

**MORAL THEOLOGY FOR HEDGEHOGS:
RONALD DWORKIN'S THEORY OF JUSTICE**
// **TEOLOGIA MORAL PARA OURIÇOS: A TEORIA
DA JUSTIÇA DE RONALD DWORKIN**

Alexandre Araújo Costa

>> **ABSTRACT // RESUMO**

After decades of studies that emphasized the necessity of a moral reading of the law, the American philosopher Ronald Dworkin published in 2011 the book *Justice for Hedgehogs* in which he explicitly presents his theory of justice. This paper analyzes the theory exposed, showing the structure of Dworkin's arguments, showing how he adopts an Aristotelian methodology (which elaborates interpretations able to attribute meaning to effective social practices) that leads to the Platonic conclusion that affirms a fundamental unit of values. It is held at the end of this ethical project is not consistent because the analysis of effective practices do not to lead to the recognition of the unity of the Good, but only to the recognition that the liberal tradition adopted by Dworkin has a universalist discourse based on the existence of a unitary concept of Good. Thus, the moral understanding of the morality proposed by Dworkin generates a discourse that is more theological than philosophical, because it maintains its validity in denying the possibility of a philosophical critique that questions the moral assumptions of the author.

// Após décadas de estudos que enfatizaram a necessidade de uma leitura moral do direito, o filósofo americano Ronald Dworkin publicou, em 2011, o livro *Justice for Hedgehogs*, em que ele apresenta explicitamente sua teoria da justiça. O presente artigo analisa a teoria exposta, evidenciando a estrutura dos seus argumentos, mostrando como Dworkin adota uma metodologia aristotélica (ao elaborar interpretações capazes de dar sentido às práticas sociais efetivas) que o conduz a uma conclusão platônica (ao afirmar a unidade fundamental dos valores). Sustenta-se, ao final, que esse projeto ético não é consistente, eis que a análise das práticas efetivas não conduz ao reconhecimento da unidade do bem, mas apenas ao reconhecimento de que a tradição liberal em que Dworkin se insere tem um discurso universalista que se baseia na existência de uma noção unitária do bem. Assim, a autocompreensão moral da moralidade proposta por Dworkin gera um discurso de matriz mais teológica que filosófica, pois baseia sua validade na negação da possibilidade de uma crítica filosófica que coloque em questão os pressupostos morais assumidos pelo autor.

>> **KEYWORDS // PALAVRAS-CHAVE**

Ethics; Ronald Dworkin; Platonism; Aristotelianism; Skepticism. //
Ética; Ronald Dworkin; Platonismo; Aristotelismo; Ceticismo.

>> **ABOUT THE AUTHOR // SOBRE O AUTOR**

Associate Professor of the Institute of Political Science of the University of Brasilia (UnB). Leader of the research group in Politics and Law. //
Professor do Instituto de Ciência Política da UnB. Coordenador do Grupo de Pesquisa em Política e Direito.

I. THE UNITY OF VALUES

In 2011, after decades of studies that emphasized the necessity of a moral reading of the law¹, the American philosopher Ronald Dworkin published a book entitled “Justice for Hedgehogs”, in which he presents his ethical theory with an ambitious and honest approach. It is ambitious because its main objectives contradict a great deal of the theoretical production of the last century, advocating the existence of value judgments that are objectively correct and sustaining the unity between ethical, moral and political values. It is honest because such objectives are clearly defined in the initial paragraphs and are pursued throughout almost 500 pages of a transparent argumentation in relation to its assumptions and consequences. Albeit I disagree with almost all of Dworkin’s assumptions, which also leads me to disagree with the conclusions of his work, I have great admiration for the transparency with which he sought to highlight his assumptions and uphold his positions.

His starting point is simple and well-articulated with the empiricism that marks the British approach to moral philosophy since the beginning of modern times: *there are social value practices which need to be interpreted*. Away from the rationalist influences of Kantianism, which sought to define inalterable and transcendental criteria of morality, Dworkin endeavored to offer to his contemporaries a theory that would give a suitable explanation to the actual lives of the people who make moral judgments on a range of different situations and consider these analyses to be true since they are based on justice parameters that are objectively valid. According to the American author, this is the *ordinary view* that most of us support more or less unreflectively².

Dworkin adopts this ordinary view and seeks to uphold it against two groups of thinkers that criticize it. The first encompasses those who accuse it of being imprecise, since people tend to overly trust their moral intuitions, and highlight that the absence of a critical perspective leads to the reproduction of prejudices. These are the thinkers from a Socratic background, who consider common sense to represent the shadows in the wall of a cave, and support the necessity of seeking true illumination through rational procedures. Dworkin calls them internal skeptics as they believe in the existence of an objective morality (thus having an internal approach to morality), but doubt that common sense can be able to elucidate it.

Dworkin’s theory opposes this rationalism through a reaffirmation of the human principle that there is an insuperable void between deontic judgments and actual judgments, making impossible a factual demonstration of the deontic validity of any statement. He recognizes that it is not possible to rationally demonstrate that certain moral opinions are true or false, which brings his conception dangerously close to the perspective supported by the other group of critiques of the ordinary view: the external skeptics, who believe it is impossible to judge values from objective truth criteria. Dworkin expressly rejects this external skepticism for considering it incompatible with effective moral

practices, given that even the most skeptical of philosophers is oriented according to “some limited integrated set of opinions that carries visceral authenticity”³.

