

## BOOK REVIEW

SOCIAL ORDER AND THE LIMITS OF LAW. By Iredell Jenkins. Princeton, N.J.: Princeton University Press, 1980. Pp. xiv, 390. \$25.00.

*Reviewed by John T. Valauri\**

Contemporary Anglo-American legal philosophy is primarily concerned with the question, "What is law?" Jurisprudents such as Dworkin, Fuller, Hart, and Kelsen have directed their attention to the formal analysis of law and legal systems;<sup>1</sup> critical theorists such as Bickel, Hayek, Lowi, and Unger to the construction of ideal legal orders.<sup>2</sup> Though points of view may vary within each group, these writers mainly consider the analytical and structural characteristics of the law.

In *Social Order and the Limits of Law*<sup>3</sup> Iredell Jenkins diverges from the mainstream of Anglo-American jurisprudential thought. Professor Jenkins's approach is teleological. He sees positive law as part of a framework to maintain in harmony a great variety of purposive human activities. Rather than asking, "What is law?" Jenkins begins his book by asking, "Why is law?" He explains the difference between the two questions: "To ask *why* instead of *what* is to throw the emphasis on the genetic, functional, and teleological aspects of law rather than on its formal and structural characteristics; without denigrating these latter, it treats them as derivative of the former."<sup>4</sup>

Jenkin's unfamiliar use of familiar terminology and explanatory devices illustrates the direction and magnitude of his divergence from mainstream thought. Although the writings of Fuller and Jenkins frequently refer to the purposiveness of law, Jenkins's work, unlike

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1. See, e.g., R. DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977); L. FULLER, *THE MORALITY OF LAW* (rev. ed. 1969); H. HART, *THE CONCEPT OF LAW* (1961); H. Kelsen, *GENERAL THEORY OF LAW AND STATE* (A. Wedberg trans. 1945).

2. See, e.g., A. BICKEL, *THE MORALITY OF CONSENT* (1975); F. HAYEK, *1 LAW, LEGISLATION AND LIBERTY* (1973); T. LOWI, *THE END OF LIBERALISM* (1969); R. UNGER, *LAW IN MODERN SOCIETY* (1976).

3. I. JENKINS, *SOCIAL ORDER AND THE LIMITS OF LAW* (1980).

4. *Id.* 4.

Fuller's, contains no lengthy discussion of the "inner morality of law,"<sup>5</sup> because Jenkins is concerned more with the reasons for law than with its procedural principles. Similarly, although both Jenkins and Hayek use an evolutionary concept to interpret and explain social structures,<sup>6</sup> Jenkins integrates this concept into a larger purposive framework. Moreover, Jenkins does not draw the sharp distinction Hayek does between "spontaneous orders" and "organization."<sup>7</sup> Instead, Jenkins views human activity as including aspects of both elements of Hayek's dichotomy. Furthermore, Jenkins uses the evolutionary concept in a more systematic way than Hayek, not merely to explain law as a social practice but also to discuss the developments that called this practice into being and to describe its background, tasks, and limits.

In *Social Order and the Limits of Law* Jenkins first sets out a systematic theory of the context and causes of positive law,<sup>8</sup> and then applies that theory to contemporary problems such as legal obligation, civil disobedience,<sup>9</sup> rights, and justice.<sup>10</sup>

### I. THE MATRIX OF POSITIVE LAW

The foundation of Jenkins's theory of law is his first "metaphysical assumption": the uniformity of nature.<sup>11</sup> Jenkins adheres to Whitehead's rejection of Cartesianism. According to Whitehead,<sup>12</sup> Descartes erred in assuming the separate and independent existence of body and mind, thus masking "the true relation of each organism to its environment; and [creating] the habit of ignoring the intrinsic worth of the environment which must be allowed its weight in any consideration of final ends."<sup>13</sup>

The rejection of Cartesianism permits Jenkins to parallel Hayek in attacking the doctrine of "constructivist rationalism."<sup>14</sup> The construc-

