Liberal Equality: Political not Erinaceous

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Abstract

Ronald Dwokin's *Justice for Hedgehogs* defends liberal political morality on the basis of a rich account of dignity as constitutive of living well. This article raises the Rawlsian concern that making political morality dependent on ethics threatens citizens' political autonomy. Thereafter, it addresses whether the abandonment of (erinaceous) ethical foundations signals the demise of Dworkin's liberalism and explores the possibility of laundering his conception so as to facilitate a marriage between the political philosophies of Rawls and Dworkin. The article finishes by rebutting some objections Dworkin raises against Rawls's account of public reason.

Keywords: Dworkin, Rawls, liberalism, dignity, liberal equality, public reason

My aim in this article is to examine how in *Justice for Hedgehogs* Ronald Dworkin understands the place of ethics within political morality, and to relate Dworkin's view to the distinct view developed by John Rawls in Part Three of *A Theory of Justice* and *Political Liberalism.* As is familiar, Rawls's view focusses on the *stability* of his conception of *Justice as Fairness* and other liberal conceptions of justice and attempts to show how their demands are *congruent* with individuals' pursuit of their own good. In doing so, Rawls assumes that we have an interest in living well and that, even if we didn't, the project of pursuing good lives is dear to us. If liberal justice failed to harmonise with that pursuit we might, then, have a sound reason to reject it. To avoid that possibility, Rawls attempts to show how liberal political institutions, which inevitably produce diverse conceptions of how to live well, can nevertheless still be affirmed as legitimate by an 'overlapping consensus' of citizens committed to freedom and equality (1999, part three; 1996; 2001, §§. 11, 54-60).

By contrast, in *Justice for Hedgehogs* Dworkin's project is more ambitious and audacious than Rawls's.[1] Like Rawls, Dworkin attempts to explain why we need not choose between living well and honouring our duties to other citizens. But unlike Rawls, who sought to avoid engagement with religious and ethical controversies for the sake of consensus on political principles, Dworkin argues that a

political morality is defective if it does not rest on a rich account of ethics.

For the purposes of this article, I follow Dworkin's distinction between 'ethics' and 'morality'. Thus, moral questions concern 'how we ought to treat others', ethical ones how we 'lead good lives for ourselves' (p. 191). As Dworkin acknowledges, although 'ethics' and 'morality' are sometimes understood as having broader meanings, it is the distinction between these two questions that is of central importance.

Dworkin deploys the metaphor of the tree of morality in which political morality is a branch of a general moral theory, which in turn grows from the idea of an ethical life (p. 5). As with a tree whose trunk is nourished by the photosynthesis in its leaves, the different branches of morality inform ethics, because living well depends on respecting the rights of others. However, unlike Rawls's political liberalism, in which the branch that is political morality is 'freestanding' of any particular ethical conception, a 'module' as Rawls describes it that can be slotted into many different ethical foundations, for Dworkin the ethical trunk and political branches are 'integrated' in the sense that the truth about what it is to live well in part determines our obligations to each other. Indeed, Dworkin tells us that integration is a 'philosophical necessity' (p. 264). An account

of political morality is inadequate to the extent that it is not integrated with the rest of morality and ethics.

My aim in this article is to explore the differences between these rival conceptions of the place of ethics within political morality, proceeding as follows. First, I summarise the central features of Dworkin's 'integration' conception of value. Second, I raise the Rawlsian concern that making political morality dependent on such a detailed account of ethics threatens citizens' political autonomy. Third, I examine the question of whether abandoning wholehearted integration signals the demise of Dworkin's liberalism and explore the possibility of laundering Liberal Equality to free it of its dependence on particular ethical foundations so as to facilitate a marriage between Rawls's and Dworkin's liberal egalitarian accounts of political morality. Finally, I address some of the objections Dworkin raises against Rawls's account of public reason and try to show how they might be resisted if we interpret Rawls differently.

1. Erinaceous Liberalism

Over the last few decades, Dworkin has developed and defended an attractive conception of liberal politics. In *Justice for Hedgehogs*, he places centre stage the idea of the 'unity of value'. The particular hedgehog Dworkin wants to serve is dissatisfied with the fox who

takes at face value the apparent conflict between different political ideals like liberty, equality and democracy. The hedgehog believes that these ideals do not, after all, conflict but are instead different mutually supportive aspects of the same idea of how we should live together as a political community. In support of the hedgehog, Dworkin offers an account of the various liberal political ideals and virtues in which no conflict arises amongst them.

The hedgehog denies, in addition, that there is a conflict at a different normative level, between acting justly and living a good life. The fox points to various instances in which these two ideals seem to conflict, such as when an individual must sacrifice his life in a war waged in defence of just political institutions, or give up her personal fortune for the sake of a more equal society. But Dworkin's erinaceous instincts motivate him to interpret the idea of living well in a way that is consistent with and, indeed, shapes our conceptions of morality and justice. As we shall see, it is at this juncture that the contrast between political and erinaceous liberalism is most stark.

