
**LIBERAL RESPONSIBILITY:
A COMMENT ON *JUSTICE FOR HEDGEHOGS***

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Ronald Dworkin's magnificent writings range with unmatched breadth and depth across ethics, metaethics, hermeneutics, jurisprudence, and political philosophy. But for all their range, they tend to display certain common aspects. One is substantive. Throughout his corpus, there is an unwavering, unapologetic, and sophisticated defense of egalitarian liberalism. Another is methodological and rhetorical. Dworkin's writings often deploy a "ground-shifting" mode of argument. Confronted with an opposing view, he is apt to assert that his opponent has mischaracterized their dispute. The legal positivist, the strict constructionist, and the political conservative might take themselves to be adopting positions fundamentally opposed to his. However, the versions of their positions that would generate stark disagreement are incoherent. The real argument is taking place in a different conceptual space than his opponents have supposed, one more congenial to Dworkin's views.¹

Justice for Hedgehogs displays these same features.² Its effort to ground egalitarian liberalism in concepts of responsibility, I would suggest, is a ground-shifting argument that aims to deflect certain prominent conservative critiques of egalitarian liberalism. Taking this to be one of the central ambitions of the book, I aim to assess one of its central claims: namely, that a case for liberalism can be built around the idea that each person bears a responsibility to live her life well.

* Professor, Harvard Law School. Thanks to James Fleming for organizing an excellent conference and for inviting me to participate, and to Glenn Cohen, Ronald Dworkin, Julie Faber, Richard Fallon, John Manning, Frank Michelman, Martha Minow, Mark Tushnet, and Benjamin Zipursky for very helpful comments. Remaining errors are my own. As a student of Professor Dworkin's, I am particularly pleased to be among those engaging his ambitious new book.

¹ See, e.g., RONALD DWORKIN, IS DEMOCRACY POSSIBLE HERE: PRINCIPLES FOR A NEW POLITICAL DEBATE 1-23 (2006) (identifying common assumptions that permit conservative Republicans and liberal Democrats to engage in constructive discourse). I mean the phrase "ground-shifting" to be descriptive of a mode of argumentation, not to convey a negative evaluation of it.

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

I.

A notable feature of the Obama presidency has been its emphasis on personal responsibility.³ In his inauguration speech, President Obama called for

a new era of responsibility – a recognition, on the part of every American, that we have duties to ourselves, our nation and the world; duties that we do not grudgingly accept but rather seize gladly, firm in the knowledge that there is nothing so satisfying to the spirit, so defining of our character, than giving our all to a difficult task.⁴

The President's much-discussed September 8, 2009 speech to students similarly emphasized the responsibility of each student – owed to themselves and to all Americans – to make something of their lives.⁵

Why this focus? Like his Democratic predecessor in office, President Obama seems inclined to distance himself from a form of liberalism that has been the object of conservative attacks. As portrayed by conservative critics, "liberalism" is an elitist ideology that tolerates and even endorses self-indulgence and irresponsibility. "Liberals" are accused of displaying excessive faith in the ability of technocrats and/or life-tenured judges to improve our lives for us. They are said to dismiss patriotism and religious piety as manifestations of ignorance and to encourage a self-absorbed focus on the satisfaction of individual wants to the exclusion of family and community commitments. Liberals also treat criminals as products of unfortunate circumstances who are at least as much in need of understanding as punishment. They are also insufficiently willing to credit individuals with responsibility for their achievements, which in turn leaves them prone to treat wealth created by individual effort as a common asset.

Obviously, I am painting with a very broad brush and a very loud palette. And I should make clear that in reciting these criticisms, I am not endorsing them. Instead, I mean only to observe that they are now familiar, and that, since the time of Ronald Reagan's election as President, they seem to have struck a chord with many Americans. In turn, they have helped to induce contemporary liberals, including President Obama, to emphasize the degree to which their brand of liberalism is not vulnerable to criticism of this sort.⁶

³ Posting of Jesse Lee to The White House Blog, <http://www.whitehouse.gov/blog/A-Message-of-Hope-and-Responsibility-for-Americas-Students> (Sept. 8, 2009, 04:37 PM EST).