5. See L. FULLER, *supra* note 1, at 33-94.

6. See F. HAYEK, 2 *LAW, LEGISLATION AND LIBERTY* 8-34 (1976); I. JENKINS, *supra* note 3, at 15-17.

7. See F. HAYEK, *supra* note 6, at 35-38.

8. See text accompanying notes 11-25 *infra*.

9. See text accompanying notes 29-37 *infra*.

10. See text accompanying notes 39-48 *infra*.

11. I. JENKINS, *supra* note 3, at 5.

12. See A. WHITEHEAD, *SCIENCE AND THE MODERN WORLD* 278-80 (1925). See text accompanying notes 17-20 *infra*.

13. A. WHITEHEAD, *supra* note 12, at 281-82.

14. See F. HAYEK, *supra* note 6, at 8-34; I. JENKINS, *supra* note 3, at 15-17. I am not asserting that these alleged errors appear full blown in the writings of Descartes, merely that the mind-body dichotomy discussed here has become most closely identified with Cartesianism by the writers mentioned and by other writers. Indeed, Hayek states that application of constructivist rationalism to moral and social topics was performed not by Descartes but by Hobbes and other later writers. See F. HAYEK, *supra* note 6, at 9.

tivist-rationalist position in political and legal philosophy devalues tradition, custom, and history and champions the reconstruction of society under the direction of human reason alone. Jenkins and Hayek believe that the adherents of constructivist rationalism confuse the conceivable with the feasible and prudent, thereby ignoring natural limitations, threatening social harmony, and risking social disorder and breakdown.

One aspect of the constructivist-rationalist error, according to the anti-Cartesian view of Jenkins and Hayek, is the program of "radical doubt." This program equates rationality with deduction from premises that are certain.<sup>15</sup> Modes of thought and action not in conformity with constructivist rationalism are overlooked or rejected, but such modes do exist. As Hayek states, "It is simply not true that our actions owe their effectiveness solely or chiefly to knowledge which we can state in words and can therefore constitute the explicit premises of a syllogism."<sup>16</sup> Instead, by following practices derived from tradition, intuition, and trial and error, people can function successfully and promote social welfare. Hayek's position applies the invisible-hand theory to social and legal institutions, and contends that socially necessary information need not (and cannot because of the limitations of the individual mind) be known by everyone.

The analytical basis for Hayek's and Jenkins's attack on constructivist rationalism is Ryle's distinction between knowing how and knowing that, which Ryle explains as follows: "[I]ntelligence is directly exercised as well in some practical performances as in some theoretical performances and . . . an intelligent performance need incorporate no 'shadow act' of contemplating regulative propositions."<sup>17</sup> Practical performance therefore is independent of and different from theoretical reason. This distinction has intuitive plausibility. An athlete who performs his athletic activity well may not be able to explain his actions tactically or physiologically; a coach or sports doctor may be inept athletically but proficient at "contemplating regulative propositions," tactical or physiological, about the sport. On both the individual and social levels, knowledge (in the sense of knowing how) may be acquired not only theoretically, but also through practical training.<sup>18</sup>

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15. F. HAYEK, *supra* note 6, at 10.

16. *Id.* 11.

17. G. RYLE, *Knowing How and Knowing That*, in II COLLECTED PAPERS 212 (1971).

18. This difference is mirrored in the terminology used to discuss different types of knowledge and their development, retention, and loss. See, e.g., G. RYLE, *On Forgetting the Difference Between Right and Wrong*, in II COLLECTED PAPERS 381-90 (1971).

Some opponents of Cartesianism argue for the existence of a class of phenomena between natural and artificial phenomena. Hayek, quoting Adam Ferguson, describes these phenomena as "the result of human action but not of human design."<sup>19</sup> The existence of these phenomena in political philosophy results in the elimination of the original-legislator myth which dates back at least to Plato. In legal philosophy these phenomena result in the rejection of the distinction between natural and positive law because this distinction rests on the overly simplistic dichotomy between natural and artificial phenomena.<sup>20</sup>

If constructivist rationalism is denied, what is the explanation for social change? Jenkins finds the answer in his second "metaphysical assumption": the theory of evolution.<sup>21</sup> Social change is explained not by deliberate construction but by evolution or organic development. Taking into account his first postulate of the uniformity of nature, Jenkins applies the theory of evolution not merely to the development of human institutions, but also to natural realms, including the nonhuman and the inanimate.<sup>22</sup>

Jenkins defines law as "a principle of order."<sup>23</sup> This definition applies to laws regulating all three realms of phenomena. Jenkins summarizes the possible interrelations between law and phenomena in a matrix of positive law in which he arrays four "dimensions of order"—many, one, process, and pattern—against three "regimes of becoming"—necessity, possibility, and purposiveness.<sup>24</sup> All twelve components of the resulting matrix must be given due weight in the development of positive law lest unforeseen repercussions create social disorder. Positive law for Jenkins is a supplemental principle of order, aiding but not supplanting the less formal, less planned modes of social order.<sup>25</sup> According to Jenkins positive law cannot effectively anticipate other social attitudes, habits, and rules.

