

PHIL 167: Contemporary Political Philosophy
Fall 2005; David O. Brink
Handout #5: Dworkin on Liberty, Equality, and Liberalism

LIBERALISM AND THE RIGHT TO EQUAL CONCERN AND RESPECT

Can liberalism reconcile its commitments to liberty and equality? There is a tension between nineteenth century (libertarian) liberalism that takes liberty to be fundamental and New Deal liberalism that tempers liberty with equality. Indeed, there may seem to be a tension within New Deal liberalism between its embrace of economic equality (manifested in the rejection of Lochner's doctrine of liberty of contract) and of political and social liberties. Does liberalism have a coherent political theory? Though Dworkin discusses illiberal views and rival forms of liberalism, his chief aim seems to be to explain the coherence of New Deal liberalism.

Dworkin distinguishes between **constitutive** and **derivative** ideals, values, and rights. The important question is how to understand liberalism's constitutive political ideals. If liberty were liberalism's constitutive value, then liberty could be restricted

- (a) only for the sake of liberty and
- (b) only then for greater gains in liberty.

But Dworkin thinks that neither (a) nor (b) is tenable. Against (a), Dworkin reminds us that liberty can be restricted to prevent harm and nuisance, as in criminal and tort law. Against (b), Dworkin expresses skepticism about whether liberty is quantifiable in the relevant way. He thinks that permissible restrictions on liberty, such as the regulation that restricts traffic on Lexington Avenue that turns it into a One Way, restrict liberty more than impermissible ones, such as restrictions on subversive advocacy.

By contrast, Dworkin thinks that equality can be liberalism's constitutive ideal. But we have to be careful about how we understand equality. Dworkin asks us to distinguish between **equal treatment** and **treatment as an equal**. I should treat my children as equals. Sometimes this requires equal treatment. All else being equal, I should give them the same allowance or send them to the same schools. But suppose all else is not equal, that my younger child has significant physical and/or cognitive handicaps. In this case, treating them as equals may call for unequal treatment. It may call for spending considerably greater resources on my handicapped child. Dworkin concludes that treatment as an equal or treatment with equal concern and respect is the more fundamental demand and that equal treatment is appropriate, when it is, because this is what is demanded by treatment as an equal.

So Dworkin proposes to understand liberalism as resting on a constitutive commitment to a right to equal concern and respect. But a constitutive commitment to equal concern and respect does not itself distinguish between **liberalism** and **conservatism**. We should distinguish between abstract **concepts** and specific **conceptions** of those concepts that determine the extension of that concept. Liberals and conservatives employ different conceptions of the concept of equal concern and respect. Whereas liberals appeal to a **deliberative** conception of equal concern and respect, conservatives appeal to a **perfectionist** conception of equal concern and respect. These different conceptions of a common constitutive concept lead liberals and conservatives to different derivative institutional commitments. Liberalism's deliberative conception of treatment as an equal leads it to stress **governmental neutrality** among rival conceptions of the good. By con-

trast, conservatism's perfectionist conception of treatment as an equal leads it to stress **government's role in promoting a particular conception of the good.**

Dworkin focuses on the implications of liberalism and conservatism for two familiar social mechanisms:

- (a) distribution of social and economic goods through a competitive market and
- (b) political decision-making through a system of representative democracy.

Dworkin believes that whereas conservatism embraces both social mechanisms wholeheartedly, liberalism supports familiar institutional limitations on these social mechanisms. Dworkin concentrates on explaining and justifying the liberal's defense of limited markets and democracies, rather than on criticizing the conservative's unlimited versions of these institutions.

A LIMITED MARKET

If people differed only in the preferences they have freely chosen, then liberalism's conception of equality would require initial equality of resources and opportunities but would then allow market mechanisms to determine future distributions. But **natural** and **social inequalities**, over which people have no control, require limitations in the operation of markets within systems of private property rights, viz. inheritance and progressive personal income taxes.

CONSTITUTIONALLY LIMITED DEMOCRACY

Representative democracy is to political decision-making as the market is to economic decision-making. But democracy expresses the right to equal concern, as liberalism interprets it, imperfectly. Dworkin distinguishes between a person's **personal preferences** – those that concern how she is treated, what she can do, and what her prospects are – and her **external preferences** – those that concern how others are treated, what they can do, and what their prospects are. Liberalism, he suggests, implies that each has a right to have her personal preferences -- but not her external preferences -- taken into account in the decision-making process. The way to screen-off external preferences, Dworkin thinks, is to constrain democratic (majoritarian) decision-making by recognizing constitutional rights to personal and civic liberties.

QUESTIONS

1. Most perfectionists would only endorse the market and democracy when they are in the majority; otherwise, these mechanisms seem unlikely to promote the good. **Convention-alism** or **subjectivism** about the good seems better suited to market and majoritarian allocation processes.
2. Is the operation of external preferences either necessary or sufficient for removing an item from the democratic agenda?
 - Is it always wrong to pursue external preferences in the public domain, even if the preferences are positive and innocent?
 - Suppose everyone is pursuing personal preferences, but individuals combine to form a majority coalition that advances their interests at the expense of minority interests. Don't we want individual rights to protect against such majority tyranny?
3. Is a "utilitarianism of personal preferences" adequate? Isn't the demand to maximize happiness, as measured by personal preferences, distributionally insensitive? Is it egalitarian enough?