

The Legacy of
Ronald
Dworkin

Edited by

WIL WALUCHOW *and* STEFAN SCIARAFFA

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EDITOR'S INTRODUCTION

The Legacy of Ronald Dworkin (collected essays)

Wil Waluchow and Stefan Sciaraffa,* editors.

In June 2014, the McMaster University Program in Legal Philosophy sponsored a conference titled *The Legacy of Ronald Dworkin* (lawconf.mcmaster.ca). The conference featured ten keynote addresses and thirty-one conference presentations culled from a pool of about eighty submissions. These presentations touched upon many aspects of Ronald Dworkin's wide-ranging contributions to philosophy, including his theory of value, political philosophy, philosophy of international law, and legal philosophy. The present volume comprises sixteen of these papers (eight keynotes and eight conference presentations).

The volume's organizing principle and theme reflects Dworkin's self-conception as a builder of a unified theory of value. The broad outlines of Dworkin's system can be found in a number of passages from his work, including the following:

We all have unstudied moral convictions, almost from the beginning of our lives. These are mainly carried in concepts whose origin and development are issues for anthropologists and intellectual historians. We inherit these concepts from parents and culture and, possibly, to some degree through genetic species disposition. As young children we deploy mainly the idea of fairness, and then we acquire and deploy other, more sophisticated and pointed moral concepts: generosity, kindness, promise keeping, courage, rights, and duties. Sometime later we add political concepts to our moral repertoire: we speak of law, liberty, and democratic ideals. We need much more detailed moral opinions when we actually confront a wide variety of moral challenges in family, social, commercial, and political life. We form these through interpretation of our abstract concepts that is mainly unreflective. We unreflectively interpret each in the light of the others. That is, interpretation knits values together.¹

We catch a glimpse of Dworkin's hedgehog in the passage's last two sentences. There, Dworkin asserts that in response to practical challenges, we refine our

*We would like to thank the Social Sciences and Humanities Research Council of Canada, McMaster University, and Osgoode Hall Law School for their generous support of the 2014 McMaster Legal Philosophy Conference: *The Legacy of Ronald Dworkin* (lawconf.mcmaster.ca).

¹Dworkin (2011: 101).

initial unstudied moral and political concepts by knitting them together with other value-concepts. That is, we interpret the requirements of each discrete value-concept so that they fit with and support the requirements of our other value-concepts, including not only the sundry moral and political concepts alluded to above, but also value-concepts from other practical domains. For Dworkin, doing moral, political, or legal philosophy is in large part to engage in this value-concept integrating activity, but in a reflective way.

The volume's first section, Part I, "The Unity of Value," addresses the most abstract and general aspect of Dworkin's work—the unity of value thesis that Dworkin broaches in the passage above. Our hope is that by addressing this material in the volume's first section, we will encourage the reader to keep in mind that Dworkin's corpus is informed and integrated by the unity of value thesis. Joseph Raz's contribution is the lone entry in this first section. Despite his status as a leading proponent of exclusive legal positivism and an incisive critic of Dworkin's non-positivist legal theory, Raz offers a highly sympathetic and nuanced exploration of Dworkin's unity of value thesis. As we hope Raz's contribution and our discussion below of his and the other contributions to the volume illustrate, Dworkin's practical philosophy rests on a web of interconnected and mutually supportive theories of truth, the nature of value, the semantics of value-claims, and how such claims can be justified.

The volume's second section, Part II, "Political Values: Legitimacy, Authority, and Collective Responsibility," addresses Dworkin's contributions to political philosophy. Dworkin holds that political concepts, such as the concepts of law, liberty, and democratic governance enumerated in the passage above, comprise a distinct subset of moral concepts. Namely, political concepts are those moral concepts that pertain to the values realized by collective entities, such as states and other associations to which we belong, rather than our individual actions or characters.² The contributions to the volume's second section address Dworkin's discussions of a number of such political concepts, including authority, civil disobedience, the legitimacy of states and the international legal system, distributive justice, collective responsibility, and Dworkin's master value of dignity and the associated values of equal concern and respect.

