

## Book Review

### JUSTICE FOR THE HEDGEHOG\*

by Ronald Dworkin

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Where is the song before it is sung?<sup>[1]</sup>

1 “The fox knows many things, but the hedgehog knows one big thing.”<sup>2</sup> Whatever Archilocus might have meant by that statement no one knows. It was snatched by Isaiah Berlin for his essay on the broad distinction between two kinds of artists and intellectuals: “There exists a great chasm between those, on one side, who relate everything to a single central vision, one system, less or more coherent or articulate, in terms which they understand, think and feel – a single, universal, organizing principle in terms of which alone all that they are and say has significance – and, on the other side, those who pursue many ends, often unrelated and even contradictory, connected, if at all, only in some *de facto* way, for some psychological or physiological cause, related to no moral or aesthetic principle.”<sup>3</sup> Berlin thus believed that the first kind of artistic and intellectual personality belongs to the hedgehogs and the second to the foxes. Foxes must have been breeding so rampantly that hedgehogs were feeling the breath of extinction settling on each and every one of their quills. Those who do not suffer from doubt expect that a definitive work will arrive, not only to restore the balance of nature, but to eradicate foxes from the philosophical terrain. Here it is: *Justice for Hedgehogs* (“*JFH*”). *JFH* is thus important and will be cheered or damned, depending, of course, on whether one is a fox or a hedgehog, but it is a book that deserves a serious and honest study of the thesis Dworkin advances, regardless of whether one roams more naturally in the ground or on it.

2 Dworkin does not defend his thesis that value in all its forms is indeed one big thing, in remote areas or in sporadic instances. He intended this to be exhaustive because the question of value emerges in

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\* Belknap Press, 2011.

1 Attributed to Alexander Herzen.

2 Greek soldier and poet, circa 680 BCE–645 BCE.

3 Archilocus, quoted by Isaiah Berlin in “The Hedgehog and the Fox”, an essay in *The Proper Study of Mankind* (Farrar, Strauss & Giroux, 2000) at p 436.

every philosophical subject – justice, liberty, law, politics, morality and truth. They are matters that have proved terribly resistant to any large, all-encompassing, and uniform consensus as to what they are and how they apply. G E Moore argued that such debates fail because they wrongly assumed that values are natural as facts and thus can be objectively proved.<sup>4</sup> Similarly, one of Moore's distinguished predecessors, David Hume, expressed the view that all the objects of human reason or enquiry can be divided into two categories which he described as "relations to ideas" and "matters of fact".<sup>5</sup>

3 Dworkin makes his case in the important metaphysical subjects in which value permeates our thinking about those subjects which he groups into three parts, namely, "Ethics", "Morality" and "Politics" respectively in parts three, four, and five of the book. He draws a distinction between ethics and morality in a special way. He sees morality as defining the standards by which we treat others, and ethics as providing the standards by which we ought to live. On the face of it, the two overlap, but Dworkin explains that there may be conflicts between how we ought to live and how we ought to treat others. In the "Ethics" chapter, Dworkin discusses "Dignity" and "Free Will and Responsibility". The Aristotelian idea of ethics and morality (used interchangeably unlike the Dworkinian approach) may not have taken moral luck into account since, by this view, it was not necessary to distinguish living well and having a good life. Dworkin introduces the conception of "dignity" in the form of two principles – "self-respect" and "authenticity" – in order to unify the values in ethics and morality. These principles are important to his thesis because he believes that we cannot choose values around which to live by unless we think that our life has value. From these notions he glides to the doorstep of existentialist ideas of free will and responsibility (which is an inherent aspect of authenticity, Dworkin's second principle of dignity).<sup>6</sup> He reinterprets these ideas to fit his synthesis of values. He acknowledges that "we must struggle to choose, and on this view we do create value".<sup>7</sup>

4 He begins the chapter on "Morality" by discussing the connection between a life which has the self as the centre and one which takes others into account. In this chapter, he discusses "Aid", "Harm" and "Obligations". Continuing with his universal principles he discussed in the previous chapters, he makes his case on the foundation that morality is a universal objective value and discusses the basic idea that morality,

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4 Moore's point is widely known as the argument from "the naturalistic fallacy". See G E Moore, *Principia Ethica* (Cambridge University Press, 2000) at p 61.

5 See Hume, *An Enquiry concerning Human Understanding* (Oxford University Press, 1999) at p 108.

6 Ronald Dworkin, *Justice for the Hedgehog* (Belknap Press, 2011) at p 210.

7 Ronald Dworkin, *Justice for the Hedgehog* (Belknap Press, 2011) at p 230.

springing from a respect for life, is founded on the premise that we owe a responsibility not to harm others. However, he immediately recognises the challenge posed by the troublesome puzzle of the double effect. He acknowledges that the principle of the double effect – causing death to one in the process of saving another – has no answer in itself, but he does not think that it is an obstacle to his unity of value thesis. He asserts that his thesis, founded on the principle of dignity, will not address the problem of the double effect only when one allows others to usurp the decision one has to make for himself (for example in the saving of a life situation). His principle of dignity will apply to many cases of the double effect where the choice of action sits firmly within the responsibility of the actor. Dworkin explains with this illustration:<sup>8</sup>

Suppose you and I, shipwrecked, are equidistant from a bobbing life jacket. We do not let nature take its course, which would mean both drowning. We race for the life jacket. If I lose, it is the presence of a rescuer trying to save another person – you trying to save yourself – that leads to my death. Why does it matter if your rescuer is not you but a third party who is a better swimmer – your wife? – tossing you the jacket instead of me? The harm I suffer then is only competition harm – only my bad luck. But if your wife shoots me so that you will get to the life jacket first, then this is not just bad luck. She has usurped my right to decide whether my life should end immediately.

