

RONALD DWORKIN



JUSTICE FOR
HEDGEHOGS

JUSTICE FOR HEDGEHOGS

Ronald Dworkin



THE BELKNAP PRESS
OF
HARVARD UNIVERSITY PRESS
Cambridge, Massachusetts
London, England

2011

Copyright © 2011 by Ronald Dworkin
All rights reserved
Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Dworkin, Ronald.
Justice for hedgehogs / Ronald Dworkin.
p. cm.
Includes bibliographical references and index.
ISBN 978-0-674-04671-9 (alk. paper)
1. Values. 2. Ethics. I. Title.
BD435.D85 2011
170'44—dc22 2010033807

JUSTICE FOR HEDGEHOGS

For Reni

Preface

This is not a book about what other people think: it is meant as a stand-alone argument. It would have been longer and less readable if packed with responses, distinctions, and anticipated objections. But, as an anonymous reader for the Harvard University Press pointed out, it would weaken the argument not to notice the great variety of prominent theories in the several fields the book touches. I compromised by discussing the work of contemporary philosophers in several extended endnotes spread throughout the book. I hope this strategy makes it easier for readers to decide which parts of my argument they wish to locate in the contemporary professional literature. Nevertheless, it proved necessary to anticipate objections more fully in some parts of the text—particularly in Chapter 3, which examines rival positions in greater detail. Readers who are already persuaded that moral skepticism is itself a substantive moral position will not need to linger over those arguments. Chapter 1 provides a road map of the entire argument and, at the risk of repetition, I have included several interim summaries in the text.

I have been fortunate in attracting critics in the past, and I hope this book will be criticized as powerfully as past books have been. I propose to capitalize on technology by establishing a Web page for my responses and corrections,

www.justiceforhedgehogs.net. I cannot promise to post or to respond to all comments, but I will do my best to make additions and corrections that seem called for.

Acknowledging all the help I have had in writing this book is close to the hardest part of writing it. Three anonymous readers for the Press made a host of valuable suggestions. The Boston University Law School sponsored a conference of some thirty papers, organized by James Fleming, to discuss an earlier version of the manuscript. I am unboundedly grateful for that conference; I learned a great deal from the papers that I believe has much improved the book. (I acknowledge, in endnotes, several passages that I changed in response to criticism offered there.) The conference papers are published, together with my response to many of them, in *Symposium: Justice for Hedgehogs: A Conference on Ronald Dworkin's Forthcoming Book* (special issue), *Boston University Law Review* 90, no. 2 (April 2010). Sarah Kitchell, that review's Editor-in-Chief, did an excellent job of editing the collection and making it available to me as quickly as possible. I have not been able to include the bulk of my responses in this book, however, so readers might find it helpful to consult that issue.

Colleagues have been unusually generous. Kit Fine read the discussion of truth in Chapter 8, Terence Irwin the discussion of Plato and Aristotle in Chapter 9, Barbara Hermann the material on Kant in Chapter 11, Thomas Scanlon the section on promising in Chapter 14, Samuel Freeman the discussions of his own work and that of John Rawls in various parts of the book, and Thomas Nagel the many discussions of his views throughout the book. Simon Blackburn and David Wiggins commented helpfully on drafts of my endnote discussions of their opinions. Sharon Street generously discussed her arguments against moral objectivity discussed in the endnotes to Chapter 4. Stephen Guest read the entire manuscript and offered a great many valuable suggestions and corrections. Charles Fried taught a seminar based on the manuscript at the Harvard Law School and shared his and his students' very helpful reactions to it. Michael Smith corresponded with me in further discussion of the issues raised in his *Boston University Law Review* piece. Kevin Davis and Liam Murphy argued with me about promising. I benefited greatly from discussion of several chapters in the New York University Colloquium on Legal, Political and Social Philosophy, and in a similar Colloquium, organized by Mark Greenberg and Seana Shiffrin, at the UCLA Law School. Drucilla Cornell and Nick Friedman reviewed the manuscript extensively in their forthcoming article "The Significance of Dworkin's Non-Positivist Jurisprudence for Law in the Post-Colony."

