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## DWORKIN ON ETHICS AND FREEWILL: COMMENTS AND QUESTIONS

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Dworkin says that what he calls “the hydraulic principle” denies “responsibility if either determinism or epiphenomenalism is true.”<sup>1</sup> Of the two, it is the claim of a conflict between determinism and responsibility that is more engaging: Dworkin’s dismissal of the reach of epiphenomenalism is swift and seems to me to be largely compelling. The tussle with determinism is more substantial, but Dworkin’s presentation is enlightening in covering a lot of ground with care. The central issue is similar to David Hume’s reasoning that outside influences may explain our judgments and even make them predictable, and yet they do not make our judgments any less genuine or any less important in assessing our responsibility.<sup>2</sup>

This is a subject of some nostalgia for me, because in my first philosophical essay published fifty years ago, in 1959, I tried to chastise Isaiah Berlin for his belief that determinism and predictability make the idea of moral responsibility entirely unviable.<sup>3</sup> Berlin was extremely gracious in his reply – though remaining in disagreement with me – and he answered my criticism patiently in some detail in the Introduction to his *Four Essays on Liberty* published ten years later.<sup>4</sup> My point, basically Humean (though I had not seen the connection very clearly then), was not, of course, new. What Dworkin does beautifully is bring out the richness of counter-arguments that have to be addressed and the counter-counter-arguments needed to construct a more complete picture that corresponds to

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<sup>1</sup> RONALD DWORKIN, *JUSTICE FOR HEDGEHOGS* (forthcoming 2010) (Apr. 17, 2009 manuscript at 146, on file with the Boston University Law Review).

<sup>2</sup> See DAVID HUME, *AN ENQUIRY CONCERNING HUMAN UNDERSTANDING* 126 (Anthony Flew ed., Open Court 1991) (1748).

<sup>3</sup> Amartya Kumar Sen, *Determinism and Historical Predictions*, 2 *ENQUIRY* 99, 113-15 (1959).

<sup>4</sup> ISAIAH BERLIN, *Introduction to FOUR ESSAYS ON LIBERTY*, at xiii (1969).

Hume's rather rapid reasoning.<sup>5</sup> I find Dworkin's discussion to be both illuminating and persuasive.<sup>6</sup>

My main difficulty with Dworkin's reasoning about ethical responsibility, however, concerns his principles of "self-respect"<sup>7</sup> and "authenticity."<sup>8</sup> Let me go along with Dworkin to the extent of agreeing that a person is not acting responsibly if he leads his life in a way that he would have compelling reasons to judge as "a wasted opportunity" and also agreeing that a person has some responsibility to consider what would "count[] as success in his own life."<sup>9</sup>

Nevertheless, my problems remain even after this broad agreement. To explain why, let me consider four possibly "irresponsible persons" in Dworkin's framework: Anne, Beth, Carla, and Dora.

Anne thinks that there are good reasons for her to value either a life of type A (respectful and conservative on traditional matters, without hurting anyone's feelings), or of type B (being radically "contemporary" and reshaping lives, including her own, in a way that would give adequate recognition to what modern scientific knowledge could offer). Anne will face no difficulty from Dworkin if she proceeds then to decide that one of these lives – either A or B – would be distinctly better than the other. But suppose she does not come to that conclusion. Rather, Anne continues to believe that even though life A and life B are each better than other kinds of lives (such as confused living without adequate thought on what should count as success in her life), she has a reasoned incompleteness in ranking A and B against each other. Given this partial ranking, which does not reflect any lack of reasoning, but which is, in fact, a result of her reasoned scrutiny, Anne believes that it would be responsible enough for her to pursue either lifestyle.<sup>10</sup>

Is Anne right? And would Dworkin accept this? If Dworkin's answer is, "Fine, that's okay," then I would like to see in his writings a greater recognition of

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<sup>5</sup> See, e.g., DWORKIN, *supra* note 1 (manuscript at 8-9) (presenting and responding the philosophers who believe a "non-moral metaphysical argument" is necessary to suppose that moral judgments can be true).

