

WORKING ON THE INSIDE: RONALD DWORKIN'S MORAL PHILOSOPHY

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ABSTRACT: In my 2009 book *Moral Realism as a Moral Doctrine*, I argued that morality is objective in several distinct though overlapping senses, and I further maintained that questions about the objectivity of morality are substantive moral questions (albeit usually at high levels of abstraction). In the course of that book, I made several laudatory references to Ronald Dworkin's well-known 1996 article 'Objectivity and Truth' as well as to some of his other writings. In regard to the two main themes of my book that have just been mentioned, I took myself to be firmly allied with Dworkin. Though *Moral Realism as a Moral Doctrine* adverts only occasionally to his work, it makes clear my esteem for his reconception of meta-ethics as a branch of ethics. At a few other junctures in my 2009 volume, however, I criticized Dworkin. My criticisms were focused not on his legal philosophy – with which I have sustainedly taken issue elsewhere – but instead on some of his ethical positions. One such position to which I took exception is his value-monism. That is, I took exception to his opting for the hedgehog side of the ancient hedgehog/fox dichotomy that was made famous in modern times by Isaiah Berlin. Dworkin's allegiance to the former side of that dichotomy is starkly proclaimed by the title of his sprawlingly ambitious recent book *Justice for Hedgehogs*. In what follows, I will leave aside many sections of that impressive tome in order to concentrate on the main portion that deals with meta-ethics and on one portion that deals with the putative unity of value. Given that I am almost entirely in agreement with the former portion and largely in disagreement with the latter, this brief review will naturally impugn Dworkin's assumption that his anti-Archimedeanism and his value-monism are integrally connected.

Keywords: *Jurisprudence, Philosophy, Moral Realism*

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TRABAJANDO EN EL INTERIOR: LA FILOSOFÍA MORAL DE RONALD DWORKIN

RESUMEN: En mi libro de 2009 ‘Moral Realism as a Moral Doctrine’, argumenté que la moral es objetiva en varios sentidos distintos que se solapan, y luego sostuve – que las preguntas sobre la objetividad de la moral son cuestiones morales sustantivas (aunque por lo general en los altos niveles de abstracción). En el curso de ese libro, he hecho varias referencias elogiosas a conocido artículo de 1996 de Ronald Dworkin ‘Objectivity and Truth’, así como a algunos de sus otros escritos. En lo que respecta a los dos temas principales de mi libro que se acaba de mencionar, me puse firmemente del lado de Dworkin. Aunque, ‘Moral Realism as a Moral Doctrine’ refiere sólo de vez en cuando a su trabajo, se deja en claro mi estima por su nueva concepción de la meta-ética como una rama de la ética. En algunos otros momentos en mi texto de 2009, sin embargo, critiqué a Dworkin. Mis críticas no estaban centradas en su filosofía jurídica – con el que me he tomado sostenida tema en otro lugar – sino que en algunas de sus posiciones éticas. Una tal posición a la que hice excepción es su valor del monismo. Esto es, que hice excepción a su opción por el lado erizo de la antigua dicotomía erizo / zorro que se hizo famosa en los tiempos modernos por Isaiah Berlin. Dworkin es leal a la antigua lado de esa dicotomía, así también ha sido aclamada de forma ambiciosa en su ‘Justice for Hedgehogs’. En lo que sigue, voy a dejar de lado muchas de las secciones de ese impresionante libro con el fin de concentrarme en la parte principal que se ocupa de la meta-ética y en una parte que se ocupa de la unidad putativa de valor. Teniendo en cuenta que estoy casi totalmente de acuerdo con la parte anterior y en gran parte en desacuerdo con este último, esta breve reseña, naturalmente pretende impugnar la hipótesis de que la lealtad de Dworkin en su anti-arquimediano y el valor del monismo están conectados íntegramente

Palabras clave: *Filosofía del derecho, Filosofía, Realismo moral*

1. INTRODUCTION

In my book *Moral Realism as a Moral Doctrine*¹, I argue that morality is objective in several distinct though overlapping senses, and I further maintain that questions about the objectivity of morality are substantive moral questions (albeit usually at high levels of abstraction). In the course of that book, I make several laudatory references to Ronald Dworkin’s well-known article ‘Objectivity and Truth’² as well as to some of

¹ KRAMER, Matthew. *Moral Realism as a Moral Doctrine*. Oxford, UK: Wiley-Blackwell, 2009.