⁴ President Barack Hussein Obama, Inaugural Speech (Jan. 20, 2009) (transcript available at <http://www.whitehouse.gov/blog/inaugural-address>).

⁵ Lee, *supra* note 3.

⁶ President Obama's Democratic predecessor was similarly attuned to these concerns, as manifested in his embrace of welfare reform and a "tough on crime" stance. See Noam Scheiber, Op-Ed., *The Centrists Didn't Hold*, N.Y. TIMES, July 28, 2007, at A15 (discussing the efforts of President Clinton and the Democratic Leadership Council to stake out a "centrist" position between conservatives and liberals). My point is not that one who takes

Twenty-first century liberalism, the President insists, is a form of liberalism that takes seriously both rights *and* responsibilities.

Justice for Hedgehogs reflects this same intellectual and political mood. To be sure, it has other aims – most notably, to reconcile the right and the good rather than to give priority to one over the other. Moreover, responsibility concepts have figured prominently in some of Dworkin’s earlier works – though it is probably significant that their rise to prominence postdates the Reagan revolution.⁷ And yet, perhaps more so than in any earlier work, *Hedgehogs* ties the defense of egalitarian liberalism to a notion of individual responsibility. The ethical responsibility to construct one’s own life, coupled with the recognition that each person is under a comparable responsibility with respect to her own life, grounds much of the book’s political argument.⁸ “If it is responsibility that matters to you,” Dworkin seems to be saying, “then you are with me, not against me.”

II.

Hedgehogs claims that each of us bears a responsibility to live well, which Dworkin defines as a life of dignity.⁹ Dignity incorporates two principles: self-respect and authenticity.¹⁰

To live in a self-respecting manner is to recognize that one’s life has objective importance, and therefore to take one’s life seriously as a performative project. Success is not defined in terms of an end-state. Rather, it inheres in the undertaking itself. “The final value of our lives is *adverbial* not adjectival. It [is] the value of the performance, not anything that is left when the performance is subtracted. It is the value of a brilliant dance or dive when the memories have faded and the ripples died away.”¹¹ Not just any performance satisfies this responsibility. A person who devotes his life to collecting matchbook covers – or for that matter to amassing wealth for its own sake – fails to engage in worthwhile activities: he degrades himself.¹² By the same token, anyone who fails to live in accordance with the demands of morality also fails to live well.¹³ Authenticity, meanwhile, requires that one identify for oneself, and embrace in a suitably reflective manner, the activities at which one will strive to succeed, with an eye toward the formation of a

responsibility seriously must be committed to these positions. Rather, it is that they figured in a conscious effort by President Clinton to address a political vulnerability to certain charges raised by conservatives.

⁷ See Ronald Dworkin, *Foundations of Liberal Equality*, in 11 THE TANNER LECTURES ON HUMAN VALUES 1, 83 (Grethe B. Peterson ed., 1990).

⁸ See DWORKIN, *supra* note 2 (manuscript at 11).

⁹ *Id.*

¹⁰ *Id.* (manuscript at 128).

¹¹ *Id.* (manuscript at 124).

¹² *Id.* (manuscript at 261).

¹³ *Id.* (manuscript at 165-66).

“coherent narrative of living.”¹⁴ A life successfully devoted to a calling, no matter how worthy, is a life without dignity if one has not embraced that calling as part of an overall account that one has constructed for one’s own life.