<sup>6</sup> One caveat, for which if given more time I would have argued, is that Dworkin may have to give more weight to the diverse implications of mental pathology. Mental diseases do exist and are distressingly common, and the significance of a person's judgment may demand a very different treatment when a person's ability to reason – in the normal sense – is in disorder.

<sup>7</sup> DWORKIN, *supra* note 1 (manuscript at 128) ("Each person . . . must accept that it is a matter of importance that his life be a successful performance rather than a wasted opportunity.").

<sup>8</sup> *Id.* ("Each person has a special, personal responsibility for identifying what counts as success in his own life; he has a personal responsibility to create that life through a coherent narrative that he himself has chosen and endorses.").

<sup>9</sup> *Id.* I may not be thrilled with the disciplinarian tone of these admonitions, but Dworkin's basic point seems to me to be right.

<sup>10</sup> This issue is discussed more fully in my essay Amartya Sen, *Maximization and the Act of Choice*, 65 *ECONOMETRICA* 745, 771-72 (1997), reprinted in AMARTYA SEN, *RATIONALITY AND FREEDOM* 158 (2002).

the possibility of incompleteness of preference ranking and the far-reaching implications of reasoned choice according to partial rankings (a subject that interested John Dewey very much<sup>11</sup>). The case would, of course, be unproblematic with what may look like a small variation<sup>12</sup>: in particular if Anne found that A or B are equally good and that each would equally make her life a success. In that case, Dworkin should – and I believe would – allow Anne the freedom of being loyal either to A or to B, without calling her irresponsible.

However, incompleteness is a far cry from indifference. Perhaps Dworkin has an argument why incompleteness of rankings is not permissible. Such arguments exist in the literature, but I would argue none are convincing. But more particularly, I did not see any such argument as I read the manuscript.<sup>13</sup>

Consider now a second case, in which Beth is certain that there is a unique way of ranking A and B, and that the incompleteness of her ranking the two lifestyles (A, B) is only tentative, not assertive. So, she is not equilibrated on this (unlike Anne); not now, nor ever – even though she works hard every morning on deciding what would make her life more “successful” and less “wasted.” Not all our efforts yield what we hope to get, and given her efforts and commitment to resolve her dilemma, does Beth not get a passing grade because of her endeavour and application, despite her lack of “success?”

Now, imagine a third person: Carla. She believes that leading a life in such a super-disciplined way is itself “a wasted opportunity.” The secret to making a life a success is not to think in those terms, but to go by spontaneous decisions, even though in hindsight some of the chosen paths may turn out to have been mistakes. Would Carla be irresponsible to herself if she follows one of Dworkin’s demands (by seriously asking what would make her life “successful”) but not another (about creating the lifestyle that she could say she had most reason to have)?

And, finally, we come to Dora, who thinks it is very “silly” to keep asking restlessly whether her life is “successful.” “Stop this search and get a life!” she says. We should – at least she would – reasonably live without such an overriding concentration on self-assessment. Assessment takes time away from other things one could do and is itself a part of living. To keep assessing whether one is giving “a successful performance” would itself be a part of a particular lifestyle (a rather obsessive one), and it is, Dora argues, not an especially good lifestyle.

It is possible that all these cases can be well addressed within Dworkin’s general framework, in which case I would like to hear more from him on these issues. Or, if they really violate the demands that Dworkin imposes on personal responsibility to oneself, then I would like to know why he imposes these

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<sup>11</sup> John Dewey, *Logical Method and Law*, 33 PHIL. REV. 560, 567 (1924); see also ISAAC LEVI, *HARD CHOICES* 220 (1986).

<sup>12</sup> In actuality, this variation is not so small.

<sup>13</sup> Admittedly, it was read amidst distraction on the beaches of Circe; I could of course have missed something (even though I had greater freedom to read than Ulysses had on the same beach).

demands in that form. Having taught joint classes with Dworkin at Oxford for many years, I know there are few things as enjoyable as hearing him explain what exactly he wants to say – and why. I look forward to that pleasure.