The volume's third section, Part III, "General Jurisprudence: Contesting the Unity of Law and Value," addresses various aspects of Dworkin's general theory of law. As we shall see, Dworkin held that law is a kind of value, located in its distinct place in the web of interdependent and interdefined values described in his unity of value thesis. As Dworkin puts it in his later writings, he defends a one-system view of law, according to which law is not a normative system distinct from other values, particularly moral, but rather law is part of one larger system of value. This section comprises responses to this one-system view—some sympathetic and others highly critical.

The volume's fourth and final section, Part IV, "Value in Law," comprises pieces that offer accounts of the structure and defining values of discrete areas of law.

²Id. 327-329.

To put it in widely used terms that (as we discuss below) Dworkin might resist, these pieces are contributions to normative jurisprudence rather than general jurisprudence—more specifically, the normative jurisprudence of constitutional law, the law of contract, and procedural law. Given the systematic and unitary nature of Dworkin's theory of value, it should not be surprising that the border between Dworkin's political philosophy and his normative jurisprudence is porous. For example, Daniel Halliday's contribution challenges the justice of a legal regime that would allow unlimited intergenerational transfer of wealth via bequests. Hence, it both addresses the law of wills and estates and Dworkin's theory of distributive justice, yet we have placed it in the volume's political philosophy section. Similarly, Aditi Bagchi's piece defends a theory of contractual interpretation based on Dworkin's account of authority, and Hamish Stewart criticizes and offers an alternative to Dworkin's claim that fairness and accuracy in fact finding are the key defining underlying values of procedural law. Yet, we have placed these pieces in the volume's final section that addresses Dworkin's normative jurisprudence.

No doubt, good arguments could be made that some of the pieces placed in the volume's final section (e.g., Stewart's and Bagchi's) could have been placed in its second section, and vice versa (e.g., Halliday's). Our guiding principle in this regard is that the volume's final section should comprise contributions that focus on the fundamental structure and values of discrete bodies of law. Thus, for example, we grouped Halliday's piece with the contributions pertaining to Dworkin's political philosophy rather than the volume's final section on the grounds that although his piece has implications for the justice of tax policy and laws governing intergenerational transfer, its primary objective is not to explicate the fundamental structure or underlying defining values of a discrete body of law.

There are many arguments and insights contained within this volume that we do not discuss in this introduction despite their cogency and importance. In part, this is due to space constraints. Also, this material ably speaks for itself, and, hence, there is no need to rehearse it all here. Rather, our main objective in what follows is to illustrate the systematic nature of Dworkin's practical philosophy by identifying key Dworkinian threads that run through and unify the various arguments that our contributors have advanced. To this end, we sketch only some of the main arguments from the works collected here, with an eye to situating them both with respect to Dworkin's arguments that are directly relevant and his systematic theory of value. Paralleling the structure of our volume, the following discussion comprises four sections that respectively speak to the volume's four parts and their associated themes: the unity of value; political values; value in general jurisprudence; and value in law.

1. The Unity of Value

As noted above, Raz's contributes the lone entry in our volume's first section. In this piece, Raz seeks to clarify Dworkin's unity of value thesis, and he identifies a

research agenda comprising questions that Dworkin has left for us. To this end, Raz sets out a general statement of the unity of value thesis and then explores two interpretations of it. As a preface to his statement of the unity of value thesis, Raz notes that Dworkin's term *value* refers to a broad normative category that includes reasons, norms, virtues, and values in the narrower, more common sense of the term. Raz also cites the following two passages from Dworkin:

[T]he various concepts and departments of value are interconnected and mutually supportive.³

The truth of any true moral judgment consists in the truth of an indefinite number of other moral judgments and its truth provides part of what constitutes the truth of any of those others.⁴

Although the latter statement refers specifically to moral judgments, Raz takes it to be a particular application and elaboration of the relationship between the departments and categories of values described in the first passage cited immediately above.