It would be natural for readers to suppose that Dworkin regards the responsibility to live well as a matter of virtue. So interpreted, it would stand for the idea that a life lived well displays certain excellences, and that a person who lives well deserves praise and admiration. By the same token, a life with no direction, or that is devoted to trivial activities, is a life that can be criticized as a wasted opportunity. Cast as such, the idea of a responsibility to live well might appeal to the intuitions of many readers, though surely not all.¹⁵

Yet this rendition is weaker than Dworkin means it to be and perhaps needs it to be. Each of us, he insists, is under a genuine obligation to live well: “Our ethical responsibilities are as categorical as our moral responsibilities. That is why we not only regret not having lived well but *blame* ourselves for not having done so.”¹⁶ In Dworkin’s parlance, living well is both a virtue-responsibility and a “relational” responsibility¹⁷: a person’s failure to fulfill this responsibility renders her “liable” – answerable – to others.¹⁸ The same responsibility also generates affirmative duties, some of which may be quite onerous. Each of us is obligated to attend to the construction of her life, to be vigilant not to permit others to make decisions about it that we ought to make for ourselves, and to resist domination by others. Also, if the failure to live well were merely a failure to live excellently, the concept of ethical responsibility could not provide – as it purports to provide – a grounding for some of the central political-theoretical claims in the book. For example, it is the responsibility to live well that grounds Dworkin’s case for the protection of religious liberties: the state’s imposition of religious orthodoxy is deemed incompatible with each individual fulfilling her duty to fashion her own life.¹⁹ The same notion of responsibility grounds one’s political obligations, including the obligation to participate in the political life of one’s community and to work to secure the conditions of legitimate government, which in turn

¹⁴ *Id.* (manuscript at 132).

¹⁵ Some might reject the idea that one bears a responsibility to construct a coherent life’s narrative, as opposed to living one’s life in the moment. Others might regard as self-indulgent a conception of ethics that calls on individuals to devote substantial efforts to shaping the arc of their lives, as opposed to giving themselves over to a greater good or cause not of their own making, such as God or Country.

¹⁶ DWORKIN, *supra* note 2 (manuscript at 126).

¹⁷ *Id.* (manuscript at 66).

¹⁸ *Id.* (manuscript at 132) (arguing that authenticity generates a responsibility to “accept judgmental and liability responsibility in appropriate circumstances”); *see also infra* text accompanying notes 39-40 (briefly discussing the ways in which Dworkin may contemplate holding persons answerable for failing to live well).

¹⁹ *Id.* (manuscript at 235-36).

requires that the polity make substantial steps toward the attainment of substantively just distributions of rights, resources, and opportunities.²⁰

III.

One might be forgiven for supposing that Dworkin's casting of the authentically and excellently lived life as a genuine duty amounts to an effort to square the circle. For it seems to wed an "existentialist" ethic of life as a self-authored, courageous, and successful performance to three contrary ideas: a democratic sensibility that ascribes equal worth and importance to each person's life; a theory of value which holds that there are metrics apart from self-authorship, courage, and success by which to gauge the worth of life-performances; and a conception of the life well-lived as genuinely obligatory.²¹

Conceptions of individual flourishing that emphasize self-creation and mastery have not always sat well with the egalitarian proposition that each person is of equal worth. Perhaps in recognition of this awkwardness, Dworkin briefly engages Nietzsche. He observes that, even if Nietzsche is properly read as denying that most of us can live greatly, Nietzsche nowhere denies that each of us is "charged" with a responsibility to do so.²² This is hardly comforting. If Nietzsche supposed that most of us cannot live well, it is difficult to see why he or anyone who holds the same view would conclude that there is an obligation to do so. The larger point is that a notion of excellence and mastery in the living of one's life seems to run deeply, though perhaps not sharply, against the idea that all are created equal, or that, when it comes to government's relation to its citizenry, each person is deserving of equal concern and respect. And this tension is only exacerbated when the idea of living well is cast in terms of a responsibility rather than an opportunity. If some of us are by nature or nurture unable to grasp or heed this basic and indeed gravely important ethical duty, that fact might provide the beginnings of a justification for differential treatment. Even if these categories are drawn in an effort to be kind towards those in the latter group – for example, by offering taxpayer-funded ethical instruction to the benighted – they might still be stigmatizing and in that sense anti-democratic.²³

Dworkin is also aware that his emphasis on notions of authenticity and self-creation seem to sit uncomfortably with the idea that certain life-projects are unworthy. He argues that the awkwardness is only superficial – an artifact of

²⁰ *Id.* (manuscript at 204).

