

The Chain Novel and the Problem of Self-Undermining Interpretation

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In a number of essays, Ronald Dworkin argues that law is an interpretive enterprise.¹ More specifically, it is an instance of constructive interpretation, which is to say, it is “a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong.”² The argument of this essay is that Dworkin’s notion of interpretation is more radical than is usually recognized, in no small part because the checks he proposes against unfettered interpretation cannot, as formulated, fulfill this task. I will argue for the second point through an analysis of two ancient passages that, broadly speaking, meet Dworkin’s criteria for legitimate interpretation, yet are nonetheless untenable. Before doing so, however, it is necessary to establish the radical nature of Dworkin’s interpretive theory. To that end, I begin by

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1 Dworkin has published this argument in a number of forums. The present essay refers primarily to R. Dworkin, “Law as Interpretation,” in W. J. T. Mitchell, ed., *The Politics of Interpretation* (Chicago: University of Chicago Press, 1982), 249-270; idem, *Law’s Empire* (Cambridge: Harvard University Press, 1986).

2 Dworkin, *Law’s Empire*, 52.

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comparing Dworkin to arguably the most radical hermeneutic philosopher, Martin Heidegger, whose understanding of interpretation represents a robust and unabashed version of a position that Dworkin comes close to adopting, yet assiduously wishes to avoid. In this sense, Heidegger's *Being and Time* represents the dangers Dworkin faces in introducing constructive interpretation into the realm of legal discourse.

Dworkin and Interpretive Freedom

Three issues in Heidegger's hermeneutic theory stand out with regard to Dworkin: that interpretation involves making explicit what was already implicit; that this shift may be precipitated by a failure or a breakdown; and that meaning is located in the interpreter rather than in the interpreted object. With regard to the first, Dworkin follows Heidegger in reversing the roles of interpretation and understanding. Traditionally, interpretation was understood as a tool for resolving difficulties that hinder an understanding of a text. Johann Martin Chladenius, an eighteenth century thinker who helped lay the groundwork for the discipline of hermeneutics, writes: "Interpreting is nothing but handing readers those concepts which ... they need for a correct understanding of a passage,"³ but suggests that such an action need not be taken on a regular basis. Understanding is the default: so long as the reader proceeds without incident, the process is self-evident; there is nothing to explain. Only when we run up against resistance, that is, cannot (or cannot fully) understand a passage or a text, only then do we have recourse to interpretation. As Friedrich Schleiermacher states in his 1819 lectures on hermeneutics: "Strict interpretation begins with misunderstanding and searches out precise understanding."⁴

3 From J. M. Chladenius, *Einleitung zur richtigen Auslegung vernünftiger Reden und Schriften*, cited in M. Ferraris, *History of Hermeneutics*, trans. L. Somigli (Atlantic Highlands, NJ: Humanities Press, 1996), 65.

4 From Schleiermacher's "The Outline of the 1819 Lectures," trans. J. Wojcik

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Schleiermacher did not, however, maintain this view for long, eventually formulating a comprehensive theory of interpretation as underlying *all* understanding. This doctrine – which Jean Grondin has aptly characterized as the “universalization of misunderstanding”⁵ – identified interpretation as constitutive of understanding as such, and thus established the field of philosophical hermeneutics. But for all its novelty, Schleiermacher’s position did not call into question the traditional relationship between interpretation and understanding. The reader starts out with no understanding of the text (or the object) under discussion, and uses interpretation to gain understanding. Interpretation, in other words, precedes understanding.

In *Being and Time*, Heidegger reverses this relationship. For him, understanding comes first and interpretation follows. The reasons for this reversal are complex, and involve Heidegger’s attempt to overcome one of the vexing difficulties of modern epistemology, namely, the relationship between the subject and the object, between man and world. The problem is already evident in Descartes’ *cogito*, which posited the knowing subject (more accurately, the self-knowing subject) as the foundation upon which to establish the edifice of knowledge. With “I think therefore I am,” Descartes believed he had found a starting point impervious to skepticism, since doubts are themselves cognitions and so even in raising doubts I am affirming my existence as a thinking subject. Descartes’ subject, however, was very much alone, with no clear path “out” to the world. How does the subject come to know the world, and how can the validity of that knowledge be assured? Descartes’ answer – that the beneficence of God guarantees the overall accuracy of our ideas – failed to convince the philosophers that followed him, and the attempts to bridge the gap between Descartes’ worldless subject and external reality form an important chapter in the

and R. Haas, in G. L. Ormiston and A. D. Schrift, eds., *The Hermeneutic Tradition: From Ast to Ricoeur* (Albany, NY: SUNY Press, 1990), 92.

5 See J. Grondin, *Introduction to Philosophical Hermeneutics*, trans. J. Weinsheimer (New Haven and London: Yale University Press, 1994), 67-72.

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history of modern philosophy. Indeed, the philosophic mission of Edmund Husserl, Heidegger's teacher at Freiburg and the man to whom Heidegger dedicated (the early editions of) *Being and Time*, was a conscious attempt to solve Descartes' difficulty and provide a rigorous philosophic framework – i.e., phenomenology – for the subject's engagement of the world.

In *Being and Time*, Heidegger struck out in a new philosophic direction, arguing that to ask how the knowing subject comes to know the world is meaningless since there is no human existence separate from the world. Human being (which Heidegger calls *Dasein*)⁶ cannot be separated from the broader context in which it is encountered and in which it encounters itself. Context, which Heidegger calls “the world,” is not, *pace* Descartes and Husserl, something encountered belatedly by a worldless “I” that had been up to that point radically unsituated.⁷ Nor is “world” merely the spatial framework in which objects are discovered. It is rather a condition, a *sine qua non* of human being, the totality of contexts in which human being encounters itself and its surroundings. The most basic category of human being is “Being-in-the-World.”⁸

6 Heidegger's terminology is notoriously difficult and its employment would require much more detailed discussion than this brief sketch allows, so I use it only sparingly. Heidegger was aware of this difficulty but regarded it as a necessary element in his philosophic project. In §7 of *Being and Time* he discusses the need for a new philosophic vocabulary and explains the “inelegance of expression” in the book as the result of his decision to chart a course that runs contrary to the flow of Western philosophy from Plato on: “[I]t is one thing to give a report in which we tell about entities, but another to grasp entities in their Being. For the latter task we lack not only most of the words but, above all, the ‘grammar’,” Martin Heidegger, *Being and Time*, trans. John Macquarrie and Edward Robinson (New York: HarperOne, 1962), 63.

7 “It is wrong to oppose to objects an isolated ego-subject,” M. Heidegger, *The Basic Problems of Phenomenology*, trans. A. Hofstadter (Bloomington and Indianapolis: Indiana University Press, 1988), 278.

