

A Contemporary Approach towards Liberalism

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Introduction

Liberalism accords primacy to liberty and Ronald Dworkin, the contemporary liberalist, offers us fresh insights into the arguments for equality (that is based on the principles of ethical individualism). His liberal equality merges the traditional liberal ideas of individual liberty and autonomy with that of equal life prospects for all. Dworkin aims at removing discrimination against the disadvantaged sections and helping them lead decent lives. His prominent goal seems to be construing the basic principle of these rights. This paper attempts to analyse Dworkin's grounding principle, by clarifying his chief arguments, so that we might better understand their nature and force as well as how they fit together over time.

The established approaches

In Greek thought, discussions on political freedom began with an eye to political participation. Plato and Aristotle, both, give primacy to the notion of state or society over the individual. They defended slavery as a natural institution and as being beneficial for both the slave and master. This, however, seems unjustifiable since freedom – if valuable for one – must be valuable for all. If slaves are 'men' then no argument would justify slavery (Barker, p. 336).

The contractarian philosophers (mainly Hobbes, Locke, and Rousseau) transfer people's natural liberty or right to a sovereign. Notwithstanding, each secures a different sort of right for the individual. Hobbes allows for the right to self-preservation, Locke preserves the right to life, liberty and property and Rousseau advocates the right to freedom which is based on the general will of the state. But, in reality, these endeavours lead to some form of tyrannical government for, in all of them, all individuals in the state do not take a part in the agreement.

J. S. Mill puts forward his notion of individual liberty (the right of an individual to develop his capacities free from the interference of others) and resolves the problem of the oppression of minority in a democracy. On the other side, Mill elucidates upon the concept of public and writes, "miscellaneous collection of a few wise and many foolish individuals, called the public" (Mill, p. 276). The philosopher advises that, amongst all the citizens of the state, one should give preference to the genius. This is justified in view of the genius' much larger contribution towards the development of the society. Further, "genius can only breathe freely in an atmosphere of freedom" (Mill, p. 298). Undoubtedly, Mill was arguing for a social elitism in which liberty and individualism are not intended for all but for the exceptional few. This problem is addressed adequately in Dworkin's idea of equal life prospects for all.

In the nineteenth century, arose the problem of defining the features of liberty. At that time, Berlin gave two concepts of liberty which helped distinguish political liberty from other kinds of liberty. Berlin differentiated between two aspects of liberty: negative and positive. Further, he gave significance to the negative over the positive. He explained, through Mill's argument, that man's most successful effort in the modern society is self-improvement. Certainly, Berlin gave a fresh perspective to contemporary discussions on liberty, but did not talk much about equality. To do justice to the ideas of both liberty and equality, contemporary work needs to look into the ideas of Dworkin.

Rawls's represents a new edition of traditional hypothesis and this hypothesis inserts a new section into the series of contractarian theory in its 'original position'. His hypothesis formulates the notion of justice and rebuffs the contemporary ethical conception (especially utilitarianism). Dworkin sorts out Rawls's criticism by emphasising that Rawls's basic assumptions are unlike the classical liberalist assumptions. Hence, it is pertinent to look further into Dworkin's fundamental principle on Rawls's theory of justice.

Richard J. Arneson also makes known that, in the contemporary world, one of the foremost promoters of liberal egalitarianism is Dworkin who merges the concept of individual liberty and autonomy with equal life prospects for all in his liberal equality (Arneson, p. 79). Dworkin admits that in order to attain the ideal of liberal egalitarianism, we must arrive at a key principle that helps conciliate competing rights.

The Dworkinian approach

Dworkin starts with a question about the right to liberty, namely, 'Do we have right to liberty?' and responds, as Isaiah Berlin does, in the negative sense (Berlin, p.121-122). Further, he acknowledges that, there is a conflict between the right to liberty and equality. For example, the disputes between the American Whites and Blacks. Here, the Blacks identify with the uncultured and unskilled person and, at first, demand an abstract right to equality. On the other hand, the Whites identify with the cultured and skilled person and, at first, demand an abstract right to liberty. Hence, there is need to reach a conciliation between these two rights. Dworkin tries to reset a formula to unite these competing rights.

