

## A Matter of Principle

By Ronald Dworkin. Cambridge: Harvard University Press, 1985.

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Ronald Dworkin's writings are familiar both to legal theorists and to members of the greater intellectual community. In our world, jurists are divided primarily along natural law and positivist lines over the fundamental issue of the extent to which legal directives must conform to moral standards to be considered law. Dworkin offers, in his doctrinal works, an alternative structuring of the legal reality with his metaphysical categories of legal rules, policies, and principles. The legal system includes principles some of which themselves are moral standards, and these principles *are* laws.

In his new book, *A Matter of Principle*, Dworkin strives to make evident how his theorizing and commenting on practical concerns work together. Says Dworkin, "This is a book about fundamental theoretical issues of political philosophy and jurisprudence . . . It is, above all, a book about the interplay between these two levels of our political consciousness: practical problems and philosophical theory, matters of urgency and matters of principle." Dworkin effects this by anthologizing 19 of his essays previously published. He groups them under the headings of "The Political Basis of Law," "Law as Interpretation," "Liberalism and Justice," "The Economic View of Law," "Reverse Discrimination," and "Censorship and a Free Press."

In some of the essays, Dworkin presents and further develops his theories about the nature of law and the judicial decision. For example, in "How Law Is Like Literature," Dworkin argues that legal interpretation is like the interpretation of literature. In one revealing analogy, Dworkin brings out how the seemingly distinct tasks of creating and interpreting can be seen as merging in law as in literature. We are asked to imagine one writer composing the first chapter of a novel and sending it to another who will write the second, and so on. Dworkin brings out how each writer, except the first, is faced with not just the task of creating a chapter but also of interpreting the entire corpus "to establish . . . what the novel so far created is." (158) The analogue for law is judges' deciding hard cases, especially when the judge must determine what rules or principles "underlie" cases related to the instant case. Here, the judge "must interpret what has gone before because he has a responsibility to advance the enterprise before him rather than strike out in some new direction of his own." (159) Dworkin's inclusion of essays of this sort — those that develop his theorizing generally — may be seen as a straying from his overall purpose of

portraying the dynamic interplay between theory and practice, although arguably he needs to set himself up first with some articles just on the development of theory.

Other articles do bring out precisely this interplay. "Is the Press Losing the First Amendment?" is a good example. Here Dworkin brings out the importance of deciding whether the press' claims to special privilege are based on principle (making them a matter of individual rights) or policy (making them a matter of the community's welfare). Dworkin argues that any attempt on the part of the press to expand its First Amendment freedom based on principle is weak. One reason for this is that if the special privilege is construed as following from a justification of this freedom based on a matter of right, then journalists must endorse a position incompatible with a theory of equal rights attaching to all, namely, they must hold that some — the journalists — are more important than others. Among the reasons for thinking that a better approach rests the freedom and the attendant privilege on community-welfare policy is this: One can plausibly assert that journalists have "a special and indeed indispensable function in providing information to the public at large." (386) Dworkin's analysis here comes around practically to admonishing those who would defend the press on grounds of principle: "If we care so little for principle that we dress policy in its colors when this suits our purpose, we cheapen principle and diminish its authority." (6)

All in all, the book does help to give us a more complete profile of Dworkin as a theoretician concerned with urgent practical matters. The raw materials are here for readers to construct a more uniform and integrated view of his work. Dworkin's contribution to his project is, however, a little thin in that we get as assistance only six pages of introductory comments and no afterword or postscript. But I suppose Dworkin could reasonably respond that his intention is for the reader to be the judge. □