He then asks to the skeptics: if you consider the beliefs that you live by as authentic beliefs, “what kind of hesitation and doubt would then make sense? Why shouldn’t you simply believe what you then believe? Really believe it?”⁴. This fragment of the epilogue reveals the basic premise of the Dworkinian argumentation: *we should believe in our beliefs*. This assumption is the opposite of the Socratic position that constitutes the distinctive mark of occidental philosophy: *question your beliefs and trust your reason*. This position was explicitly reaffirmed by René Descartes, who inaugurated the philosophical approach of modernity, stating that only a hyperbolic doubt could lead us to the truth, as humans take as the truth all that they have learnt by custom and by example⁵ and, thus, they can believe with equal intensity in correct affirmations and well-grounded prejudices.

While philosophers have spent two and a half millennia seeking to understand what reason can tell us about moral values, Dworkin twists this question and asks what our moral values require from our reason. His answer is that morality demands us to believe in the truth of our moral convictions and that we shall act according to our most viscerally authentic beliefs. Even if we know that our moral values derive from the interaction between our genetic tendencies, our culture and our personal history, the morality in which we are immersed demands us to treat moral values as objectively valid⁶. The *authentic conviction* about *objective values that must be observed* forms the basis of the moral virtue that Dworkin calls *responsibility*⁷, which is in the core of his theory of justice as it is based on this criterion that he refutes the skeptics. To Dworkin, questioning the existence of objective moral criteria is a sign of *irresponsibility* as skepticism distances us from the behavior that ordinary view considers morally required.

This line of argumentation leads Dworkin to circularity, as he seeks to ground morality in morality itself through the affirmation that we have the *moral duty* to believe in our *moral convictions*. It is necessary to recognize that one of the great achievements of *Justice for Hedgehogs* is in the fact that Dworkin highlights this circularity, clearly sustaining that his moral categories “are drawn from within morality – they are themselves moral judgments”⁸ and countering the modern thesis that “something other than value must underwrite value if we are to take values seriously”⁹.

Despite this transparency being admirable, it is important to note that it ends up promoting a peculiar overvaluation of faith, as Dworkin attributes a positive moral value to the capacity that people have of considering that their beliefs are objectively true. In fact, he does not use the word *faith*, but affirms the necessity of taking our convictions seriously, given that “we can seek through about morality only by pursuing coherence endorsed by conviction”¹⁰. This does not mean an immediate canonization of intuitive assurances, given that he recognizes that

“our convictions are initially unformed, compartmentalized, abstract and therefore porous”¹¹, and that is why he advocates that it is necessary to create a critical interpretation that promotes “a thorough coherence of value among our convictions”¹². This systematization strategy is not a coincidence; it is fully compatible with the criteria of *integrity* that composes the legal hermeneutics supported by the author¹³.

This ideal of coherence cannot be reduced to the formalist systematics that inspired the modern attempts to anchor moral values solely on rationality. To Dworkin, the virtue of responsibility does not only demand the moral convictions system to be coherent, but it also demands it to be viscerally authentic, as morality needs to be compatible with “what feels natural to us as a suitable way to live our lives”¹⁴. This is where Dworkin more directly opposes the philosophical tradition that uses the category of *reason* as the theoretical instrument capable of questioning our most visceral beliefs. Instead of creating concepts aimed at identifying and correcting the distortions and prejudices that are present in common moral concepts, he seeks to establish a coherent system *from* the disarticulated and uncritical set of moral conceptions that are present in common sense. Instead of highlighting the philosophical virtue of doubt and encouraging a critical analysis of our authentic visceral values, he proposes that we anchor ourselves to our authentic values and concludes by saying that all thinkers that promote a systematic questioning of the *ordinary view* are *skeptical*. For this reason, in the book *Justice for Hedgehogs*, Ronald Dworkin does not seem to present a proper *moral philosophy*, but a *moral theology*, i.e. a dogmatism that explains the demands imposed by the moral virtue assumed by the author.

In this theology, the fundamental virtue is *responsibility*, which demands from us a dogmatic belief in the obligations that move our lives more viscerally. This construction allows to elegantly settle the philosophical difficulty consistent in justifying the reason why people have the obligation to act according to the imperatives of the good. This difficult question was approached by Plato through the establishment of the necessary links between duty and desire: he argued that we desire the happiness of our immortal soul, which will be awarded or suffer punishment according to the morality of our actions, and therefore we should seek to behave with fairness.¹⁵ A modern reading of this argument is present in Kant, who replaced the desire in the Platonic equation for rationality: mankind belongs both to the sensitive and the intelligible world, what makes it mandatory for us to follow the moral rules dictated by reason¹⁶. This thesis, based on the existence of a rational soul, seem little attractive to the contemporary laic sensibilities, which tend to admit Hume’s diagnosis in the sense that there is no such thing as an objective obligation, given that “the sense of justice and injustice do not derive from nature, but has an artificial - although necessary - origin from education and human conventions”¹⁷.

Dworkin clearly notices the challenge presented by the human distinction between facts and values, and tries to overcome this difficulty with an alternative: he admits that Hume is correct in the sense of the

impossibility of rationally demonstrating moral objectivity, but sustains that Hume's conception when "properly understood, supports no skepticism about moral truth but rather the independence of morality as a separate department of knowledge, with its own standards of inquiry and justification"¹⁸. This support of the autonomy of morality allows Dworkin to develop the idea that we are morally required to believe in the objectivity of our moral judgments, given that it would be irresponsible to develop a theory of justice detached from a theory of moral objectivity¹⁹. Therefore, even if the skeptics' position could be cognitively justifiable, it would be morally condemnable for not taking seriously the necessity of acting responsibly.