Raz formulates Dworkin's unity of value thesis as follows:

Given what values are, each of them and each value proposition or value belief rests on a constitutive case, and the values included in these cases themselves rest on further constitutive cases.⁽⁹⁾⁵

In sum, as Raz reconstructs it, Dworkin's unity of value thesis holds that the truth-conditions of any value claim refer to other true value statements. That is, for any value-claim, it is true only if and because its truth is supported by other true value-claims.

A large part of Raz's discussion is an exploration of the connection that Dworkin draws between the unity of value thesis and his idea of constructive interpretation. As is well known, Dworkin holds that constructive interpretation comprises three elements:

Interpretation can therefore be understood, analytically, to involve three stages. We interpret social practices, first, when we individuate those practices: when we take ourselves to be engaged in legal rather than literary interpretation. We interpret, second, when we attribute some package of purposes to the genre or subgenre we identify as pertinent, and, third, when

³Id. 10.

⁴Id. 117.

⁵Compare Raz's statement of Dworkin's unity of value thesis with his claim that practical reasons are facts that constitute the case that the actions for which they are reasons are valuable. Bear in mind that, as Raz notes, Dworkin would characterize assertions of the form "A has a reason to phi" as value-claims. See, e.g., Raz (2011: 13): "A normative practical reason is a fact that actions of a certain kind have properties that can give a point or a purpose to their performance, properties that make it possible for people to perform those actions because they possess them, and where actions so undertaken are intelligible because of that fact." See also Id. 36: "Reasons for action, I will assume, are facts that constitute a case for (or against) the performance of the action."

we try to identify the best realization of that package of purposes on some particular occasion.⁶

The unity of value thesis figures in the second and third stages of constructive interpretation. In the second stage, the interpreter must look to values external to the practice in question to locate the practice's purposes or, as Dworkin sometimes puts the same idea, the practice's values. And, in the third, the interpreter must look to these underlying purposes or values to determine what the practice requires in particular cases. For instance, on this view, to specify the underlying values and requirements of the practice of acting with courtesy, one must look to values other than courtesy (e.g., respect).⁷ In sum, for Dworkin, any value-claim is justified in terms of a network of all other value-claims, each component claim of which is justified in the same way. Hence, no set of values plays a foundational justificatory role.

A key question Raz raises is whether the most plausible reconstruction of Dworkin's unity of value thesis assigns a merely epistemic role to constructive interpretation or an epistemic and innovative role. Raz labels the merely epistemic reading as the Object-Dependence Thesis (ODT), which he formulates as follows:

Truths about value are independent of any single person's view about what values there are; the constitutive case for them consists of values or propositions about values.(16)

On this view, truths about value are mind-independent in the following robust sense: Dworkinian interpretive reasoning with respect to the relevant initial set of unruly and inconsistent beliefs about value (perhaps an agent's beliefs or beliefs widely accepted within her community) provides practical agents with epistemic access to truths about such values, but such reasoning, even if fully informed and idealized, is not constitutive of those truths.

By contrast, according to a perspectival constructivist reading of the unity of value thesis, interpretive reasoning is both epistemic and innovative, for true value statements just are those that reflect the value judgments that would result from the application of Dworkinian interpretive reasoning to the initially unruly set of value propositions comprised by the relevant perspective. Hence, on the constructivist reading of the unity of value thesis, truths about value are objective and mind-independent in a weak sense of the term, for any single person might make mistakes in her interpretive reasoning about values or might so reason on the basis of mistaken empirical facts. However, such truths would not be mind-independent in the more robust sense of the term that, as we read it, the ODT contemplates, for on the constructivist account, truths about value are constituted by

⁶Dworkin (1986: 230-231).

⁷See Id. 46-49.



FIGURE 1.1. *Dworkin's Complex Conception of Dignity.*

the deliverances of the method of interpretive reasoning correctly applied to the relevant perspective's set of value judgments.