To grasp the nature of Dworkin's account it is worth noting an array of different conceptions of how living well relates to acting justly. First, there is the *vulpine view* described above, which accepts the possibility of a conflict between the imperatives of political morality and living well. Among this family of views are those that assert that if such a conflict arises then political morality always or

normally defeats our reasons to pursue our own well being. In his Just So story (pp. 15-19), Dworkin calls this 'the morality of self-abnegation', the emblematic version of which is utilitarianism (p. 18). One could, of course, take the opposite view and argue that attending to the claims of others always or normally loses out to fashioning a good life for oneself. The extreme version of that position, which Dworkin calls 'the ethics of self-assertion', that is sometimes (controversially) associated with Nietzsche, is that the demands morality purports to place on us are in fact bogus and there is, accordingly, no real conflict after all (p. 18). And there are moderate positions that treat moral and ethical reasons as more evenly balanced such that we ought sometimes to attend to the claims of others, sometimes to our own ethical needs and goals, when the two conflict.

In addition to these conflict views, there are different views that deny the possibility of conflict: 'philosophies of self-affirmation' (pp. 15-16). Dworkin discusses two prominent examples, which, following his taxonomy, we may label 'incorporation' and 'integration' views (pp. 202-203). His example of *incorporationism* involves adherents of certain religions who believe that living well requires us to follow the moral code created or identified by their gods. The code provides us with ideals and principles about how we ought to treat each other and our task is to live well by honouring

them and pursuing our own well being within their constraints. Crucially, however, to identify the right code we need not ask whether its moral principles are responsive to our interest in living well. Reflection on what we owe to others, or what through faith or scripture our gods tell us that we owe to others, is sufficient.

By contrast, *integrationists* claim that there is a two-way relationship between living well and acting morally. In particular, they claim that the content of our duties to each other is 'fixed at least in part by the independent character of ethical responsibility' (p. 202).

Dworkin develops his rich integration model of ethics and morality (including political morality) over a number of chapters and there is space here to summarise only their headline moves so as to characterise the contrast with political liberalism. First, at the outset he distinguishes between 'having a good life' and 'living well' (pp. 195-202). The reconciliation of ethics and morality is, he observes, unlikely if we focus on having a good life, because the goodness of a life is affected by luck. If I happen to find myself in an environment in which morality requires me to sacrifice my life or leave my important projects unrealised, then it is implausible to think that I do not suffer a bad by complying with morality. Similarly, a life of poverty may be less good in a variety of ways than one afforded the diverse opportunities that stolen money can buy.

However, to reconcile ethics and morality, Dworkin asks us to focus not on the ethical question of 'what makes one's life go better or worse?', but rather the different question, 'how should I live?'. Those two questions are connected but not identical. Living well, Dworkin tells us, 'means striving to create a good life, *but only subject to certain constraints essential to human dignity*' (p. 195, emphasis added). Because living well includes honouring certain constraints, the prospects for its reconciliation with morality are promising, and Dworkin argues at length that these constraints support the adoption of particular principles of morality. Specifically, the *ethical* constraints in question are those of 'self-respect' and 'authenticity', which when elaborated properly, generate moral and political principles that regard everyone's life as having equal importance and confer the right and duty on each individual to make her life a success.

The first constraint of dignity is 'self-respect', which is the requirement that one acts from the conviction that it is important that one's life is well lived. Indeed, Dworkin argues that we cannot make sense of our failures or successes in life without believing it objectively, and not merely subjectively, important to live well (pp. 205-209). Dignity's second ethical requirement is 'authenticity', which demands individual self-expression, 'seeking a way to live that grips you as right for you and your circumstance' (p. 209). You

do not live well if the relationships and projects you pursue are chosen for you by others or if you do not bother to assess for yourself whether they are worthy of pursuit. To live an authentic life the individual must endorse the goals she pursues on the basis of serious reflection about their merits (pp. 209-214, 102-122).

These two aspects of dignity are necessary conditions of living well. Dworkin's next key move is to show how they motivate and shape moral and political principles. He invokes what he calls 'Kant's principle', that self-respect implies treating everyone else's life as equally as important as one's own, which he defends by rejecting arguments that try to establish that objective ethical importance attaches to some particular individual or group and by rebutting the claim that the principle of equal importance is merely a contingent norm of democratic society (pp. 255-260). And because it is objectively important that everyone lives *authentically*, dignity's transformation into a fundamental moral principle supports a liberal interpretation of the moral and political ideals we have reason to adopt.