I am grateful to the NYU Filomen D'Agostino Foundation for grants enabling me to work on the book during summers. I am grateful to the NYU Law School, also, for its research support program that allowed me to hire a string of excellent research assistants. Those who worked on substantial portions of the book include Mihailis Diamantis, Melis Erdur, Alex Guerrero, Hyunseop Kim, Karl Schafer, Jeff Sebo, and Jonathan Simon. Jeff Sebo reviewed substantially the entire manuscript and offered very valuable critical comments. These assistants, collectively, provided almost all the endnote citations, a contribution for which I am particularly grateful. Irene Brendel made many perceptive contributions to the discussion of interpretation. Lavinia Barbu, the most exceptional assistant I know, has been invaluable in a thousand ways. One more, rather different, acknowledgment. It has been my unmatched good fortune to have as my closest friends three of the greatest philosophers of our time: Thomas Nagel, Thomas Scanlon, and the late Bernard Williams. Their impact on this book is most quickly demonstrated by its index, but I hope it is evident in every page as well.

JUSTICE FOR HEDGEHOGS

Contents

Preface *ix*

1 Baedeker *i*

PART ONE

Independence

- 2 Truth in Morals *23*
3 External Skepticism *40*
4 Morals and Causes *69*
5 Internal Skepticism *88*

PART TWO

Interpretation

- 6 Moral Responsibility *99*
7 Interpretation in General *123*
8 Conceptual Interpretation *157*

PART THREE

Ethics

- 9 Dignity *191*
10 Free Will and Responsibility *219*

PART FOUR

Morality

- 11 From Dignity to Morality 255
12 Aid 271
13 Harm 285
14 Obligations 300

PART FIVE

Politics

- 15 Political Rights and Concepts 327
16 Equality 351
17 Liberty 364
18 Democracy 379
19 Law 400

Epilogue: Dignity Indivisible 417

Notes 425

Index 489

I

Baedeker

Foxes and Hedgehogs

This book defends a large and old philosophical thesis: the unity of value. It is not a plea for animal rights or for punishing greedy fund managers. Its title refers to a line by an ancient Greek poet, Archilochus, that Isaiah Berlin made famous for us. The fox knows many things, but the hedgehog knows one big thing.¹ Value is one big thing. The truth about living well and being good and what is wonderful is not only coherent but mutually supporting: what we think about any one of these must stand up, eventually, to any argument we find compelling about the rest. I try to illustrate the unity of at least ethical and moral values: I describe a theory of what living well is like and what, if we want to live well, we must do for, and not do to, other people.

That idea—that ethical and moral values depend on one another—is a creed; it proposes a way to live. But it is also a large and complex philosophical theory. Intellectual responsibility about value is itself an important value, and we must therefore take up a broad variety of philosophical issues that are not normally treated in the same book. We discuss in different chapters the metaphysics of value, the character of truth, the nature of interpretation, the conditions of genuine agreement and disagreement, the phenomenon of moral responsibility, and the so-called problem of free will as well as more

traditional issues of ethical, moral, and legal theory. My overall thesis is unpopular now—the fox has ruled the roost in academic and literary philosophy for many decades, particularly in the Anglo-American tradition.² Hedgehogs seem naïve or charlatans, perhaps even dangerous. I shall try to identify the roots of that popular attitude, the assumptions that account for these suspicions. In this introductory chapter I offer a road map of the argument to come that shows what I take those roots to be.

My advance summary could start in any chapter, fanning out from there, tracing the implications of that chapter for the rest. But I think it best to start at the end of the book, with political morality and justice, so that readers particularly interested in politics will have an advance understanding of why I think that the more abstract philosophical discussions of the book are required steps to what concerns them most. I hope that starting the summary there will also encourage other readers whose greater interest lies in more mainstream issues of philosophy—meta-ethics, metaphysics, and meaning—to find practical importance in what they might believe to be abstruse philosophical issues.