But why should we be morally responsible? In order to answer this question, Dworkin shifts from a field that he defines as *moral* (our obligations towards others) to the field of *ethics*, where the requirements for living a desirable life are defined. He recalls the Aristotelian argumentation on *eudaimonia* (good life), starting from the tautological affirmation that all men want a desirable life, in such a way that a good life can be considered something *good per se*. And, inspired by Aristotle's argumentation on moral excellence, he sustains that *eudaimonia* is not only an existence full of pleasures, but that of a *dignified* life.

According to Dworkin, "we must find the value of living – the meaning of life – in living well" and "dignity and self-respect – whatever these turn out to mean – are indispensable conditions of living well"²⁰. This dignity is dogmatically defined based on two intertwined principles: on one side, the principle of *authenticity*, which demands people to identify the values they consider to be valid more instinctively; and on the other side, the principle of *self-respect*, which demands people to seek in practice the realization of their authentic values²¹. "Together, these two principles offer a conception of human dignity", which Dworkin uses as a criterion to define the nature of morality, given that acts are only considered unfair when they harm the dignity of another person²². Thus, the combination of the principles of dignity results in the moral virtue of *responsibility*: the commitment with the realization of values in which we believe.

At this point, Dworkin's argumentation follows the same structure which has marked his work, especially in the field of interpretation of the law: he analyses the responses that have been given to problems in practice, and uses them to construct an interpretation that translates them as best as possible²³. This is exactly the methodology that Aristotle, as shown by Martha Nussbaum, uses to establish a theory that is always in agreement with the *phainómena*, i.e. the present current opinions we are used to call common sense²⁴. Although Aristotle recognizes that common perceptions may be radically wrong, they are the starting point he uses to establish a philosophical theory which identifies their limitations and dilemmas, and which can allow the construction of a conception that transcends them, but somehow preserves them²⁵. Instead of mechanically repeating the traditional assumptions, he seeks to identify in the heart of tradition its immanent principles (which would not be accessible by

other means, as advocated by Platonism) in order to construct ethical criteria which allow the best possible translation of this tradition itself. This commitment with the identification of the best possible interpretation offered by tradition is what Dworkin defines as responsibility.

After defining responsibility in the field of ethics, the author extends its definition to a field that he calls morality, using a Kantian approach: our self-respect generates, in parallel, the respect towards all other human beings²⁶. After covering this aspect, he soon transfers equal moral consideration to the field of politics, defining that political legitimacy needs to be grounded on a principle of equal concern, which he considers to be morally justifiable, and on a principle of respect towards the individual responsibilities which guide ethical behavior. To Dworkin, “the basic understanding that dignity requires equal concern for the fate of all and full respect for personal responsibility is not relative. It is genuinely universal”²⁷. And as politics defines the law, legal norms should be interpreted in order to translate the sense of justice “not because we must sometimes comprise law with morality, but because that is exactly what the law, properly understood, itself requires”²⁸.

With this, Dworkin unifies the multiple facets of value within society (ethical, moral, political and legal spheres), subjecting all of them to the virtue of responsibility, which implies the objective obligation of seeking in our coexistence (i.e. in morality, in politics and in the law) the consolidation of the values of equality and responsibility. Therefore, Dworkin considers the only responsible (i.e. morally correct) position that of people who are linked to an ordinary view: “what worries them is not whether moral claims can be true but which moral claims are true; not whether we can, but whether we do, have good reason to think what we do”²⁹. Although Dworkin attaches himself to this perspective, he accepts the criticism of external skeptics in the sense that moral truth cannot be comprehended as some sort of correspondence to established facts. However, he simultaneously argues that “we cannot escape, in how we think, an assumption that value exists independent of our will”, as this is part of the “inescapable phenomenology of value in people’s lives”³⁰.

As the interpretative perspective of Dworkin is compromised by how common sense understands morality, he finds it necessary to develop a concept of an actual moral truth, eventually talking about a *moral epistemology*³¹. He could as well have given this moral truth another name (such as validity or legitimacy), as he clearly recognizes that it has a different meaning from the scientific one. However, as ordinary view considers this objective validity to be *the truth*, Dworkin adopts this designation and seeks to interpretively understand what common sense considers to be *the truth* in the moral field. His conclusion is that a moral judgment is true when it is the result of a responsible reflection, understood as an interpretation that systematically integrates the suitable moral values concerning a given issue.

At this point, the perspective supported by *Justice for Hedgehogs* deviates from the architecture developed by Aristotle in his *Nicomachean Ethics*, which presents a catalogue of virtues which need to be applied

with prudence³². The virtue of *phrônesis* is exactly knowing how to identify the *topoi* correctly and making suitable moral judgments from them. In this context, justice is not translated as the quality of an act, but the quality of a person. To Dworkin, on the other side, responsibility is not the characteristic of a person, but of an action: an action may be qualified as responsible when it observes certain criteria. And the solution that he proposes is systematic: a reflection is responsible when it is capable of integrating all conflicting *prima facie* values in an interpretation that excludes tensions between them by promoting their unity. This thesis of the unity of values is well-summarized by Smith: “what one domain of value requires of us must be consistent with (indeed, support) what other domains of value require of us”³³.

Aristotle was aware that such a Platonic unity of values was nothing less than a formal illusion³⁴. Dworkin, on the other side, considers the pursuit of unity a moral obligation, as “responsibility seeks coherence and integration”³⁵. Although the ordinary view is not reflective enough to encompass the explicit assumption that moral values form a unified system, it considers each moral value to be objectively correct and, therefore, they should all be correct simultaneously. The result of this idea is the belief defined as “the hedgehog’s faith that all true values form an interlocking network, that each of our convictions about what is good or right or beautiful plays some role in supporting each of our other convictions in each of those domains of value”³⁶.