8 For a lucid discussion of this concept, and of the first division of *Being and Time* more generally, see H. Dreyfus, *Being-in-the-World: A Commentary on Heidegger's Being and Time, Division I* (Cambridge: MIT Press, 1991).

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The idea that human being is constituted by its engagement with the world has important ramifications for Heidegger's conception of interpretation and understanding. Though the term "understanding" usually refers to the intellectual comprehension of a concept, for Heidegger it is not "any cognition at all in the sense of grasping something thematically"⁹ but rather a basic and primordial engagement with the world. That is, since human being is always "in-the-world," always situated within a broader context, the world is not something we come upon belatedly and as strangers; it is always, in a deep sense, already understood. Understanding is, so to speak, the default condition of human being, a collection of self-evident assumptions that underlie our most basic interactions with the world. However, on occasion these assumptions cease to be self-evident and become explicit; this Heidegger calls interpretation. "[W]hen something in the world is encountered as such, the thing in question already has an involvement which is disclosed in our understanding of the world, and this involvement is one which gets laid out by interpretation."¹⁰ Interpreting, then, does not involve the discovery of something unknown, but rather bringing to light the understanding that was heretofore merely implicit. Interpretation does not lead to understanding, rather it is an explication (a making-explicit) of an understanding that is already present. The traditional order has been reversed: understanding precedes interpretation.

Two points should be emphasized here. The first involves the transition from implicit understanding to explicit interpretation. As noted, Heidegger takes understanding to be a mode of engagement with the world that is so basic that we are not aware of it. What, then, precipitates the shift to a more explicit, cognitive grasp? Heidegger's answer is, Failure. So long as objects function in the way we expect them to, they are absorbed, so to speak, into the general surroundings and

9 Heidegger, *Being and Time*, 385.

10 *Ibid.*, 191.

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their specific nature is overlooked. We press a button to turn on an appliance, we enter our house through the door, shake hands with a new acquaintance but hug a friend – interactions with our inanimate and living surroundings that embody an implicit grasp of technology, western architecture, socially acceptable physical contact, and so forth. But it happens that understanding runs into difficulty: the appliance breaks down and the button is pressed to no avail; the keys to the house are lost and we must enter through the window; we are introduced to a person from another culture who ignores our outstretched hand and kisses us on the cheeks. In each of these examples the failure strips the environment of its self-evidence and raises to the surface what had been implicit (now confounded) assumptions about the world.

The second involves the nature of the meaning laid bare in interpretation. Interpretation was traditionally understood as the recovery of authorial intent. This was true of Georg Friedrich Meier in the 18th century, who states that “the hermeneutically true meaning ... is the intention which the creator of the sign meant to express by it.”¹¹ And it was still true more than a century later, when Wilhelm Dilthey argued that “we must therefore call understanding the process by which we intuit, behind the sign given by our senses, that psychic reality of which it is the expression.”¹² For Heidegger, however, the meaning that comes to be explicitly recognized – that is, interpreted – is not something that can be traced back to the intention of an author or to anything else in the world. “Meaning is ... not a property attaching to entities, lying ‘behind’ them or floating somewhere as an ‘intermediate domain’ ... *Only human being [Dasein] can be meaningful or meaningless.*”¹³ And the meaning that belongs to human being is projected onto the

11 G. F. Meier, *Versuch einer allgemeinen Auslegungskunst*, quoted in Ferraris, *History of Hermeneutics*, 68.

12 W. Dilthey, “The Rise of Hermeneutics,” trans. F. Jameson, in Wojcik and Haas, *The Hermeneutic Tradition*, 102.

13 Heidegger, *Being and Time*, 193 (emphasis in the original).

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otherwise a-meaningful world. Indeed, projection is constitutive of understanding: "... understanding has in itself the existential structure which we call 'projection'."¹⁴ Projection is not an intentional or even conscious action, for "the character of understanding as projection is such that the understanding does not grasp thematically that upon which it projects..."¹⁵ It is only when the implicit understanding is thematized and becomes itself an object of inquiry, when, in other words, it becomes interpretation, that it is recognized. The key point for our discussion is that, according to Heidegger, meaning is not discovered or recovered, rather it originates in the interpreter and subsequently projected onto the world.

In sketching the conception of interpretation and understanding in *Being and Time* I have focused on a number of key issues: that understanding is given at the outset of the process though only implicitly; that circumstances may arise that force the previously implicit assumptions ("understanding") into the light; and that meaning does not reside in the thing interpreted but in the interpreter. For the present discussion, the significance of these issues lies in the resemblance they bear to Dworkin's theory of law,¹⁶ a resemblance nowhere more evident than in Dworkin's assertion that legal claims are always based on a deeper set of jurisprudential assumptions, though these assumptions are often merely implicit and unrecognized.

Any practical legal argument, no matter how detailed and limited, assumes the kind of abstract foundation jurisprudence offers, and when rival foundations compete, a legal argument assumes one and rejects others. So any judge's opinion is itself a piece of legal philosophy, even when the philosophy is hidden and the visible

14 Ibid., 184-185 (emphasis in the original).

15 Ibid., 185.

16 That Heidegger and Dworkin are engaged in fundamentally different projects and come from different intellectual traditions is indisputable, but for expository reasons I will not repeat this qualifier every time I refer to a point of similarity between the two.

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argument is dominated by citation and lists of facts. Jurisprudence is the general part of adjudication, silent prologue to any decision at law.¹⁷

Dworkin elaborates this idea in his example of a community whose “members follow a set of rules, which they call ‘rules of courtesy.’”¹⁸ The key point here is that initially these practices exist as brute social facts, “the rules are just there and are neither questioned nor varied.”¹⁹ Ultimately, of course, interpretation will demonstrate that certain assumptions undergird these practices. But before the assumptions are laid bare, before they are made explicit, the practices represent a lived, unquestioned manifestation of these assumptions. Both Dworkin and Heidegger, then, posit a pre-interpretive understanding (of the law or of the world, respectively), an understanding, moreover, that gives way to interpretation. For Dworkin too, the self-evidence of a given set of practices at times disappears, replaced by the “interpretive attitude.” Then “the institution of courtesy ceases to be mechanical; it is no longer unstudied deference to a runic order...”²⁰ The shift from a pre-interpretive to an interpretive attitude is critical:

[B]efore the interpretive attitude takes hold ... no question arises whether the traditional forms of respect are really those the practice requires ... When the full interpretive attitude develops, however, this assumed point acquires critical power, and people begin to demand, under the title of courtesy, forms of deference previously unknown ...²¹

Dworkin does not provide here a detailed discussion of how this change comes about, why “the full interpretive attitude develops.” An

17 Dworkin, *Law's Empire*, 90. See also G. Postema, “‘Protestant’ Interpretation and Social Practices,” *Law and Philosophy* 6 (1987): 284.