Justice

Equality. No government is legitimate unless it subscribes to two reigning principles. First, it must show equal concern for the fate of every person over whom it claims dominion. Second, it must respect fully the responsibility and right of each person to decide for himself how to make something valuable of his life. These guiding principles place boundaries around acceptable theories of distributive justice—theories that stipulate the resources and opportunities a government should make available to people it governs. I put the matter that way, in terms of what governments should do, because any distribution is the consequence of official law and policy: there is no politically neutral distribution. Given any combination of personal qualities of talent, personality, and luck, what a person will have by way of resource and opportunity will depend on the laws in place where he is governed. So every distribution must be justified by showing how what government has done respects these two fundamental principles of equal concern for fate and full respect for responsibility.

A laissez-faire political economy leaves unchanged the consequences of a free market in which people buy and sell their product and labor as they wish and can. That does not show equal concern for everyone. Anyone impover-

ished through that system is entitled to ask: "There are other, more regulatory and redistributive, sets of laws that would put me in a better position. How can government claim that this system shows equal concern for me?" It is no answer that people must take responsibility for their own fate. People are not responsible for much of what determines their place in such an economy. They are not responsible for their genetic endowment and innate talent. They are not responsible for the good and bad luck they have throughout their lives. There is nothing in the second principle, about personal responsibility, that would entitle government to adopt such a posture.

Suppose government makes the extreme opposite choice, however: to make wealth equal no matter what choices people made for themselves. Every few years, as would be possible in a Monopoly game, government calls in everyone's wealth and redistributes it in equal shares. That would fail to respect people's responsibility to make something of their own lives, because what people chose to do—their choices about work or recreation and about saving or investment—would then have no personal consequences. People are not responsible unless they make choices with an eye to the costs to others of the choices that they make. If I spend my life at leisure, or work at a job that does not produce as much as I could of what other people need or want, then I should take responsibility for the cost this choice imposes: I should have less in consequence.

The question of distributive justice therefore calls for a solution to simultaneous equations. We must try to find a solution that respects both the reigning principles of equal concern and personal responsibility, and we must try to do this in a way that compromises neither principle but rather finds attractive conceptions of each that fully satisfy both. That is the goal of the final part of this book. Here is a fanciful illustration of a solution. Imagine an initial auction of all available resources in which everyone starts with the same number of bidding chips. The auction lasts a very long time, and will be repeated as long as anyone wishes. It must end in a situation in which nobody envies anybody else's bundle of resources; for that reason the distribution of resources that results treats everyone with equal concern. Then imagine a further auction in which these people design and choose comprehensive insurance policies, paying the premium the market establishes for the coverage each chooses. That auction does not eliminate the consequences of good or bad luck, but it makes people responsible for their own risk management.

We can use that fanciful model to defend real-life distributive structures. We can design tax systems to model these imaginary markets: we can set tax

rates, for instance, to mimic the premiums it seems reasonable to assume people would pay in the hypothetical insurance market. The rates of tax designed in that way would be fairly steeply progressive; more so than our tax rates at present. We can design a health care system mimicking the coverage it seems reasonable to assume people would seek: this would require universal health care. But it would not justify spending, as Medicare now does, enormous sums keeping people alive in the last few months of their lives, because it would make no sense for people to give up funds useful for the rest of their lives to pay the very high premiums required by that sort of coverage.

Liberty. Justice requires a theory of liberty as well as a theory of resource equality, and we must be aware, in constructing that theory, of the danger that liberty and equality will conflict. It was Isaiah Berlin's claim that such conflict is inevitable. I argue, in Chapter 17, for a theory of liberty that eliminates that danger. I distinguish your freedom, which is simply your ability to do anything you might want to do without government constraint, from your liberty, which is that part of your freedom that government would do wrong to constrain. I do not endorse any general right to freedom. I argue, instead, for rights to liberty that rest on different bases. People have a right to ethical independence that follows from the principle of personal responsibility. They have rights, including rights to free speech, that are required by their more general right to govern themselves, which right also flows from personal responsibility. They have rights, including rights to due process of law and freedom of property, that follow from their right to equal concern.

This scheme for liberty rules out genuine conflict with the conception of equality just described because the two conceptions are thoroughly integrated: each depends on the same solution to the simultaneous equation problem. You cannot determine what liberty requires without also deciding what distribution of property and opportunity shows equal concern for all. The popular view that taxation invades liberty is false on this account provided that what government takes from you can be justified on moral grounds so that it does not take from you what you are entitled to retain. A theory of liberty is in that way embedded in a much more general political morality and draws from the other parts of that theory. The alleged conflict between liberty and equality disappears.