² DWORKIN, Ronald. “Objectivity and Truth: You’d Better Believe It”, in: *Philosophy and Public Affairs* 25, 1996, pp. 87-139.

his other writings. In regard to the two main themes of my book that have just been mentioned, I take myself to be firmly allied with Dworkin. Though Moral Realism as a Moral Doctrine adverts only occasionally to his work, it makes clear my esteem for his reconception of meta-ethics as a branch of ethics.

At a few other junctures in my 2009 volume, however, I criticize Dworkin. My criticisms are focused not on his legal philosophy – with which I have sustainedly taken issue elsewhere³ – but instead on some of his ethical positions⁴. One such position to which I take exception is his value-monism. That is, I take exception to his opting for the hedgehog side of the ancient hedgehog/fox dichotomy made famous in modern times by Isaiah Berlin. Dworkin's allegiance to the former side of that dichotomy is starkly proclaimed by the title of his sprawlingly ambitious recent book *Justice for Hedgehogs*⁵. In what follows, I will leave aside many sections of that impressive tome in order to concentrate on the main portion that deals with meta-ethics and on one portion that deals with the putative unity of value. Given that I am almost entirely in agreement with the former portion and largely in disagreement with the latter, this brief review will naturally impugn Dworkin's assumption that his anti-Archimedeanism and his value-monism are integrally connected.

2. DWORKIN AT HIS BEST: A FEW QUERIES

Although the tone of Dworkin's 1996 article is sometimes counterproductively supercilious, and although the argumentation is sometimes excessively compressed (occasionally to the point of glibness or misleadingness), his approach as a whole is extraordinarily incisive and refreshing. The gist of that article is carried forward and amplified in Part One – and, in many respects, also in Part Two – of *Justice for Hedgehogs*. Since my own book on moral realism as a moral doctrine reveals how firmly I agree with Dworkin's general insistence that meta-ethical questions are substantive ethical questions, I will confine myself here to a few queries about matters of detail.

First, Dworkin⁶ writes as follows: 'Many people think...that the choices that adult partners make about the mechanics of sex raise no moral issues: they think that all judgments that condemn certain sexual choices are false. They ground this limited

³ KRAMER, Matthew. *In Defense of Legal Positivism*. Oxford, UK: Oxford University Press, 1999, Chap. 6

⁴ Should note that I greatly admire Dworkin's political philosophy as it is presented in Dworkin 2000. See Kramer 2001. Nonetheless, my own account of justice (developed in a book-in-progress entitled *A Stoical Theory of Justice*) is markedly different from his.

⁵ DWORKIN, Ronald. *Justice for Hedgehogs*. Cambridge (MA), USA: Harvard University Press, 2011.

⁶ DWORKIN, *Justice for Hedgehogs... op. cit.*, p. 33.

skepticism in positive opinions about what makes acts right or wrong; they do not believe that the details of adult consensual sex, whether heterosexual or homosexual, have any right- or wrong-making features.' Now, as a moral term, the adjective 'right' can be an antonym of 'wrong' or a synonym of 'correct.' Although those two senses of the adjective are not mutually exclusive, they are not equivalent. We are interested here solely in the first of those two senses, since Dworkin is contrasting 'right' with 'wrong' in the quoted passage. If a course of conduct is right in that first sense, it is morally permissible; engaging in such a course of conduct will not breach any moral duties and will therefore not amount to a wrong.

Given this construal of the term, all or most of the people who believe that 'the mechanics of sex raise no moral issues' are thereby taking the view that various sexual practices between consenting adults are right. That is, they are taking the view that such practices are morally permissible. When they deem condemnations of those practices to be mistaken, they typically are not assuming that the practices lie outside the reach of morality altogether (like the orbiting of the planet Earth around the sun or the interaction of subatomic particles or the flights of migratory birds). Instead, they typically believe that the practices are located within the domain of morality as morally permissible modes of conduct – which is why the aforementioned condemnations are false. Hence, insofar as Dworkin purports to be recounting a position that is quite widely espoused, he errs in designating it as a variety of skepticism. It is not even a highly circumscribed variety of skepticism.