Jenkins uses this matrix, for example, to attack Judge Frank Johnson's recognition of mental patients' right to treatment in *Wyatt v. Stickney*.<sup>26</sup> Using his matrix Jenkins condemns Johnson's intervention

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19. F. HAYEK, *supra* note 6, at 20 (quoting A. FERGUSON, AN ESSAY ON THE HISTORY OF CIVIL SOCIETY 187 (1767)).

20. F. HAYEK, *supra* note 6, at 20.

21. I. JENKINS, *supra* note 3, at 5.

22. *Id.* 30-40.

23. *Id.* 69.

24. *Id.* 42.

25. *Id.* 16.

26. 344 F. Supp. 373 (M.D. Ala. 1972), *aff'd in part, remanded in part, rev'd in part sub. nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

as an overemphasis on the regime of purposiveness which has unforeseen, but inevitable, negative reactions in the regimes of necessity and possibility. This condemnation illustrates Jenkins's belief that attempted legal reform of social institutions is likely to fail if the reform is not consonant with society's habits and goes beyond the scope of legal resources.

The matrix of positive law provides a counterbalance to theories of judicial and social activism. The matrix correctly reflects the merit of a comprehensive and harmony-seeking approach to social and legal change; it warns us not to confuse desirability with feasibility. Jenkins's preliminary examination of the philosophical foundations of theories of law and society, which focuses needed attention on the theories' assumptions about man and reason, should provoke a re-examination of the often unconsciously Cartesian foundations of much contemporary legal and social theory.

The matrix theory is, however, an extreme corrective. Its sweeping rejection of social engineering invites the opposite danger of inaction. At the least the matrix theory seems to counsel acceptance of the legal status quo, if not to assert the legitimacy of the status quo by definition. The theory eliminates the leadership role of law, optimistically assuming that other social forces will bring about the changes justice demands.

There is inadequate historical support for this optimism. Moreover, the theory minimizes the educational and motivational force of legal change. Literal application of Jenkins's theory might condemn *Brown v. Board of Education*<sup>27</sup> as wrongly decided because the decision was at variance with the period's predominant social attitudes, and might proclaim the legal or moral correctness of *Plessy v. Ferguson*<sup>28</sup> because it was in accord with the social and legal attitudes of its day. But if individuals can appeal to moral and legal rights that are independent of public opinion, and if part of the law's function is to safeguard and implement these rights, Jenkins's matrix cannot be an adequate theory of positive law because it fails to explain and safeguard these rights in the first instance.

## II. JENKINS AND CONTEMPORARY PROBLEMS

After setting out a systematic theory of law in the first part of his book, Jenkins applies this theory to major contemporary problems of legal thought and action. Ronald Dworkin is his primary antagonist in

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27. 347 U.S. 483 (1954).

28. 162 U.S. 537 (1896).

these areas, and Jenkins's exposition may be viewed as a sustained attack on Dworkin's liberalism.

A. *Legal Obligation and Civil Disobedience.*

In the areas of legal obligation and civil disobedience, Jenkins confronts two problematic topics for contemporary legal theory. The inadequacy of proposed solutions to these problems until now has frustrated attempts at synthesis.

Hart has effectively criticized Austin's classical theory, that legal obligation is based on coercion or the threat of coercion, because it confuses being obliged with having an obligation.<sup>29</sup> Hart proposes an alternative theory, which Jenkins sees as based on the concept of validity.<sup>30</sup> Hart weakens his theory, however, by inadequately explaining social acceptance and convention. One needs a clear explanation of these two notions to differentiate action based on obligation from that based on mere habit or coincidence. Hart faces the same problem as other modern theorists. Actual or explicit acceptance is too strict a requirement for obligation and one that is too difficult to comply with in practice. Tacit acceptance, like tacit consent, seems contradictory. One can see why Hägerström resorts to the belief in the magical powers of words to explain obligations.<sup>31</sup> A promising approach to this problem bases obligations on agreements that are or can be made rationally or under certain ideal conditions.<sup>32</sup> This approach requires, however, the prior acceptance of certain theories of rationality or conditions for impartial choice.