To elucidate further, Dworkin states that legal positivists build a threat of connection between law and morality. So, he disproves legal positivism and recommends an alternative account of law. There is a fundamental question regarding the idea of rights: do the citizens have a right to break the law or not? If a person breaks the law and government prevents him/her by arrest or prosecution, then should we respect the one who is in jail? Conservatives and liberals admit that citizens have a right to break the law – sometimes when conscience needs and sometimes when government accuses them. However, Dworkin suggests that, we can dilute this paradox through civil disobedience.

Often, on the grounds of general utility, government limits citizen's liberty. For example, we have a legal right to drive our car on the street. But, in the general interest, government can make the street one-way. Not all legal rights are moral rights against the government. This does not mean that the right to disobey the law is a separate right. Yet again, Dworkin argues that such general utility cannot be the only base through which citizens are prevented of exercising their rights. For instance, the law of defamation restricts a person's personal right but protects the right of others. One cannot wreck others' reputation by his careless speech without having good grounds for what he thinks. Therefore, it is necessary for the government to choose between two kinds of rights (here – citizen's personal rights to State's protection and personal right to be free from State's interference).

Dworkin elucidates that government can abridge citizens' rights on two significant grounds: human dignity and political equality. The first one comes from the presupposition that every person is a constituent member of the society. The second says that the government should treat all the citizens, irrespective of their social status, with equal concern and respect. So, in the political community, all must have equal freedom. As a result, we must consider these ideas (dignity and equality) as axiomatic. Hence, we should make a consistent adjustment between society and government – which depends upon balance of rights. "The institution of rights is therefore crucial, because it represents the majority's promise to the minorities that their dignity and equality will be respected." (Dworkin, p. 205) Government must treat its citizens with equal concern and respect. In the next section, I will analyse reverse discrimination as a fundamental constituent of right.

Government provides its citizens with the right to equal protection. But, many a times, this right clashes with other popular social policies. One should not think that this is a paradoxical situation because equality is divided into two sections: equality as a policy and equality as a right. Thus, individuals' right to equality is infringed upon for the sake of a policy of an overall greater equality. To clarify this further, Dworkin explains reverse discrimination, which entails two kinds of rights: the right to equal treatment and the right to treatment as an equal. The first relates to the right to an equal allocation of some resource or opportunity or burden, for example, one person one vote system. The second relates to the right to be treated with equal respect and concern, for example, under the tax policy. Also, sometimes but not always, the first includes the second. Consequently, the first is a derivative right and the second one is a fundamental right. This practice removes discrimination between blacks and whites. So this discriminatory policy is justifiable because such discrimination is wrong.

Douglas N. Husak explains that both liberty and equality have equal value in reality. Therefore, the citizens have the right to liberty as much as they have right to equality. Further, he says that, Dworkin concurs with the idea that citizens have 'no right to liberty'. Husak criticises Dworkin since all kinds of rights must be taken seriously. Certainly, we can attach more importance to one kind of right but it does not mean that the other does not exist. I find this approach deceptive for Dworkin does not explain liberty and equality differently. He reasonably justified his keystone in contemporary liberalism. Having thus drawn upon Dworkin's notion, we must justify the establishment of his idea in the next section.

Justification for the Underpinning of Dworkin's idea

We cannot ignore John Rawls's '*A Theory of Justice*' for we are looking upon justice in association with rights. Dworkin explicates that Rawls's original position differs from the classical contractarian theory because it does not define a right to any particular goal. Certainly, Dworkin's arguments are not similar to Rawls. Dworkin, however, assumes that Rawls's methodology presupposes the constructive model of reasoning from particular convictions to theories of justice. People must not misconstrue Rawls's deep theory (hypothetical agreement) as advocating that the right to liberty is fundamental while the right to equal concern and respect is an abstract right. Dworkin postulates the moral theory that lies behind Rawls's theory of justice. In this way, he attempts to resurrect Rawls's approach and justifies his underpinning.