Second, Dworkin classifies moral relativism as a species of internal skepticism. Given that the other skeptical doctrines in his taxonomy deny that certain moral assertions are ever true, his characterization of moral relativism as skeptical is inapposite⁷. His thought seems to be that moral relativists will insist on the falsity of any statement which maintains that some mode of conduct possesses a univocal moral status across all the communities where such conduct might take place. As he writes: 'Another now popular opinion holds that no universal moral claim is sound because morality is relative to culture; this view, too, is internally skeptical because it relies on the conviction that morality rises only out of the practices of particular communities'⁸. However, given that any utterance of a universal moral claim will take place in a community of people whose shared moral sentiments set what relativists perceive as the truth-conditions for the claim, relativists will accept that any universal moral judgment is truth-apt and that it may well be true wherever it is uttered. Although moral relativism is indeed antithetical to a moral-realist affirmation of the objectivity of morality, its anti-realist

⁷ *Ibid.*, p. 34.

⁸ *Ibid.*

broadsides focus not on the determinate correctness of answers to moral questions but instead on the existential mind-independence of moral principles. A moral relativist can accept that there are uniquely correct positive answers to countless moral questions, but she will of course construe the semantics or the truth-conditions of those answers relativistically. In so doing, she is not displaying skepticism in Dworkin's sense. She is not doubting that sundry far-reaching ascriptions of moral properties to modes of conduct can be true. She is not doubting that propositions such as 'Torture is always and everywhere wrong' can be true. Rather, she is presupposing that the truth or falsity of any such ascription of wrongness to torture will hinge on the shared convictions of the people who make up the community in which the ascription is propounded⁹.

Third, more important than the foregoing quibbles – and various other quibbles that might be raised¹⁰ – is the matter of Dworkin's dismissiveness toward the minimalist or deflationary account of truth. His brief engagement with that account occurs in the midst of his effort to present moral reasoning as a type of conceptual interpretation. His rejoinder to minimalism runs as follows:

We cannot, however, take this view of the concept of truth as it appears in philosophical controversies about truth – for example, in the controversy about whether moral claims can be true (or, indeed, whether the deflationary theory of truth is correct). In the mundane use, any worry about the nature of truth disappears once we understand its redundancy....But in philosophical contexts truth remains the focus of attention: we cannot transfer our concern about its nature to concern about something else. It is correct, but wholly unhelpful, to say that the sentence 'Moral judgments can be true' is true if and only if moral judgments can be true. The fact remains that philosophers disagree about whether moral judgments can be true because they disagree about what truth is¹¹.

This dismissal of minimalism is not readily fathomable. As has been emphasized by Paul Horwich¹², the foremost contemporary proponent of the minimalist approach

⁹ For a longer discussion of the differences between moral relativism and moral skepticism, see KRAMER, *Moral realism... op. cit.*, pp. 126-8.

¹⁰ For example, when discussing response-centered accounts of moral properties, DWORKIN, *Justice for Hedgehogs... op. cit.*, p. 431, writes: 'The simplest form of the view would be first-personal: torture is wrong if it disgusts me. That plainly entails a substantive judgment: torture would be acceptable if it didn't disgust me.' There is no entailment of the sort posited here by Dworkin, though there would have been such an entailment had he been pondering the claim that torture is wrong only if it disgusts him.

¹¹ *Ibid.*, p. 173.

¹² HORWICH, Paul. *Truth*. Second Edition. Oxford, UK: Oxford University Press, 1998, Chap. 1; "Gibbard's Theory of Norms", in: *Philosophy and Public Affairs*, 22, 1993, pp. 72-3.

to truth, such an approach is singularly well suited to quantificational contexts akin to those which Dworkin has in mind. Horwich argues, indeed, that ‘all legitimate uses of the truth-predicate...are simply displays of this generalizing function... [T]he device of generalization is no less useful when the propositions in question are normative than when they are naturalistic’¹³. With regard to the controversy over the truth-aptness of moral judgments, pace Dworkin, the minimalist approach will indeed redirect attention from the nature of truth to something else – but the redirection should be welcomed by Dworkin, since it is highly congenial to his whole outlook. For a minimalist, after all, the question whether ‘Torture is wrong’ can be true is equivalent to the question whether torture can be wrong. In other words, the redirection of attention is from the nature of truth to substantive morality. A similar redirection occurs when we have quantified over the domain of moral judgments and when we then bring minimalism to bear on a question about the truth-aptness of moral judgments generally.

