Isaac Marks Memorial Lecture

DO VALUES CONFLICT? A HEDGEHOG'S APPROACH

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Conflict is now a familiar story among political philosophers and theorists. It is the beginning of maturity, many of them say, to recognize that important political values conflict and pull us in different directions. Equality and freedom are both desirable, for example, but we can only have the one at the cost of the other. In my recent book, *Sovereign Virtue*,[1] I described one consequence of this story. It is a sovereign requirement of government that it treat all those subject to its dominion as equals, that is, with equal concern. Does it show equal concern to allow poverty? It would seems not. But we are also told that equal concern requires respect for people's freedom as well. So equal concern requires a trade off of these two virtues: government must make a hard choice, and only dogmatists would insist that equality is always more important than liberty.

This is not the only supposed conflict within our political virtues. Democracy is said often to conflict with basic individual rights. The Supreme Court may protect those basic rights, according to this story, but only at the cost of democracy, because every time the Court overturns some state statute in the name of individual rights, then the Court is usurping the function of the majority and imperiling democracy. There is yet another supposed conflict between the rights and freedoms of individuals and the concept of true community. Liberal emphasis

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1. RONALD DWORKIN, SOVEREIGN VIRTUE (Harvard University Press, 2000).

on individual rights neglects the responsibilities that people owe to community, according to this claim, and liberal permissiveness, which encourages people to develop their own personal sense of morality, endangers the spirit of community, which depends on a shared and common sense of moral imperatives. So once again a hard choice is necessary, and according to many critics of liberalism, the United States has erred, in recent decades, in the direction of liberal freedom. It is time, these critics say, to redress the balance.

There are other examples of value conflict with less political bite. It is a staple of moral theory, for example, that people often or at least sometimes confront moral dilemmas, in which they do wrong no matter what they do. God commanded Isaac to slay his own son;[2] Jean Paul Sartre's distraught patriot had to decide whether to leave his unprotected mother to join the resistance against the Nazis;[3] William Stryon's Sophie had to choose one of her children to save letting the other die.[4]

These are moral dilemmas, but we can easily construct ethical dilemmas as well. Gaugin had to decide whether his role in his family was more important than the talent that called him to Tahiti to paint. Someone you know may have had to make a similar decision between his religious or ethnic identity, which might ask him to emigrate to Israel, and a desire for a meaningful career that demands that he stay in the United States. At a more pedestrian level, people must often decide whether it is right to sacrifice something they hold important, like valued friendships, to concentrate on some professional or other goal that requires their full and unstinting concentration.

Let us pause for a moment to consider the character or structure of these familiar alleged conflicts. The supposed conflict is not just a matter of some person's not being able to have everything he or she wants, or a political community not being able to accomplish everything its members might think useful or desirable. That kind of conflict is of course inevitable. I can't travel to every foreign land I would like; I haven't the time or the money. I can't read every book I would like to have read. The United States cannot devote all its resources to pure science, however exciting the result would be. This isn't the kind of conflict that I want to discuss, because it isn't threatening. It doesn't have the political consequences I described. Let us assume that it is true that if a nation shows equal concern for the lives of all its citizens, instead of special concern for its poets, it will produce less great poetry in consequence. I don't mean that that is likely, but just that it is possible. That would as yet present no dilemma or conflict, because it would seem obvious that poetry, important as it is, is less important than political fairness.

The conflict becomes threatening when it isn't just a matter of choice, but of tragic choice—when something bad or wrong is done whatever choice is made.

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2. *Genesis* 22.

3. *See* Jean-Paul Sartre, *Existentialism Is a Humanism*, *in* EXISTENTIALISM FROM DOSTOEVSKY TO SARTRE 345–69 (Walter Kauffman ed., 1988).

4. *See* WILLIAM STYRON, SOPHIE'S CHOICE (1979).

That is evidently so in the case of the moral dilemmas: whatever choice Styron's Sophie makes cheats a child of what he or she is entitled to have: a mother's protection in time of greatest need. That is what makes the alleged political conflicts so terrible. If we protect rights, by expanding the jurisdiction of the Supreme Court, then we cheat on democracy, which isn't just a matter of not having everything we want, but of doing something in itself wrong. If we protect equality by denying liberty, then, since liberty is a fundamental right, or in any case something of fundamental importance, we have done something very wrong. This frightening suggestion—that sometimes we do wrong whatever we do—is the seat of the modern idea of inevitable conflict.