Note further that, as we understand it, the perspectival constructivist reading is not a response-dependence view. That is, this reading does not hold that a value claim is true if and only if a fully informed and ideal interpretive reasoner would accept it. Rather, the claim is that true-value claims are those that are entailed by the method of interpretive reasoning as applied to the relevant set of initially unruly set of value judgments and the correct empirical facts.

Raz finds evidence for the constructivist reading in Dworkin's discussions of the values of authenticity and responsibility. For Dworkin, the value-concepts of authenticity and responsibility are constituents of a larger complex of value-concepts that Dworkin refers to as dignity, as shown in Figure 1.1.

According to Dworkin, self-respect requires each person to acknowledge that her life matters, and hence the importance of living an authentic life.⁸ Dworkin adds that living an authentic life entails acting responsibly, which among other things, involves acting in accordance with the deliverances of interpretive reasoning as applied to one's initially wild and unruly array of value beliefs (as described by Dworkin in the lengthy passage cited in the second paragraph of this introduction).⁹

Raz suspects that Dworkin would accept neither the ODT nor the constructivist interpretation¹⁰ of the unity of value thesis. Nonetheless, he considers these

⁸Dworkin (2011: 203-204).
⁹See also Id. 108 & 203-204.
¹⁰Scattered throughout Dworkin's corpus are a number of discussion that speak to whether he is most charitably read as a kind of metaethical constructivist or could be sympathetically reworked along these lines. See Dworkin (1973: 505-519) for a distinction between two interpretations of Rawls's method of reflective equilibrium: constructive and natural. The latter parallels Raz's Object-Dependence Theory (ODT), and the former parallels the perspectival constructivist

two possibilities in the hopes of clarifying Dworkin's view and the research program that it frames. Raz describes this research programme as follows:

Given that truths about values are grounded in constitutive cases themselves consisting (in part) of truths about values, each one of which depends on a constitutive case, and so on and so forth, we should research (a) whether, and if so to what degree or in what ways, do the links thus existing between truths about values connect all truths about all values, or only some of them; and (b) how tight are the connections between values so established (do they allow for conflict? Indeterminacies? Etc.)?(22)

Raz recognizes that Dworkin's answers to some of these questions are clear. Namely, Dworkin holds that all values are linked to one another, that there are no incommensurate values, and that there are no fundamental conflicts between values. However, Raz argues that these answers are not required by the unity of value thesis and that Dworkin has provided no argument for them.

Toward the end of his contribution, Raz argues that whether Dworkin realized it or not, the ODT must be the "ultimate foundation of the doctrine of unity." (21) The following passage contains Raz's main argument for this claim.

[A]t the end of the day Dworkin sees the case for engaging in interpretive reasoning, as he understands that process, that is the case for understanding values through Dworkinian interpretation, as resting on the responsibility project. It is what responsibility requires of us. The case for the responsibility project is that it is valuable, and its value must in the last resort be vindicated by the ODT approach.(21)

One might object that the responsibility project need not in the last resort be vindicated by the ODT approach, for this project could be vindicated by way of a perspectival constructivist approach. That is, at least from some perspectives, engaging in interpretive reasoning with respect to the unruly and wild array of value judgments that constitute those perspectives would lead to endorsement of the responsibility project. In other words, for some, interpretive reasoning might very well be self-affirming.

However, this objection misses Raz's point, which we take to be the following twofold claim. First, the responsibility project is valuable only if the unity of value thesis is true. In other words, engaging in interpretive reasoning with respect to one's value judgments is a valuable project only if, per the unity of value thesis, such reasoning leads to true beliefs about value. Second, if Dworkin's metanormative unity of value thesis is true, its truth is, per the ODT, "independent of any

reading of the unity of value thesis. Dworkin endorses the constructive interpretation of reflective equilibrium. See too Dworkin (2011: 63-66). There, he rejects Rawls's constructivism. Note, however, that what he specifically rejects is Rawls's attempt to employ this method in his latter work without relying on moral truths or aspiring to identify such truths. Most vexing for the constructivist reading of Dworkin is his puzzling skirmish with Sharon Street, who is a thoroughgoing constructivist about value. See Dworkin (2011: 446, n. 9). See also Dworkin (1996).

single person's view about what values there are." (16) In sum, we take Raz's claim to be that for the responsibility project to be vindicated, at least one truth about value—namely, the metanormative unity of value thesis itself—must not be a perspectival construction.

