



## *In Memoriam*

### Ronald M. Dworkin (1931–2013)

Ronald Dworkin died on February 14 this year at the age of eighty-one. He was widely regarded as one of the most influential philosophers of law and political philosophy of the post-war era of the 20<sup>th</sup> century, but also of the 21<sup>st</sup> century.

Ronald Dworkin was, at various times, Professor of Jurisprudence at Oxford, Sommer Professor of Law and Philosophy at New York University and Jeremy Bentham Professor of Jurisprudence at University College London.

Ronald Dworkin has pursued his comprehensive liberal theory for nearly four decades, beginning with the field of philosophy of law in his books *Taking Rights Seriously* (1977), *A Matter of Principle* (1985), *Law's Empire* (1986), *Life's Dominion* (1993), followed roughly two decades later by his book *Justice in Robes* (2006).

Dworkin's academic work was often seen as a reaction to that of Herbert Hart, author of *The Concept of Law*, and Dworkin's predecessor as Professor of Jurisprudence at Oxford. Hart was the main representative of a dominant for much of the 20<sup>th</sup> century school of "positivist" legal philosophy, according to which the law is a set of rules based on customs and institutions and legal deliberation need not take account of considerations of morality or fairness.

In *Taking Rights Seriously*, Dworkin condemned Hart's philosophy as "normatively inert". The law, Dworkin maintained, comprises not only rules but legal and moral principles, which have to be taken into consideration by judges while making their rulings. In his most widely-quoted book *Law's Empire*, Dworkin developed the theory of "Law as integrity", arguing that judges have a duty to decide cases in such a manner that the law becomes more coherent and appears as the product of a single moral vision. After considering the sources of law in *A Matter of Principle*, and offering a full-dress theory of law in *Law's Empire*, in *Life's Dominion* he tried characteristically to find common ground on abortion between pro-life and pro-choice forces in a common respect for human life. In *Justice in Robes*, he returned to a lifelong fascination with judges and the nature of adjudication.

Along the way, Dworkin developed a liberal political theory of justice, in the context of the revival of political philosophy in the '70s, and as an attempt to offer alternative theory of justice to Rawlsian liberal theory of "justice as fairness". He called his conception of justice the "equality of resources" account of justice, and set it out in the book *Sovereign Virtue – The Theory and Practice of Equality* (2000). In his latest work, *Justice for Hedgehogs* (2011),

Dworkin intends to solidify the philosophical foundations of his theory, and especially to illustrate the unity of ethical and moral values as well as more fully develop his conception of the integrity of law, politics and morality.

Dworkin has already partly explained in *Sovereign Virtue* and in several related articles the philosophical foundations of his political and legal theory. In *Sovereign Virtue*, he accentuates political morality and elaborates two fundamental principles of humanity – principle of equal concern and principle of individual responsibility. In *Justice for Hedgehogs*, he focuses more on individual ethics and personal morality; nevertheless, the point in both is that there is continuity between individual ethics and political morality despite multitudinous individual moral positions and that justice is a parameter of individual ethics.

In accordance with the “equality of resources” account of justice, the sovereign power or coercive political government must secure the just distribution of resources, which is both “endowment insensitive,” or separated from any differences of the individual with regard to social status, as well as to natural talents and handicaps on the one hand, and “ambition-sensitive” to personal choices on the other. According to *Sovereign Virtue*, the legitimacy of a government depends both on how a purported government has acquired its power and how that power is exercised. Justice is a matter of sovereign responsibility to treat each person with equal concern and respect.

In *Justice for Hedgehogs*, Dworkin also considers two fundamental principles of humanity, but this time he formulates them as two ethical principles (principles of individual ethics): the principles of self-respect and of authenticity. The author transfers political principles into their ethical analogues. In doing so, he emphasizes that we have an ethical responsibility to create something of positive value out of our lives, and that this ethical responsibility is an objective one. In addition, he argues that our various responsibilities and obligations to others flow from the above mentioned personal responsibility for our own lives.

These two principles together offer a conception of human dignity. Dignity requires self-respect and authenticity, and dignity helps in identifying the content of personal morality. As Dworkin says, acts are wrongful if they insult the dignity of others. The principle of dignity demands that we should be responsible not only for the success of our lives but also to accept relational responsibility.

After elaborating two fundamental principles from the point of individual ethics and individual morality, Dworkin returns in *Justice for Hedgehogs* to the linkage between an individual perspective and that of political morality and legitimacy. This helps to clarify the interconnection of individual well-being and living well in the political community on one side, and explaining political legitimacy starting from personal dignity on the other.