18 Dworkin, *Law's Empire*, 47.

19 Ibid.

20 Ibid.

21 Ibid., 48.

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earlier essay, however, suggests that the encounter with difficult, even apparently undecidable cases may play a role. In “Is There Really No Right Answer in Hard Cases?”²² Dworkin argues that in all but very few cases legal decisions are, in principle, and within an established legal system that recognizes the role of precedent, decidable. Briefly, the decidability of legal cases is due to the fact that “[t]here is something else in the world beside hard facts, in virtue of which propositions of law might be true.”²³ The “something else” in question is what Dworkin will eventually come to call integrity – a conscious attempt to extract the underlying values of the existing legal corpus and thus obtain a north star, or perhaps an entire constellation, by which to navigate present decisions. These jurisprudential values are determined in the same way literary scholars intimately familiar with a novel (Dworkin’s example is *David Copperfield*) can meaningfully discuss the expected behavior of the novel’s characters in situations not described by Dickens.²⁴ In other words, the events of the novel are understood as manifestations of principles that can, upon reflection, be identified and then employed in determining future decisions. What is significant for the present argument is that the search for these principles – the search, to return to the legal context, for the “abstract foundation jurisprudence offers” – is precipitated by the encounter with a case that is at least on some accounts undecidable. Dworkin does not state this conclusion explicitly, but it appears that the breakdown of the assumed or self-evident approach, the inability to arrive at a compelling legal position without recourse to second-order analysis – precisely this

22 R. Dworkin, “Is There Really No Right Answer in Hard Cases?” in *A Matter of Principle* (Cambridge: Harvard University Press, 1985), 119-145.

23 Dworkin, *A Matter of Principle*, 138.

24 Commentators have noted, and it bears repeating, that Dworkin consistently turns to realistic English novels as his literary examples. Dickens novels are clearly fine choices for a theory that emphasizes thematic unity and consistency of characters, but it is less clear that they can be used as the basis for a general discussion of literary interpretation, as Dworkin seems to imply.

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impasse precipitates the theoretical analysis of the heretofore implicit assumptions of the law. In this too, then, Dworkin's model is similar to Heidegger's.

Earlier, I concluded Dworkin's statement that "the institution of courtesy ceases to be mechanical; it is no longer unstudied deference to a runic order" with an ellipsis. The words that follow in the original are "... people now try to impose *meaning* on the institution,"²⁵ and they call attention to a third point of similarity to Heidegger. Namely, that according to Dworkin, meaning is imposed on a practice, rather than identified or uncovered within it. Here Dworkin is rejecting the widely-held view that the legislator endows a law or a statute with meaning and the role of the interpreter is to uncover that meaning. For one thing, how can a judge uncover the intentions of strangers in the past, many long-dead? And who *are* the authors of a statute – the legislators, the ratifying President, or perhaps the lobbies? How can the judge be sure that the (in any case not fully recoverable) intentions are relevant, when many legislators would not have foreseen the later legal developments facing the court?²⁶ These objections, though weighty, are ultimately of secondary importance, since the entire enterprise of "speaker's meaning" is *ab initio* misguided. Constructive interpretation – of which legal interpretation, alongside interpretation of art and literature is a subset – is

... essentially concerned with purpose not cause. But the purposes in play are not (fundamentally) those of some author but of the

25 Dworkin, *Law's Empire*, 47 (emphasis in the original).

26 The argument concerning legislative intent is at 317-327; the same difficulties attend constitutional interpretation, on which see 359 and following. Note that the need to secure for the interpreter the freedom to recast past decisions in the best possible light (i.e., as determined by current moral standards and not those of the legislators and judges of the time) dictates that the interpretive enterprise be construed as "a matter of imposing purpose on an object or practice." Release from authorial intent is necessary if law is to be a progressive enterprise.

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interpreter. Rightly, *constructive interpretation is a matter of imposing purpose on an object or practice...*²⁷

The interpreter is not bound by the meaning attributed to a law or a statute by its authors, rather “imposes” purpose upon the object under investigation. When this view is combined with the characterization of law as an interpretive enterprise, the result is deeply problematic. “Speaker’s meaning” (legislative and constitutional intent, most commonly) has traditionally served as a check on the hermeneutic license of the legal interpreter, an “external” measure by which the acceptability and even legitimacy of an interpretation can be judged. Having rejected speaker’s meaning, are we left with an unfettered interpreter? How does one evaluate whether the interpreter has *imposed purpose* properly?

The assertion that interpretive meaning is not discovered in the object of interpretation but imposed (or projected) on it brings us back to the comparison with Heidegger. For the point of this comparison is not to suggest or identify channels of historical influence;²⁸ it is rather to introduce the question, present for both thinkers, of nihilism. In *Being and Time*, Heidegger does not take nihilism to constitute a danger, but rather a potential entrée to an existential truth. Recognizing that there is no external measure that determines one’s mode of being from without paves the way for an authentic self-understanding, oriented not toward the world as a “given” (which it is not), but toward the possibilities inherent in the self. Since meaning resides only in Dasein, not in things, there is nothing limiting the assignment of meaning. At the

27 Dworkin, *Law’s Empire*, 52 (emphasis added).

28 Such an investigation would undoubtedly focus on the figure of Hans-Georg Gadamer, whom Dworkin cites repeatedly. Gadamer was Heidegger’s disciple in Marburg and understands his own philosophic oeuvre as flowing from Heidegger’s thought. See Gadamer’s breathless description of Heidegger as a teacher in H. G. Gadamer, “Martin Heidegger and Marburg Theology,” in *Philosophical Hermeneutics* (Berkeley and Los Angeles: University of California Press, 1977), 198-212.

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very core of human being lies nothing, *nihil*, but a nothing that is not mere privation but rather the ground for human freedom. Man is, at least in theory, the unfettered interpreter of his own being. Heidegger is a nihilist, but, paradoxically, a positive nihilist.²⁹

My point here is emphatically *not* that Dworkin follows Heidegger into hermeneutic nihilism. It is rather that an interpretive philosophy that discards the potential check of authorial intent and argues instead that the interpreter imposes meaning upon the object under discussion, risks endowing the interpreter with a freedom that may devolve into nihilism. To phrase this somewhat differently, if Dworkin's interpretive philosophy wishes to avoid nihilism, it must provide a different criterion or set of criteria by which to constrain the hermeneutic freedom of the interpreter.