Democracy. But there is another supposed conflict among our political values. This is the conflict between equality and liberty, on the one hand, and

the right to participate as an equal in one's own governance, on the other. Political theorists sometimes call the latter a right to positive liberty and suppose that that right may conflict with negative liberty—the rights to freedom from government I just described—and also with the right to a just distribution of resources. The conflict is realized, on this view, when a majority votes for an unjust tax scheme or a denial of important liberties. I respond to that claim of conflict by distinguishing various conceptions of democracy. I distinguish a majoritarian or statistical conception from what I call the partnership conception. The latter holds that in a genuinely democratic community each citizen participates as an equal partner, which means more than just that he has an equal vote. It means that he has an equal voice and an equal stake in the result. On that conception, which I defend, democracy itself requires the protection of just those individual rights to justice and liberty that democracy is sometimes said to threaten.

Law. Political philosophers insist on yet another conflict among political values: the conflict between justice and law. Nothing guarantees that our laws will be just; when they are unjust, officials and citizens may be required, by the rule of law, to compromise what justice requires. In Chapter 19 I speak to that conflict: I describe a conception of law that takes it to be not a rival system of rules that might conflict with morality but as itself a branch of morality. It is necessary, to make that suggestion plausible, to emphasize what might be called procedural justice, the morality of fair governance as well as just outcome. It is also necessary to understand morality in general as having a tree structure: law is a branch of political morality, which is itself a branch of a more general personal morality, which is in turn a branch of a yet more general theory of what it is to live well.

You will by now have formed a suspicion. Poseidon had a son, Procrustes, who had a bed; he suited his guests to his bed by stretching or lopping them until they fit. You might well think me Procrustes, stretching and lopping conceptions of the great political virtues so that they neatly fit one another. I would then be achieving unity on the cheap: a meaningless victory. But I mean to submit each of the political conceptions I describe to the test of conviction. I will not rely on any assumption that a theory is sound just because it fits with other theories we also find agreeable. I hope to develop integrated conceptions that all seem right in themselves, at least after reflection. I do make an independent and very powerful claim, however. I argue throughout the book that in political morality integration is a necessary condition of

truth. We do not secure finally persuasive conceptions of our several political values unless our conceptions *do* mesh. It is the fox who wins too easily: it is his apparent victory, now widely celebrated, that is hollow.

Interpretation

The first step toward that important conclusion, about integration and truth, requires facing up to an immediate challenge. I sketched a series of claims about the true meaning of a variety of political concepts. How can I show that one conception of equality or liberty or democracy is right and rival conceptions wrong? We must pause to consider what political concepts are and how we might be said to agree or disagree about their application. If you and I mean something entirely different by “democracy,” then our discussion about whether democracy requires that citizens have an equal stake is pointless: we are simply talking past one another. My claims about the best understanding of the political virtues would then count only as statements about how I propose to use certain words. I could not claim that I am right and others wrong.

We must ask: When do people share a concept so that their agreements and disagreements are genuine? We share some concepts because we agree, except in cases we all regard as borderline, about what criteria to use in identifying examples. We mainly agree about how many books there are on a table, for example, because we use the same tests in answering that question. We don’t always agree because our criteria are sometimes slightly different: we might disagree because you count a large pamphlet as a book and I don’t. In that special borderline case our disagreement is illusory: we don’t really disagree. Justice and the other political concepts are different, however. We think that our disagreements about whether progressive taxation is just are genuine even though we disagree, in some cases very sharply, about the right criteria for deciding whether an institution is just.

We must therefore recognize that we share some of our concepts, including the political concepts, in a different way: they function for us as *interpretive* concepts. We share them because we share social practices and experiences in which these concepts figure. We take the concepts to describe values, but we disagree, sometimes to a marked degree, about what these values are and how they should be expressed. We disagree because we interpret the practices we share rather differently: we hold somewhat different theories about which