When Dworkin comes back to political morality and political legitimacy in his last book *Justice for Hedgehogs*, he deepens his analysis of the same topic as compared to *Sovereign Virtue*. The author puts the main focus on human rights and on obligations of the sovereign to secure that rights of citizens be fully respected: rights plainly provide a better focus in the field of political morality, whereas duties and obligations are a better point of reference in the field of personal responsibility, because individuals have political rights, and some of these rights, at least, are matched only by collective duties of the community as a whole rather than of particular individuals. There is a deep

connection between his conception of political legitimacy and his conception of “basic” human rights.

According to Dworkin, the principle of legitimacy is the most abstract source of political rights. Political rights which are basic for human dignity are “basic” human rights and they are trumps for legitimacy. Other political rights are trumps/relevant standards for other political ideal, like for justice. Principles of dignity have been directly expressed in specific “basic” human rights. The first principle of dignity – principle of self-respect – is supported by paradigmatic human rights: not to be tortured, discriminated and exposed to blatant prejudices, not to be punished innocent, and by the right to due process. The second principle of dignity – principle of authenticity and personal responsibility – is supported by the right of free speech and expression, right to conscience, political participation, due process, religious belief.

The importance of his last book *Justice for Hedgehogs* and of the entirety of Dworkin’s works is supported by the fact that the *Boston University Law Review* organized a massive symposium on the near-final draft of *Justice for Hedgehogs* in September 2009. This magazine published a special volume in April 2010 which contained numerous critical essays and thirty-eight pages of Dworkin’s own critical response to his critics. In addition, Dworkin also took into consideration relevant critical remarks by addressing them in the final version of this great book.

Dworkin closes the circle, so to speak, between *Sovereign Virtue* and *Justice for Hedgehogs*, in the latter of which he deepens and diversifies his analysis of fundamental principles of humanity. He also comes back to the issue of the sovereign, justice and political legitimacy from the perspective of human rights, and, so to speak, closes the circle between *Taking Rights Seriously* and all his later published books.

The meaning of taking rights seriously in this mentioned book and in the later ones is that government must treat each citizen with an equal concern, in order to be legitimate. Human dignity and human rights have been most prominent values of his long-lasting theoretical work and public practical-political activity. However, the way how he explains the centrality of human rights, for example in *Justice for Hedgehogs* and one of his latest texts “Human Rights and International Law” shows Dworkin has been still primarily focused on the Westphalian system of nation-states, and only indirectly to the changed meaning of international law and human rights in the global context. In spite of the fact that he – similarly to other most prominent theoreticians of the centrality of human rights in a contemporary international law – elaborates ideas about that some violations of basic human rights

“... may be sufficiently serious as to require formal economic and even, if barbaric, military intervention... In less grave and more controversial cases the proper forum of enforcement is not an economic or military battleground but the chambers of international courts and tribunals that rely on treaties, international law, or more informal international pressure to secure compliance.”

In spite of the fact that this conclusion is similar to the ones of other most prominent theoreticians of the centrality of human rights in a contemporary international law, Dworkin has been lagging behind the current conceptions of the legitimacy of international law which actually put aside the Westphalian system and propose human rights of individuals and groups primarily as the subject of international law protection.

His books were immensely influential, especially in US law schools, but also worldwide. He also published many articles both in journals of legal and po-

litical philosophy. His active presence in public and academic life was supported by publishing over one hundred articles, reviews, and letters on legal and philosophical issues in *The New York Review*. Over more than four decades he took up some of the most important controversies in American public life, including affirmative action, abortion, assisted suicide, pornography, health care, civil liberties and the war on terror, and what he called the “embarrassingly bad decisions” of the Supreme Court’s “right-wing phalanx.” His integrative approach in theory was followed throughout his career by attempts of “the moral reading of the Constitution”, as well as moral reading of law and politics in general.

His interpretation of liberalism as the egalitarian conception, e.g. the theory and practice in which equality and liberty have been indivisible values, and even more, in which equality has priority over liberty, is far from being commonly accepted. Dworkin’s attempts to redeem contemporary liberalism in a direction of essentially diminishing social and economic inequality belong to a left wing liberal orientation. He is perfectly aware of the existing ubiquitous inequalities throughout the contemporary world, even in the most prosperous Western countries. Dworkin insists upon a utopian idea of a full equality of resources as being a legitimate goal for liberal governments and liberal communities.

His insisting on just distribution of resources, on morally founded legal and political principles, then, his insisting on human dignity and human rights protection, represents an extraordinary legacy inside contemporary liberal tradition. His prestigious theoretical legacy, his comprehensive and complex legal and political thought will keep its already achieved importance also in the future.

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