Dworkin devotes individual chapters in the remainder of the book to explain the implications of his conception of dignity for various issues that have attracted the attention of philosophers: the extent of our duty to come to the aid of those in dire need, what may be done to others, what we may do when our actions affect the

opportunities or welfare of others, whether promise-keeping is obligatory, questions concerning associative and political obligations, and a range of issues concerning how we might characterise and defend particular conceptions of equality, liberty, democracy and law. With regard to political morality, the respect and authenticity requirements of dignity play out as the twin principles of equal concern and individual responsibility to make a success of one's life, and Dworkin asks us to consider his conception of justice, Liberal Equality, as the best interpretation of those principles.

To give just one example of how ethics shapes political morality, consider his account of justice, which recommends an equal distribution of *resources* rather than *welfare*. The chief reason why welfarist metrics of interpersonal comparison are inadequate, according to Dworkin, is that they employ a particular judgement about what makes people's lives go better or worse; they rank the success of different people's lives according to that welfarist standard and compensate for disadvantage on that basis (p. 355). The political use of such a metric for judging the success of people's lives is, he argues, a kind of usurpation of the project of defining how to live, a denial of individuals' special responsibility to define for themselves what it means to live well, as required by authenticity (pp. 354-356). To judge questions of justice in a manner that is respectful of authenticity and special responsibility we require a

conception of advantage that exhibits 'continuity' with individuals' distinctive beliefs about whether their lives are well lived. Equality of resources satisfies that requirement, Dworkin argues, because the compensation it recommends by way of the redistribution of wealth or other resources for disadvantages with respect to health, ability or market luck is sensitive to people's own judgements about what is valuable (pp. 354-362).

2. Rawlsian Worries

Erinaceous liberalism might be the best account that has yet been developed of how attractive political principles follow from a rich and appealing conception of ethics. But should we adopt it as our *official* political morality?

Let us call our official political morality the set of political ideals and principles that, together with their justifications, guide our politics. Those ideals and principles might be expressed in the preamble to our constitution and they justify the adoption of particular institutions for the legislative, judicial and executive branches of government. They may also serve us as citizens in shaping our orientation to our political regime, by offering us arguments for its adoption, for example, thereby enabling us to see

that our politics serve us rather than impose values on us that we find alien (Rawls 2001, pp. 3-5).

It might be thought that the political theory that draws on the right (comprehensive) account of the requirements of living well ought to be our official political morality. However, Rawls argues that this natural thought is, nevertheless, mistaken. We ought not appeal to 'the whole truth', he claims, because doing so would jeopardise citizens' *political autonomy*. In the Rawlsian conception it is important that free and equal citizens affirm the rules that constrain them and the foundational ideals that justify those rules (Rawls 1996, pp. 66-68).

Rawls famously argues for 'political' conceptions of justice and legitimacy. Such conceptions do not depend on the truth or falsity of any particular conception of ethics but, instead, are presented as independent ideals of political morality that might be adopted by citizens who affirm very different, perhaps incompatible, ethical convictions. Rawls's argument for 'political' conceptions of justice and the use of 'public reason' within them depends in part on his observation that a society that protects the range of civil and political freedoms that are familiar in liberal societies inevitably exhibits pluralism of conviction with respect to ethics and its relationship to morality. Put crudely, ethical pluralism is the predictable consequence of individuals living under social and

political institutions that satisfy their interests in developing and deploying an appropriate sense of justice and the ability to lead an ethical life that is reflectively chosen. Given such pluralism, citizens can affirm the laws that constrain them in the right way only if those laws and their rationale do not rest on ideals and arguments that are rejected by citizens with those interests. Consequently, his recommendation is that our official political morality should stand free of such disputes.

Consider, for example, Dworkin's distinction between incorporation and integration views of the relationship between ethics and morality. The evidence suggests that incorporationists who believe it appropriate to read off their political morality from scripture or alight on it through revelation, rather than by an assessment of what kind of morality would serve our ethical interests, are a stable constituency of liberal society. Were integration written up as the official philosophical doctrine of that political community, it would deprive incorporationists of the opportunity to affirm their politics as their own. In these circumstances, Rawlsians claim that our reason to respect individuals' political autonomy, understood in the sense of their affirmation of the constraints under which they live, gives us reason to refuse to search for the whole truth about ethics and its relationship to morality. Accordingly, even

if true, erinaceous liberalism should not be the official philosophical conception of a liberal political community.

The rejection of Dworkin's account of political morality as our official political doctrine does not, however, imply that it has no role to play in an ideal society. In the first place, it is open for Rawlsians to try to prise the political ideals and principles Dworkin proposes from the controversial ethical foundations he elaborates; to present them, instead, as standing free of his integration account of ethics and morality. Laundering Dworkin's liberalism in that way would make it a candidate for adoption as our official political doctrine given Rawls's constraints. I undertake that laundering strategy in the next section.