Dworkin’s conception converges with the Platonic idea that a moral analysis only makes sense if there is a unified notion of the Good. This position leads him to define that responsible interpretation should “knit values together”³⁷ in such a way that the result of the interpretation is the extinction of conflicts of value in a holistic system. Thus, even if Aristotelians may be cognitively right in assuming the radical plurality of social values and the conflicting nature of values of justice, each and every one of us is morally obliged to live as if morality was an objectively binding unified system of values.

This belief in the objectivity of values prevents Dworkin’s theory to enter the field of relativism, given that the ordinary view is not perceived as a historically constructed moral theory, but as an effectively correct perspective. With that, he could consider cultures that do not share the same aspects as the North-American culture (which is the culture of reference when he talks about *us*) to be wrong, since his referential moral framework lacks values that justify such discrimination. “They share the concept of justice with us, but – at least so we can sensibly suppose – they misunderstand that concept profoundly. There is no relativism in this story, only error on their part.”³⁸

II. BETWEEN PLATO AND ARISTOTLE

Dworkin’s focus on the moral virtue of responsibility may be understood as an Aristotelian rebellion against the hegemony of Platonism. In

modern times, the Platonic sensibilities tend to what Amartya Sen calls institutional transcendentalism: the search for identifying a universal legitimacy criterion and constructing institutions capable of realizing it³⁹. This conception considers that a reflection on human rationality is capable of identifying universal criteria of justice which, once clarified, could be used as the fundamental criterion for moral and legal analyses. This is the essence of all contractualism, from Hobbes to Rawls, which seeks to ground objective values from an original imaginary situation in which people would act in a perfectly rational way.

Dworkin is in the opposite direction of this tendency, returning to the Aristotelian thesis that we need to understand the intelligible from the sensible. Only a careful analysis of actual social practices can create an understanding of the values underneath it, and that is why he gives so much importance to an interpretative approach: it is not about a rational reflection that reveals universal values, but about understating effective social practices from the creation of models that are able to attribute meaning to such practices. At this point, he moves away from the Greek and modern metaphysics and assumes a radical historicist position: the interpretation of the sensible is always historically determined and is therefore incapable of revealing categories outside that historical context.

This is a true hermeneutic position which dates back mainly from Gadamer⁴⁰, as Dworkin admits that we are immersed in a tradition, as “we share social practices and experiences in which these concepts figure”⁴¹. Such perspective recognizes that values are elements of our interpretation and that, as such, value disagreements are not actual conflicts in relation to the facts, but in relation to the meaning that we attribute to them. Therefore, these conflicts cannot be resolved by taking as a reference an absolute value that serves as an Archimedean argument, but instead the shared hermeneutic horizon from which we interpret reality. In this context, an interpretation is consistent based on how it can articulate all the relevant elements within a unified narrative.

This unity is relevant, but it cannot be taken as something to be discovered through careful observation, but instead as an understanding that is developed through a reflection that follows certain parameters which Dworkin calls *theory of interpretation*. At this point, he moves away from the Gadamerian hermeneutics and approaches classic hermeneutics, which we can call *dogmatic* as it is aimed at defining canons capable of orienting the interpretative exercise. Gadamer developed a phenomenology of interpretation, showing how it operates and formulating categories in order to understand our own interpretative activity. Gadamer, however, vehemently refutes the possibility of identifying external parameters for the interpretation of traditions. He does not deny the existence or the importance of such criteria, but only argues that they are part of a given tradition and therefore cannot integrate a general philosophy of interpretation.

In the degree of abstraction of Gadamer’s theory, the hermeneutic canons of a tradition are perceived as its integral part, and not as part

of the interpretative categories which conform with our own capacity of comprehension. Therefore, such criteria may be studied from an external perspective, which analyses the methods in which such criteria were established and how they are articulated, but without committing to the validity of such parameters. As well-demonstrated by the philosophers linked to the Vienna Circle, and Kelsen in particular, validity is an intra-systematic category: there is no universal normative validity, as the category itself refers to a given historical system which recognizes the validity of the norm⁴².

The awareness of the relativity of values is at odds with the social use we make of them, as value categories are used in dogmatic analyses which presume the mandatory aspect of the norms and values that compose it. It is for that reason that Kelsen supported that we should conciliate our theoretical awareness of the relativity of values with our practical necessity of participating in discussions that presume the validity of norms, treating the rules that integrate an effective tradition as objectively valid⁴³. More than that, he noticed that our normative discussions are usually uncritical, as we tend to treat moral and legal norms as valid, without noticing that this validity cannot be demonstrated, but only presumed. To Kelsen, Hart⁴⁴ and positivists in general, once we perceive this mythical structure of normative discussions, we can choose to adopt an external or internal perspective.

An external perspective to the system does not mean a neutral and objective perspective, but only a focus that does not presume the validity of the norms addressed. A religion sociologist could make statements on the typical beliefs of Buddhists or on Christian mythology without presuming the veracity of the religious stories or the veracity of their commandments. But this does not mean that he speaks from an empty place, as the researcher develops a discussion based on the sociological system, which has its own categories and interpretative canons. Besides, adopting an internal perspective does not necessarily imply a sincere and visceral commitment from the thinker in relation to the value system in which they operate. An atheist sociologist of religion may debate with a catholic bishop on the correct sense of certain religious dispositions in an argumentation that only makes sense within an established discussion area. A positivist judge could question the suitability of a normative interpretation of certain hermeneutic canons even acknowledging that the validity of the interpreted norm cannot be demonstrated.