²¹ I am using the term "existentialist" as a term of convenience, to help evoke in the reader's mind the kind of performative conception of a life going well that *Hedgehogs* seems to embrace.

²² DWORKIN, *supra* note 2 (manuscript at 165). Needless to say, I am not taking a position on how best to interpret Nietzsche.

²³ Dworkin suggests that moral philosophers can play the role of "experts" who can provide "templates" for dignified lives. *Id.* (manuscript at 71).

confusions in epistemology.²⁴ Let us grant that there is nothing incoherent about a theory that connects an ethic of authenticity to an account of value that allows for objective truths. Any ethic of authenticity must nonetheless contain a strong measure of catholicity. Its natural tendency, one might say, is to push against the idea that a particular way of living is the right way to live. The identification of a robust set of substantive criteria for living well that renders unacceptable a broad array of possible life-projects sits uncomfortably with the view that the individual's construction and carrying out of *her own* life plan is a basic responsibility borne by each person.

Hedgehogs opines that a life devoted to collecting matchbook covers, however self-conscious and successful on its own terms, is a life that amounts to a failure to heed the responsibility to live well.²⁵ So, too, is a life that lacks narrative coherence and is instead a motley collection of chosen experiences.²⁶ Why? Let us imagine two achievement-oriented parents anxiously trying to convince their self-supporting, twenty-something child not to be content with a life of matchbook-cover collecting. "You are capable of so much more!" they might exclaim. It is possible that they mean to express the judgment that their child has fallen down on a responsibility each of us bears, to try to make a certain kind of life for himself. On the other hand, I would think it more natural to interpret their comment as expressing doubts about the ability of even a grown child to exercise sound judgment that will spare him subsequent regret, as well as aspirations for the child that, as they might eventually concede, are *their problem*, not his. My point is not that we lack standards for assessing whether a person is living well. Rather, my point is that Dworkin seems to have fastened on standards that are arbitrary and censorious. A life devoted to the collection of matchbook covers (or, say, sports playing cards) might lack certain virtues, such as ambition of a certain kind. (It also might display others, such as doggedness.) But why is it a life to be condemned as irresponsibly led? As compared to what? A life self-consciously devoted to crafting elegant poetry? What is the salient difference between these life-performances? Even if it is erroneous to criticize Dworkin's marriage of "existentialism" to an objective value theory as incoherent, the marriage still seems vulnerable to charges of elitism – a common complaint lodged against "liberals" by contemporary conservatives.²⁷

The most striking aspect of Dworkin's treatment of the responsibility to live well is its presentation as a genuine duty.²⁸ It is this feature of his analysis that seems most difficult to reconcile with a performative ethic that calls for each of us to live courageously and honestly by his or her own choices.²⁹ To suppose

²⁴ *Id.* (manuscript at 136).

²⁵ *Id.* (manuscript at 261).

²⁶ *Id.* (manuscript at 154-55).

²⁷ *See supra* Part I.

²⁸ *See* DWORKIN, *supra* note 2 (manuscript at 196).

²⁹ Perhaps the antithesis of existentialism is not objectivity but obligation?

that the fashioning of one's life is the *doing of one's duty* seems to undermine the "me-ness" – the assertion of individuality – that gives meaning and value to the undertaking. "Existentialism," as I am using the term here, stands for the idea that the value of a person's life-performance resides precisely in its being his or hers – self-authored and self-actuated. Can one make sense of a self-chosen, authentic life as the fulfillment of a duty? If so, what sort of duty is it? To whom is it owed?