Whatever the merits of that strategy it is worth noting that Dworkin's ethical defence of liberal politics might figure within an ideal Rawlsian society in two other ways. First, it has a place in what Rawls calls the 'background culture' of society (Rawls 1996, pp. 13-14; 211 n. 42). Even if the validity of our political principles does not depend on their being integrated with self-respect and ethical authenticity, the expression and examination of Dworkin's view in non-political forums remains permissible and, arguably, desirable. A well-ordered Rawlsian political system would neither validate nor gainsay integration as the right way to relate to liberal political convictions, still less the particular kind of integration Dworkin

envisages. Nevertheless, given its richness and plausibility, individuals may have good reason to advertise its merits within the background culture. In addition, if Dworkin is right that his account is the best justification of liberal politics, then his account provides free and equal citizens with the great service of enabling them to see how their political principles are most attractive when integrated with ethics. Dworkin offers a convincing account of intellectual responsibility that involves the rejection of various leading approaches to objectivity about value and he argues for the need to examine, interpret and worry about the beliefs one holds. For example, it may well be true that the most responsible way, perhaps the best way, to adopt and hold political principles is to accept that questions about value are independent of questions about the non-moral world ('Hume's Principle', Dworkin calls it).

As a handbook for responsible individuals, then, Dworkin's account may be unrivalled. Intellectually responsible citizens will engage in liberal politics and defend their principles because they believe them to be true. They may well have the whole truth on their side. According to Rawlsians, however, that does not justify them imposing the whole truth on others who reject their account of intellectual responsibility and the integration of value: it would be unjust for an integrationist to require other citizens to reflect in the way he thinks is demanded by ethical responsibility, for example.[2]

But he is not prevented from acting on the whole truth in his own life.

A second place for Dworkin's integration account is as part of what Rawls calls 'the wide view of public political culture' (1999b, pp. 591-594). In his final statement of the idea of public reason, Rawls accepts that the political articulation of religious and general ethical arguments, like Dworkin's appeal to Kant's principle or the ethical constraint of authenticity to justify liberal politics, is permissible, and perhaps shrewd, if governed by what he (Rawls) calls 'the proviso'. Such arguments, he says, 'may be introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons solely given by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support' (Rawls 1999b, p. 591). The Rawlsian hope is that those who disagree in the integration versus incorporation debate might nevertheless share liberal political values associated with a conception of cooperation between free and equal citizens. The public political articulation of an individual's particular ethical convictions, if consistent with the proviso, is valuable because it gives others assurance that her commitment to those political values and public reason is secure and expressed in good faith. It serves that function because it enables others to appreciate that her liberal convictions are deeply grounded

in her fundamental philosophical beliefs (Rawls 1999b, pp. 592-594). In that way, erinaceous liberalism has a role to play within our political discourse, even if it is not our official political doctrine.

3. Laundering Liberal Equality

I have argued that Rawls's constraints on political reasoning do not require us to abandon Dworkin's ethical argument for liberal equality, but they do imply that we should reject it as our official doctrine. In this section, I return to the suggestion I made above, that many of Dworkin's arguments for liberal equality can be interpreted as 'political' in the Rawlsian sense and, for that reason, those aspects of his account are suitable for endorsement as elements of our official political doctrine. That laundering suggestion has two parts. First, dignity might be presented as an ideal of political morality that, in Rawls's sense, stands free of controversial ethical foundations. Second, the arguments within Dworkin's conception of politics, Liberal Equality, can be offered as political arguments in Rawls's sense. In particular, his account of equality of resources, I shall argue, is right because it does not rely on the truth of particular ethical conceptions but, instead, seeks to accommodate different views of ethics within its account of advantage.

(i) Dignity as a Freestanding Ideal of Political Morality

Dignity can be deployed as an ethical or moral idea. As an ethical constraint it demands self-respect and authenticity. As a moral ideal it asserts that everyone's life has *equal importance* but that each has a *special responsibility* for her own life. I have briefly reviewed Dworkin's integration argument for the morality of dignity in which ethical dignity figures prominently. My suggestion now is that we might adopt dignity as the foundational ideal of a *political* conception of justice and legitimacy.

Understood as the foundation of a political conception, dignity is presented as freestanding of disputes about how we might identify and pursue a good life. Presented in that way, the ideals of equal importance and special responsibility may be affirmed by incorporationists and integrationists alike. Consider equal importance, for example. Dworkin's integration view derives that ideal from the first person observation that my living well matters objectively and the recognition that there is nothing special about my life in virtue of it being mine or my membership of a particular religion or ethnicity. By contrast, incorporationists may affirm equal importance for different reasons: equality in the eyes of their god as documented in their spiritual text, for instance, or as an axiom of the moral code they follow. Indeed, it may be that certain religious

doctrines deny that everyone's life has equal importance in the eyes of God yet retain the belief that it has equal importance from the point of view of political morality. A religious group might think it is God's chosen people but nonetheless believe that the government should treat its citizens as equals regardless of religious affiliation.