Dworkin's sketchy remarks about the concept of truth suggest how one might defend an unalloyed constructivist reading of Dworkin's unity of value thesis:

We could offer, as our most abstract characterization, that truth is what counts as the uniquely successful solution to a challenge of inquiry. We could then construct more concrete specifications of truth for different domains by finding more concrete accounts of success tailored to each domain. These different accounts would be nested. The value theory would be a candidate account for success across the whole domain of interpretation, and the theory of moral responsibility I described in chapter 6 would be a candidate application of the value theory to the more specific interpretive domain of morality. A different account of success, and hence, truth, would be offered for science.¹¹

In keeping with this passage, the Dworkinian constructivist might point out that her theory of value—the unity of value thesis—is itself a candidate account of the success conditions of value judgments. Moreover, she could argue that whether the unity of value thesis is itself correct turns on the set of success conditions that govern such metanormative claims. As we interpret it, Raz's point about the foundational status of the ODT presupposes the robust mind-independence of metaethical truths. However, it is unlikely that Dworkin would have accepted this presupposition.¹²

As the following passage indicates, Dworkin argues that truth is itself an interpretive concept and hence, claims about truth, i.e., claims about the success conditions of claims within any discourse, must be established by way of interpretive reasoning.

We can rescue philosophical arguments about the nature of truth if we can understand truth as an interpretive concept. We should reformulate the different theories of truth that philosophers have proposed, so far as we can, by treating them as interpretive claims. We share a vast variety of practices in which the pursuit and achievement of truth are treated as values. We do not invariably count it good to speak or even to know the truth, but it is our standard assumption that both are good. The value of truth is interwoven in these practices with a variety of other values that Bernard Williams called, comprehensively, the values of truthfulness.¹³

¹¹ Id. 177.

¹² Dworkin is difficult to parse on this particular issue. See Id. 446, n. 9 and Dworkin (1996) for relevant discussions.

¹³ Dworkin (2011: 173).

Thus, in accordance with the tenets of constructive interpretation, Dworkin could argue that to specify the purposes and hence the truth-conditions of any type of discourse, be it scientific or value-discourse, the theorist must engage in first-order argument about the underlying values of engaging in discourse of that kind.¹⁴ That is, one must engage in interpretive reasoning. Accordingly, one committed to a thoroughgoing perspectival constructivist reading of the unity of value thesis might argue that the success conditions of metanormative claims about the success conditions about value (e.g., the unity of value thesis) are not robustly mind-independent. Rather, they too are perspectival constructions of interpretive reasoning.

At this point, it should be clear that Dworkin made many claims and arguments that fall squarely within the domain of inquiry commonly described as metaethics. As we have just discussed, Dworkin defended a theory of the underlying nature of value, the meaning and structure of value concepts and claims, the truth-conditions of value-claims, and how such value-claims might be justified. Moreover, as we hope this volume illustrates, Dworkin's core metaethical claim, the unity of value thesis, is the backbone of all his work.

Readers familiar with Dworkin's work might object to our characterization of the unity of value thesis as a metaethical claim, for Dworkin vigorously expressed his impatience with the distinction between first-order ethics and metaethics. To wit, a section of *Justice for Hedgehogs* bears the title, "Yes, Meta-Ethics Rests on a Mistake."¹⁵ Although we cannot fully unravel this knot here, we think that the discussion of Dworkin's theory of truth puts us in a position to identify a key thread. Namely, Dworkin was not opposed to metaethics broadly construed as inquiry into the semantics, epistemology, and underlying metaphysics of normative discourse. However, he did reject a distinction that he took to be a defining tenet of contemporary metaethics: "the distinction most moral philosophers draw between ordinary ethical or moral questions, which they call first-order substantive questions, and the second-order questions they call 'meta-ethical.'"¹⁶