Perhaps one way to understand *Hedgehogs* is as reviving and revising an early and now mostly suppressed aspect of the liberal tradition, of which John Locke's thought provides an example. Locke seems to have sought to justify recognizably liberal and democratic political arrangements by reference to a conception of responsibility.³⁰ Each of us, he supposed, has a natural duty to preserve oneself, to be productive, and to see to it that others heed the demands of morality. To commit suicide, to be indolent, to allow wrongs to go unpunished – each amounts to a breach of this duty. And government's legitimacy hinges on whether it succeeds in making it possible for us to do our duty.³¹ Central to Locke's view, however, is a conception of humans as answerable to their Creator. Each person, he supposed, is an "agent" not only in the sense of being a self-directing creature, but in being a person charged by a principal to undertake actions on His behalf.³² For Locke, the duty to live aright is owed to God.³³

Dworkin's conception of ethical responsibility has a Lockean flavor to it. At one point, he refers to the responsibility to live well as an "assignment."³⁴ From whom does this assignment emanate, and on whose behalf is it undertaken? Standing in for God, so to speak, is a normative claim. Each human life has objective importance. It is the fact of the importance of one's life that generates a duty to make something of it – that it is something of value means that it is incumbent on you to make something of it.

Perhaps Dworkin means to assert that the duty to live well is a logical entailment of the recognition of the importance of each human life.³⁵ Certainly, he does not provide much of an argument to get from the objective importance of one's life to the duty to live it well. Granting the derivation,

³⁰ This is John Dunn's reading of Locke. JOHN DUNN, *THE POLITICAL THOUGHT OF JOHN LOCKE: AN HISTORICAL ACCOUNT OF THE ARGUMENT OF THE 'TWO TREATISES ON GOVERNMENT'* 121-26 (1969); *see also* JEREMY WALDRON, *GOD, LOCKE, AND EQUALITY* 13 (2002) (emphasizing the centrality of Christian theology to Locke's thought, and suggesting that it may not be possible today to "shape and defend an adequate conception of basic human equality apart from some religious foundation").

³¹ DUNN, *supra* note 30, at 123.

³² *See id.* at 251-52.

³³ *Id.*

³⁴ DWORKIN, *supra* note 2 (manuscript at 162).

³⁵ If I deny being under this duty, am I forced to concede that my life is of no importance?

however, one still wants to know: to whom is one answerable for a breach of this duty, and in what way?

Some duties – the familiar example is the duty of the well-off to contribute something to the less well-off – are said to be “imperfect.” To say that a duty is imperfect is to say, in part, that no particular person has a claim arising out of its breach. It is possible that Dworkin means for the ethical duty to live well to be imperfect, although he seems to suppose it is owed at least to oneself. Regardless, even one who breaches an imperfect duty can be rendered answerable in some sense to others by virtue of that breach. Even if no particular person has standing to demand the performance of an imperfect duty, or to demand redress for its breach, the breach might still justify members of the class of potential beneficiaries, as well as others, in criticizing one who neglects the duty. Breach of an imperfect duty might also justify others in withholding certain kinds of benefits. A well-off person who fails in her duty to assist the less well-off can rightly be condemned by the less well-off, and by her peers, as having behaved immorally – perhaps in some cases even contemptibly – and she can rightly be deemed unfit for certain honors or positions.

In treating ethical responsibility as falling into the category of “liability responsibility,” Dworkin seems to embrace the idea that one is accountable for one’s breach of the duty to live well.³⁶ A life poorly lived renders one answerable to others even beyond their entitlement to express disappointment. They can say of us not merely that we have done less well than we might have, or have missed an opportunity to demonstrate excellences that we could have demonstrated, but that we have fallen down on a very important job that was not ours to choose to ignore – that we are in this respect bad people. Of course, one who fails in his duty to live well does not earn the same type of response as one who breaches other moral duties, such as those enshrined in the provisions of a criminal code: Dworkin is not contemplating punishment for those who choose undignified life-projects, or who fail to self-consciously construct and endorse a life-narrative.³⁷ But when he talks about the responsibility to live well, he does seem to have in mind the sort of duty that, when breached, subjects one to criticism for being seriously ethically challenged. In this respect, there is again an element of censoriousness in his position. *Hedgehogs* is judgmental about how people live their lives, and for

³⁶ See DWORKIN, *supra* note 2 (manuscript at 132).