But is this really true? I shall concentrate on the political cases, and, in particular, on the supposed conflict between liberty and equality that I began by describing. Of course we can define the various political virtues in such a way that conflict is indeed inevitable. Suppose we define equality in the way that certain socialists did: equality means everyone having the same wealth no matter what choices he makes about work or leisure or consumption or investment. We can define liberty in the way that John Stuart Mill and Isaiah Berlin have: someone's liberty is his freedom to do whatever he might wish to do free from the interference of others. Then we will certainly have a conflict between liberty and equality. In order to protect the equal distribution of wealth, we will have to prohibit theft, which is a denial of liberty. If we allow people to produce and trade goods, then inequality will appear, because some will be more talented at production than others, no matter how often we gather up resources for redistribution. So if we want to guarantee equality we have to prohibit trade, which is a great interference with liberty. The first of these compromises of liberty would seem justified; we should prohibit theft. The second does not seem justified: we should not prohibit trade. But the two cases are alike in that in each we have to choose between protecting equality and protecting liberty: we cannot protect both at the same time.

So if we define liberty and equality in the way I did, then the conflict appears. But why should we define them that way? Here are two other definitions that I want to put before you. I will present them in schematic form for the moment, because that will be enough to show that they do not generate (at least obviously) a conflict between the two political values. We can define equality dynamically, as I did in *Sovereign Virtue*. Equality is preserved when no one envies the package of work and reward than anyone else has achieved. Suppose people start with equal resources of all kinds: they have the same initial wealth, health, luck, and talents. They differ only in their preferences over work and leisure and types of work and consumption. Some like to work at producing what others want, like pop music or computers; others at producing what fewer people want, like poetry or philosophy. Some like to work hard, and others like leisure more. If each gives effect to these preferences, they will soon have different wealth, but equality will have been preserved.

Of course this account is unrealistic in that people do not have equal talents and luck. So in *Sovereign Virtue* I proposed that we institute what I called hypothetical insurance markets. We ask: what would people, on average, have

bought by way of insurance against poverty, at some early age, if it were offered to them on equal terms? Then we institute a tax scheme modeled on some reasonable answer to that hypothetical question. We take in taxes the total of what we judge people would have paid for insurance premiums in such a market, and we redistribute the proceeds to those who earn less than we believe most people would have insured to guarantee. That would no doubt provide more by way of unemployment relief than any of the United States now provides. I don't mean to defend this scheme again here, but only to offer it as a sample of a competing understanding of what equality requires.

Now consider the following definition of liberty. Your liberty is your freedom to dispose as you wish of property or resources that have been awarded to you under a reasonably fair system of property and other laws, free from interference of others, so long as you violate no one's rights. There are various ways that a government might fail to respect liberty so understood. It might have a reasonably fair set of laws, but it might try to dictate to you how you should spend or dispose of your property under those laws. It might tell you that you cannot use your money to publish material critical of the government or to buy drugs, or that you must use seatbelts when you drive your own car. But it does not compromise your liberty when it tells you that you may not steal, because it is telling you that you may not dispose of property which has not been awarded to you by a just regime of laws.

There is no reason to assume that if we define equality and liberty in these new ways they will conflict. We need not prohibit trade to protect equality; on the contrary trade will be indispensable to genuine equality. We must prohibit theft to protect equality, but prohibiting theft is no compromise of liberty. So we now have two sets of conceptions of liberty and equality. Let us give these names. I shall call the first set—the traditional definitions under which conflict is apparent and inevitable—the flat conceptions of equality and liberty. I shall call the second set—the different conceptions under which equality and liberty do not conflict, at least obviously, the dynamic conceptions.

Whether there is a conflict between these two important political virtues depends, then, on how we conceive them. (That can also be shown to be true with respect to the other political conflicts I described: between individual rights and democracy, and between individual freedom and community, but I cannot take the time to develop the point separately for these different pairs of concepts.) We must now turn to the obviously important question. How shall we decide which conceptions are the right ones? Or, if you object to there being a matter of right or wrong here, which are the better ones? The question of conflict turns on that further, more intuitively philosophical, issue.