To be sure, in his discussion of the foundation of human rights, Dworkin sets out reasons to be sceptical of certain religious foundations of political morality, such as divine command theories (pp. 339-344). The soundness of his case against those religious views is not my present concern. My modest aim is merely to point out that equal importance as a political ideal is acceptable to various incorporationists and can, thereby, serve as the basis for a conception of political morality that might generate a Rawlsian 'overlapping consensus'.

Similar claims can be made on behalf of special responsibility. Dworkin helpfully clarifies the meaning of responsibility by distinguishing between several kinds (pp. 102-104). It is *assignment* and *liability* responsibility that are central to liberal political morality. A person is assignment-responsible when she has a duty to attend to some matter at hand, as when an individual is responsible for saving a drowning child from a shallow pond, or when no one else has the duty to attend to some matter, as when an individual has responsibility for pursuing his own goals. An individual has liability

responsibility when she has a duty to compensate others for the damage she has caused or when she ought to bear the costs herself of a foolish decision she took. For Dworkin, assignment responsibility is a central part of his integration model, because it is a requirement of living well. Successfully responding to the challenge of living well requires me to do certain things; if others satisfy my goals on my behalf then I have not performed, and living well is constituted by a particular kind of performance. But assignment responsibility and accepting liability for one's decisions are also features of the major religions of the world, which assert that ultimately it is individuals who face the task of coming to appreciate god's importance and that nonbelievers are liable to bear at least some of the costs of not being at one with god.

Dignity as an ideal of political morality, then, figures in incorporation as well as integration moral conceptions. Since that is the case, it is available to political liberals to adopt it as a *freestanding* ideal of political morality from which we may argue for particular political principles.

(ii) Liberal Equality as a Freestanding Account of Justice

Now consider Dworkin's account of political values, which includes interpretations of the nature of equality, liberty and democracy

among other concepts. One striking feature of his account that is particularly attractive from a political liberal point of view is its sensitivity to people's distinctive ambitions and ethical beliefs. This 'ambition-sensitivity' goes beyond the commonplace thought within liberal philosophy that justice demands the protection of individuals' freedom to develop, express and pursue their convictions about how best to live. Dworkin extends the idea to the very heart of his conception of what citizens owe to one another by asking us to identify individuals' entitlements by reference to the so-called 'envy test', which evaluates whether anyone, in the light of her own ethical commitments, would prefer to have what someone else has. For example, in his imaginary island auction everyone bids for the items she believes will enable her to pursue her distinctive goals and, because everyone enjoys equal bidding power, the outcome is that no one prefers what anyone else has. Leaving aside for the moment the question of how to deal with natural or social inequalities, Dworkin explains that the envy test is the best distributive interpretation of the ideals of equal concern and special responsibility. Specifically, it does not impose any collective judgement about ethical success but devolves those judgements to citizens themselves (pp. 356-357; see also Dworkin 2000, ch. 7).

In his earlier, more elaborate account of egalitarian justice, Dworkin criticises those, like G. A. Cohen, who offer *discontinuous*

accounts of interpersonal comparison. The discontinuity approach asserts that even if an individual does not regard himself as worse off than someone else in virtue of the more expensive ambitions he has, that does not settle the question of whether he suffers a disadvantage (Dworkin 2000, pp. 294-296). In Cohen's example, Paul should be compensated for his photographic ambitions that are more costly to fulfil than Fred's preference for fishing, even when Paul believes that his life goes better than Fred's notwithstanding Fred's higher preference-satisfaction (Cohen 1989, p. 923). One counter-intuitive feature of the discontinuity approach, Dworkin observes, is that it claims that an individual with expensive tastes may be regarded as disadvantaged in a way that generates a duty on the part of the community to compensate her even in cases in which she believes her life is more successful than those of others in the absence of greater income (Dworkin 2000, pp. 287-296; 2004, pp. 339-350; Williams 2002; Clayton 2000; Hansen and Midtgaard 2011).

By contrast, Dworkin's continuity approach avoids that counter-intuitive result by allowing 'us to cite, as disadvantages and handicaps, only what we treat in the same way in our own ethical life' (2000, p. 294). In the envy test for inequality, individuals bring their own distinctive ethical convictions to bear on the question of whether they are more or less disadvantaged compared to others. From her own particular first-person perspective each asks herself

whether she would prefer to have what someone else has in the light of what matters to her. Dworkin's account of equality as resources, then, does not, as some have thought, list a set of goods that are deemed valuable regardless of what individuals value, but defines resources as those items that intrinsically or instrumentally matter to people (1990, pp. 106-110). In that way it is responsive to the different particular ethical views of individuals and avoids imposing upon them a judgement about what is ethically valuable.