From an external perspective, we can evaluate the existence of a system, explain its structure and show how it operates. With this focus, it is not possible to discuss if a given norm is valid *per se*, but only if it is recognized as valid by the people who operate the system itself. The validity of this kind of external observation of morality (independently of calling it ethics, moral philosophy or meta-ethics) is questioned by Dworkin, who affirms that morality can only be comprehended from an internal perspective. This is an important observation, as the debate on the validity of a normative proposition is always an internal discussion on the system, as the validity criteria are all internal. Thus,

it is not possible to have an external discussion on the moral meaning of an action, given that value questions can only be answered through value judgements.

This distinction between external and internal perspective is denied by Dworkin, who upholds the inexistence of an external perspective to morality. By denying the existence of “nonevaluative, second order, meta-ethical truths about value”⁴⁵ he supports that all meta-ethical discussions are necessarily moral debates. In this sense, it would be unavoidable to assume that there are objective moral values, given that this is an element that involves all moral discussions, as this is how we live morality itself: “it is how we think”⁴⁶.

This link with our effective moral practices and discussions is important for the theory since it bases itself on the interpretation of these social phenomena. However, this hermeneutic approach leads to a peculiar fact: our moral discussions are not seen as historical or subject to interpretation. And with that, we return to the Platonic argument that, either these discussions make no sense at all, or the objective values assumed in our moral discussions do necessarily exist. Faced with this dilemma, Plato supports that the existence of the Good is a logical necessity, as its inexistence would lead to the absurdity of denying the sense of morality as a whole⁴⁷. Dworkin, on the other hand, argues that the existence of objective values is a moral necessity, as the need to take moral seriously demands from us the assumption that “the moral and other principles on which we act or vote are objectively true”⁴⁸.

This is the point around which Dworkin's arguments gravitate, where he effectively recognizes to go around in circles: the moral discussions which integrate our social practices make reference to objective values and, therefore, they impose the moral obligation of recognizing the objectivity of values. In short, the Dworkinian thesis is that there is an objective moral obligation of recognizing the objective validity of morality itself. And that is why he considers that the people who do not recognize this moral truth are not ignorant (which would be a cognitive judgement), but irresponsible (which is a moral judgement).

Fortunately, he recognizes on the first page of the book that this idea is a belief: “it proposes a way to live”⁴⁹. Thus, the book does not have the intention to rationally fundament the necessity of moral engagement, but only to explore the philosophical consequences of a certain moral engagement. This position prevents Dworkin from establishing a dialog with the skeptics, and he simply disregards the skeptical argument for not being compatible with the belief that he assumes. Well, since Plato, philosophy has been a dialog that needs to include skeptics, as philosophical arguments should have an objective validity and not only a circumstantial one. Dialogs which are based on value grounds and do not admit questioning are more properly dogmatic than philosophical, what makes the thesis supported in *Justice for Hedgehogs* better qualified as theology than philosophy.

III. AGAINST SKEPTICISM

Just as in theology books, Dworkin presents his dogmatic truths as if they were supported by unquestionable evidence. In the beginning of the introduction, he describes what the principles of a legitimate government are – *equal concern and personal responsibility*⁵⁰ – without any justification. In the beginning of Chapter II, he postulates: “that there are truths about value is an obvious, inescapable fact”⁵¹, since even the people who deny the existence of objective values consider that they are postulating an objective truth about values. In order to explain this opinion, Dworkin defines as ordinary view the perspective of the people who make moral judgments from the assumption that their analyses are objectively true since they are based on moral criteria which are objectively valid. As he intends to make an interpretative theory, which gives meaning to effective moral practices, this description of the ordinary view is very important as the author considers that “most people more or less unthinkingly hold that view”⁵².

And the moral discourse is normally unreflective. It fails to discuss the bases of morality, but takes certain principles as valid, focusing only on the practical consequences of the application of such criteria. In Dworkin’s words, “on the ordinary view, general questions about the basis of morality — about what makes a particular moral judgment true — are themselves moral questions”⁵³. The people involved in this discussion may ask themselves about the veracity of moral propositions, such as “abortion is a morally condemnable act”, and that statement will be considered true or false according to its correspondence with the moral values whose validity are considered to be evident.

The problem is that many people or groups consider a range of different values to be evident. In this context, the only possible debate is that which revolves around what are the morally-binding norms. Followers of different religions, for example, may discuss between themselves on what are the true requirements of morality, and they are equally immersed in the ordinary view. Each one of them will consider that their own conceptions are objectively correct and that people who think differently are simply wrong because of their incapacity of recognizing the values that are actually valid. And that is why the Mayans would sacrifice children in the 15th Century, Africans would sell their enemies as slaves to Europe in the 16th Century, and the Nazis would kill homosexuals in extermination camps in the 20th Century.

Dworkin clarifies that this ordinary view has a series of critiques, who not only propose concurrent ordinary views to the dominant one, but who also question the ordinary view as a whole. A first line of critiques considers that ordinary view does not offer a suitable justification of the moral values considered to be objective, and that it is necessary to develop a more solid argument for their justification which is not only based on intuition or tradition, but which is grounded on rationality itself. From Plato to Dworkin, this has been the main function of moral philosophers: the search for rational evidence that certain values are objectively valid.

This category of critiques is called by Dworkin internal skeptics, who consider that the ordinary view typically leads to error for taking prejudices of our own culture as evident, mixing shadows with reality inside a Platonic cave.

