The Main Elements of Dworkin’s Legal Philosophy

1. The law consists not only of rules but also of principles. Rules are applicable in an all-or-nothing fashion, whereas principles have the extra dimension of weight.

2. He rejects the positivist notion of a single ultimate or fundamental test for law, such as a rule of recognition. In its place he puts the sort of reasoning that he ascribed to his imaginary judge, Hercules.

3. In any sufficiently rich legal system the question, What is the law on this issue? Always has a right answer, discoverable in principle, and it is the duty of the judge to try to discover it.

4. Though judges in hard or controversial cases have discretion in the weak sense that they are called upon to exercise judgment—they are not supplied with any cut and dried decision procedure—they never have discretion in the strong sense which would exclude a duty to decide the case one way rather than the other.

5. Even in a hard case one does not reach a stage where the law has run out before it has yielded a decision, and the judge has to make some new law to deal with a new problem. Judges never need to act, even surreptitiously, as legislators, though Dworkin allows that they may in fact do so as they sometimes do when they make a mistake or when they prospectively overrule a clear precedent.

6. If judges are not legislating but still discovering an already existing law, they must confine themselves to considerations of principle; if they let policy outweigh principle, they will be sacrificing someone’s rights in order to benefit or satisfy others, and this is unjust.

7. Dworkin rejects the traditional positivist separation of law from morality. The task assigned to Hercules is to find the theory that best explains and justifies the settled law, and to use this theory to decide otherwise unsettled issues. He construes the phrase “best explains and justifies” as including a moral dimension.

Brief Summary
Like Fuller, Dworkin rejects Aquinas while still insisting there is a necessary connection between law and morality. Unlike Fuller, Dworkin focuses not on legal systems as a whole but on judges’ activity of interpreting laws. Dworkin focuses on the judge and uses judicial decisions in actual legal systems as his way of challenging the legal positivist picture of law as demarcated by a set of primary rules identified by secondary rules of recognition. Like the realists, D challenges the dominance of formal or paper legal rules within judicial decision making. But unlike the realists and unlike Critical Legal Studies, D does not take the relative absence of formal rule-based legal constraint as suggesting a relative lack of constraint at all.
Rather: D sees the constraint both in the methods of the judge and in the full array of society’s previous political as well as legal decisions. His focus on interpretation is his way simultaneously of rejecting a rule-based picture of law without rejecting the idea that judges are different from others kinds of official decision makers.

Dworkin vs. Fuller: the source of prima-facie obligation is not just in principles of legality; these are not enough. The prima-facie obligation comes not just from these but from the “integrity” of law. Law is not just a grab-bag of rules laid down by the powers that be. Law = rules plus principles and this means it more than the mere exercise of power. This integrity gives it a claim on our obedience.

**Key claim:** The law consists of the explicitly adopted rules plus the best moral principles that can be interpreted as lying behind those rules.

So for Dworkin judges must interpret which moral principles lie behind the explicitly adopted rules. There are two dimensions of interpretation:

*Formal dimension* – Which set of principles better “fits” the existing legal system and history of precedent? Relevant here are:

- (a) logical consistency
- (b) the fit between principles and past decisions (a judge “must continue the past and not invent a better past”).

*Substantive dimension* – Which principles are morally speaking the best ones, that is, closer to the moral truth?

Example: a right to privacy = the principle that best explains the 4th Amendment’s ban on unreasonable searches and seizures, and this extends to wiretapping.