To be sure, the quantificational situation with regard to the controversy over the truth-aptness of moral judgments is not quite as clear-cut as the straightforward universal quantification in the examples which Horwich discusses. How are we to construe the quantification in the question whether moral assertions can be true? Whereas existential quantification might not be sufficiently demanding¹⁴, straightforward universal quantification would be too stringent. (No one should think that the truth-aptness of moral judgments hinges on the truth-aptness of absolutely everything that is classifiable as a moral judgment.) We best construe the question if we take it to be governed by a plurative quantifier, such that the question is to be answered affirmatively if a substantial proportion of moral judgments are truth-apt¹⁵.

In any event, the main point here is that a minimalist understanding of the question redirects attention from the nature of truth to matters of morality. Instead of wondering whether some substantial number of ascriptions of moral properties to modes of conduct can be true, we shall be wondering whether sundry modes of conduct can partake of the moral properties that are ascribed to them by some substantial number of moral judgments. That redirection of attention is precisely what someone of Dworkin’s anti-Archimedean bent should welcome. It is entirely consistent with his

¹³ HORWICH, *Gibbard's Theory... op. cit.*, p. 73.

¹⁴ Although an affirmative answer to an existentially quantified version of the question would be inconsistent with external skepticism, it would be consistent with a global variety of internal skepticism.

¹⁵ POTTS, Timothy. *Structures and Categories for the Representation of Meaning*. Cambridge, UK: Cambridge University Press, 1994, pp. 259-60.

elaboration of an interpretive method for tackling the abstract and concrete moral matters which he wishes to address. His dismissal of minimalism is therefore baffling¹⁶.

3. DWORKIN ON VALUE-PLURALISM: SOME PRELIMINARY POINTS

Despite a number of missteps on points of detail (only a few of which have been broached above), Dworkin is at his best in his critique of meta-ethics. His critique leaves ample room for meta-ethical theorizing, but valuably helps to make clear that such theorizing is located within the ethical domain rather than beyond it. Dworkin's achievement along those lines is highly commendable.

Far less persuasive is his insistence on the unity of value. Dworkin himself takes that insistence to be integrally connected to his anti-Archimedeanism, for he writes at an early point in his book that the meta-ethical positions which he combats are 'dear to a fox's heart'¹⁷. Neither Dworkin's value-monism nor his connection of that doctrine to his anti-Archimedeanism is tenable. Within the bounds of a short review, I cannot provide a wide-ranging rejoinder to Dworkin on these points. Hence, the discussion in my next section will concentrate on the conflicts between values with which Dworkin has most frequently grappled: namely, the conflicts between liberty and other values such as democracy and equality. Justice for Hedgehogs continues his recurrent engagement with those conflicts.

Before we turn to that discussion, however, the limits of my disagreement with Dworkin should be highlighted. First, if his affirmation of the unity of value were confined to the proposition that basic ethical principles are interconnected, it would be wholly unexceptionable¹⁸. The content of every such principle is indeed partly constrained and determined by the content of every other such principle¹⁹. Someone can coherently insist as much while affirming that the potential for conflicts between basic ethical values is ineliminable. That is, someone can coherently insist as much while denying that a correct understanding of the basic principles of ethics will reveal

¹⁶ Admittedly, he says that minimalism is wholly unhelpful rather than incorrect. However, when he indicates why minimalism would be wholly unhelpful, he appears not to be aware that the minimalist account of truth has been developed especially to deal with quantificational contexts.

¹⁷ DWORKIN, *Justice for Hedgehogs...* *op. cit.*, p. 24.

¹⁸ Dworkin quite reasonably distinguishes between ethics and morality (2011, 13-15 et passim). I have long used the terms 'ethics' and 'ethical' more broadly to encompass both morality and the sorts of matters which Dworkin denotes through those terms. I am here and elsewhere adhering to my own broader sense of each of those words.