We can make our lives harder by quickly disposing of some useless suggestions. We cannot choose conceptions of liberty or equality by looking in a dictionary, or by taking a poll to see how most people would define the terms "liberty" and "equality." Nor is it a matter of what most political philosophers, or other supposed experts, would say. It is easy to see why the question of which is the proper conception of a political concept is not just a semantic question or one for the experts. Liberty, equality, democracy, community, and the other concepts

in question are *interpretive* concepts.[5] We agree that each names a virtue, and we agree on obvious examples of what would be a violation of equality or liberty or democracy or community. But part of politics consists in arguing about what, more precisely, within the limits of these paradigms, the virtues consist in.

We need philosophical analysis to tell us what liberty and equality really are, not what they are widely supposed to be. But what kind of philosophical analysis? A comparison with what philosophers call natural kinds might be helpful here. We learn what gold really is—we learn about the true nature or essence of gold—by chemical analysis: that analysis might show that much of what we now think is gold really isn't. So we should seek to learn what equality and liberty, in their essence, really are. The analogy with gold is instructive, however, because it fails in a key respect. We believe that gold is what it is quite independently of human concerns, ambitions, or needs. But that is not even remotely plausible about a political virtue like equality or liberty. We can't look into these and find a chemical composition or a specific gravity. They are what they are because we are what we are: we believe that a government that respects liberty and equality in some way improves the lives of those whom it governs.

Liberty and equality are not natural kinds, like gold and dogs, but *values*, and we cannot understand a value unless we understand why it is important that we respect or seek out that value, unless we understand what is good about it. Indeed the whole idea of conflict among our values presupposes, as I emphasized, not just that choices are needed, but that something of value is lost whenever a choice is made. So we must be guided by that assumption. Our interpretations of liberty, equality, and the rest must aim to show what is good about the virtue in question. It must aim to show why, if the virtue is compromised, something *bad* has happened, something of value has been lost, people have not been treated as they had a right to be treated.

If we use that test, then we must dismiss what I called the flat conceptions of equality and liberty very quickly. On the flat conception of equality, equality has been compromised when the grasshopper does not have as much left over as the ant—when, that is, people who might have worked choose leisure instead, and the state has not taken from those who have worked to make up the difference. The flat conception of equality assumes that this is an insult to equality even when those who have not worked had the skill and opportunity to do so. But does anyone think that something bad has happened when the state refuses to take from those who have worked to make those who have chosen not to work equally well off? That something has happened that the indolent have a right to be protected against? That something of value has been lost? If not, then on the test I just proposed the old, flat definition of equality fails immediately and miserably.

We can make the same point about the flat definition of liberty. According to that definition, it is a violation of liberty when I am prevented from stealing your property. Mill and Berlin agree that laws that prevent me from

5. *See* RONALD DWORKIN, LAW'S EMPIRE (1986) (discussing interpretive concepts).

stealing are justified, but they insist that these laws nevertheless do compromise liberty. So once again the flat conception seems to fail the methodological test, at once and miserably. Has anything of value been lost when I am prevented from knocking you down and taking your wallet? Or from kidnapping your child? Can anyone seriously think that anyone's rights or legitimate interests are offended by laws that prevent me from attacking people in that way? If not, then we need a new account of liberty.

On the contrary, at least at first glance, it seems that the dynamic conceptions of liberty and equality do comply with our methodological principle. Nothing has gone wrong when people have less resources now because they have chosen to live an expensive life. But something has indeed gone wrong when they have less now because they had brute bad luck, including bad genetic luck. So the dynamic conception of equality passes the test. It is not regrettable when people are denied resources that it would be unfair for them to have. But it is regrettable when other people dictate to them how they should use the resources that are fairly theirs. So the dynamic conception of liberty passes the test as well.

We have established something important: so far as the famous and celebrated conflict between liberty and equality depends on adopting the flat conceptions of these two virtues, it is a fake conflict. But that is not, of course, the end of the story. It is an important conclusion, because those who claim inevitable conflict among political values have just assumed something like these indefensible conceptions. Still, we must not be lazy in the other direction. We cannot announce the opposite conclusion until we have constructed conceptions that do meet our methodological test, and that seem not to produce conflict. I made a start on that, by describing what I called the dynamic conceptions of the two virtues. Now I must try to defend these, first against certain objections, and then by trying to show how they do pass the tests I described. Then—only then—would it be right to consider whether they generate conflict or not. I should emphasize, however, that even if I succeed in these limited aims you need not be convinced. For you may think that there are better conceptions than those I defend, that also pass the methodological test, and that do produce conflict. I shall return to that possibility later, but I wanted you to be aware that I am not ignoring it.

