

the theory that troubles Dworkin so, the plain-fact view of law, which has it either that there is existing law that definitively settles any issue (the layman's version) or that, should the existing law be silent on some issue, the judge, through his discretionary power, creates a new law (the academic or progressive version). (11) In either case, again, disagreement about law cannot be recognized.

Dworkin styles his theory "law as integrity," the idea being that judges create a rationally integrated and coherent network of legal principles which is law. In defining law vis-a-vis the judge's task, Dworkin has us think of a judge named Hercules to underscore the magnitude of the project: "The actual, present law, for Hercules, consists in the principles that provide the best justification available for the doctrines and devices of law as a whole. His god is the adjudicative principle of integrity, which commands him to see, so far as possible, the law as a coherent and structured whole." (401)

In helping the reader get a better sense of this view of law and the judge's function, Dworkin introduces an analogy he has drawn elsewhere. He compares the various judges in the legal system to a group of novelists each of whom is to contribute a chapter to a novel. Just as each writer is to add to what has been written before him in a fashion that makes sense of the prior efforts, so too must judges deal with the thoughts of their predecessors in developing the law. Says Dworkin, "The adjudicative principle of integrity instructs judges to identify legal rights and duties, so far as possible, on the assumption that all are created by a single author – the community personified – expressing a coherent conception of justice and fairness." (225) As such, Dworkin refers to contemporary legal practice as "an unfolding political narrative." (225)

If law itself is an interpretive concept, one where "judges should decide what the law is by interpreting the practice of other judges deciding what the law is," (410) its empire is an attitude: "Law's empire is defined by attitude, not territory or power or process....It is an interpretive, self-reflective attitude addressed to politics in the broadcast sense." (413) Dworkin extends the metaphor of law's having an empire as he identifies its capitals, its princes, and its prophets: "The courts are the capitals of law's empire, and judges are its princes, but not its seers and prophets. It falls to philosophers, if they are willing, to work out law's ambitions for itself, the purer form of the law within and beyond the law we have." (407)

From just this brief summary of the main tenets of Dworkin's thought, a few difficulties become evident. For one thing, law understood as an interpre-

## *Law's Empire*

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*Law's Empire* is perhaps Dworkin's most synoptic account to date of the ideas that he has been developing for well over a decade on the nature of law and the judicial decision.

Law, we find, is an "interpretive concept" (87) which, so understood, allows us to give credence to the phenomenon of judges' disagreeing in hard cases. Dworkin finds this very important, describing the book as being "about theoretical disagreement in law," (11) and identifying as the "signal merit" of the view that we can "believe what our judges say," that we can "take the opinions judges write in hard cases at face value." (90) This could not be done on

tive concept may be an overly narrow way of characterizing a complex phenomenon. The activity of judges obviously figures large in Dworkin's characterization of law; after all, it is they who do the interpreting, it is they who may be in disagreement about how the ongoing political narrative should be told. And, indeed, law qua interpretive concept allows us to make sense of this activity of courts so described. But what of other apparently quite significant factors that need to be accounted for, like the citizenry's understanding, accepting, and following laws, that seem quite removed from the activity of judges? It is telling, I think, that the citizenry was excluded from the inventory of personages in the empire that Dworkin thought worthy of mentioning.

Further, certain problems surround the role Dworkin assigns to the philosopher/sage in the empire. First, I am not sure that Dworkin, a philosopher himself, has transacted, at least in this book, any of the business that he expects of the empire's philosophers; Dworkin's vision of philosophers providing a vision of what law can become is not itself a vision of what law can become. But regardless of whether Dworkin himself discharges the duties he has assigned to the philosopher, there is a more difficult problem – how, practically, will the thinking of the empire's philosophers come to affect the thinking of the judges as their narratives unfold?

Dworkin suggests that a possible problem with his whole plan is whether philosophers are willing to assume the role he assigns, but he shows little sensitivity to the problem of how to insure that the empire's princes will pay any attention to those who are so willing. I do not think it a generalization made with any significant distortion to say that our judges are quite ignorant of most philosophical thought on law. And, if so, underscored is the magnitude of the chasm between the territories of our judges and our philosophers and thus the need to do some serious thinking on the fashion in which this chasm can be bridged. My own sense of the matter is that, even if Dworkin's overall rendering of law's empire may be incomplete in this regard, it is, nonetheless, a good piece of cartography, notably because of his having placed philosophers on the map of law's empire.