Dworkin does indeed provide such criteria in the notion of integrity and its offshoots, which serve, at least in part, as interpretive checks.³⁰ How so? Integrity provides coherence to past legal decisions, and it interprets past decisions in the best possible light. The ideal of making law "the best it can be" is elusive at best, empty at worst, and Dworkin does not offer a detailed discussion of what it entails. Instead he provides a number of distinctions that aim to provide criteria for interpretation, be they substantive or procedural. An example of substantive continuity is Dworkin's distinction between "concept" and "conception." The former is the broadest characterization of some practice, consisting of "discrete ideas that are uncontroversially employed in all interpretations."³¹

29 See the analysis offered in G. Motzkin, "Heidegger's Transcendent Nothing," in W. Iser and S. Budick, eds., *Languages of the Unsayable: The Play of Negativity in Literature and Literary Theory* (Stanford: Stanford University Press, 1996), 95-116. On the philosophical genealogy of Heidegger's nihilism see L. Bogliolo, "Dall' X di Kant al Nichts di Heidegger," *Aquinas* 14 (1971): 271-289.

30 For a lucid discussion of these matters see D. Lind, "A Matter of Utility: Dworkin on Morality, Integrity, and Making Law the Best it Can Be," *Constitutional Law Journal* 6 (1996): 631-681.

31 Dworkin, *Law's Empire*, 71.

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Controversy resides only at the next level, that of the different conceptions of the (shared) concept, i.e., the different views regarding how best to manifest or realize the concept in question. So while the surface dynamics may paint a picture of conflict (conceptions), deeper analysis reveals an underlying consensus (the concept). Thus, the analysis of one seeking to characterize a particular practice, “if successful, must also be uncontroversial, because his claim [regarding the concept that underlies the social practice] fails unless people are by and large agreed that [this is so].”³² A similar idea is found in Dworkin’s assertion that social practices begin with a “preinterpretive stage.” As he writes: “First, there must be a ‘preinterpretive stage’ in which the rules and standards taken to provide the tentative content of the practice are identified.”³³ In each case, there is something that the interpreter ought rightly ascertain – an underlying concept or a preinterpretive stage – and his success or failure on this point will affect the validity of his overall interpretation.³⁴

The most explicit statement regarding interpretive constraint is Dworkin’s assertion that legal interpretation is analogous to “a group of novelists [that] writes a novel *seriatim*... [e]ach novelist aims to make a single novel of the material he has been given ... [and] to make this the best novel it can be construed as the work of a single author.”³⁵ This suggestive image constrains the interpreter in two ways. First, each writer adheres to the (still elusive) ideal of making this “the best novel it

32 Ibid.

33 Ibid., 65-66.

34 It is important to distinguish between two of Dworkin’s claims that may *prima facie* appear contradictory: that the interpreter imposes meaning on social practices, and that the interpreter discovers concepts and pre-interpretive stages that underlie social practices. There is an undeniable tension here, but not, I think, outright contradiction. What the second interpreter discovers is meaning that the individuals in the community have imposed (even if unawares) upon the practice. “Judges are authors as well as critics” (*Law’s Empire*, 229): in the former the interpreter is an author, in the latter a critic of other interpreters. In neither case does meaning simply “reside” in the external world.

35 Dworkin, *Law’s Empire*, 229.

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can be,” which, in the legal realm, must include identifying the concepts and the preinterpretive stages underlying the inherited body of law. Second, the reader is situated within a tradition that she actively seeks to maintain.

Law's Empire is a theoretical book, and the discussions of “serial interpretation,” concepts, and preinterpretive stages only rarely draw on empirical examples. On the face of it, however, it would appear that a Scripture-centered interpretive tradition might represent an excellent example. Interpreters share certain underlying assumptions regarding Scripture, look to Scripture as the source of their interpretation, but also to previous generations of interpreters, who were themselves committed to Scripture and to their predecessors, and so on. Be that as it may, the rich history of scriptural interpretation also raises questions regarding the ability of tradition to constrain interpretation. As I've noted several times, Dworkin does not and in a sense cannot provide a clear definition of what constitutes the best possible interpretation. As a result, outlandish interpretations – e.g., the Zohar's assertion that legal texts in the Bible refer to dynamics between different aspects of the Godhead – are not counterexamples. Within the kabbalistic community of 13th century Spain, this was a good faith interpretation that presented the Torah (and the commandments) in the best light possible. There is, however, a type of interpretation that cannot be countenanced, namely one that undermines the authority of the very text from which the interpreter draws her own authority. That is, an interpretation of a canonic text that argues against the authority of the text. Since the interpretation undermines the text from which it draws its authority, I will refer to it as self-undermining and assert that a legal-interpretive theory must be able to deny the validity of such interpretations. In what follows, I discuss two self-undermining interpretations, and suggest that, in its current formulation, Dworkin's idea of a “chain novel” legal tradition does not provide the necessary strictures to deal with such interpretations.

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Paul and The Law

The first source I want to discuss is Paul's Epistle to the Galatians. At the time of its composition (somewhere between 50-55 CE)³⁶ the followers of Jesus were divided into two camps. One was centered in Jerusalem and headed by James, Jesus' brother, and Peter, the other a network of churches established by Paul, scattered throughout Asia Minor and the Mediterranean. The two camps were divided on the question of the status of gentiles with regard to the teachings of Jesus. The members of the Jerusalem Church held that the teachings of Jesus were aimed at Israel, in keeping with certain traditions, perhaps most prominently the Matthean version of Jesus' authorization of the apostles: "Go nowhere among the gentiles, and enter no town of the Samaritans, but go rather to the lost sheep of the house of Israel" (Matt 10:5-6).³⁷ If so, they reasoned, gentiles must first convert to Judaism and only then can they be saved through the Gospel of Christ. Paul, who from the outset of his mission distanced himself from the Jerusalem Church,³⁸ believed that gentiles do not need to convert to Judaism, but rather may be saved through faith in Christ alone.³⁹

36 On the dating of Galatians see H. D. Betz, *Galatians: A Commentary on Paul's Letter to the Churches in Galatia* (Philadelphia: Fortress Press, 1984), 9-12, and the literature cited therein. For a helpful survey of some of the scholarly issues surrounding the epistle, see M. D. Nanos, ed., *The Galatians Debate: Contemporary Issues in Rhetorical and Historical Interpretation* (Peabody, MA: Hendrickson, 2002).

37 See also, from the Sermon on the Mount, "Do not think that I have come to abolish the law or the prophets; I have come not to abolish but to fulfill. For truly I tell you, until heaven and earth pass away, not one letter, not one stroke of a letter, will pass from the law until all is accomplished ... unless your righteousness exceeds that of the scribes and Pharisees, you will never enter the kingdom of heaven" (Matthew 5.17-20).

