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Easy Virtue by Peter Berkowitz

A review of *Sovereign Virtue: The Theory and Practice of Equality* by Ronald Dworkin.
Harvard University Press, 511 pp., \$35.

Even his many critics recognize that Ronald Dworkin ranks among his generation's leading moral philosophers and constitutional scholars. Along with the work of John Rawls, Dworkin's prolific scholarly and journalistic writings have defined the intellectual agenda for academic liberals in law schools as well as philosophy and political-science departments for a quarter of a century. While he by no means speaks for all those who call themselves liberals, Dworkin, who holds professorships of law and jurisprudence at New York University and University College, London, certainly speaks for the dominant strand of academic liberalism, providing one of its most articulate and theoretically sophisticated voices. Dworkin's liberalism is egalitarian, rights-based, procedural, and progressive. All American liberals affirm human equality, but Dworkin's liberalism declares it an imperative of justice that the state guarantee a substantial degree of social and economic equality through a generous welfare system, universal health care, and an aggressive affirmative-action program. All liberals invoke individual rights, but Dworkin's greatest concern is with those that protect the freedoms of speech, abortion, sexual choice, and a dignified death. All liberals emphasize the rule of law and impartial administration of justice, but Dworkin's philosophy demands that government remain neutral toward competing conceptions of the good life, especially those grounded in traditional religious faith. And while it is an axiom for liberals that upholding the principles of freedom and equality promotes human progress, Dworkin's liberalism stands out for its resolute if unstated conviction that morality and law require a legislative agenda and a constitutional jurisprudence that, on virtually all important points, converge with the political program of the left wing of the Democratic party.

Sovereign Virtue is a collection of essays written since 1981 in which Dworkin deepens his theoretical account of liberalism and expands on its practical imperatives for democracy in America.

His overarching purpose is to clarify the political implications of a morality that he calls "ethical individualism." This "critical morality" --- which he sometimes speaks of as if it were identical with morality itself --- is grounded in two "ideals" or "principles," which bear a certain family resemblance to the fundamental premise of the liberal tradition, the natural freedom and equality of all individuals. The first holds that "it is objectively important that any human life, once begun, succeed rather than fail --- that the potential of that life be

realized rather than wasted." The second insists that "one person --- the person whose life it is --- has a special responsibility for each life, and that in virtue of that special responsibility he or she has a right to make the fundamental decisions that define, for him, what a successful life would be."

The first thing to notice about Dworkin's principles --- especially given his insistence on their implications for law and public policy --- is their indeterminacy, just how much room they leave for competing moral and political interpretations. The success of each human life may be "equally objectively important," but to whom? In the eyes of God? In our hearts? According to a universal law? What is the individual's responsibility or duty in securing the success of other lives? What is the government's responsibility, and to what extent does it turn on questions about the government's capabilities and impact? In what does human success consist? Wealth? Honor? Virtue? Salvation? What counts as a "fundamental decision"?

The second thing to notice is the tension between the two principles. If it is objectively important that each life succeed rather than fail, aren't there likely to be occasions in which the objective failure of some requires others to compel them to choose better? This need for intervention is implied by the intimation Dworkin incorporates into the first principle that we all have a general responsibility to help others succeed. But this conflicts with the "special responsibility" invoked in the second principle of each individual to make his own "fundamental decisions."

The third thing to notice is the discreet non sequitur embodied in Dworkin's principle of "special responsibility." It does not follow from this notion that we have a "right" to make "fundamental decisions." Perhaps we are the stewards of our lives, in need of instruction and stringent laws to help us meet our special responsibilities. The police have a special responsibility to enforce the law, but they are bound by the laws they enforce and must also answer to their superiors.

Dworkin wants to have his cake and eat it too: He wants both a far-reaching egalitarianism and wide-ranging individual freedom. His first principle asserts the existence of an objective moral order that imposes a general responsibility for redistributing wealth so as to bring about "equality of resources," while the second declares the impermissibility of restricting the individual's freedom to decide what a good life consists in.

Something has to give. The redistribution of resources necessarily involves a substantial restriction on the freedom of some. And the freedom to define and live a good life must, given the unequal distribution of strength, charm, beauty, intelligence, and fortune, lead to striking inequalities of societal honor, wealth, and power.

Nor can one approve of Dworkin's rhetorical ploys—for example, the selective appeal to the issue of scholarly bias. In considering the Supreme Court's support for laws banning assisted suicide --- a holding he prominently opposed --- Dworkin acknowledges concerns that the ill and elderly may be coaxed into choosing death by relatives or hospital officials while casting doubt on the studies that raise them: "Many of the social scientists who have compiled the relevant evidence have strong ethical opinions, including religious convictions or convictions about proper medical ethics, that might impair their scientific independence." Perhaps. Yet in a long chapter defending affirmative action, Dworkin relies almost exclusively on *The Shape of the River*, a book on its empirical effects by Derek Bok and William G. Bowen—as presidents of Harvard and Princeton, the architects of the very programs whose merits they assess.

Dworkin also stacks the deck via tendentious labeling. Two parties, he argues, have been battling it out on the Supreme Court over which rights the Constitution protects. The "party of history" --- the conservatives --- contends that it protects only those basic liberties that are, in the words of Justice White, "deeply rooted in this Nation's history and tradition." The "party of integrity" --- Dworkin's party --- holds that the Court's task is to identify the general moral principles that underlie existing constitutional rights and to derive from them new rights for changing circumstances. No doubt Dworkin has put his finger on an important difference between the two camps. But it is invidious to build partisan moral judgments into the very names that he assigns.

A third ploy is the appropriation of opponents' terminology. In the mid 1980s, natural-law theory --- thanks in particular to Dworkin's colleague John Finnis --- began to enjoy something of a comeback in academic circles. Dworkin published an article maintaining that his theory of constitutional interpretation, according to which it is a judge's task to formulate a holding that makes the best sense of the nation's constitutional history, is a form of "naturalism" and a respectable version of natural law. Never mind that nature in the natural-law tradition suggests a standard opposed to convention, a standard that stands apart from and superior to history. Then in the mid 1990s, as religion began to occupy a more prominent place in American politics, Dworkin sought in *Life's Dominion* to find a ground for the right to abortion in the First Amendment's guarantee of religious liberty. He argued that opinions about the status of a fetus imply opinions about the ultimate meaning of life, and that it is just such opinions that religious liberty was meant to protect. No matter that in the view Dworkin proposed, religion has nothing special to do with God.

Now, as attention both public and scholarly shifts to questions of character, Dworkin has wrapped himself in the mantle of virtue. "Equal concern for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance," Dworkin asserts at the beginning of his book, "is the sovereign virtue of political community." It is a peculiar sort of interest in virtue, however, that sees it only as an attribute of institutions and not also of individuals. And it is a shortsighted concern for equality that neglects the shadow vices --- envy, conformism, and sluggishness --- that imperil democracy and liberty.

Ronald Dworkin is a powerful and persuasive advocate of the view that law and politics do indeed at crucial junctures depend on moral philosophy's services. At the same time, exposing the subtle maneuvers and clever obfuscations he employs to advance his particular derivation of law and public policy from morality is a powerful reminder that we have good reason to limit our dependence on philosophers.

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