Let me briefly restate the dynamic conceptions of equality and liberty. Equality is satisfied when any differences in people's resources reflects the different costs to others of choices they have made. Liberty consists in being able to do what one wishes, short of violating the rights of others, with the resources assigned by a reasonably just distribution of resources. One objection to these definitions is inevitable: that in formulating them I have begged the question of conflict that I am supposed to be discussing. I have indeed defined these political virtues in such a way that conflict is, let us say, unlikely. But that is not, or at least not yet, a fair objection. I did not define the virtues in the way I did so as to avoid conflict. I defined them so as to capture what is good about the virtue in question, to help us see why it is a cause for regret when people are cheated of liberty or equality. So any objection must contest the substance, not the consequence, of my definitions. Otherwise the critic is begging the question in the opposite direction.

Does the dynamic conception of equality capture what's good about equality? Well, what does it leave out? The nerve of the dynamic conception is that the resources someone has should be sensitive to his choice, but insensitive to his endowment. Taxation modeled on the hypothetical insurance scheme wouldn't actually achieve that goal in practical circumstances, but it aims to come as close as is possible. Consider each of the limbs of this ambition—that distribution should be sensitive to choice and that it should be insensitive to endowment—separately. We can then evaluate objections addressed to each limb in turn.

Should distribution be sensitive to choice? Many eminent philosophers, including both the utilitarians and John Rawls, would object that choice is often illusory. We don't have as much control over our preferences as I seem to suppose. Many of our tastes are inbred, and someone whose tastes are particularly expensive to satisfy might therefore complain that he has simply had bad genetic luck. In some cases, tastes depend not on genes, but on an environment that is forced on people. Young people in inner-city ghettos sometimes develop work aversion, but that is presumably a consequence of the fact that the work available to them—if any—is unstable, ill-paid, and degrading.

But the importance of choice to equality does not depend on any idea that we choose the tastes or preferences out of which choices are made. Obviously we don't: we may try to inculcate preferences we wish we had, but we do so under the direction of more basic ambitions that we have not chosen to have. The point is rather to recapitulate in politics the role that choice plays in our own, individual critiques of our own lives and of our own responsibility. We want our politics to be continuous with our personal ethics, and we couldn't manage, in directing our own lives, without the crucial ethical distinction between the consequences for which we must take responsibility, because they reflect our choices, and those for which we are not responsible because they reflect brute luck or the decisions of others.[6]

I agree that ghetto work-aversion, to the extent that it really does exist, calls for a special discussion. We cannot simply say that people who shun work because they come from a background in which satisfactory work was denied them must take the consequences of that attitude. But we resist that harsh conclusion for only one reason: that the environment that has produced their work aversion is a deeply unjust—because inegalitarian—one. (There are upper-class twits in Britain, where I live part of the time, who ask for special consideration because they were raised to think that ordinary work is beneath them. We have less, if any, sympathy for them.) For now, we owe those who have suffered from injustice in this way special attention: more should be spent on their education, for example, for that reason. But our long-term aim should be to reach a just state in which we have no good reason not to ask people to take the consequences of the choices that, for whatever reason, they freely make.

Now consider objections directed to the second limb of our conception of equality. The critics agree that distribution should be insensitive to endowment,

6. *See* SOVEREIGN VIRTUE, chs. 6 & 7 (2000).

but complain, first, that redistributive taxation modeled on hypothetical insurance markets will not eliminate all differences in people's fates except those attributable to choice. That is true, as I conceded. No one would buy unemployment insurance to guarantee receiving the highest wage in the community, or anything close to it. The premiums for such insurance would be literally impossible to pay. So no policy of welfare for the unemployed that is modeled on insurance will eradicate the income differences between those who earn at the higher levels and those who are kept from poverty only by income transfers measured by hypothetical insurance.

