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KEYNOTE ADDRESS

JUSTICE FOR HEDGEHOGS

RONALD DWORKIN*

Some of you, probably too many of you, have heard me talk about Learned Hand's vision of heaven.¹ You will be relieved to know that I now have my own vision of heaven: lots of people, including among them among the most distinguished philosophers and lawyers in the world, have come together to discuss a book of mine. As if that weren't good enough, they discuss it before I've actually finished writing it so I can benefit from what they say. That isn't the best part. The best part is that I don't even have to die.

I will use these opening comments to offer an advance summary of the book, but with a difference. The book begins in questions of metaethics, which are among the most technical philosophical topics of the book, and it ends in an extended discussion of political morality.² In these remarks, I will proceed in the opposite direction. I'll start by describing the political settlement I regard as required by justice. I'll then try to illustrate my claims about the unity of value by showing how each part of that political settlement fans out into a large variety of other questions, questions that meet one another

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¹ One account of Hand's vision of his first day in heaven describes it as such:

[H]e would say that in the morning there would be a baseball game, with the score 4-1 in favor of the opposing team in the bottom of the ninth. Hand's team then loads the bases, and it is Hand's turn at bat; he promptly hits a home run, clearing the bases and winning the game. In the afternoon, there is a football game between the evenly matched teams, tied in a scoreless match. With a minute left to play, Hand catches a punt, weaves his way down the sidelines, and scores the winning touchdown. The highlight of the day is an evening banquet, with civilization's greatest minds – Socrates, Descartes, Benjamin Franklin, and Voltaire – among the guests. The designated speaker for the evening is Voltaire. After a few words from him, the audience shouts, "Shut up Voltaire, and sit down. WE WANT HAND!"

GERALD GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* 680 (1994).

² RONALD DWORKIN, *JUSTICE FOR HEDGEHOGS* (forthcoming 2010) (Apr. 17, 2009 manuscript on file with the Boston University Law Review).

at various points and so account for the structure, complexity and range of the book itself. That unity is what I hope will become clearer.

I start by describing how people collectively, through government, should treat themselves as individuals. I suggest two reigning principles. First, government must show equal concern for the fate of every person, every citizen over whom it claims dominion. Second, government must respect the responsibility and right of each person to make something of value out of his or her life. So: equal concern and equal respect for responsibility. Consider the impact of those two principles on the question of distributive justice. There is no politically neutral distribution of the resources of a nation. Every distribution is in great part the consequence of whatever laws and policies its government adopts. So every distribution has to be justified by showing how it respects these two fundamental principles.

The *laissez-faire* thesis beloved by conservatives holds that the economy should be dominated by unconstrained markets in which people are free to buy and sell their labor as they wish and can. Justice, they say, consists in people having whatever they can take for themselves from that struggle. Do unconstrained markets show equal concern for everyone? Anyone who loses and ends in poverty is entitled to ask, "Since almost any other set of laws would put me in a better position, how can you defend laws that generate this distribution? How do these laws treat me with equal concern?" A defender of *laissez-faire* cannot sensibly reply that that system respects personal choice and so respects personal responsibility. People are not responsible for much of what determines their place in such an economy. They are not responsible for their genetic endowment; they're not responsible, therefore, for their innate talent. They're not responsible for the good and bad luck that people have throughout their lives. There is nothing in the second principle respecting responsibility that would entitle government to adopt a position that leads to great inequality.

But now, suppose government went to the other extreme and said, "We will make wealth equal, no matter what choices people make." So every few years, as we could in a Monopoly game, we will call in all the wealth and redistribute it equally again. That program would not respect the responsibility of people to make something of their own lives because what people chose to do, their choices about work or recreation, their choices about saving or investment, none of these choices would have any consequences. It is part of any proper conception of personal responsibility that people should make such choices with a sense of the consequences. In particular, in a society of equal concern, they ought to make choices over labor and rest, investment and consumption, with an eye to the opportunity costs to others of the choices that they make. If I spend my life at leisure, I should realize that that is expensive to other people because I might have been producing what they would like to have.

The question of distributive justice, I therefore think, can be posed as a question of the solution to simultaneous equations. Each of the two principles I named at the beginning sets out essential desiderata and we must come to

attractive conceptions of what each requires that will allow us to set the basic structure of a nation's economy respecting both. I have attempted to do that in this book. I'll briefly summarize the ideal state of affairs that I contemplate in the usual way of philosophers, that is, by describing something impossible.