38 In chapters 1 and 2 of Galatians Paul recounts how, following his call, "I did not go up to Jerusalem to those who were already apostles before me, but I went away at once to Arabia, and afterwards I returned to Damascus" (Gal 1.17). Over the next seventeen years Paul spent fifteen days in Jerusalem

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The debate between Paul and the Jerusalem Church played out in two main theaters. One was Jerusalem itself, to which Paul was summoned and where he faced charges that he was perverting the teachings of Jesus.⁴⁰ The second was the churches outside of Judea. Though established by Paul, other apostles – apparently from the Jerusalem Church – visited these congregations, seeking to persuade their members to adhere to Jewish law, or at least to some minimal observances. Several epistles are written to counter the influence of these teachings, including Galatians.⁴¹ There, Paul addresses “the churches in Galatia,” which he himself established,⁴² and argues that, contrary to what the “other apostles” have been teaching, adherence to the Law – the *nomos*, the Torah – is not necessary for the salvation of gentiles. In arguing this position to congregants open to Law-centered arguments, Paul invokes the support of the Torah itself:

Tell me, you who desire to be subject to the Law, will you not listen to the Law? For it is written that Abraham had two sons, one by a slave woman and the other by a free woman. One, the child of the slave, was born according to the flesh; the other, the child of the free

“but I did not see any other apostle except James, the Lord’s brother” (Gal 1.19), and he boasts that “I was still unknown by sight to the churches of Judea that are in Christ” (Gal 1.22).

39 For a lucid discussion of the ways in which Paul’s views are being re-considered in contemporary scholarship, see J. Gager, *Reinventing Paul* (New York: Oxford University Press, 2000).

40 The confrontation is described in Acts 15, when “some believers [i.e., followers of Jesus] who belonged to the sect of the Pharisees stood up and said, ‘It is necessary for [the gentiles] to be circumcised and ordered to keep the law of Moses’” (Acts 15.5). It is worth noting that the Jesus-believing Pharisees do not accuse Paul of teaching that *Jews* are no longer bound by the Law.

41 See also Acts 15.1: “Then certain individuals came down from Judea and were teaching the brothers, ‘Unless you are circumcised according to the custom of Moses, you cannot be saved.’”

42 Paul writes: “I am astonished that you are so quickly deserting the one who called you in the grace of Christ...” (Gal 1.6).

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woman, was born through promise. Now this is an allegory: these women are two covenants. One woman, in fact, is Hagar, from Mount Sinai, bearing children for slavery. Now Hagar ... corresponds to the present Jerusalem, for she is in slavery with her children. But the other woman corresponds to the Jerusalem above; she is free, and she is our mother. (Gal 4:21-26)

Paul then quotes Isaiah 54:1 – “Sing, O barren one who did not bear; burst into song and shout you who have not been in labor! For the children of the desolate woman will be more than the children of her that is married, says the LORD” – and enjoins his readers to become the sons of freedom rather than slavery. For what, Paul asks, returning to the earlier proof-text, “does the scripture say? ‘Drive out the slave and her child; for the child of the slave will not share the inheritance with the child of the free woman’” (Gen 21:10).

The use of Scripture in this passage is complex. Inasmuch as Scripture is (lower case) law, it is no longer required of the gentiles. This is clear from the allegoric identification of Hagar with Mount Sinai and the Mosaic laws with slavery. Yet it would be an error to read this as a rejection of Scripture as such. To the contrary, Paul anchors his argument in Scripture, that is, Scripture correctly (=allegorically) interpreted. For allegorically, both Genesis 21 and Isaiah 54:1 associate Sarah (Isaiah’s “barren one” and “desolate woman”) with the non- (or anti-) Sinaitic believers in Christ. Genesis enjoins the rejection of law-centered religiosity (Sinai is to be “driven out”) while Isaiah prophesies the flourishing of those who choose this path (“the children of the desolate woman”).⁴³

This bifurcated use of Scripture – the Hebrew Bible arguing against itself – also occurs in Romans 10:5-7:

43 The English dulls the sting of Paul’s paradoxical argument, since the Greek νο/μος is both the legal portions of the Hebrew Bible, and “Scripture” as such. “Tell me, you who desire to be subject to the law, will you not listen to the law?” (οἱ ὑπὸ νόμον θέλοντες εἶναι τὸν νόμον οὐκ ἀκούετε;).

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Moses writes concerning the righteousness that comes from the law, that “the person who does these things will live by them” (Lev 18:5). But the righteousness that comes from faith says, “Do not say in your heart, ‘Who will ascend into heaven?’, that is, to bring Christ down, or ‘Who will descend into the abyss?’, that is, to bring Christ up from the dead.”

In Leviticus 18:5 God speaks to Moses, saying “You shall keep my statutes and my ordinances; the person who does these things will live by them,” a statement Paul rejects for two reasons. First, it might be (and was) interpreted as presenting Mosaic law as the source of true life. Second, it follows a statement that links Israelite (which for Paul and his contemporaries would be synonymous with Second Temple Jewish) chosenness and the rejection of the surrounding nations: “You shall not do as they do in the land of Egypt ... and you shall not do as they do in the land of Canaan ... you shall not follow their statutes” (Lev 18:3). This position, however, is contrasted to the “righteousness that comes from faith” – a righteousness linked to a different verse, Deuteronomy 30:13.⁴⁴ Paul cites two verses, but only Leviticus is “from the law” in that it is committed to a Sinaitic worldview. Here too, then, Paul sets one biblical verse against another; properly interpreted, *nomos*-Scripture rejects *nomos*-Sinai.

I present these Pauline interpretations because they represent an unacceptable mode of legal interpretation – one that uses Scripture to undermine the legal standing of Scripture (at least for gentiles, in this case). A modern analogy might be an interpretation which argues that the preamble of the Constitution (say, the 18th century understanding of “the blessings of liberty”) nullifies the articles that follow, and that it is the authority of the preamble that justifies this nullification. Yet Paul’s reading of the Hebrew Bible fits the criteria endorsed in *Law’s Empire*, or, at least, it is too close a fit for comfort. True, such a link appears

44 Paul is citing the Septuagint version, which differs from the Masoretic, not in a way that affects the present argument.

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prima facie unlikely since Paul is traditionally understood as an outsider who seeks to effect a radical break with Judaism and consequently with the Hebrew Bible, and so is neither part of a tradition nor committed to the best possible interpretation of the (now superseded) “Old Testament.” Yet a number of considerations mitigate against this view. It is, for one thing, readily apparent that he remains committed to the Hebrew Bible (and to its proper interpretation) as a source of religious authority, as even the arguments that the (Sinaitic) law be rejected by the gentiles are anchored in biblical interpretation. More importantly, while Paul affirms his individual transformation,⁴⁵ the interpretive tools he uses are not novel. For while allegory was eventually embraced by the church and largely rejected by Jewish interpreters (at least in Christian Europe), there existed an allegorical tradition in Paul’s day, the exemplar of which was Philo of Alexandria. Here is how Philo interprets the Sarah and Hagar story:

“Hagar” is interpreted as “sojourning” ... she is the study of school disciplines [...] Why does Hagar flee from [Sarah’s] face? Not every soul gladly receives discipline ... the hostile and malevolent (mind) hates and avoids and flees from it, and draws near pleasant words rather than those which can profit it [...] What is the meaning of the words “There found her an angel of the Lord...”? All these things that are said are symbols and types by which (Scripture) represents the widely learned soul, which is the property of virtue, but is not yet able to see the beauty of its mistress ... Do you not see that all this is a tropical figure of the soul that progresses?⁴⁶

The details of Philo’s allegorical interpretation – Sarah as wisdom disciplining Hagar, who represents the elementary studies – are unimportant for the present discussion. What is important is the

45 For an analysis of the so-called conversion motif in Paul’s religious self-identity see A. Segal, *Paul the Convert: The Apostolate and Apostasy of Saul the Pharisee* (New Haven: Yale University Press, 1992).