As we have just seen, Dworkin rejected this distinction, for he held that truth is itself an interpretive value-concept, and hence, the metaethical project of establishing the success conditions (or the lack thereof) of value claims can proceed only by way of first-order arguments about values. Note further that this view reverberates throughout his work. For instance, as is well known, he similarly holds that no firm line divides general jurisprudence from judging. That is, in his view, there is no firm line that divides establishing the success conditions of first-order legal reasoning (general jurisprudence) from first-order legal reasoning (judging).

¹⁴ See Huw Price (2013) and Lynch (2009) for carefully defended and stated theories of truth that in some respects parallel the theory of truth that Dworkin sketches in *Justice for Hedgehogs*.

¹⁵ Dworkin (2011: 67).

¹⁶ Id.

2. Political Values: Legitimacy, Authority, and Collective Responsibility

The volume's second section comprises pieces that address some of Dworkin's key contributions to political philosophy. In their respective pieces, Candice Delmas and Thomas Christiano critically assess a number of Dworkin's claims about the basis and scope of political legitimacy. Delmas and Christiano advance their argument within the framework of Dworkin's account of political legitimacy that holds (1) a state is legitimate only insofar as it possesses the moral liberty to enforce its directives, and (2) such legitimacy is likely fatally undermined if the state does not have the moral power to obligate its subjects by issuing those directives.¹⁷

Dworkin frames his inquiry into the grounds of political legitimacy in terms of a tension between two kinds of value. On the one hand, he recognizes that a necessary condition for the realization of goods of the very highest moral importance is widespread conformity to and enforcement of networks of putative obligations. For example, the goods of friendship, marriage, and a parent-child relationship can only be realized if the norms that constitute these relationships are followed and enforced. In this same vein, the goods of living in a political community (stability, order, reliable rights protection, and so on) can only be realized if the relevant network of putative obligations that constitute the political community is followed and enforced. Thus, for Dworkin, a key basis of the political obligation to obey a community's laws and the state's moral liberty to enforce those laws is that following and enforcing these norms contributes to the maintenance of the goods of political community.

On the other hand, Dworkin worries that the conformity to and enforcement of such political obligations is a threat to the value of dignity. As Dworkin characterizes this value, dignity requires the moral agent both to stay true to her reasons in the face of irrational contrary impulses and to act in accordance with her own interpretive reasoning rather than the dictates of others. Thus, his worry:

How can I, given my special responsibility for my own life, accept the dominion of others? How can I, given my respect for the objective importance other people's lives, join in forcing them to do as I wish?¹⁸

In short, Dworkin's concern is that by conforming to the dictates of others as embodied in the state's laws, the moral agent might fail to manifest appropriate recognition of the fact that her life matters. Similarly, by enforcing those laws, moral agents might fail to respect the importance of other people's lives.

Dworkin holds that this tension can be resolved on the basis of a Kantian principle implicit in the second question of the immediately foregoing passage. This principle holds that self-respect (a component of Dworkin's master value of

¹⁷Dworkin (2011: 321-323) and (1986: 190-192).

¹⁸Dworkin (2011: 320).

dignity) requires recognition of the objective rather than the subjective ground of the fact that one's life matters—namely, a ground shared by all rational agents. Hence, self-respect requires acknowledgment of the fact that one's life matters as much but not more than the life of other rational agents.¹⁹ Accordingly, he offers the following resolution of the stated worry:

We find ourselves in associations we need and cannot avoid but whose vulnerabilities are consistent with our self-respect only if they are reciprocal—only if they include the responsibility of each, at least in principle, to accept collective decisions as obligations.²⁰