I imagine an initial auction of all the available resources in which each person has the same number of bidding chips and the bidding is conducted so that in the end nobody envies anybody else's bundle of resources. If he did, he could have bid to have them. The auction may take a long time, but that is the result. And then, a further auction takes place of insurance in which people make their own choices over risks of various kinds by deciding what insurance to buy. I agree that that is an extremely artificial construction. But I spend a good deal of time, not just in this book but in other books, in showing how we can use that kind of a model, with emphasis on the insurance aspect, as converting brute bad luck into a kind of choice luck.³

I'll give you two quick illustrations. I think we can use that structure to defend a progressive income tax, indeed an income tax more steeply progressive than ours at present. I also think that this device provides the justifying model for a sensible health care system in which, for example, we would spend collectively less money keeping people alive in the last four months of their lives because people buying insurance would not pay the very high premiums that would be necessary to provide that coverage at the expense of what they needed for other purposes when young. But, of course, this approach would justify some important level of mandatory health care for everyone.

That brief sketch of a model for distributive justice is only the beginning of a more general theory of justice. We need a theory of liberty as well, and we must be aware of the danger that any plausible theory of liberty will conflict with the egalitarian theory of distributive justice I just described. It was Isaiah Berlin's claim that this is necessarily the case.⁴ I try to argue for a theory of liberty in this book along the following lines. I distinguish freedom, which is simply your ability to do anything you might want to do without government restraint, from liberty, which is that part of freedom that government would do wrong to restrain. So I do not accept any general right to freedom. I accept, instead, a right to liberty, and the right that I urge is rather complex.

I stress in the book three types of argument we have available to justify liberty. First, we need some liberties, particularly of speech, because they are necessary to a fair and properly efficient democratic system of government. Second, we have a right to what I call ethical independence; this flows from the second fundamental principle I mentioned. We have a right to make fundamental choices about the meaning and importance of human life for

³ See, e.g., *id.* (manuscript at 226-28); RONALD DWORKIN, *SOVEREIGN VIRTUE* 331-50 (2000).

⁴ See generally ISIAH BERLIN, *Two Concepts of Liberty*, in *FOUR ESSAYS ON LIBERTY* 118 (1969).

ourselves, the right the Supreme Court recognized as justifying its holding that government must not prohibit early term abortion.⁵ Third, we have a right, again based in ethical independence, not to be denied any freedom when the government's justification rests on either the popularity or superiority of some conception of the best way to live.

Each of these grounds of liberty is very complex and I spend many pages trying to develop what they mean. But you will have gathered by now that this theory of liberty has a character that I can describe, borrowing a phrase from T.M. Scanlon,⁶ by calling it a buck-passing theory of liberty. You cannot isolate what liberty requires from your conception of what a true democracy is, which ethical views are fundamental, and what justifications that government might offer are ethical rather than moral. The common view that income tax is an invasion of liberty turns out to be false on this account, provided that what government takes from you can be justified on moral grounds. A theory of liberty is embedded in a much more general political morality and draws from other parts. The result is that the alleged conflict between liberty and equality and liberty and democracy disappears.

Another supposed conflict is sometimes described as the conflict between two kinds of liberty: positive and negative. Negative liberty is freedom from government; positive liberty is freedom to govern ourselves by participating in our governance in the right way. For us moderns, positive liberty means democracy so we must confront the familiar suggestion that genuine democracy might be at odds with justice or equality because a majority might not vote to respect the rights of individuals.

I respond to that suggestion by distinguishing various conceptions of democracy. I distinguish a statistical or majoritarian conception from what I call the partnership conception. As you will see, if you dip into that section of the book,⁷ a partnership conception insists that government be so structured that each citizen can rightly say that he has acted through the community, that he has participated in the political decision, and participated as an equal in that decision. And this means more than that he has an equal vote; it means that he has an equal voice, and most important of all, an equal stake in the result. So that what I regard as a proper conception of democracy requires the protection of just those individual rights that democracy is sometimes said to threaten.

There is yet a further part of any overall political settlement: the institution of law. We are taught from the early days of law school about a potential conflict between law and justice. I try to describe law, not as something to be set beside morality and studied in conjunction with it, but as a branch of morality. This requires me to stress what might be called procedural morality,

⁵ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) ("At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."); *Roe v. Wade*, 410 U.S. 113, 164-65 (1973).

⁶ See T.M. SCANLON, *WHAT WE OWE TO EACH OTHER* 97-98 (1998).

⁷ DWORKIN, *supra* note 2 (manuscript at 240-48).

the morality of fairness as well as justice. But in the end, I argue that the alleged conflict disappears once we understand the way in which law can sensibly be treated as a branch of political morality.

You will have by now formed a suspicion. Poseidon had a son called Procrustes who had a bed and he suited his guests to the bed by stretching them or lopping them until they fit. You would not be ungenerous at this point in thinking that I'm acting like Procrustes, stretching and lopping conceptions of these great virtues so that they fit rather than conflict with one another.