The continuity approach to distribute justice is relevant to my laundering of Liberal Equality in the following way. Citizens of a free society disagree about the good life. Some regard preference-satisfaction as constitutive or indicative of how well a life is going. However, others do not regard the fact that their lives exhibit less preference-satisfaction than they might as a reason to change their ambitions or goals so as to improve their satisfaction, and they do not believe that preference-satisfaction is either constitutive or indicative of living well or leading a good life. Given this disagreement about how to judge whether different people's lives go well, Rawlsians need a way of identifying whether individuals are advantaged or disadvantaged that can serve them in deciding what citizens are due that does not depend on controversial ideals of what living well involves. The appeal of the continuity approach is that it succeeds in that respect. It refuses to judge citizens as disadvantaged

by reference to goods that do not figure in their own ethical lives. Instead, the envy test accommodates rather than disregards different individuals' distinctive beliefs about how successful their respective lives are and, thereby, offers a method of interpersonal comparison that is acceptable to everyone.[3]

For clarity, it is worth drawing a distinction between two kinds of continuity between ethics and political morality, both of which are exhibited in Dworkin's account. The continuity approach to distributive justice refers to each individual's distinctive ethical judgements to identify whether there is an inequality that is relevant to how we ought to distribute resources such as material goods. In this approach, justice does not require that I be compensated unless *I* believe that my life is less successful than another's. Let us call this *judgemental* continuity for distributive purposes. It is contrasted with the different kind of continuity between ethics and political morality that is characteristic of Dworkin's integration view of the relationship between ethics and political morality, which we shall call *normative* continuity, according to which the ideals and principles we have reason to pursue in politics should track the ethical truths that ought to guide our non-political lives.

Dworkin's conception of liberal politics exhibits continuity in both judgemental and normative senses. It does so because the truth about ethics includes the constraint of authenticity, which supports

the adoption of principles of distributive justice that identify advantage and disadvantage according to whether individuals, exercising their own ethical judgement, genuinely believe that their lives are better or worse than those of others. My suggestion, however, is that judgemental continuity is separable from normative continuity and can be defended on the basis of a Rawlsian conception that refuses to affirm or deny accounts of political morality that are continuous in the normative sense. Judgemental continuity is attractive to political liberalism because it is an account of justice that does not gainsay the ethical beliefs of any citizen. Instead, it claims that a distribution of items that satisfies the envy-test is justifiable to everyone because no one can make a claim in good faith that they have less than others in the light of what matters to her.

4. Dworkin's Doubts

I have suggested that Dworkin's moral ideal of dignity might stand free of dignity as a guide to ethics and that his continuity account of distributive justice might complement rather than threaten Rawls's justificatory restraints. In this section I consider the doubts Dworkin expresses about Rawls's argument that political philosophers ought to limit themselves to public reasons.

Dworkin claims that 'Rawls's "public reason" constraints are unwise and would bar his [i.e. Rawls's] own most influential arguments from official political discourse' (p. 269), and he directs us to his article 'Rawls and the Law' (2006, ch. 9) for his defence of those claims.[4] There he argues that Rawls's endorsement of a legal right to abort and his famous Difference Principle depends on arguments that depart from the restrictions required by public reason.

What are public reasons and is Dworkin right that liberal politics cannot be defended adequately without departing from them? He says that he finds 'the doctrine of public reason difficult to define and defend', but he distinguishes two construals. The first, which he regards as fundamental, is that 'the doctrine permits only those justifications that all reasonable members of the political community can reasonably accept'. The second, which is supposed to follow from the first according to Dworkin's interpretation, is that officials are required 'to offer justifications that are based on the political values of the community and not on comprehensive religious or moral or philosophical doctrines' (2006, p. 252)

With respect to the first construal of public reason, Dworkin argues that it either fails to exclude ethical views such as his own controversial account of dignity or that the exclusion of such views is unmotivated. It fails to exclude ethical dignity as an argument for particular laws if the truth of an ethical conception is sufficient for it

to be capable of reasonable acceptance regardless of whether others do in fact accept arguments that rest on such foundations. Alternatively, if Rawls means that the test requires others to be capable of accepting an argument 'without abandoning their convictions of a certain sort—their *X* convictions', then putting aside the special case of certain religious arguments, Dworkin claims that 'we seem to have no basis for stipulating what these *X* convictions are' (2006, pp. 252-253).

Turning to the second construal of public reason—the distinction between political values, which are admissible, and religious, moral and philosophical doctrines, which are not—Dworkin argues that Rawls's Difference Principle and his defence of the legal right to abort depend on controversial moral arguments that flout Rawls's own argumentative rules. Dworkin's argument with respect to the Difference Principle is as follows:

> The difference principle . . . is generated and defended in reflective equilibrium by a set of assumptions, including assumptions about the fundamental moral irrelevance of effort or responsibility: If the arrangement that best maximizes the position of the worst-off group turns out to reward slackers, that is no objection. Rawls defends this conclusion by supposing that effort is influenced by endowment. So it is, but it is not exhausted by endowment, and the question of how

> the interaction between the two is to figure seems a mixed question of psychology and morality of just the kind that divides different comprehensive moral views about personal responsibility. Rawls's position is certainly controversial in our community, and some people reject it in favour of a theory of distributive justice that depends more on personal responsibility (2006, p. 253).