Thus, Dworkin concludes that the conformity to and enforcement of a community's laws is not an affront to one's dignity so long as all members of the community conform and are held to the community's constitutive obligations. To this condition of political legitimacy, Dworkin adds one more. Namely, norms generally accepted as obligations are "genuine obligations . . . only when they are consistent with an equal appreciation of the importance of all human lives and only when they do not license the kind of harm to others that is forbidden by that assumption."²¹

In sum, in at least two ways, Dworkin's value of dignity plays a crucial role in grounding political legitimacy. First, by conforming to and holding others to the laws of one's community, the moral agent plays her part in a group practice that is a necessary condition for the realization of goods that are integral to the well-being of every member of her political community. In other words, by acting in this way, the moral agent acknowledges that her life and those of her fellow community members matter, thereby according an appropriate measure of respect to each. Second, violating those norms is an affront to the dignity of those who accept and conform to such obligations, for such violations are failures of reciprocity that render others' unrequited conformity to the practice a tacit denial of their equal worth.

In a crucial qualification of the second condition just described, Dworkin allows that political obligations are binding even if they embody an imperfect conception of equal appreciation so long as their deficiencies are not too egregious.²² However, this qualification introduces yet a further tension. On the one hand, respect for human dignity requires conformity to the extant laws of the community despite their imperfections, yet on the other, it might be that by disobeying those laws one might contribute to efforts that might lead the community to a more perfect appreciation of the equal worth of its citizens. Thus, Dworkin acknowledges that "[i]t is debatable when civil disobedience is an appropriate response to a citizen's more general obligation to help improve his community's

¹⁹See *Id.* ch. 11.

²⁰*Id.* 320.

²¹*Id.* 315.

²²See e.g., Dworkin (1986: 202-206).

sense of what its members' dignity requires."²³ In her contribution, Delmas enters into this debate, and she argues that in addition to the political obligation of obedience to the law, there is a political obligation of civil disobedience. That is, she argues that "resistance to unjust laws, policies, and institutions in overall legitimate communities, as well as resistance to illegitimate governments and are not only compatible with, but required by, the principles of Dworkinian dignity." (26) More pointedly, she argues that contemporary political communities are egregiously unjust, and hence, the predominant duty binding on the members of such communities requires disobedience.

Whereas Delmas responds to Dworkin's account of the basis of state legitimacy, Christiano critically assesses and offers an alternative to his account of the basis of the legitimacy of international law. That is, he assesses and provides an alternative account of the complex of legal norms, such as *jus cogens* norms, the provisions of certain multilateral treaties, and international customs that are commonly recognized as constituting an international legal order with which all states are duty-bound to comply. Christiano criticizes two features of Dworkin's account of the basis of this body of law's legitimacy: its non-cosmopolitanism and its failure to recognize the import of state consent.

As noted above, Dworkin holds that the ability to secure a number of highly important goods is a key basis of a state's political legitimacy. Dworkin enumerates a number of goods that states secure in support of his views concerning the basis of the legitimacy of international law: protection from the depredations of war and human rights abuses; the avoidance of catastrophic collective action failures that can only be cured by international coordination (e.g., climate change or depletion of the oceanic commons); the provision of some say in the enactment and administration of international policies that have significant implications for the well-being of their citizens; and the ability of a state's citizens to acquit their responsibilities to help protect people in other nations from war crimes, genocide, and other violations of human rights.²⁴ Dworkin argues that international law is constituted by a set of norms practiced by states. More pointedly, they are those norms that constitute an international practice that augments states' capacity to provide their respective citizenries with goods of the sort just enumerated. Dworkin further argues that such norms impose binding obligations for any state insofar as conformity with them augments that state's ability to provide its citizens with those goods.

In sum, Dworkin's account of the legitimacy of international law is non-cosmopolitan, for on this account, international law is binding and hence legitimate only insofar as each respective state's conformity to this body of law mitigates that state's legitimacy deficits with respect to its own citizens. Christiano challenges the non-cosmopolitan structure of Dworkin's account, arguing that the fundamental interests of all persons are the immediate ground of the legitimacy

²³ Id. 321.

²⁴ Dworkin (2013: 17-18).