Jenkins suggests a different approach. He contends that if legal obligation is neither reducible to nor deducible from other concepts, a faulty or inappropriate method of derivation is being used.<sup>33</sup> Rather than as a development of argument or inference, Jenkins sees obligation as a product of feelings. He observes that people live together in relationships that are of mutual benefit. Emotional bonds arise out of these relationships, inducing feelings of personal or communal obligation on which legal obligations are based. Jenkins distinguishes his position from that of Austin and Hart: "So where Austin says *we are obliged*, and Hart says that *we have an obligation*, I say that *we recog-*

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29. See H. HART, *supra* note 1, at 79-88.

30. I. JENKINS, *supra* note 3, at 193.

31. A. HÄGERSTRÖM, *INQUIRIES INTO THE NATURE OF LAW AND MORALS* 1-16, 348-66 (C. Broad trans. 1953).

32. See, e.g., J. RAWLS, *A THEORY OF JUSTICE* 333-91 (1971).

33. I. JENKINS, *supra* note 3, at 194-95.

nize ourselves to be obligated.”<sup>34</sup> This doctrine explicitly adopts the position of intuitionist philosophers, such as Prichard, for whom the question, “Why should I perform my obligation?” is illegitimate because there can be no answer through rational demonstration; the justification for the validity of the obligation can be only intuitive or self-evident.<sup>35</sup>

Jenkins also postulates that legal obligations are felt mediately through the less formal groups and institutions that constitute society. The mediate-bonding and emotional-origin bases of legal obligation have conservative political and legal consequences for both government and citizen. Under Jenkins’s theory a government cannot unilaterally change citizens’ obligations without jeopardizing its authority, but neither can a citizen protest against the government concerning his obligations.

Jenkins’s theory of legal obligation undercuts civil disobedience in both scope and rationale. Though he recognizes that government must respond to the justified claims of civil disobedients,<sup>36</sup> his theory of legal obligation provides an insufficient basis for justification of these claims. The organic theory of society upon which Jenkins’s matrix of positive law rests neither adequately recognizes nor provides for citizens’ rights and duties. Rawls argues that a natural duty not to be an agent or recipient of grave injustice by government overrides the duty to obey the government.<sup>37</sup> This position seems in line with contemporary thought and law from Nuremburg to Vietnam. But for civil disobedience to have a justification, reasoned argument concerning obligation and its bases must be possible. If, however, as Jenkins asserts, obligation is a feeling arising from intuition and not reason, no such discussion is possible.

In his writing on civil disobedience<sup>38</sup> Dworkin asserts that, at least in some cases in the United States, the validity of a law cannot be demonstrated. This result occurs, Dworkin believes, because of the incorporation into the Constitution of moral concepts that constantly evolve and are not amenable to final formulation. Thus, for Dworkin, there may be sincere, reasoned, and justifiable dissent and civil disobedience even after the Supreme Court has spoken.

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34. *Id.* 199.

35. See H. PRICHARD, *Does Moral Philosophy Rest on a Mistake?*, in *MORAL OBLIGATION AND DUTY & INTEREST I* (1949).

36. I. JENKINS, *supra* note 3, at 207.

37. See J. RAWLS, *supra* note 32, at 380.

38. See R. DWORKIN, *supra* note 1, at 206-22.

Both Jenkins and Dworkin incompletely explain the relationship of reason to obligation. Jenkins insists that the practical requirements of governing and the need for social solidarity restrict the exercise of the kind of sincere dissent and civil disobedience that Dworkin would allow. Rational discussion is not concerned primarily with practical and material social requirements and the need for stability and harmony. Rather, rational discussion assumes the former and ignores (except, perhaps, in a formal sense) the latter. Society cannot, however, function like a rational discussion. Argument in society eventually must stop and action must be taken; the unconvinced sometimes must be coerced to comply. But Jenkins's error is that "eventually" is not "now," and "sometimes" is not "always." In the middle area where reasonable people may disagree about the practical need to act or the moral/theoretical need to argue, standards are needed. To derive these standards the reciprocal roles of reason and sentiment must be analyzed and balanced.