46 Philo, *Questions and Answers on Genesis*, translated by R. Marcus (London: Harvard University Press, 1953), Book 3, §§20, 26, and 27.

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methodological continuity with Paul's own allegorical interpretation. "All these things that are said are symbols and types by which (Scripture) represents the widely learned soul," says Philo, and Paul echoes this view: "Now this is an allegory: these women are two covenants." Clearly, a shared allegorical approach is not the same as saying that Paul is part of a tradition or that he fits Dworkin's image of the serial novelist, but it is worth remembering that the employment of allegory situates Paul within an accepted hermeneutic practice.⁴⁷ There are also important parallels between Paul's allegory and the *pesher* interpretation of the Dead Sea Scrolls, as Timothy Lim has shown.⁴⁸

What of the requirement that the interpreter seek to cast past decisions in the best light possible? As recent Paul scholarship has shown, the theology of the Pauline epistles can indeed be understood as a *bona fide* interpretation of Hebrew Scripture.⁴⁹ Consider, for example, God's promise to Abraham in Genesis 12. After instructing Abraham to leave his home and family and travel to "the land that I will show you" (Gen 12:1), God makes the following promise to Abraham:

I will make you a great nation, and I will bless you ... I will bless those who bless you, and the one who curses you I will curse; and in you all the families of the earth shall be blessed. (Gen 12:2-3)

The key element for Paul's reading is that all the nations of the earth gain blessing through Abraham, that is, they gain blessing *qua* nations, *qua* non-Jews.⁵⁰ Now, the other elements of God's promise to Abraham

47 On Philo as part of an interpretive tradition see D. M. Hay, "Philo's References to other Allegorists," *Studia Philonica Annual* 6 (1979): 41-75.

48 T. H. Lim, *Holy Scripture in the Qumran Commentaries and Pauline Letters* (Oxford: Oxford University Press, 1997).

49 See the important article by J. D. G. Dunn, "Paul: Apostate or Apostle of Israel," *Zeitschrift für die neutestamentliche Wissenschaft* 89 (1998): 256-271. See also D. Boyarin, *A Radical Jew: Paul and the Politics of Identity* (Berkeley and Los Angeles: University of California Press, 1994); John Gager, *Re-inventing Paul*; Jacob Taubes, *The Political Theology of Paul*, translated by Dana Hollander (Stanford, CA: Stanford University Press, 2004).

50 Genesis 12:3 speaks of "families" but when the blessing is repeated God

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had all been fulfilled: God had led Abraham's descendents to the Land of Israel and they had become a nation, arguably one blessed by God. For Paul, the advent of Christ marked the fulfillment of the final element in God's promise – the blessing of the nations through Israel, not as Israel. In other words, God's promise requires that the Gentiles *not* be converted to Judaism, but rather approached in their present, uncircumcised state, and instructed in the teachings of Christ. As Paul states in Galatians, Christ died “in order that in Christ Jesus the blessing of Abraham might come to the Gentiles” (Gal 3:14). This momentous theological shift has, moreover, a hermeneutic dimension. “And the Scripture, *foreseeing that God would justify the Gentiles by faith*, declared the gospel beforehand to Abraham, saying, ‘and in you all the families of the earth shall be blessed’” (Gal 3:8). In other words, the emergence of a faith-centered redemption for Gentiles was foreordained or, in the technical sense of the word, prefigured in the Abraham narratives. Since Scripture foresaw this future development, the reader who recognizes the theological import of Christ's advent and rejects the imposition of the law on the Gentiles – and only he – is true to Scripture! The negation of the law is the fulfillment of the Law. To couch the same ideas in Dworkin's terms, it is (only) the interpretation which denies the legal force of the Law that casts the Law in the best possible light.

Paul's break with tradition is far less radical than is often assumed. This is evident, first and foremost, in the fact that Paul remains an interpreter who understands his own theology as adhering to – and a fulfillment of – the Hebrew Bible.⁵¹ Paul's ongoing engagement of Scripture in his epistles is especially significant in light of the proliferation of Second Temple texts that anchor their religious authority in accounts of extra-biblical divine revelation (e.g., the traditions surrounding Enoch and his heavenly ascent, or the evolution of the figure

tells Abraham that “by your offspring all the *nations* of the earth gain blessing for themselves” (Gen 22:18).

51 For a systematic discussion see R. B. Hays, *Echoes of Scripture in Paul's Letters* (New Haven: Yale University Press, 1993).

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of Baruch, Jeremiah's amanuensis).⁵² And, as noted, Paul even anchors his assertion that Gentiles can be saved without converting to Judaism in Scripture, arguing for a historical evolution (pre-advent versus post-advent) already announced in the biblical account of Abraham. Finally, in interpreting Scripture allegorically, Paul is adopting an established hermeneutic tool, familiar to his Hellenistic audience both from Alexandrian biblical interpreters and from the Neoplatonic and Stoic readers of Homer. Now, it would be an overstatement to suggest that Paul is an ideal Dworkinian interpreter of the law, primarily because Paul understands himself to be living in a period of world-historic change; the transformation effected by Christ's advent means that one cannot adhere to pre-advent traditions. But there is a tension between Paul's adherence to the Hebrew Bible, and the relatively conventional interpretive canons he employs, on the one hand, and the anomistic conclusions he reaches, on the other. Before discussing the implications of this tension, it is necessary to discuss a second self-undermining interpretation.

The Talmudic Reception of Psalm 119:126

Psalm 119 is the longest psalm in the psalter. An acrostic, it is, to use the title of David Noel Freedman's 1999 study, an "exaltation of Torah,"⁵³ and prominently features many of the legal terms that will become central to later Jewish thought, e.g., "commandment" (*mitzvah*), "law" (*hoq*), "teaching" (*torah*) and more.⁵⁴ The present analysis focuses on verse 126, which reads in Hebrew: עת לעשות לה' הפרו תורתך, "It is time for the LORD to act, for your law (*torah*) has been broken." There is

52 See M. E. Stone and T. A. Bergren, eds., *Biblical Figures Outside the Bible* (Harrisburg, PA: Trinity Press International, 1997).