³⁷ If the duty to live well is as fundamental as Dworkin seems to suppose, one wonders whether there is a case to be made from within his theory for certain coercive responses to those who breach – for example, mandatory ethical training. I am not suggesting that Dworkin in fact endorses coercion of this sort; the question is whether his account permits it. Perhaps he would argue that fulfillment of the duty to live well is incompatible with coercion because coercion necessarily renders the person’s life-project no longer her own. This imagined response, however, is unsatisfactory. In principle, at least, coercion could be used merely to enable or incentivize individuals to attend to the construction of their lives.

reasons that have nothing to do with the immediate consequences of those lives for others or for the world.

The extent to which *Hedgehogs* is objectionably judgmental will depend, finally, on the robustness of its criteria for living well. Imagine a young man who, following in the footsteps of his father, and his father's father, becomes a plumber who does his job competently, and spends his weekend playing with his children, maintaining his house, and watching sports on television. Although it would be an overstatement to say that he has merely fallen into his life, it would also be an overstatement to say that he has self-consciously constructed it for himself, or that he has "endorsed" it. It is the only life he ever conceived of himself living. Now imagine a life of traditional piety – one lived peaceably, pleasurably, and charitably on terms set long ago by the dictates of habit and custom. Finally, envision a person who takes the only employment available in her locality and who performs just well enough at work to keep from getting fired. She could be more attentive to her children, but nonetheless provides them with adequate material resources and psychological support. When not attending to work or kids, she likes to drink with some friends in a local bar. None of these lives strike me as the sort of "successful performance" that Dworkin seems to have in mind when arguing that each of us bears the responsibility to live life as a bravura performance.³⁸ If so, the responsibility that Dworkin identifies seems too demanding. None of these imagined lives strikes me as deserving of condemnation for being unethical or irresponsibly lived.

At times, *Hedgehogs* indicates a willingness to weaken what I have taken to be the demandingness of its conception of the ethical responsibility to live well. For example, Dworkin suggests that victims of oppression can be forgiven if it is their victimization that prevents them from living with dignity.³⁹ Suppose it is the case that, because of the unjust conditions of patriarchal societies, generations of women have accepted, with little reflection or choice, a cramped conception of themselves as domestic servants. According to *Hedgehogs*, we might say that each member of this innumerable class failed in her responsibility to live well, yet can be excused for her failure. Is this a suitable framework for evaluating these lives? Being absolved of responsibility for failure is certainly better than not being absolved. Yet the judgment of failure stands, and it is harsh. Dworkin would have us say to these women: "It is not your fault that you have failed to attend to the responsibility that each of us bears to live well." Should they be comforted?⁴⁰

³⁸ DWORKIN, *supra* note 2 (manuscript at 128).

³⁹ *Id.* (manuscript at 159-60).

⁴⁰ Dworkin relies on the distinction between living well and living a good life to reduce the apparent over-demandingness of the duty to live well. *See id.* (manuscript at 123-26). Given that we often have little control over whether we can achieve the things for which we strive, he says, the metric for a life well-lived cannot be actual success. While this move promises to shield actors from a certain amount of bad moral luck, it by no means eliminates

I can envision two lines of response to these criticisms. No doubt there are others. Dworkin might say that I have overstated the demands of the duty to live well. Living well does not require an elaborate effort to construct a life-narrative around a series of well-crafted performances. It entails only an occasional reflection on, and ratification of, the course on which one's life is anyway heading. It is difficult, however, to square this weaker reading with all of the attention devoted by *Hedgehogs* to what counts as a life well-lived. In any event, this conception of what we owe ourselves (and others) achieves the virtue of plausibility only by embracing the vice of blandness. It will not provide a substantial enough platform on which to build an argument for liberal moral or political principles.

