

An Equal Division of Property

Sovereign Virtue. By Ronald Dworkin. *Harvard University Press*. 511 pp. \$35.

Reviewed by Robert T. Miller

Ronald Dworkin, the Sommer Professor of Law and Philosophy at New York University and the Quain Professor of Jurisprudence at University College in London, is an internationally renowned legal theorist and one of the relatively few academics to achieve the coveted status of public intellectual. His political views are predictably leftist. He argued during the impeachment process, for example, that the House of Representatives' vote to impeach President Clinton would annihilate the separation of powers and that removing the President would be a "kind of coup." In his latest book, *Sovereign Virtue*, he arranges several previously published articles into a theory of equality, arguing that this is the paramount political virtue.

Dworkin assumes that equality means some form of economic equality, an assumption to which I shall return below. Economic equality he understands as equality of resources, and the heart of his argument spells out just what equality of resources means. On its own terms, the book may be judged successful on the coherence of this account. The argument proceeds in stages. First, we are asked to imagine that all members of society are given an equal amount of artificial currency with which to bid in an auction for all currently existing impersonal resources, by which Dworkin means to include all material resources (with a generally conventional bundle of legal property rights) but exclude any special political rights or the labor of other persons. This auction proceeds in multiple rounds until all participants pronounce themselves satisfied in the sense that none would prefer, on the whole, the lot of resources purchased in the auction by anyone else. The auction is critical to Dworkin's account because the measure of value used in determining whether a citizen has an equal share of resources is the opportunity costs to other citizens of his holding those [50] resources, i.e., the amount other citizens would pay to have had them, and this can be determined only through market mechanisms.

Dworkin next observes that the equality of resources among citizens will not long endure because some citizens will subsequently earn more than others. In essence, Dworkin thinks that differences in income arising from differences in native talent, as opposed to those arising from differences in ambition or willingness to work hard, must be eliminated in the name of equality by redistributing wealth away from the talented rich to the untalented poor. (Dworkin later reveals that he thinks luck is the most significant cause of income differentials.) Of course, we cannot determine what portion of a person's income is due to his native talent and what portion to his ambition. Thus, to determine how much income to redistribute, Dworkin introduces another critical thought experiment: hypothetical insurance markets.

We imagine that, at the end of the auction, all citizens are offered the opportunity to purchase an insurance policy that will pay them the difference between the amount they actually earn by working and a fixed level of income that they negotiate with the insurance company. The premiums for this insurance policy will be a percentage of the citizen's actual income, with citizens earning higher incomes paying larger percentages of their income in premiums (i.e., the premium structure is in effect a progressive income tax). Citizens will generally not insure more than a modest level of guaranteed income because the premiums for policies guaranteeing large

incomes will be prohibitively expensive, both because the probability of the insurer having to pay on the policy is high (most people will not earn high incomes on their own) and because the amount the insurer will have to pay is large (the difference between the high guaranteed income and the insured's low actual income). Hence, most citizens will contract for only a minimal income to ensure a decent standard of living. The average level of income that citizens would insure is the amount of income a just society in the real world will guarantee its citizens through redistributive taxation. Although Dworkin never gives a dollar figure for this average, he is sure it is substantially higher than the level of income guaranteed to persons in the United States through our current welfare programs.

Dworkin realizes that what economists call adverse selection would be fatal to this hypothetical insurance market. That is, if, in deciding what income level to insure, citizens knew approximately how much they could expect to earn, then those who expect to earn little would purchase high levels of coverage, and those who expect to earn much would purchase low levels or none at all, and so the premiums paid to the insurers could not cover the benefits to be paid by them, and the insurance market would collapse. Hence, Dworkin stipulates that, in deciding what level of income to insure, citizens shall not know the value of their own talents in the subsequent labor market. His argument fails if this condition renders the whole thought experiment incoherent.

Dworkin is sensitive to this point. He is familiar with the criticism that John Rawls' notion of the original position in his *Theory of Justice*—in which citizens deliberate about rules of justice for their society “behind a veil of ignorance” that obscures all their own personal characteristics, including many of their own preferences and moral judgments—is incoherent, and so he is at pains to tell us that citizens will know what their talents and preferences are, even if they do not know their market value. He [51] insists that under such circumstances the decisions citizens would make about how much income insurance to purchase can still be taken to be intelligent decisions of rational persons substantially like us.

But this is wrong, and for several reasons. First, anyone generally ignorant of the value people place on human talents could know nothing of social life: he would not know that facility in reasoning is crucial to success in many areas of human endeavor, that physical strength and speed have a wider scope of application than weakness, or even that most people enjoy sex. Imagining what the world would be like without knowing anything about what people generally value is impossible for us. Second, if Dworkin's citizens are to decide intelligently how much to spend on income insurance, they have to understand what else they might spend their money on, and hence they must know what other goods and services are available in their society and their relative prices. But then they know the market prices of the services people sell in their society, and so they know the market prices of the services they themselves might sell, and thus the market value of their own talents. So Dworkin's hypothetical insurance market is just incoherent. In fact, Dworkin's account lapses into naked self-contradiction when, later in the book, he insists that citizens can make authentic decisions only if they have “access to the widest available literature and other forms of art.” How it is that these do not disclose the market value of various talents he does not say.