Another category of critiques is that of the *external skeptics*, who doubt the very possibility of making true moral judgments. To these thinkers, there is no such thing as moral evidence, be it from an intuitive or rational nature. Therefore, they do not assume that the ordinary view leads to evaluation mistakes, but to a fundamental deception: the assumption that there are values which are objectively valid. These people have their moral convictions and tend to defend them with the same intensity as the supporters of the ordinary views, but they do not consider it possible to justify their subjective convictions based on an objective argumentation⁵⁴.

The external skeptic, therefore, is the moral equivalent of the agnostic. They may even have their own subjective belief in a given deity, or sense that there is a higher force that guides nature, but they are skeptical about the possibility that reason could show something about the divine world. Agnosticism does not necessarily imply skepticism towards the existence of gods or the validity of religions, but only to the capacity of reason of clarifying the truths about metaphysics. Therefore, the ordinary view faithfully believes that their god is the real god, while the internal skeptics believe in a true moral code and think that their “arguments for holding it true are suitable arguments”⁵⁵, and the external skeptics deny the possibility of existing moral commandments which are objectively valid.

To the external skeptics, Dworkin prepares an interesting trap: discussing the validity of moral commandments, even if it is with the purpose of denying them, seems to lead them to enter a moral discussion, as “they draw on the same kinds of arguments, and they claim truth in just the same way”⁵⁶. When an external skeptic affirms that “no one ever has a moral obligation because there are no queer entities that could constitute a moral obligation”, Dworkin considers this to be a moral affirmation, just as the affirmation that the position of heavenly bodies do not influence people’s lives would be an astrological one. For that reason, he sustains in Chapter III that “any sensible moral skepticism must be internal to morality”⁵⁷.

This is an interesting argument, but it is not less fallacious because of that, as it is based on a peculiar redescription of the argument of the external skeptics. According to Dworkin, the external skeptics evaluate the veracity of specific moral propositions (such as “abortion is moral” and “abortion is immoral”) and argue that there are no suitable reasons to prefer any of the two assumptions, which would then lead us to sustain indetermination (impossibility to decide) in the field of morality, which by itself is a moral argument. But in fact, this is not what the external skeptics sustain, although this is what moralists understand.

A moral agnostic would say: there are no moral commandments that are rationally valid as reason is inattentive to values. And there are no

commandments which are objectively valid since there are no objective veracity criteria beyond human rationality itself. In fact, this is usually not a statement on morality, but on normative statements in general, which can be developed within a context where the moral repercussion of a given statement is irrelevant.

The fact that a statement has a moral repercussion does not mean that this is a first-degree moral statement, as it is not part of a moral discussion. In order to understand this, we can make an analogy with medicine. Imagine that a doctor is arguing with another doctor on the reasons why a given person passed away. One of them supports that the woman had a stroke and, because of that, she lost control of the vehicle she was driving. The other one argues that she lost control of the vehicle because she probably fell asleep and the stroke happened because of the adrenaline discharge she received when she woke up at the time of the crash. This is a relevant scientific issue, and not a legal one.

It is clear that defining the cause of the accident (the mishap of a stroke or the imprudence of driving when feeling asleep) has impacts in the legal consequences of the case (to compensate occasional victims?) and in the moral evaluation (would the driver be guilty of having run over someone?). But that does not mean that the positions of the examiners analyzing the case would constitute suitable moral or legal opinions. The conclusions of the examiners are interpreted differently by different moral or legal systems, resulting in different consequences. It is clear that the investigation itself may have been requested for moral or legal reasons, but this does not change the fact that the medical, physical or biological statements cannot be transformed in legal arguments just because of that.

They respond to different interpretation systems, to different languages that have their own validity/veracity criteria, whose existence may impact in the field of moral and legal duties (a medical report of brain death could allow the removal of an organ), but it is a very different thing to state that because of this they may contain first-class legal or moral statements. This seems to be Dworkin's mistake in analyzing the position of the external skeptics and I believe this mistake originates from an inadequate characterization of the moral and legal spheres.

Judges look at the world from an internal perspective to the law, in such a way that they measure the relevance of different situations in view of their legal impact. Adopting this internal perspective, it is possible to identify a certain domain of the law, formed by all the elements that have legal implications. This area may be composed of facts (such as birth), intentional behaviors (such as an attack) and statements (such as a contract), and they are all relevant in the interpretation: the law makes them relevant. This is very different from identifying a legal discussion, which talks specifically about the *legal meaning* of these acts.

Defining morality or the law as a discussion, adopting a linguistic reference, implies a much more restricted view on what law and morality are. This is the typical distinction of people who distinguish ethics from meta-ethics and who distinguish a normative discussion on legal

facts (the law) from a theoretical discussion on the normative discussion itself (the science of the law). These distinctions only make sense when we adopt these discussions as a reference, and this is the typical distinction made by external observers, who are interested in perceiving the particularities of a given social discussion practice.

Opting for a non-linguistic reference, defining the law or morality as a domain (or field or world or environment or any other similar concept), leads to a perspective where the limits are less well-defined and where facts could pertain to a wide range of different domains. This approach is typical of internal discussions, which analyze the world according to the relevance of the phenomena in order to evaluate a given interpretation system. This perspective tends to mix the notions of *pertinence* and *repercussion*, and this is Dworkin's confusion.