I respond to Dworkin's doubts about public reason in three ways. First, I argue that, interpreted in the light of Rawls's overarching project, public reason is well motivated and succeeds in excluding a certain class of arguments from public discourse. Second, pace Dworkin's reading, I explain how Rawls defends the Difference Principle by appealing to arguments in public reason.[5] And, third, even if we accept Dworkin's claim that the Difference Principle cannot be defended plausibly from within public reason alone, I reassert my earlier observation that it might remain the case that other attractive conceptions of justice, such as Liberal Equality, can be justified on that basis.

First, let us consider Dworkin's claim that public reason fails to exclude many arguments or it is unclear on what basis it excludes a particular class of moral arguments. To rebut this argument Rawls's idea of public reason needs to be nested within the overarching conception of political morality that it serves. As

outlined above, political autonomy—free and equal persons affirming the political principles and legal rules that constrain them—is the most relevant foundational ideal that provides the basis for public reason and defines its contours. In the Rawlsian conception, free and equal persons have interests in developing and exercising a sense of justice and the ability to develop, reflect on, revise and pursue the ethical commitments. The reasons these interests give us to maintain particular social and political institutions count as public reasons in Rawls's view. However, the effect of those institutions, which protect various liberal freedoms, is moral and ethical pluralism. Since acceptance of the arguments for the rules that constrain free and equal citizens is an important political value, we ought to avoid siding with any particular controversial view within that plurality.

On the basis of this brief summary, it is clear that public reason need not be defined as excluding any moral position that is controversial within *our* community, here and now, for our community includes many people who reject the important interests that serve as the basis of Rawls's account. Although libertarianism of the Nozickian variety, for example, appeals to many citizens in existing democracies, the Rawlsian argument that it fails to attend fairly to the interests of citizens is not rendered inadmissible within political debate by that fact. Indeed, Rawlsian public reason excludes

arguments, like libertarian arguments, that fail to give appropriate attention to the interests of citizens. A view is compatible with public reason only if it elaborates and defends the familiar liberal and democratic rights and the priority of their maintenance over other political goals, and provides an account of social and economic justice that secures for all citizens adequate opportunity to make use of these liberties to pursue their goals (Rawls 1996, xlviii, lviii-lx). Conceptions that satisfy those conditions count as liberal in Rawls's account, and public reason is the reason that is internal to such conceptions. Public reason does not, then, reflect the agreement of citizens of our particular society. Rather it is the reason associated with a family of (controversial) liberal conceptions of political morality (see also Clayton 2006, pp. 6-24; Quong 2011, pp. 138-160).

Although the political arguments Rawls appeals to are moral arguments that specify what we owe to each other, it is not the case that any moral argument that is true satisfies the requirement of acceptability to everyone; Dworkin's second interpretation, acceptability without the need to abandon *X* convictions, is indeed what Rawls has in mind in offering 'acceptability to free and equal citizens' as his justificatory requirement. But Dworkin's claim that Rawls offers no basis for his selection of what counts as an *X* conviction can be resisted by delineating the kinds of conviction that are respectively included and excluded from public reason. Pursuing

that strategy, Rawlsians may observe that reasonable citizens are committed to the particular set of interests reviewed above, to serve those interests by reference to the findings of uncontroversial science, and to resolve competing claims in a determinate, publicly acceptable and verifiable manner that treats each citizen's claim as having equal importance. On this view, excluded arguments are those controversial moral, religious and philosophical positions that are not elaborations of this partially defined ideal and over which there is disagreement between citizens committed to that ideal.[6] Religious arguments are an example, but so too are the arguments of integrationists and incorporationists who disagree about how the political values are related to our ethical responsibilities. They are excluded because they cannot elicit a consensus among those committed to the liberal ideal of social cooperation given the inevitability of disagreement about the soundness of such arguments. By contrast, certain controversial arguments are included. For example, although his own conception of justice, Justice as Fairness, is rejected by many citizens in democratic society, Rawls claims that it remains consistent with public reason because it seeks to articulate and defend a set of political principles solely on the basis of the liberal conception of social cooperation outlined above.[7]

Turning to Dworkin's second set of doubts, if the soundness of the argument for the Difference Principle turned on the truth or falsity of views that are unrelated to the specified interests of citizens or the need for fair and public rules for the distribution of resources, then the principle would, as Dworkin insists, flout Rawls's own restrictions. However, that seems not to be the case. Dworkin is right to say that the Difference Principle rests on a controversial moral argument about how we ought to respond to income differences that are the product of market exchange. However, Rawls's argument seems to have impeccable public reason credentials. His case is, first, that inequalities that are attributable to unequal endowments are not justified; second, that because effort is influenced by endowment, principles that reward according to effort cannot be just because they result in inequalities that are attributable to unequal endowment; and, third, an important feature of Rawls's argument that Dworkin overlooks, that it is impracticable to fashion public rules that demarcate the portion of an individual's income that is produced by endowment or other kinds of happenstance that, prima facie, ought not to affect the distribution of resources from the portion that is produced by factors that do justify inequality of income.