¹⁹ KRAMER, *Moral realism...* *op. cit.*, pp. 363-4.

that they all fit together without any room for conflicts between them. My objections to Dworkin's position are focused on his espousal of a no-room-for-conflicts thesis; I am not addressing any milder thesis about the interconnectedness of basic ethical values.

Second, my objections do not imply that conflicts between fundamental ethical values are inevitable (either in any given context or in general). Although the occurrence of such conflicts from time to time is highly likely, the only thing inevitable is their possibility. This point should be emphasized because Dworkin sometimes writes as though his opponents contend that conflicts between major ethical values emerge ineluctably. For example, when commenting on Isaiah Berlin's admonitions about positive-liberty doctrines that discount the significance of negative liberty, he asserts: 'Berlin's history warns us that bad philosophy is dangerous, but it does not show that better philosophy must end in conflict....Berlin thought conflict between the two forms of liberty inevitable'²⁰. Berlin's writings are not unequivocal on the point in question – or on most other points, for that matter – but Dworkin's comment is exegetically defensible. However, the general doctrine of value-pluralism does not depend on any assertions about the unavoidable clashes between major ethical values. Although clashes between those values are abidingly possible and over time are highly likely, a value-pluralist is not committed to the proposition that such clashes have to emerge.

Third, although I am taking issue with Dworkin's doctrine of the unity of value, his elaboration of that doctrine is impressively systematic and well-structured. His lines of reasoning are elegant and sophisticated even though I remain unpersuaded by his overall position. Moreover, notwithstanding my dissent from his general value-monism, I concur with many of his more detailed points. My remarks in the next section, which include some severe strictures, do not bespeak any blanket disagreement with his sundry ethical ruminations.

4. DWORKIN ON LIBERTY

One of the most striking features of Dworkin's discussions of liberty in *Justice for Hedgehogs* is his nearly complete inattention to the vast philosophical literature that has proliferated during the decades since the publication of Berlin's famous essay on negative and positive liberty²¹. Dworkin does refer en passant to an essay on freedom

²⁰ DWORKIN, *Justice for Hedgehogs*... *op. cit.*, p. 366.

²¹ Much of that literature is cited in Kramer 2003, and much of it is excerpted in CARTER, Ian; KRAMER, Matthew; STEINER, Hillel (eds). *Freedom: A Philosophical Anthology*. Oxford, UK: Blackwell, 2007. Among the political philosophers who have made important contributions to that literature – contributions

by his close friend Bernard Williams and to a short book on the topic by his close friend Charles Fried²². Otherwise, however, neither in the relevant portions of his new tome nor in any of his previous writings does Dworkin display the slightest awareness of the aforementioned literature. He does not cite or discuss anything else from it, and indeed his chapter on liberty in *Justice for Hedgehogs* cites only two writings more recent than Berlin's essay: the book by Fried, and a work on American constitutional theory by Dworkin's friend Stephen Breyer. Good though the three publications by Williams and Fried and Breyer are in their own ways, some fleeting citations to them hardly compensate for Dworkin's cavalier disregard of the multitudinous writings of political philosophers on liberty during the past fifty years. If Dworkin himself has been too busy to become familiar with those writings, he should have delegated the task to one of the seven research assistants whom he thanks in his Preface.

Were Dworkin's own reflections on liberty unimpaired by his lack of acquaintance with the contemporary philosophical literature on the topic, the harshness of my tone in the preceding paragraph might be excessive. However, his treatment of negative liberty is in fact seriously marred by his failure to keep abreast of that literature. Dworkin attributes ridiculous theses to his opponents, and he never comes to grips with the subtle and sophisticated arguments which they have actually put forward. Moreover, he is quite mistaken insofar as he thinks that their arguments purport to be Archimedean.