When a cosmologist states that the position of heavenly bodies does not have any influence in defining an individual's personality, this is a statement that does not integrate the domain of astrology. The scientist does not have astrological categories as his starting point, he does not share its dogmas and he does not see the world from its interpretation keys. On the other hand, if a cosmologist states that heavenly bodies do not have any influence on the soul of an individual, he would be abandoning the domain of physics: his statement would leave the scientific sphere and enter esotericism, religion or other areas of mystical aspect, where the notion of *soul* would then make sense. But when a scientist limits himself to affirming that the influence of existing physical interactions between humans and the Pisces constellation cannot have a relevant impact on the physical constitution of a person, he makes a *physical* denial, and not an *astrological* one, with regard to a given fact.

Clearly, this is a statement that may have an impact on astrology, once it implies the denial of certain astrological interpretations. An astrologist may sincerely dedicate himself to refuting the affirmations of the scientist and uphold the existence of the relation the scientist has denied. This possibility of an astrological denial of the scientific affirmation does not change the argument of the scientist into an astrological argument, although it is clearly possible to discuss the astrological implications of the affirmations of a physicist, psychologist or biologist.

This is Dworkin's mistake, which derives from his manifested option, from the first line of the book, for an internal perspective to morality. He considers that all statements that have any impact on his own moral judgement have a moral nature, and, in that sense, he does not accept an external point of view to morality. To Dworkin, considering that even the most skeptical of skeptics could talk about the validity of moral positions, even if it is to deny the objective validity of any value judgment, then the skeptics are not truly skeptical towards morality and should admit the existence of some form of moral truth. Admitting this kind of argument would lead us to the deception of calling the physicist an astrologist who denies the scientific validity of astrology.

Therefore, Dworkin's initial statement is correct, but it is an empty statement: from the common moral vision, the position of the skeptics

cannot be morally sustained. This is equivalent to supporting that, from the common theological view, the position of agnostics and atheists cannot be sustained. These are tautological statements, and Dworkin's option for this kind of conception represents a narrowed choice: since ordinary view considers itself to be objectively correct, Dworkin ends up supporting that it is not morally acceptable to question this correction. He labels internal skepticism all criticism directed to his value assumptions and also external skepticism all criticism directed to his belief in the moral truth. Instead of dialoguing with these "skeptics", Dworkin seeks closure by upholding the impossibility of having a productive debate on the validity of the conceptions he considers to be authentic and worthy of respect. With that, the only field which remains open to moral debate is the discussion with non-skeptics: an internal discussion aimed at defining the best manner of integrating common sense values to a coherent system.

IV. CONCLUSION

Philosophically, Dworkin's moral theory is unbalanced. He promotes an attempt at harmonizing Platonic and Aristotelian elements, but the result is an internal contradiction which he tries to overcome inconsistently through the introduction of the moral notion of *responsibility*. The final result is a Platonic conception, as he upholds the unity of the good as a necessary requirement to a rational understanding of the world. However, the method he applies is Aristotelian: the development of an intuitive perspective, which creates interpretations capable of attributing meaning to effective social practices. The problem is that the analysis of effective practices does not correspond to the unity of the Good, as both Plato and Aristotle knew well.

The unity of the Good is a logical necessity for the world to have an objective meaning and, being a logical necessity, it cannot be built on the sensible world. But more than that: the sensible world is made of shadows and, therefore, it is not reasonable to expect that a careful analysis of institutional practices will lead to the understanding of the Good. Against this necessity, Dworkin argues that we should not analyse good from logic, but from morality itself, which leads to a circularity which he expressly admits: the objective criteria of justice can only be based on the objective criteria of justice itself.

And what if such criteria do not exist? Dworkin escapes from this question with the argument that it contradicts our effective moral practice. The option for an interpretative perspective intentionally attaches us to these moral practices, requiring philosophers to develop a theory that could explain our moral experience instead of denying our basic moral intuitions. In fact, we behave as if objective justice existed and our moral discussions would only make sense from an argumentation system that involves objective moral criteria. After all, as Dworkin states, "it is how we think"⁵⁸. Therefore, the role of the philosopher should be to

interpret such practices by making theories that are capable of recognizing that they are not absurd.

Aristotle was well-aware that this interpretative construction of morality does not lead to a unitary idea of the good, but to a multiplicity of excellences that take as fundamental criteria the behaviour of the people who are recognized as excellent. Dworkin, on his turn, believes that the Aristotelian exercise of creating a self-comprehension of the moral tradition is necessarily capable of showing a unitary notion of the good, given that only such a conception would fully realize our own morality's pretention of being objective.

With that, what he proposes is a moral discussion capable of articulating the dominant moral values in liberal and democratic societies in the beginning of this 21st Century. This is a moral discussion (in the sense that it is attached to certain value beliefs) and not an ethic one (in the sense that it reflects on the structures of moral discussion) and even more evidently not a meta-ethic discussion (in the sense that it reflects on the reflections about ethics). More than that, this is a discussion that denies the own validity of ethics or meta-ethics, i.e. a philosophical reflection that could lead to the weakening of moral values, a consequence that should be avoided by any responsible thinker. As stated by Dale Smith, Dworkin upholds “that morality is a separate domain of inquiry from science and metaphysics and that any moral argument must ultimately stand or fall on moral (not metaphysical or scientific) grounds”⁵⁹.

This argument resembles quite well an excerpt from Utopia in which More supports the freedom of worship, but at the same time excludes from the political life any of those who deny the existence of an after-life because citizens of Utopia look at them “as scarce fit to be counted men, since they degrade so noble a being as the soul, and reckon it no better than a beast's: thus they are far from looking on such men as fit for human society, or to be citizens of a well-ordered commonwealth; since a man of such principles must needs, as oft as he dares do it, despise all their laws and customs”⁶⁰. The belief in the inexistence of an after-life is not subdued for being a cognitive deficiency but a moral one.