Like his many other writings in political and legal theory, the book suffers from Dworkin's method of philosophizing. Most analytic philosophers use linguistic techniques to analyze

concepts from other intellectual domains and then display their interrelations. Dworkin, by contrast, begins from unchallenged, highly abstract principles and then inquires which interpretation of these is best. Thus the fundamental Principle of Equal Importance states variously that “it is important . . . that human lives be successful rather than wasted, and this is equally important . . . for each human life,” or that “government must act to make the lives of citizens better, and must act with equal concern for the life of each member” of the community. (That these formulations, which are only two of several given in the text, are obviously not equivalent is a matter that Dworkin passes over in silence; perhaps the [52] inconsistency arises from the several chapters’ having originated in previously published essays). This method creates two serious difficulties.

First, Dworkin’s foundational principles make essential use of unexplicated concepts like “importance” or “success,” and these concepts are given definite content only when Dworkin argues that his proposed interpretation of them is better than the alternatives. This procedure conceals what is most relevant, i.e., the criteria or standards of rationality that Dworkin is using when he argues that one interpretation is “better than” another. These do all the philosophical work, and Dworkin is not forthcoming about them; they have to be guessed at by examining the arguments he makes in reliance on them. By obscuring key assumptions in this way, Dworkin often leaves the impression that his conclusions are simply the products of pure reason and that denying them involves some kind of fundamental incoherence. In fact, it involves only disagreeing with the unstated and often controversial standards and criteria Dworkin is holding in the background.

Second, Dworkin clearly states that he is assuming, not arguing for, his fundamental principles. He promises another book, based on his recent John Dewey Lectures at Columbia University, that will justify the principles themselves. For those formulations of the Principle of Equal Importance to which almost anyone would give verbal assent, this might be unproblematic. But from the argument as a whole it seems that the formulation being presupposed is that government must ensure that all citizens under its dominion have some form of economic equality, the best interpretation of which turns out to be equality of resources, i.e., wealth (as opposed, say, to success in their plans or endeavors or subjective psychological satisfaction). If, like most Americans, the reader does not antecedently think that government has a duty to ensure each citizen some form of economic and not merely political equality, then this five-hundred-page tome is not designed to convince him. This greatly limits the value of the book.

One gets the impression, though, that Dworkin does not care too much about such theoretical issues. He is more interested, and his writing is much clearer, when he turns from the theory of equality to its practice in the second half of the book. The results are predictable, of course. Equality, properly understood, requires a national system of health insurance, which “might very well be something functionally very close to that proposed in Clinton’s plan” of 1994, and our not having such a system is “our national disgrace.” The 1996 Welfare Reform Act “was a plain defeat for social justice.” Equality demands rigorous campaign finance reform; affirmative action is just; legal restrictions on abortion are unjust; and citizens should have a legal right to assisted suicide. But the arguments for these views, which, curiously, are often legal and constitutional arguments not related to the elaborate theory of equality developed in the first half

of the book, are much more carefully thought out and are probably the best articulated among writers from Dworkin's point on the political spectrum.

There are other problems. Dworkin sometimes speaks respectfully about religion, but then he slips, contrasting religious believers with "more sophisticated people." More importantly, whole chapters are devoted to refuting contending interpretations of Dworkin's principles, and almost always the views being refuted are attributed to no philosopher in particular. When Dworkin gets wrong something as simple as the Catholic doctrine that persons are not required to undergo heroic medical treatment to prolong their lives (Dworkin thinks the teaching is that one must use all available means to prolong life, no matter how unreasonable), the reader is left wondering about how fair Dworkin is to the sophisticated views of his unnamed philosophical opponents. In a chapter on liberal equality and the good life, this fault erupts when Dworkin accuses again unnamed opponents of being "surprisingly deficient in any serious attention to issues of philosophical ethics" about the good life that he raises. This statement is either disingenuous or else betrays a complete unfamiliarity with the last twenty years of philosophical literature regarding virtue theory. The simplicity of Dworkin's subsequent analysis, as well as his failure to cite the works of a single virtue theorist, suggests the latter interpretation.

On the whole, the volume is useful for collecting the views on equality of one of political liberalism's most celebrated contemporary intellectuals. In method and level of argumentation, it surpasses the literature of law reviews but falls short of the standards of current analytic philosophy. In its principal aim of setting out a coherent interpretation of equality of resources, it fails rather conspicuously. In even assuming that it is the proper role of government to ensure economic and not just political equality among citizens, it will strike the many Americans who agree with James Madison in condemning "an [53] equal division of property, or . . . any other improper or wicked project" as strangely and even anachronistically misguided.