A related but distinct response would question the aptness of my "all or nothing" rendition of the duty to live well.⁴¹ I suggested above that *Hedgehogs* is too judgmental in being prepared to treat as *failures* lives led by persons who do not attend properly to their life-performances. Perhaps, though, Dworkin is not committed to judging these lives to be failures. He might instead say they are lives that earn a passing grade, but not honors.

This envisioned response suffers from two problems. First, at a key moment, the text makes a point of describing a life not well-lived as a failure:

Someone who leads a boring, conventional life without close friendships or challenges, marking his time to his grave, has not [had] a good life even if he thinks he has and even if he has thoroughly enjoyed the life he has had. We cannot explain why he should regret this simply by calling attention to the pleasures missed: there may be no pleasures missed. We must suppose that he has *failed* at something: failed in his responsibilities for living.⁴²

Second, I do not think this mode of expression is accidental. Indeed, I would suggest that part of the significance of Dworkin's decision to recast the notion of a life well-led in terms of a *duty* to live well is to invite the use of an all-or-nothing metric rather than a sliding scale. Duties tend to have a binary quality – it is more natural to ask whether they have been performed or breached, not whether they have been somewhat performed.⁴³ In addition, the particular duty

it. After all, circumstances can easily conspire to impede a person's ability to carry out his life performance.

⁴¹ Thanks to Richard Fallon for raising this possibility.

⁴² DWORKIN, *supra* note 2 (manuscript at 124); *see also id.* (manuscript at 129) ("I must recognize the objective importance of my living well, of my life being a successful rather than a failed response to the challenge of living."). *But see id.* (manuscript at 126) (describing a person who has done a "worse job of living").

⁴³ It may be that the line that demarcates performance from breach is ineffable or at least difficult to define, but it is still a line. In a construction contract, for example, the question sometimes arises whether the builder has "substantially performed" – a possibly misleading phrase meant to describe the point at which the buyer really is getting the thing for which he

at issue concerns the span of an entire life. As such, it invites the passing of an especially significant (and ominous) sort of judgment: an assessment of whether, come Judgment Day, one will be deemed to have lived well or lived badly.

IV.

I have suggested that the idea of a responsibility to live well that is at work in *Hedgehogs* is in certain respects too rich to be part of a liberal political theory. And yet there are other ways in which Dworkin's treatment of this same notion of responsibility – and related notions of moral responsibility – may be too thin.

First, his analysis of moral responsibility seems destined to downplay entire domains of moral responsibility. *Hedgehogs* divides moral responsibilities into two types: duties to aid others and duties not to harm others.⁴⁴ It also includes a separate discussion of role-based obligations, but seems to assert that these are merely special instances in which duties not to harm are defined by certain conventions.⁴⁵ Regardless of their proper placement within Dworkin's taxonomy, there would seem to be moral obligations that do not sit comfortably with the ethical responsibility to live well. Can the person who dutifully attends to the construction of his life be expected to attend adequately to quotidian obligations such as the duty to pitch in at home with housework and child-rearing? What about the duty to shoulder one's fair share of the tiresome work that needs to be done to keep one's workplace or organization functioning well? Insofar as the ideal of living well is captured in the idea of life as an excellent performance, it seems to fit more comfortably the lifestyle of the self-indulgent artist than that of George Bailey.⁴⁶

The most basic claim of *Hedgehogs* is that one's ethical, moral, and political duties dovetail, rather than conflict, and that these in turn dovetail with a recognizably liberal notion that each person enjoys substantial leeway to pursue her own interests. My point is that this position is phenomenologically implausible, which may in turn suggest a conceptual problem. To be under a

contracted, even though it deviates in some details from the precise description of the thing contained in the contract.