I will concentrate here on two passages in which Dworkin sets up and knocks down straw men. The first of those passages appears somewhat before his main chapter on liberty. Dworkin writes as follows:

Consider, for example, John Stuart Mill's classic account of liberty: this is the freedom, he said, to do what one wants. If that is what liberty is, then of course

that are altogether ignored by Dworkin (though he has jostled with a few of these philosophers on other issues) – are Richard Arneson, Stanley Benn, Ian Carter, John Christman, G.A. Cohen, Lawrence Crocker, J.P. Day, Keith Dowding, Joel Feinberg, Richard Flathman, Michael Garnett, Gerald Gaus, Michael Gorr, John Gray, Tim Gray, Friedrich Hayek, Nancy Hirschmann, Thomas Hurka, Peter Jones, Kristján Kristjánsson, Chandran Kukathas, Will Kymlicka, Charles Larmore, Gerald MacCallum, Christopher Megone, David Miller, Robert Nozick, Onora O'Neill, Serena Olsaretti, Felix Oppenheim, Prasanta Pattanaik, Philip Pettit, Joseph Raz, David Schmidtz, Amartya Sen, Ronen Shnayderman, Hillel Steiner, Robert Sugden, Christine Swanton, Charles Taylor, Michael Taylor, Martin van Hees, Philippe van Parijs, Albert Weale, William Weinstein, Jonathan Wolff, and Robert Young. I disagree strongly with the positions taken by some of these philosophers, but I pursue my disagreements with them by examining their writings rather than by remaining loftily ignorant of them. Among the philosophers to whose remarks on liberty I have previously taken exception is, of course, Ronald Dworkin. See KRAMER, Matthew. *The Quality of Freedom*. Oxford, UK: Oxford University Press, 2003, p. 71 n69, p. 101 n91; *Moral realism... op. cit.*, pp. 114-17, 122.

²² DWORKIN, *Justice for Hedgehogs... op. cit.*, p. 350, 481.

any government must constantly abridge liberty; it does so when it prohibits rape or arson. But we are then confronted with a dilemma. It is necessary to make arson and rape criminal, but do we nevertheless commit a special kind of wrong, a compromise of an important value, when we do so? If we think not then, because we have defined liberty so that these laws infringe liberty, we do not really value liberty for its own sake or take liberty as such to be essential to dignity. We only value something else often associated with liberty. But what is that something else? It does not help to say that we value only fundamental liberty. We must explain what makes one liberty more fundamental than another, and we cannot explain that by supposing that some commodity we name liberty is more at stake when a fundamental liberty is in question²³.

One of the oddities of this passage is that it does not advert to a genuine and glaring weakness in Mill's account of liberty – a weakness that has been pointed out by many negative-liberty theorists from Berlin onward. That is, by tying freedom to actually occurrent desires, Mill left open the possibility that a person's freedom can be enhanced through the removal of some of her desires. Suppose that Sally is currently prevented from doing several things that she wants to do. Mill's conception of freedom implies that the deficiencies in her freedom can be overcome either through the elimination of any preventative factors or through the elimination of the relevant desires. No such account of freedom as a desideratum of political morality is tenable.

More important in the present context is Dworkin's failure to distinguish between the lessening of each person's overall freedom and the removal of particular freedoms or combinations of freedoms from each person. (Such a distinction has become especially prominent in the philosophical literature on freedom during the past couple of decades.) Mechanisms of enforcement that stand ready to give effect to legal prohibitions on rape and arson will remove certain combinations of freedoms from virtually everyone, but will ipso facto significantly expand the overall freedom of virtually everyone by markedly lowering the incidence of freedom-curtailing misconduct on the part of other people. For nearly every person, the combinations of freedoms that get protected are much more wide-ranging than the combinations that get taken away. In any credibly possible world, the net effect of such mechanisms of enforcement will be greatly freedom-expanding. Thus, if the term 'liberty' is understood to denote a political value such as the promotion of individual freedom, the legal prohibitions mentioned by Dworkin are in furtherance of liberty rather than in abridgement of it – as are any reasonable restrictions on the driving of automobiles, for example.

²³ *Ibid.*, p. 345.