5 Through the rest of his chapter on morality, Dworkin retains the two root principles of dignity in justification of all instances in which moral obligations arise. For example, he points out that philosophers who rely on a general principle for keeping promises on the ground that promises create obligations do not really have a base structure, namely, that there is no explanation why it would be a fair general principle to require that promises create obligations. A bare promise without responsibility, he says, is “inert”.<sup>9</sup> The obligations that arise from a promise come about, in Dworkin’s view, from the desire and sense of responsibility, that in performance of which lies value, and that value is objective regardless of the tribe to which we belong.

6 The two principles of dignity were extended into part five which deals with political rights and ideals such as liberty, equality, democracy and law. In order to unify the conflict between liberty and equality the principle of dignity is presented as a canopy to protect liberty as an objective and universal value, as well as a bed upon which democracy, its evil twin, might lie harmlessly side by side. The political ideals under study require, in Dworkin’s view, an interpretative understanding of

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8 Ronald Dworkin, *Justice for the Hedgehog* (Belknap Press, 2011) at p 299.

9 Ronald Dworkin, *Justice for the Hedgehog* (Belknap Press, 2011) at p 310.

their forms and functions if a coherent and harmonious whole may be perceived. Thus, Dworkin proclaimed:<sup>10</sup>

So we should treat the equation of liberty with freedom as Berlin's conception of liberty as a value. If that conception is sound – if it realizes what is good about liberty – then of course democracy conflicts with liberty, because any form of government, including democracy, is impossible without criminal law and other forms of regulation. It must follow that good government is inevitably a matter of compromise: any government must compromise one good – liberty – in order to achieve others. But this interpretation is not sound: government does not compromise its citizens' dignity when it forbids them to kill one another.

7 He insists that our dignity as equal citizens will require the Government to protect us precisely so. Since political theories are intertwined with theories of justice, an examination of what holds up such theories was unavoidable. Dworkin again firmly believes that his two principles of dignity fit an objective political settlement best. He believes that a “community that respects personal responsibility must concentrate on a fair distribution of means when it fixes its political settlement. It must leave the choice of ends to its citizens one by one.”<sup>11</sup> Dworkin's coverage of political morality crucially allows him not only to attack his favourite hedgehog dish – legal positivism – but also entrench its rival interpretative theory. He argues that the by-product of a two-system picture of law, that sees a separation of law and morals, is an unhelpful distinction between process and substance. He argues that that distinction cannot help us determine whether people swindled by Bernie Madoff can sue the Securities and Exchange Commission for negligence because a debate that assumes the distinction generally does not involve process. Hence, he concludes that “once we reject the two-systems model, and count law as a distinct part of political morality, we must treat the special structuring principles that separate law from the rest of political morality as themselves political principles that need a moral reading.”<sup>12</sup>

8 It was crucial to Dworkin's thesis of the unity of value that he establishes the foundation for its defence. That foundation rests on the idea of truth. But there is a worm gnawing at the roots of the tree of knowledge, and its name is scepticism. Dworkin's defence of his thesis must necessarily begin by exterminating that worm. Hence, he began with his idea of truth and the fallibility of scepticism as the first words in *JFH*. In his broad onslaught, Dworkin distinguishes internal and external scepticism, allowing that we can be internal sceptics in some

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10 Ronald Dworkin, *Justice for the Hedgehog* (Belknap Press, 2011) at p 367.

11 Ronald Dworkin, *Justice for the Hedgehog* (Belknap Press, 2011) at p 356.

12 Ronald Dworkin, *Justice for the Hedgehog* (Belknap Press, 2011) at p 413.

cases, which he calls “first-order moral claims” (whether it is immoral to have late abortions), but that it is impossible to be an external sceptic in what he calls “second-order moral claims” – namely, as Smith explains, “the attitude we manifest when we are sceptical about all moral claims at once”.<sup>13</sup> Dworkin does not accept external scepticism.<sup>14</sup> Dworkin insists that moral judgments can be made and that we can objectively ascertain them to be true or false as a matter of practical living. To the foxy question, “pray by what means do we tell when a moral judgment is true?”, the hedgehog answers, “by Dworkin’s objectively ascertained truth through the unity of values”. Dworkin’s thesis germinated from an Aristotelian seed, but although the pluralist holds the position that moral claims are not only incommensurable but also uncombinable, some, like Berlin, believe that “values and conflicts of value are matters of knowledge for us, with the necessity of radical choice arising only in conflicts of incommensurables”.<sup>15</sup> The thrust of *JFH* was to answer the question, how should one live? Dworkin ended the defence of his thesis with the submission that “[w]ithout dignity our lives are only blinks of duration”.<sup>16</sup> Pluralists like Berlin believe that although people want to believe that there is one irrefutable answer to that question, there is not.<sup>17</sup> “You have to break eggs to make [the] supreme omelette ... the eggs are broken but the omelette is not made.”<sup>18</sup>

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13 Michael Smith, “Dworkin on External Skepticism” (2010) 90 Boston University Law Review 509 at 510.

14 External scepticism has two forms. “Error” sceptics hold that moral claims are false and therefore do not make moral claims which they believe to be false. “Status” sceptics hold that one cannot suppose that a moral judgment can be either true or false in the way we judge other beliefs as facts – so they, unlike error sceptics, will be happy to make moral claims. Foxes are thus “status sceptics”.

15 John Gray, *Isaiah Berlin* (Princeton University Press, 1996) at p 41.

16 Ronald Dworkin, *Justice for the Hedgehog* (Belknap Press, 2011) at p 423.

17 See Noel Annan, *The Dons* (University of Chicago Press, 2001) at p 231.

18 Ramin Jahanbegloo, *Conversations with Isaiah Berlin* (Halban Press, 2007) at p 143.