Of course, duties are often defined such that acts that would otherwise amount to a breach of them do not do so when undertaken for the right reasons – e.g., an intentional killing in self-defense. And one can imagine various reasons that might justify failures to attend one's life-performance; for example, growing up in a circumstance in which one is constantly required to sacrifice one's own projects for the well-being of needy family members who cannot expect assistance from any other quarter. I am questioning whether, even in the absence of such reasons, it makes sense to talk about certain lives as amounting to breaches of a duty to live well.

⁴⁴ DWORKIN, *supra* note 2 (manuscript at 174-92).

⁴⁵ *Id.* (manuscript at 193-95).

⁴⁶ IT'S A WONDERFUL LIFE (Liberty Films 1946).

duty, whether ethical or moral, is to be bound – and, ideally, to *feel* bound – to conduct oneself in certain ways, to attend to certain matters to the exclusion of others, and to have certain persons' interests in mind and not the interests of others. Often enough, a person can navigate one set of duties without shirking others, and can do so while still enjoying freedom to pursue her own ends. But not always. Sometimes, fulfilling one duty means neglecting another, or some other form of sacrifice. And if one posits, as Dworkin does, a seemingly demanding duty to live one's life fully and self-consciously, there seems good reason to believe that these occasions for conflict and sacrifice will be pervasive.

The notion of living well may crowd out plausible moral duties in other ways. For example, Dworkin argues that one is morally responsible for a loss accidentally caused to another whenever the loss "could have been prevented had [the actor] taken precautions that would not have set back his own plans and prospects as much as the damage he was likely to cause would set back the plans and projects of others."⁴⁷ This liability standard – a moralized rendition of the famous Hand Formula – suggests, perversely, that the determination of whether one has acted with suitable care for the interests of others turns fundamentally on the way in which injurer and victim are leading their lives.

Suppose a genuinely gifted writer finds that he simply cannot write without taking long, lazy drives near his country home. The drives are therapeutic for him because they induce him to daydream. On such occasions, the driver drives only on local roads which are usually empty, except for the occasional tractor driven by a subsistence-wage farm worker. One day, lost in his creative thoughts, the writer runs through a stop sign and crashes into a tractor, injuring its driver. Under Dworkin's framework, we seem to be required to ask whether the burden to the writer of giving up the therapeutic practice of driving-while-daydreaming is outweighed by the deleterious effects on the life-constructs (such as they are) of the class of tractor drivers. I presume he would suggest that the balance easily favors the tractor drivers, though it is not obvious that he is entitled to take this position. Even so, this would not be enough to render his description of the moral obligation to avoid accidentally injuring others plausible. There seems no reason whatsoever to take into account the driver's interest in driving mindlessly, no matter how great the importance of that activity to the project that is his life. Some kinds of burdens count as reasons for concluding that an actor has acted with morally required care. But the interference with a person's particularly elaborate and delicate life-project is surely a poor candidate for such a burden.

V.

I have raised some questions about the ways in which *Justice for Hedgehogs* pursues the claim that concepts of responsibility are integral features of an adequate egalitarian liberal political theory. My worry throughout has been

⁴⁷ DWORKIN, *supra* note 2 (manuscript at 187).

that, as cast here, the idea of a responsibility to live one's life well carries with it a judgmentalism that sits poorly with the idea that government ought to be structured so as to treat its citizens with equal concern and respect. Even if I have managed to identify some problems in the book's argument, my doing so would hardly detract from its importance. I began by observing that there are few topics in contemporary legal and political theory that have not benefited from, if not been transformed by, Ronald Dworkin's writings. *Hedgehogs* offers a provocative and timely effort to demonstrate that a "liberal" can and must take seriously not only rights but responsibilities. While I have complaints about the particular way in which it articulates this claim, I agree wholeheartedly that it is a claim that liberals must make and defend.