53 D. N. Freedman, *Psalm 119: The Exaltation of Torah* (Winona Lake, IN: Eisenbrauns, 1999). See particularly Freedman's discussion of the theology of the psalm, in a section titled "the apotheosis of *tôrâ*" (pages 88-92).

54 See Freedman, *The Exaltation of Torah*, 25-55.

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some question regarding the meaning of the first hemistich, which consists of two discrete statements: *‘et la’asot*, “It is time to act,” and *la-‘adonai*, “for the LORD.” Since Hebrew word order is quite flexible, it is unclear – grammatically undecidable, in fact – whether it is time “for the LORD” to act (God is the one acting), or time to act “for the LORD” (someone else is acting for the sake of God). Most English translations prefer the former, among them King James (“It is time for thee, LORD, to work: for they have made void thy law”) and the New Revised Standard Version, which I cited above; others opt for the latter, among them the New Jewish Publication Society translation (“It is time to act for the LORD, for they have violated your Teaching”). The present discussion can set this question aside, as our focus is on the second hemistich, concerning which there is broad consensus: “they have violated Your *torah* (=your teaching, your Law).” The plain interpretation of this hemistich is that others have violated God’s laws and the verse’s addressees must act in response (either God, or a human addressee acting for the sake of God).

Not surprisingly, later interpreters have sought to identify the identity of these violators and the nature of their transgression. Patristic readers, for example, take the verse as referring to the Jews’ rejection of Christ. Origen writes:

Le texte signifie: “Pour le Seigneur, c’est le moment de créer” le peuple issu des Nations car l’Israël de jadis a “rejeté la loi.” Car ce n’était pas encore “le moment” pour le Seigneur de venir ici-bas, tant que ceux-là n’avaient pas “rejeté la loi” de Dieu.⁵⁵

Origen takes the agent of the passage to be God, and so it is time for God “to create”⁵⁶ a new community, one that emerges from the nations,

55 *La chaîne paléstinienne sur le psaume 118: Origène, Eusèbe, Didyme, Apollinaire, Athanase, Théodore*, edited and translated by Marguerite Harl (Paris: CERF, 1972), 1.391-393.

56 “Create” is one of the meanings of the Hebrew *ה-ש-ע*, usually translated “act” in this verse.

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since Israel has “rejected the Law.”⁵⁷ As noted, psalm 119 contains dozens of references to the commandments, laws, teaching, etc., and was understood by the rabbis as an affirmation of the Torah laws rejected by the Church Fathers, so it is ironic that the same verse serves as the basis for an interpretation concerning the religious failure of the law-centered Jews.⁵⁸ This interesting twist aside, Origen’s interpretation is straightforward:⁵⁹ it is necessary to defend the Torah (which for Origen meant the Torah as interpreted in light of Christ) against those who seek to undermine it. A similar approach is found in the Tosefta, an early rabbinic companion to the Mishnah. Here is the passage in Tzvee Zahavy’s translation:⁶⁰

Hillel the elder says, At the time of ingathering, scatter; at the time of scattering, gather in. When you see that the Torah is beloved by all Israel and that all rejoice in it, [then] scatter it [i.e., disseminate it freely; teach it widely], as Scripture states, “One man gives freely, yet grows all the richer” (Prov 11:24). [But] when you see that the Torah is forsaken by Israel, and all are not careful about it, [then] gather it in [viz., preserve it among yourselves], as Scripture states, “It is time to act for the Lord, [they have forsaken your Torah]” (Ps 119:126).⁶¹

57 The Hebrew *la’asot* can mean “to do” or “to make.”

58 I am not suggesting that the rabbinic interpretation is correct. It is possible that in Psalm 119 *mitzvah* refers to a wisdom instruction, “the counsel of a sage rather than juridical or cultic norms,” as argued in J. D. Levenson, “The Sources of Torah: Psalm 119 and the Modes of Revelation in Second Temple Judaism,” in P. D. Miller, P. D. Hanson, and S. D. McBride, eds., *Ancient Israelite Religion: Essays in Honor of Frank Moore Cross* (Philadelphia: Fortress Press, 1987), 563-574, citation at 566.

59 The same interpretation is also found in the commentary of St. Hilary of Poitiers to this psalm (which is numbered 118 in the Septuagint). See M. Milhau, ed., *Commentaire sur le psaume 118. Hilaire de Poitiers* (Paris: CERF, 1988), 2.192-193.

60 The precise relationship between the Tosefta and the Mishnah is a matter of some controversy, but most of new thinking on the matter pushes the Tosefta’s date back, not forward, and in any case it remains part of the classical rabbinic corpus.

61 tBerakhot 6.24. The translation and the bracketed comments are from T.

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The interpretation put forth by Zahavy's glosses is not the only possible one, nor is it certain that the Tosefta is concerned with public versus private instruction.⁶² What is clear, however, is that "gathering in" is the action required when "they have forsaken your Torah." That is, the action for the Lord is required because the Torah is being abandoned or violated. But this is not the only approach attested in the rabbinic sources. The Babylonian Talmud offers the following:

"It is time to act for the LORD, they have violated your Torah."
This verse can be read from beginning to end and from end to beginning. From beginning to end what does it mean? "It is time to act for the LORD" because "they have violated your Torah." From the end to the beginning what does it mean? "They have violated your Torah" because "it is time to act for the LORD."⁶³

The Talmud here points to an ambiguity in the biblical verse. The verse would most plausibly be read with the first hemistich as the primary clause and the second subordinate to it: "It is time to act for the LORD *because* they have violated your Torah." But the subordination can also be reversed: "They have violated your Torah *because* it is time to act for the LORD." Though grammatically defensible, this reading is starkly counterintuitive. How could a rabbinic text suggest that the need to act for the LORD leads to a violation of the Torah? The present passage merely points out that such a reading is possible,⁶⁴ but, elsewhere, the Talmud offers an example of rabbis engaged in such an activity:

Zahavy's rendering of tBerakhot in J. Neusner, ed., *The Tosefta* (New York: Ktav, 1977), 1.42. I have supplied the second hemistich of the verse, in accordance with the reading in MS Erfurt and the *editio princeps*, and see the notes of S. Lieberman, *Tosefta ki-Fshuta: Zeraim* (Jerusalem: Jewish Theological Seminary, 1992), 1.125. There is a reference to this verse in the printed edition of mBerakhot 9.4, but this is a late addition as shown by J. N. Epstein, *Introduction to the Mishnaic Text* (Jerusalem: Magnes Press, 2000), 2.975.

62 Lieberman, in his commentary (124), suggests that the passage refers to different methods of instructing rabbinic disciples.