I must therefore submit each of these conceptions of the political virtues to the test of conviction. Our job, and in particular my job in *Justice for Hedgehogs*, is to develop conceptions that are not only integrated with one another but that match conviction, at least after reflection. I think I've done that. But the test of conviction is not the only test we must meet. We must arrive at conceptions that reflect the right understanding of what a conception of a political virtue is and of what kinds of argument are suitable for defending it. We must puzzle about what makes a claim of political morality, such as the claim that a partnership conception of democracy is better than a majoritarian conception, *true*. That puzzle fans out my arguments about justice into other areas of philosophy, and indeed other disciplines, until they radiate into the book as a whole.

What kind of claim do I make when I say liberty, properly understood, is a buck-passing idea? That equality, properly understood, has the features I've described? That law, properly understood, is a branch of morality, not something distinct from it? What kind of a claim am I making in each case, and how can I possibly support that claim?

I find it necessary to think about concepts, to distinguish among the kinds of concepts that we use. Some concepts we share because we share criteria for applying them. When we don't quite share the criteria in borderline cases, then our disagreement isn't real. Our disagreement about how many books there are on a table might turn out to be merely verbal because you take a different view of whether a pamphlet is a book than I do. We share the concept to the extent to which we share criteria for its application.

We share, however, other concepts – these are among the most important we have – in spite of the fact that we don't share criteria for their application. You and I can disagree about justice, genuinely disagree, even if we don't share much by way of criteria for applying the concept of justice. These concepts function for us as interpretive concepts. We share them because we share practices, experiences, in which these concepts figure. We take the concepts to describe values, but we disagree to some degree, and in some cases to a marked degree, over how that value should be expressed, over what that value is. That explains, for example, why rather strikingly different theories of justice all count as answers to the question of what makes an institution just or unjust. These are genuine disagreements, unlike the disagreement I imagined about books. They're disagreements about what description of the underlying values at stake in arguments about justice is best.

So my answer to the question I posed, “What is it to have a theory of equality or liberty or law?,” is this. We have a theory of a political concept when we can exhibit what we take to be the value at stake in arguments about that concept. Some theories of justice declare that the value at stake is the value of happiness aggregated. Others declare that it is the value of fairness or fair play. Which of these assumptions provides the best understanding and justification of the practices in which the concept of justice figures? Which provides the best justification of paradigms of injustice about which we all agree: the injustice of deliberately convicting someone known to be innocent, for instance?

Each such theory promotes further questions. What is happiness? What is fairness? We might disagree about these further values. We could argue for a particular conception of happiness or fairness only by deploying still further values. And so on until, as I say in the book, the argument meets itself, if it ever does.⁸ I can see no way in which we can take proper account of the function of interpretive concepts in our moral and political life except by assuming that we understand each of them in a buck-passing way. We understand each of our values by seeing its place in a larger network of them all.

I describe these concepts as “interpretive” and that method of analysis as interpretation.⁹ Can we identify the method I describe as suitable for other genres of interpretation? We interpret not only in philosophy when we have political values like equality in our sights. Critics interpret poems, sociologists interpret cultures. You, I hope, are trying to interpret me as you listen. Biblical scholars interpret sacred texts, historians interpret epochs.

In one chapter, I offer a general theory of interpretation: I try to answer the question of what counts as *truth* in interpretation.¹⁰ One answer has been popular: the psychological state theory that holds that an interpretation of anything must be an attempt to retrieve the intentions of its author or creator. I argue that the psychological state theory is apt in some circumstances in some genres of interpretation and inapt in others. We need a more general theory that explains why this is so. I offer a generalized version of the theory I just described for interpretive concepts. Interpretation, in all its genres, is an attempt to show the object being interpreted in its best light, given the best understanding of the point of interpreting objects in that genre. I apply that understanding of interpretation to several examples. I consider, for example, how it helps us to understand the differences among prominent critics about how best to understand Yeats’s poem *Sailing to Byzantium*.

My summary so far will by now, I expect, have awakened your interest in what might seem a different kind of philosophical question. I’ve talked now for several minutes about claims of value. I’ve been assuming that such claims

⁸ *Id.* (manuscript at 75).

⁹ *Id.* (manuscript at 106-09).

¹⁰ *Id.* (manuscript at Chapter 7).

can be true or false. Is that assumption correct? Or should we rather understand claims of value as expressions of emotion or constructions of our personality? Or should we suppose that they are commitments, proposals for how we intend to live and invite others to live? If one of these latter descriptions is better, then it would be silly to think such claims could be true or false.