### B. *Rights and Justice.*

In the final portion of his book Jenkins confronts the definition and implementation of rights and the achievement of social or distributive justice. He attempts to apply his matrix to the issues generated by this process, most notably affirmative action. Jenkins recognizes the intertwined relation of rights and justice felt today when he says, "The primary locus of rights might thus be said to lie in the sense of injustice."<sup>39</sup>

Jenkins admits the existence of many rights.<sup>40</sup> He is not committed to the existence of one form of rights to the exclusion of all others. So, for example, he does not hold as does the libertarian Nozick that rights of entitlement may occupy the entire field of rights and thus crowd out distributive and welfare claims.<sup>41</sup> Jenkins believes that various forms of rights—legal, natural, human—exist in various stages of actualization and implementation. Rights begin in the realm of ends and pass into the realm of practice through what he calls the process of legalization.<sup>42</sup>

According to Jenkins, however, not all rights are equally amenable to legalization. Law, remember, is for him a supplemental principle of order that must act in harmony with other social institutions.<sup>43</sup> Diffi-

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39. I. JENKINS, *supra* note 3, at 243.

40. *Id.* 241.

41. See R. NOZICK, ANARCHY, STATE AND UTOPIA 268-71 (1974).

42. I. JENKINS, *supra* note 3, at 248.

43. See text accompanying note 25 *supra*.

culties in ascertaining the scope and requirements of certain rights and the limitations on the enforcement abilities of legal institutions make some rights better candidates for legalization and implementation than others. Not surprisingly, Jenkins finds that the better candidates for legal implementation are formal or negative rights.<sup>44</sup> He believes that human or substantive welfare rights, which often are based on needs and moral claims, fall beyond the range of legal power and competence. For example, Jenkins feels that adversarial adjudication is fatal to the satisfactory settlement of the problems and disputes raised by human rights.<sup>45</sup> He writes: "The claims advanced as human rights should thus be acknowledged and pursued as social goals. But they should not be recognized as legal rights, for to give them this status threatens to defeat the claims themselves by undermining the social structure on which their realization depends."<sup>46</sup>

Considerations of social stability and the strength of legal resources are important, but Jenkins goes too far in asserting that they always outweigh the positive aspects of legal enforcement of human-rights claims. Using the bargaining and reasoning process to resolve human-rights disputes, which Jenkins prefers, requires the threat of adjudication and sanction to ensure good faith and to protect minority rights. It is unrealistic to believe that significant human-rights implementation might result purely from voluntary, common agreement among the members of society.

Moreover, Jenkins makes, but never defends, the assumption that the potential changes and dislocations that he fears may result from the affirmation of human rights are more serious than the repercussions from the denial of human rights. This result need not follow for three reasons. The general recognition of the concept of human rights and the gradual implementation of particular human rights can operate as a safety valve for the release of individual, group, and class resentments. In addition, the affirmation of human rights can act to enhance and expand the sense of community and the belief that there are avenues of complaint and grievance, thus preventing the development of resentment and feelings of injustice in the first instance. Finally, the damage to self-respect and to self-fulfillment suffered by citizens denied their human rights is a significant evil in itself.

Given his treatment of the legalization of human rights, Jenkins believes law can or should do little directly to achieve social justice. Law can, however, work indirectly to prevent unfairness (*i.e.*, exclu-

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44. I. JENKINS, *supra* note 3, at 241-67.

45. *Id.* 299.

46. *Id.* 311.

sion, discrimination, and exploitation) in institutions and practices, and thus can supplement the effort at social "cultivation" or molding performed by other institutions to achieve justice.<sup>47</sup> Law's role includes both "the correction of institutional abuse" and "the restraint of individual defiance."<sup>48</sup>

Jenkins's examination of the affirmative action issue in *DeFunis v. Odegaard*<sup>49</sup> and *Regents of the University of California v. Bakke*<sup>50</sup> illustrates his difficulties with rights and justice, especially in his criticism of Dworkin. Affirmative action in professional school admission (which Jenkins calls "privileged admission") runs contrary to Jenkins's belief that social justice and human-rights implementation are not proper aims or functions of law.<sup>51</sup> He believes that affirmative action defeats its own purpose by destroying social cohesion and perpetuating inequalities.<sup>52</sup> Moreover, for Jenkins, affirmative action is not merely a well-intentioned but impractical device. He sees it in conflict with "the traditional constitutional right to equal protection,"<sup>53</sup> because he believes that affirmative action violates the right to equal protection of a DeFunis or a Bakke.