63 bBerakhot 63a.

64 Rashi in his commentary *ad loc.* refers to Elijah's willingness to offer sa-

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Rabbi Yohanan says: Those who commit extra-scriptural traditions (*halakhot*) to writing are likened to those who burn the Torah ... The school of Rabbi Ishmael taught, [Scripture states] “[The LORD said to Moses:] Write these words...” (Exod 34:27) – *these* words you may write, but do not write extra-scriptural traditions. It was suggested, Perhaps the ruling is different in the case of a new interpretation. For Rabbi Yohanan and Resh Laqish used to read a scroll of extra-scriptural traditions (*sifra de-aggadata*) on the Sabbath.⁶⁵ [Rather] thus we interpret the verse, “It is time to act for the LORD, they have violated your Torah.” They say: better that Torah be uprooted⁶⁶ than that Torah be forgotten. (bTemurah 14b)

In this example, the violation involves the rabbinic doctrine of extra-scriptural traditions and, specifically, the interdiction against their written codification.⁶⁷ However, noting that two important rabbinic

crifices alongside the prophets of Baal, a prohibited act nonetheless justified as a demonstration of God’s might (1 Kings 18).

- 65 As the context of the passage makes clear, *sifra de-aggadata* does not refer to scrolls of legends or homiletic teaching (the current meaning of *aggadah*) but to *halakhot*. See also W. Bacher, “The Origin of the Word *Haggada* (*Agada*),” *Jewish Quarterly Review* (old series) 4 (1892): 406-429. The question has been addressed more recently by B. Lifshitz “Aggadah and its Place in the History of the Oral Law,” *Shenaton Ha-Mishpat Ha-Ivri* 22 (2001-03): 233-328, however the philological analysis there is wanting.
- 66 Thus the printed edition; MS Munich reads “better that one letter of the Torah be uprooted...” E. E. Urbach juxtaposes this reading to Jesus’ saying, “For truly I tell you, until heaven and earth pass away, not one letter, not one stroke of a letter, will pass from the law until all is fulfilled” (Matt 5.17). The juxtaposition is jarring inasmuch as Jesus is here portrayed as a more faithful adherent of the Torah than the rabbis. See E. E. Urbach, *The Sages: Their Concepts and Beliefs* (Jerusalem: Magnes Press, 1983; Hebrew), 261-262.
- 67 In characterizing this doctrine as “rabbinic” I am glossing over a much more complicated picture that includes deep ambivalence in certain rabbinic circles toward the idea of extra-scriptural legal authority. On this question see my *Scripture as Logos: Rabbi Ishmael and the Origins of Midrash* (Philadelphia: University of Pennsylvania Press, 2004).

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authorities had a book of extra-scriptural traditions, the Talmud cites our Psalm and glosses it as follows: “They say: better that Torah be uprooted than that Torah be forgotten.” Echoing the view elaborated in tractate Berakhot, the passage in tractate Temurah takes the second hemistich as the main clause, i.e., the violation of the Torah is a response to the need to act for the Lord, and provides an example of such behavior on the part of prominent rabbis. Rabbi Yohanan and Resh Laqish have transgressed – the passage clearly understands them to have done so knowingly – but their transgression is sanctioned because they are acting “for the LORD.”

This is a striking interpretation, not least for the way it divorces the verse in question from its broader context. As noted, Psalm 119 is an encomium to the Torah and its constituent elements, the commandments, laws, etc. and verse 126 is located between two verses that exalt the Torah and its laws: “I am your servant; give me understanding, so that I may know your decrees” (v. 125) and “Truly I direct my steps by all your precepts; I hate every false way” (v. 127). It is wildly improbable that the Psalter sought to include in this psalm, between two law-centered verses, a statement suggesting that God wishes the Torah be violated “for the LORD.” It is also worth noting the distant but suggestive family resemblance between the Talmud’s assertion that the Torah can at times be best served by violating its legal strictures and the Patristic view that the true fulfillment of Scripture requires transcending its legal aspect and embracing its higher, Christological message.

The key issue for the present discussion, however, is that the Talmud’s interpretation, like Paul’s reading of the story of Sarah and Hagar, cites a biblical proof-text to undermine biblical law: “Better that Torah be uprooted than that Torah be forgotten” – the Torah sanctions its own violation. And here we come to the heart of the matter. In *Law’s Empire*, Dworkin suggests that an interpreter’s location within a tradition, along with a commitment to understanding previous legal decisions in the best possible light, serve as a check against unfettered

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interpretive freedom. But if we accept that an interpretation that undermines the authority of its own legal text is by its very nature unacceptable, the Talmudic interpretation of Psalm 119 suggests these checks are not sufficient. Let me phrase this differently. As noted, even though Paul draws upon established interpretive canons and offers what he takes to be a good faith interpretation of the Hebrew Bible, he maintains an uneasy relationship with the authorities who precede him.⁶⁸ The rabbis of the Talmud, however, are arguably the closest empirical approximation to Dworkin's "chain novel" interpreters: a law-centered (perhaps, law-constituted) community that defines itself in terms of fidelity to earlier rabbinic interpreters and to the written sources of Jewish law (the Bible and the now-codified Oral Law). And yet even here, within the Talmud itself, we find an interpretation of Psalm 119 that legitimizes the principled rejection of the law. "It is time to act for the LORD," therefore it is justified for you – perhaps even incumbent upon you – to violate the Torah.

* * *

The present essay attempts to ascertain whether the constraints Dworkin places on the hermeneutic freedom of the interpreter – especially the idea of the "chain novel" – are adequate. Toward this end, I have sought to apply the abstract legal concepts of *Law's Empire* to historic interpretive traditions and offered an "empirical" argument of sorts. The appeal to concrete traditions is important, since I suspect that an argument opening with "Imagine, if you will, an interpreter committed to the authority of a canonic text, that cites this very text as a prooftext for undercutting the authority of said text..." would be greeted with a good deal of skepticism. Yet both Paul and, strikingly, the Talmud make such arguments, and while each example stands on its own, together they illustrate the point more fully: the Talmudic argument suggests that even the most tradition-conscious community

68 Including those who are part of the Jesus movement. See n. 38, above.

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can produce an interpretation that undermines law itself, while Paul's shows how far-reaching the consequences of such a move may be.

The upshot of all this is that if such arguments have been advanced in the past, legal theorists need to account for the possibility that they will be advanced again. As we have seen, Dworkin rejects the idea that the interpreter sets out to recover the speaker's meaning (authorial intent), holding rather that he imposes meaning on the social practice under discussion. If the argument of this paper is correct, it is imperative that Dworkin offer more robust checks on interpretation. Absent such checks, Dworkin's interpretive theory of law could end up justifying legal interpretations that, though anchored in tradition, nonetheless undermine the law.