These are questions that are crucial whether we begin or end in politics. The philosophers who deny that moral or political judgments can be true, and offer such various different accounts of their role or function, have domestic occasions, occasions of personal life, in mind. They say we can get on just as well if we treat the moral judgments we and others make as only expressions of attitude or something of the sort. But that wouldn't do in politics. Politics is coercive. Politics is life and death, and we cannot stand up to our responsibility as governors or as citizens unless we can say more than just: "This view about what equality requires pleases me or expresses my attitudes or states how I plan to live." We have to say in essence, whatever circumlocutions may tempt us, "This is true." Others will disagree, of course. But those in power must, at a minimum, believe that what they say is so. And that means that the old question, "Can morality be true?," is a central question in political morality, an area where it achieves, in my view, its greatest importance.

Even if we agree, as I argue, that the skeptical view about moral truth is based on a misunderstanding, and that moral and political judgments can be true or false, we must still recognize that arguments about which are true and which false cannot easily be resolved. People who disagree about whether justice requires a universal health care system may be unable to persuade one another: neither side may have a lever of persuasion it can press. On the contrary, if the view I suggested is right about the nature of such disagreements, any argument can continue only by fanning out into greater and more distant areas of moral and ethical, perhaps aesthetic, theory. We will continue to disagree and our disagreement will become even more profound.

So we must consider another important moral virtue: not accuracy but responsibility. Though we cannot demand agreement from our fellow citizens, we can demand responsibility and we must therefore develop a theory of responsibility in sufficient detail so that we can say to some people, "I disagree with you, but I recognize the integrity of your argument. I recognize your responsibility." Or, "I agree with you, but you've thrown a coin or you've listened only to Fox News, and therefore you've acted irresponsibly in forming your opinion."

You won't be surprised to learn that I propose to find a theory of responsibility in the theory of interpretation that I described and therefore to continue this ever-broadening attempt to integrate our distinct moral and political values with one another. Moral reasoning, I argue, is interpretive reasoning. At the end of one chapter I offer an account of the overall moral,

political, and ethical philosophy of Plato and of Aristotle as examples – I believe paradigm examples – of moral reasoning understood as interpretive.¹¹

There is more to the book. My emphasis on the importance of the distinct virtue of moral responsibility requires me to try to face up to the question of free will. In one chapter of the book, I approach that issue by separating the two ideas of free will and responsibility and defending a compatibilist position through an ethical rather than a metaphysical argument.

Now, to bring the book's various parts together, and to integrate the values whose unity I claim, I need to connect ethics, morality, and finally political morality. I lean very heavily on two principles. I began these remarks by talking about two cardinal principles of government. These match two deep ethical principles, principles about how we each ought to lead our lives. The first is a principle of self-respect. You have a responsibility to take your own life seriously – to think it matters how you live – not if and because you happen to want to live well but because that is your responsibility. You must try to give value to your life. I call the kind of value you can give to your life *adverbial* value: value in how you lead it, not in what you leave behind. Some people, of course, leave great treasure behind: great poems and paintings and discoveries. Most of us aim to live well differently, in the way we might aim to play a piece of music well or to dive well. That is enough, indeed it's more than enough. It's wonderful.

The second ethical principle matches the other sovereign principle of political morality. We must accept a responsibility to identify for ourselves what counts as living well, what performance would give us adverbial value in living. We must do that for ourselves; we must not delegate it or subordinate ourselves to others. These two principles are substantive. They are not true by definition; nor do they follow from some immutable laws of human nature. Indeed, they have been much more often denied than affirmed in history. I offer them as true. I do hope to show, however, that many of you already accept these principles in how you live.

If you do, or if I can otherwise persuade you of their truth, I can appeal to Kant to say that you must accept that what *makes* these principles true for you is your humanity: the fact that you have a life to lead and death to face. That is something you share with all other human beings. That ground of personal morality springs from ethics. And out of that personal morality springs the political morality I began by describing.

There is a striking difference between personal and political morality. I said that we as governors, we in our political role, must treat each of us in the governed with equal concern. I don't believe we have that responsibility as individuals to one another. Something must account for the difference. What accounts for the difference, I believe, is a fact I've already mentioned: politics is coercive. We are all in a position to be harmed by others in a way that

¹¹ *Id.* (manuscript at 117-19).

would not be licensed by personal morality. We're in that position because we're part of a political union.

In a democracy we are all also in a position to harm others. We are always in danger, that is, of tyranny over their dignity. We need a way of reconciling these inescapable facts of politics with our personal morality. We can't do this, in my view, through a social contract. We can't do it through some assumption of unanimous consent. We can and must do it by accepting that this situation can be legitimate only if everyone participates as an equal in the three dimensions that I described earlier: equality of vote, equality of voice, and equality of stake. Equality of stake means that when we act together in politics, collectively, we must treat each of us as individuals with equal concern.

And now I come back to Hand's own vision of heaven. I'm going to shut up and listen to you.

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