That is an important objection, because it forces us to refine the second limb of our conception of equality. Shall we count difference in luck as a difference in endowment? If you and I both bet freely on the horses, but your horse wins and mine loses, then the difference in our resources is not sensibly attributable to any difference in the choices we have made. You have simply had better luck. Should we take the dynamic conception of equality to complain at that result? No, because erasing that kind of difference between us would eliminate gambles—including not only horse races but investment—from our lives, and make us all worse off. The dynamic conceptions suppose that what is unfair in our employment world is not that in the end luck plays a part, but that people do not have a reasonable and equal opportunity to protect against bad luck through insurance.

Now consider a second objection. Of course no government could tailor a tax scheme to hypothetical insurance person by person. It could not determine, for each individual citizen, what that citizen would have spent on unemployment insurance under appropriate conditions, and then tax that person only the premium he would have paid and award him compensation, if under-employed only at the level of coverage he would have purchased. The scheme I proposed uses speculative averages: government tries to decide the rate at which most people, or people on average, would have insured. That, I agree, is a genuine compromise with the dynamic conception of equality, forced on us by practical necessity. But the damage is limited: actual insurance markets will still be available even in communities that adopt hypothetical insurance as the basis for a tax scheme, and people who want more insurance than the average can purchase it in the actual markets. In any case, equal concern requires only the best we can do.

So I do not believe these to be compelling objections against the dynamic account of equality. Of course it doesn't follow that there aren't good objections I haven't considered. Or that a better conception of equality cannot be found. But we should now turn to liberty. What of value does the dynamic conception of liberty fail to capture? We can construct an answer, along the following lines. It is bad whenever the natural spring of the human spirit is thwarted. If I want to take your property, then it may be necessary to stop me, but there is indeed something to regret when I am stopped.

Someone—perhaps a follower of Nietzsche—might believe this. But do you? Remember, the issue is not whether, when theft is stopped, some people are prevented from having what they want. Of course they are, and you may well think that it is always better, *pro tanto*, when people have what they want. The

issue is whether any *wrong* has been done, whether people have been denied what they have a right to have. I cannot believe that people have a right to steal if they wish, and I doubt you do either.

Once again, that is not the end of the story. My main concern has been to warn against any lazy conclusion that political values just must conflict. We must do the work, against the background of an understanding about what it is to understand a value. So far as I have been able to carry the argument, the supposed conflict is an illusion, because, on the best understanding of the two virtues, they are complementary, drawing on one another, not in conflict. But the next stage in the argument may well reveal something I have missed.

I want to return, however, to a somewhat less academic and more political theme. I began by saying that among contemporary politicians (and I include the so-called new or center left as well as the old conservatives) the supposed conflict between liberty and equality serves a political purpose. Politicians appeal to the need for or value of liberty as an excuse for ignoring equality. I would like to end by calling attention to a particularly sad and powerful use of that strategy. Politicians say that taxes, which might be used to help the poor, take your money away, and that you know better how to spend your money than the government does. The second of those two claims misses the point. If taxes were eliminated, and you had "your" money to spend on your own, the first thing you would do, if you were sensible, is to figure out how to pool your money with others to buy what you cannot buy on your own. That is called taxes. But it is the first claim—that taxes take your money away from you—that seems so bizarre.

What might seem to be your money depends upon, among other things, the character of the tax system in force. The government now collects taxes in ways that allow you to distinguish your pre-tax from your post-tax income. But that is only a bookkeeping choice. Government could collect its tax money in a very different way: for example, through consumption taxes buried in prices as much of the tax burden is buried in Europe. The fallacy in the argument is deeper still, however, because behind the bizarre idea that what government takes in income taxes is really your money is the old, flat conception of liberty I discussed.

I shall close by repeating my claims about the sovereign virtue of equality. Government must treat all subject to its dominion with equal concern: everyone's lives matter, and equally. That is non-negotiable. Of course that principle has been denied over the course of human history more than it has been honored: people of one lineage or class or faith or nation or talent have been thought to matter more than other people. But we, in our nation and century, claim to accept the principle of equal concern. No politician who claimed special concern for one group within the electorate, or a second-class status for another group, would now survive. We must now work to make the principle of equal concern as sovereign in practice as it is sovereign in rhetoric. The comfortable among us must have equal concern for the poor and sick in mind when we cast our votes and lobby our officials. If we don't, then we are in danger of forfeiting not only our decency as a people but our legitimacy as a political society.

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