This narrowing of the discussion in the field of morality has its own strategic advantages, but it represents a denial of the possibility of having a debate about the inexistence of gods outside the theological arena. Metaphysics only make sense within metaphysics, and Dworkin's proposition that we should accept moral validity based on moral validity itself corresponds to a political gamble on the theological virtue of faith.

>> ENDNOTES

- ¹ Dworkin, 1996: 2
- ² Dworkin, 2011: 28.
- ³ Dworkin, 2011: 419.
- ⁴ Dworkin, 2011: 419.
- ⁵ Descartes, 1985: 40.
- ⁶ Dworkin, 2011: 149.
- ⁷ Dworkin, 2011: 103.
- ⁸ Dworkin, 2011: 10.
- ⁹ Dworkin, 2011: 17.
- ¹⁰ Dworkin, 2011: 120.
- ¹¹ Dworkin, 2011: 108.
- ¹² Dworkin, 2011: 108.
- ¹³ Dworkin, 2003.
- ¹⁴ Dworkin, 2011: 104.
- ¹⁵ Plato, 1993: 621d.
- ¹⁶ Kant, 1964: 433.
- ¹⁷ Hume, 2002: 191.
- ¹⁸ Dworkin, 2011: 17.
- ¹⁹ Dworkin, 2011: 8.
- ²⁰ Dworkin, 2011: 13.
- ²¹ Dworkin, 2011: 203.
- ²² Dworkin, 2011: 204.
- ²³ This position is originally presented in *Taking Rights Seriously* (1977) and further developed in later works, such as *Law's Empire* (1986).
- ²⁴ Nussbaum, 2009: 210.
- ²⁵ Nussbaum, 2009: 216.
- ²⁶ Dworkin, 2011: 255.
- ²⁷ Dworkin, 2011: 338.
- ²⁸ Dworkin, 2011: 415.
- ²⁹ Dworkin, 2011: 100.
- ³⁰ Dworkin, 2011: 214.
- ³¹ Dworkin, 2011: 100.
- ³² Aristotle, 1992, books III e IV
- ³³ Smith, 2012, 385.
- ³⁴ Aristotle, 1992, 1098a.
- ³⁵ Dworkin, 2011: 113.
- ³⁶ Dworkin, 2011: 120.
- ³⁷ Dworkin, 2011: 101.
- ³⁸ Dworkin, 2011: 171.
- ³⁹ Sen, 2011: 24.
- ⁴⁰ Gadamer, 1999.
- ⁴¹ Dworkin, 2011: 6.
- ⁴² Kelsen, 1991: 235.
- ⁴³ Kelsen, 1991: 78.
- ⁴⁴ Hart, 1994.
- ⁴⁵ Dworkin, 2011: 11.

⁴⁶ Dworkin, 2011: 10.

⁴⁷ Plato, 1997: 75c.

⁴⁸ Dworkin, 2011: 8.

⁴⁹ Dworkin, 2011: 1.

⁵⁰ Dworkin, 2011: 2.

⁵¹ Dworkin, 2011: 24.

⁵² Dworkin, 2011: 28.

⁵³ Dworkin, 2011: 28.

⁵⁴ Dworkin, 2011: 36.

⁵⁵ Dworkin, 2011: 37.

⁵⁶ Dworkin, 2011: 24.

⁵⁷ Dworkin, 2011: 25.

⁵⁸ Dworkin, 2011: 11.

⁵⁹ Smith, 2012: 384.

⁶⁰ More, 2010: 116.

>> REFERENCES

BOOKS AND ARTICLES

Aristotle (1992). *Ética a Nicômacos*. Brasília: UnB.

Descartes, René (1985). *Discurso do método*. Brasília: UnB.

Dworkin, Ronald

(2011). *Justice for hedgehogs*. Cambridge: Belknap Harvard.

(2003). *O império do direito*. São Paulo: Martins Fontes.

(1996). *Freedom's Law: the moral reading of the American Constitution*. Cambridge: Harvard University Press.

(1978). *Taking rights seriously*. Cambridge: Harvard.

Gadamer, Hans-Georg (1999). *Verdade e método: Traços fundamentais de uma hermenêutica filosófica*. Petrópolis: Vozes.

Hart, Herbert L. A. (1994). *O conceito de direito*. Lisboa: Calouste Gulbenkian.

Hume, David (2002). Tratado da natureza humana. In: Clarence Morris. *Os grandes filósofos do direito*. São Paulo: Martins Fontes, 182-210.

Kant, Immanuel (1964). *Fundamentação da metafísica dos costumes*. Tradução: Antônio Pinto de Carvalho. Lisboa: Companhia Editora Nacional.

Kelsen, Hans (1991). *Teoria pura do direito*. São Paulo: Martins Fontes.

More, Thomas. (2010). *Utopia*. London: Bibliolis.

Nussbaum, Martha (2009). *A fragilidade da bondade: fortuna e ética na tragédia e na filosofia grega*. São Paulo: Martins Fontes.

Plato

(1997). *Complete Works*. Indianapolis: Hacket Publishing Company.

(1993). *A República*. Lisboa: Calouste Gulbenkian.

Sen, Amartya (2011). *A Ideia de Justiça*. São Paulo: Companhia das Letras.

Smith, Dale (2012). *Law, Justice and the Unity of Value*. *Oxford Journal of Legal Studies*, Vol. 32, No. 2, 383–400 doi:10.1093/ojls/gqs006.