Jenkins attacks Dworkin for his willingness to sacrifice DeFunis's right to equal protection for the goal of a more equal society.<sup>54</sup> Jenkins finds unpersuasive Dworkin's attempt to distinguish *DeFunis* from *Sweatt v. Painter*,<sup>55</sup> a 1950 case holding that a black man had been improperly excluded from a segregated law school.<sup>56</sup> Although Dworkin asserts that each citizen has a right to equal concern and respect,<sup>57</sup> Jenkins finds this right violated when an individual's interests are sacrificed for a social goal.

Jenkins's criticism of Dworkin fails because he does not appreciate the full force of Dworkin's distinction between two kinds of rights: the right to equal treatment and the right to treatment as an equal.<sup>58</sup> Dworkin defines the right to equal treatment as "the right to an equal distribution of some opportunity or resource or burden."<sup>59</sup> This meas-

47. *Id.* 348-52.

48. *Id.* 372.

49. 416 U.S. 312 (1974).

50. 438 U.S. 265 (1978).

51. I. JENKINS, *supra* note 3, at 311. See text accompanying notes 43-48 *supra*.

52. I. JENKINS, *supra* note 3, at 270-71.

53. *Id.* 270.

54. *Id.* 301-05.

55. 339 U.S. 629 (1950).

56. R. DWORKIN, *supra* note 1, at 239.

57. *Id.* 272-73.

58. *Id.* 227.

59. *Id.*

ure seems appropriate to certain liberty-based rights such as the right to vote, but it is not appropriate as a principle governing need-based distribution of such things as wheelchairs and insulin. The superior need of paraplegics and diabetics for these things makes irrational and unjust the right to equal distribution regardless of need. This point is the essence of the right to treatment as an equal. As Benn states: "Equal protection ought not to mean an equal allocation of the means of protection—for the protection must be commensurate with the threat or impediment."<sup>60</sup>

What needs or desires are to be excluded in applying the right to treatment as an equal? Dworkin believes that external (as opposed to personal) preferences are to be excluded in utility or welfare calculations.<sup>61</sup> Self-regarding preferences may be considered, but other-regarding preferences may not. This distinction is intuitively plausible. It is not always possible to satisfy everyone's preferences. Injustice results, however, when personal preferences are frustrated solely by the preference or desire of others to create that frustration. Utility-based arguments for segregation, Dworkin believes, rely on such external preferences and thus are illegitimate; utility-based arguments for affirmative action need not rely on such preferences and therefore need not violate individual rights and autonomy.

Jenkins does not meet these arguments adequately. His adherence to a limited or formal conception of legal rights commits him to an interpretation of equality solely as the right to equal treatment. This interpretation of equality and rights works in certain contexts, most notably political rights and liberties, but not in others. In contrast, Dworkin's right to treatment as an equal provides a better explanation and result in areas such as special-need resource allocation and affirmative action.

If the right to equal concern and respect is to be more than a platitude, a satisfactory explanation of the reciprocal relation of the right to equal treatment and the right to treatment as an equal must be found. Analysis may reveal common elements of the two rights, usable as a base for comparison and balancing in cases of conflict. The sustained, bitter dispute over these rights suggests, however, that this result will not occur. The foundations and natures of these rights may be irreducibly plural. Perhaps more precise delineation of the scopes of these two rights will reduce the conflict, but the difficulties here are great. What for one person is a need may be for another a preference

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60. Benn, *Egalitarianism and the Equal Consideration of Interests*, in *CONCEPTS IN SOCIAL & POLITICAL PHILOSOPHY* 345 (R. Flathman ed. 1973).

61. R. DWORKIN, *supra* note 1, at 234-38.

or luxury. In a liberal democracy value systems and life priorities may reasonably differ. Delineations of the scope of rights will reduce and help us understand rights conflict. The sharp contrast presented by the juxtaposition of the views of Jenkins and Dworkin, however, alerts us to the difficulties of the problem and sets out requirements for a solution.

### III. CONCLUSION

In dwelling on several shortcomings in Jenkins's book, I may have unintentionally left a negative impression. This danger is inherent in reviewing an original and controversial book. *Social Order and the Limits of Law* has significant merit as a corrective to the emphasis and perspective of contemporary Anglo-American legal philosophy and also as a systematic presentation of an alternative view. No single work can be expected to resolve all theoretical and practical jurisprudential disputes or to clear up all conceptual problems. With a forceful exposition of the purposive approach to law and legal theory, Jenkins has contributed to the beginnings of a synthesis of the analytic and purposive theories of law and to an elucidation of the grounds and scope of obligation, rights, and justice.