It is not my aim here to defend Rawls's argument. Indeed, this brief review considers only Rawls's remarks against desert-based theories that reject the Difference Principle, and the Principle rests on

several further consideration that follow from Rawls's account of social cooperation (2001, §§. 27-40). My limited aim has been to show that Rawls's argument proceeds from within public reason. Dworkin is right that it is controversial and that it is rejected by many who accept Rawls's partially stated ideal. Rawls acknowledges that there are other liberal conceptions of justice that are relevantly 'political' and conform to the constraints of public reason, some of which reject the Difference Principle and his arguments for it. Because that is the case, he accepts that an economic policy that departs from the Difference Principle may be legitimate, even though it would not be fully just on his conception (1996, xlviii-l). But the fact that the Difference Principle is rejected by some who conform to the constraints of public reason does not render it incompatible with public reason. It merely shows that while conformity with public reason rules out certain arguments as inadmissible within the political domain, it does not pick out a particular account of justice as uniquely legitimate.

Finally, it is worth revisiting the argument of the previous section, which offered an interpretation of Dworkin's Liberal Equality as a conception of justice that is acceptable to everyone in the way understood by Rawlsian public reason. Even if we accept Dworkin's argument that Rawls's defence of the Difference Principle cannot be made within the constraints of public reason, it is open to

us to try to defend other liberal political arrangements that depart to some extent from those Rawls advocates. For example, I have argued that moral dignity and Liberal Equality might be offered as elements of a political conception of justice that is an attractive candidate for democratic adoption. If my arguments are sound, then we might retain Rawls's political conception and his account of public reason and marry it with Dworkin's account of liberal politics to elaborate a hybrid conception that combines the best features of these two remarkable conceptions of political morality.

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NOTES

[1] Bracketed page references within this text are to this book (Dworkin 2011) unless otherwise indicated.

[2] Even though Rawlsians and Dworkinians share a commitment to liberal politics, they may differ in the details of political morality. For example, in his discussion of abortion, Dworkin argues that states have the right to require women who are contemplating having an abortion in the first trimester to undertake a process of reflection in which they deliberate about how best to respect the inherent value of human life (Dworkin 1993, pp. 151-154). It is less obvious that such a requirement would follow from balancing the various political values at stake in a political conception.

[3] Plainly, Dworkin's resourcist account of egalitarian interpersonal comparison differs in important respects from Rawls's account, which deploys primary social goods. Notwithstanding my positive remarks about equality of resources, my aim here is to defend the modest claim that Dworkin's account can be nested within a political conception of justice. Elsewhere, I address more fully the different question of whether resources, primary goods, or some hybrid account is the right conception of interpersonal comparison (Clayton 2006, pp. 28-35; Clayton forthcoming).

[4] Dworkin offers further sceptical remarks about public reason, which I do not discuss, in *Is Democracy Possible Here?* (Dworkin 2006b, pp. 64-65). For critical discussion of those remarks, see Schwartzman 2014, pp. 1333-1336.

[5] I do not engage with Dworkin's argument that the political morality of abortion cannot be settled without engagement with ethical and religious arguments. I am more sympathetic to that part of his argument. However, it is sufficient to salvage a place for political liberalism to show how public reason can deal with several issues of public significance, such as distributive justice.

[6] To be sure, as observed above in my discussion of the 'wide view of public political culture', Rawls qualifies his view in various ways, such that they are excluded only if there are no matching arguments that can be given by reference to the political values alone.

[7] Of course, despite believing that Justice as Fairness is the best elaboration of the liberal conception, Rawls accepts that it is not the only available conception. For example, he accepts that some who are committed to the liberal conception argue that Justice as Fairness pays too much attention to the interests of those with least wealth. That argument is also one that can be made from within public reason if it is framed by reference to basic liberal commitments (1996, xlviii-l). Moreover, alternative liberal conceptions count as

legitimate, even if not fully just, if they are democratically adopted. Rawls and Dworkin are at one in distinguishing between justice and legitimacy. Legitimacy obtains when the exercise of political power is permissible and citizens have a normally decisive obligation to obey the law. Justice obtains if political association the laws of society perfectly match the demands of political morality (Dworkin 2011, pp. 321-323; Rawls 1996, pp. 427-429).