Hypothetical contract theory never provides an independent argument for fairness and all the members of the state do not bargain their self-interest for entering into it. Therefore, such a contract theory cannot be the form of an actual argument. Rawls assumes that, in order to understand the basic structure of a society, the concept of person plays a key role. As a moral person, an individual has two powers – reason and rationality. Thus, the idea of person serves, only, for developing a political notion of justice (Pogge, p.96-97). Rawls never assumes that everyone who enters into an agreement, has a conception of its good and is capable of a sense of justice. In the original position, the two principles of justice are opted for as the basis of antecedent interest (not actual interest as in contractarian theory). This antecedent interest does not annihilate the actual interest because, by removing the particular information of men and women, we adopt the two principles of justice (which are for each person's interest). Hence, in contemporary politics, the original position offers a sound argument for the two principles of justice.

Dworkin observes the theoretical basis of the original position. He finds that this is the product of a deeper political theory, which can be argued from the contract only through the two principles. Also, justice does not mean the loss of freedom for some. Utilitarianism is a teleological concept and *A Theory of justice* is a deontological concept. So, it distinguishes itself from the classical contract and utilitarian theory. Dworkin makes a tentative initial classification of the political theories, as deep theories, that might contain a contract as an intermediate device (Dworkin, p.171). Dworkin, tentatively, constructs three divisions of these deep theories: goal-based, duty-based and right-based. Utilitarianism falls under the first territory (such theory regards the interest of political organisation as being fundamental). Kant's categorical imperative belongs to second territory (the second one locates the individual at the centre and accepts code of conduct as the essence). Rawls deep theory lies in the third territory (such theory locates individual at the centre and treats code of conduct as instrumental). Dworkin concludes that the last one is most suitable since it represents good reasoning for justice.

Undoubtedly, since Rawls assumes natural rights in his hypothesis, the abstract right must be underlying in his deep theory. However, this is a more suitable political concept than that given by the contractarians. For example, Hobbes acknowledges in his deep theory that, men have a fundamental right to life whereas Rawls does not exemplify the right to any particular individual

goal. Just like contractarians, the ‘Veil of ignorance’ is also not the form of distorted ranking of interest.

Rawls’s proposed reconciliation of liberty and equality is expressed in his two principles of justice. Dworkin reveals that, certainly, Rawls proposes right to liberty in his first principle. This, however, is not a fundamental right because, after analysis, we get to know that there is distinction between general liberty and particular liberty. To illustrate, we assume that A has the right to liberty for having an ice-cream and B for participation in politics. In this sense, the second case of particular liberty has a stronger appeal for people. This is so because particular liberty entitles them to a noteworthy value and such a claim of right is an anti-utilitarian notion (successful claim of right in the strong sense). It is called basic liberty in Rawlsian concept and these basic liberties protect primary good – not as a goal but in itself. Hence, after evaluation, Dworkin discloses that Rawls offers this right to liberty, in his first principle, as a product of the contract rather than as a condition of the contract.

In his second principle, Rawls elucidates the right to equality. Here, Dworkin makes known that this right is also not a fundamental right, but more abstract than right to liberty. Rawls gets this right directly from the original position with no possibility that it will be related to the egoistic conception. Therefore, antecedent interest is not completely dissimilar from real interest. Also, in contrast to other contractarian theories, no discrimination is made by antecedent interest.

Rawls validates inequality in social status for a more fundamental sense of equality. He accepts that each person should be treated with equal respect in a state. He does not agree to people being treated in accordance with their social status. Now, Dworkin elucidates that in the second principle, Rawls defines fundamental right and it comes from right to equal concern and respect in the original position. Thus, the right to equal concern is not a product but a condition of entrance to the original position. Dworkin connects such principles of justice as an egalitarian ideal in two ways (Dworkin, p.180): he subordinates equality with liberty of political activity (when it is needed) and does not take account of relative deprivation.

Henry Shue relates Rawls’s conception of liberty to self-respect. He emphasises that Rawls admits the Aristotelian principle and, through that, we find that the most vital primary good is self-respect (Shue, p.197). Thus, self-respect can provide us a premise for the conclusion that has precedence over other goods. Shue argues that without the additional assumption of an equal distribution of self-respect, Rawls’s argument for the priority of liberty will not work. We can now acknowledge that Shue tries to define basic liberties equally by describing equal status for all.

Conclusion

Dworkin derives a fundamental right – namely the right to *equal concern and respect*. This is an effort to reunite formal equality as well as substantial equality with liberty. Through his key principle of equality, Dworkin adds a new fundamental ideology to liberalism.

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