At the end of the quoted passage, Dworkin returns to a theme which he has sounded in some of his past work on liberty. That is, he is keen to dismiss the notion that liberty can properly be understood as a 'commodity' that is at stake to varying degrees when particular freedoms or combinations of freedoms are eliminated. His dismissal of that notion is more emphatic and sustained in *Taking Rights Seriously*, where he asks us to compare a law that prohibits ordinary citizens from speaking on political issues with a law that prohibits people from driving their cars uptown on Lexington Avenue²⁴. He contests any claim that 'the citizen is deprived of the same commodity, namely liberty, in both cases, but the difference is that in the first case the amount of that commodity taken away from him is, for some reason, either greater in amount or greater in its impact than in the second.' Dworkin retorts: 'But [any such claim] seems bizarre. It is very difficult to think of liberty as a commodity.' Although this retort may have been warranted when it was published 35 years ago, the past few decades have witnessed a huge outpouring of publications that address the matter of measuring freedom²⁵. Having remained blithely unacquainted with those publications, Dworkin over the course of 35 years has preserved his arguments in amber without up-dating them.

In *Taking Rights Seriously*, Dworkin briefly proceeds to ponder two ways in which diminutions in freedom might be measured. He first supposes that we might 'measure a diminution in liberty by calculating the extent of frustration that it induces', and he rightly rejects that approach to the matter. He then broaches an alternative approach: 'We might take a different tack, and measure the degree of loss of liberty by the impact that a particular constraint has on future choices. But we should then have to admit that the ordinary criminal code reduces choice for most men more than laws which forbid fringe political activity.' Here Dworkin commits the same misstep that vitiates his discussion in the long passage from *Justice for Hedgehogs* above. That is, he looks only at the ways in which certain well-enforced laws eliminate freedoms or combinations of freedoms, and he does not consider at all the ways in which those laws expand people's freedoms or combinations of freedoms by protecting them against the freedom-reducing misconduct of other people. Such an omission fatally undermines his riposte to the thesis that freedom is a measurable property.

²⁴ DWORKIN, Ronald. *Taking Rights Seriously*. Cambridge (MA), USA: Harvard University Press, 1977, p. 270.

²⁵ Many of the relevant publications are excerpted or cited in Part IX of CARTER, KRAMER, and STEINER, *op. cit.* My own main contribution to the philosophical literature on the measurement of freedom is in the final chapter of KRAMER, *The Quality of... op. cit.*

A similar error occurs in the principal chapter on liberty in *Justice for Hedgehogs*, where Dworkin²⁶ again imputes to his opponents the view that ‘of course democracy conflicts with liberty, because any form of government, including democracy, is impossible without criminal law and other forms of regulation.’ Instead of dwelling afresh upon Dworkin’s failure to distinguish between (i) the effects of laws on some specified combinations of freedoms of each person and (ii) the effects of laws on the overall freedom of each person, we should scrutinize another aspect of his position. Whereas most philosophers use the terms ‘freedom’ and ‘liberty’ interchangeably, Dworkin stipulatively distinguishes between them: ‘Someone’s total freedom is his power to act in whatever way he might wish, unimpeded by constraints or threats imposed by others or by a political community. His negative liberty is the area of his freedom that a political community cannot take away without injuring him in a special way: compromising his dignity by denying him equal concern or an essential feature of responsibility for his own life’²⁷. Although Dworkin’s specification of the nature of freedom is problematic in some respects, we should concentrate here instead on his specification of the nature of negative liberty.

Dworkin has held to his position on negative liberty for many years, and has taken no steps whatsoever to defend that position against the telling objections raised by Ian Carter and others²⁸. What is dubious about Dworkin’s remarks is that they present a moralized conception of liberty. Every such conception affirms one or both of the following two theses: (1) the prevention of some action or state of affairs does not eliminate any liberties or combinations of liberties unless the prevention is wrongful; (2) the prevention of some action or state of affairs does not eliminate any liberties or combinations of liberties unless the stymied action or state of affairs would have been legitimate. In the most recent quotation above, Dworkin seems to have in mind the first of these theses. (In some of his earlier work, he has seemed to have in mind both

²⁶ DWORKIN, *Justice for Hedgehogs... op. cit.*, p. 367.

²⁷ *Ibid.*, p. 366.

²⁸ See, for example, CARTER, Ian. *A Measure of Freedom*. Oxford, UK: Oxford University Press, 1999, pp. 69-74; KRAMER, *The Quality of... op. cit.*, pp. 114-17; WILLIAMS, Bernard. “From Freedom to Liberty: The Construction of a Political Value”, in: *Philosophy and Public Affairs*, 30, 2001, pp. 13-14. For some further critiques of moralized conceptions of liberty, see COHEN, G. A. *Self-Ownership, Freedom, and Equality*. Cambridge, UK: Cambridge University Press, 1995, pp. 53-65; *History, Labour, Freedom*. Oxford, UK: Oxford University Press, 1988, pp. 251-3, 256, 292-6; “Illusions about Private Property and Freedom”. In: MEPHAM, John & DAVID-HILLEL, Ruben (eds.) *Issues in Marxist Philosophy: Volume IV*. Brighton, UK: Harvester Press, 1981, pp. 226-9; “Capitalism, Freedom, and the Proletariat”. In: RYAN, Alan (ed.) *The Idea of Freedom*. Oxford, UK: Oxford University Press, 1979, pp. 11-3; KRAMER, *The Quality of... op. cit.*, pp. 100-3; KYMLICKA, Will. *Contemporary Political Philosophy: An Introduction*. Oxford, UK: Oxford University Press, 1990, pp. 138, 145-51.

theses²⁹) Any such approach is problematic for a number of reasons, but perhaps the most frequently voiced complaint by Dworkin's critics is that his moralized conception eliminates the value of liberty as a distinctive political ideal. Writing with reference to a distinction between 'flat' liberty and 'normative' liberty in some of Dworkin's earlier work a distinction that parallels the freedom/liberty duality in *Justice for Hedgehogs* Carter makes this point forcefully.

To be interested only in liberty in Dworkin's 'normative' sense is to imply that there is no such thing as a defensible ideal of liberty. It is to deny, rather than to affirm, that liberty has a 'distinct quality and value'. Any defence of an ideal which involves defining freedom in terms of that ideal is not, whatever its other strengths, a defence by appeal to freedom. It is only by taking an interest in liberty in its empirical, 'flat', 'uninteresting' sense that we are able to accord liberty a 'distinct quality and value'³⁰.

Carter's worries are amply borne out by Dworkin's treatment of liberty in *Justice for Hedgehogs*. Consider, for example, the following remark about the moral status of taxation: 'The familiar right-wing complaint that taxation is an assault on liberty is mistaken. But the mistake is not conceptual: it is a mistake about justice. The structure and level of taxation in force may invade liberty if it is unjust – if it does not show equal concern and respect for all'³¹. Here the value of justice is doing all the work. In Dworkin's eyes, questions about invasions of liberty are questions about injustice. Accordingly, in his eyes, the value of liberty partakes of no distinctive political significance or weight; its significance is entirely that of the value of justice.

In need of emphasis here is that Carter's objections and other objections to Dworkin's moralized conception of liberty have nothing to do with Archimedeanism. Those objections are overtly grounded on considerations of political morality. When Dworkin's critics resist his monistic re-elaboration of various political values as aspects of justice, they are doing so squarely within the domain of moral argumentation. They are not claiming anything at odds with his critique of meta-ethics in the opening portions of his new tome. Foxes can be as staunchly anti-Archimedean as Dworkin himself.

²⁹ KRAMER, *The Quality of...* *op. cit.* p. 115.

³⁰ CARTER, *A Measure...* *op. cit.*, p. 72, emphases in original, footnote omitted. Because Dworkin had not distinguished between "freedom" and "liberty" in his early writings, Carter is using those terms interchangeably in this quoted passage (as most political philosophers do).

³¹ DWORKIN, *Justice for Hedgehogs...* *op. cit.*, p. 375.

5. CONCLUSION

There is much to be applauded in *Justice for Hedgehogs*. Most of the flaws in the opening parts of the book are quite easily rectifiable, and the strengths of those parts are considerable. The general drift of Dworkin's approach to meta-ethics is a fine accomplishment. Less commendable are his endeavors to wrap all ethical values into one. Although not every argument in the latter half of the volume is as stale as his arguments concerning liberty, and although the sheer scale of his project is impressive, value-pluralists have no reason to retreat into their foxholes in response to Dworkin's monism. They can and should profit from his queries about meta-ethical theories, but they should resist his value-unifying blandishments.

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