
DWORKIN

AND HIS CRITICS

with replies by Dworkin

Edited by
Justine Burley

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DWORKIN

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AND HIS CRITICS

PHILOSOPHERS AND THEIR CRITICS

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This book is dedicated to my father who was the first to instruct me that constant critical evaluation, of even the best views, is a valuable exercise.

Contents

Notes on Contributors	ix
Acknowledgments	xii
Introduction	xiii
Part I Equality, Liberty, and the Good Life	1
1 Expensive Taste Rides Again G. A. COHEN	3
2 Talent, Slavery, and Envy MIRIAM COHEN CHRISTOFIDIS	30
3 Equality of Resources Versus Undominated Diversity PHILIPPE VAN PARIJS	45
4 Liberty, Equality, Envy, and Abstraction MICHAEL OTSUKA	70
5 Cracked Foundations of Liberal Equality RICHARD J. ARNESON	79
6 A Puzzle about Ethics, Justice, and the Sacred MATTHEW CLAYTON	99
Part II Justice Applied	111
7 Dworkin on Freedom and Culture WILL KYMLICKA	113
8 Justice in Health Care: Can Dworkin Justify Universal Access? LESLEY A. JACOBS	134
9 Equality of Resources and Procreative Justice PAULA CASAL AND ANDREW WILLIAMS	150

10	Morality and the “New Genetics” JUSTINE BURLEY	170
Part III Abortion, Euthanasia, and Assisted Suicide		193
11	Autonomy, Beneficence, and the Permanently Demented SEANA VALENTINE SHIFFRIN	195
12	Ronald Dworkin’s Views on Abortion and Assisted Suicide F. M. KAMM	218
13	Reverence for Life and the Limits of State Power ERIC RAKOWSKI	241
Part IV The Reach of Law		265
14	Associative Obligations and the State LESLIE GREEN	267
15	Speaking with One Voice: On Dworkinian Integrity and Coherence JOSEPH RAZ	285
16	Integrity: Justice in Workclothes GERALD J. POSTEMA	291
17	The Rule of Law as a Theater of Debate JEREMY WALDRON	319
Part V Replies to Critics		337
18	Ronald Dworkin Replies RONALD DWORKIN	339
	Bibliography of Ronald Dworkin’s Works	396
	Index	405

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Introduction

Ronald Dworkin and His Critics is a celebration of the work of one of the leading minds of the twentieth century. Professor Dworkin's sophisticated appreciation of the relationship between moral, legal, and political philosophy, and of the mutual dependence of these three branches of inquiry and practical controversy, is unrivaled by his contemporaries. Indeed, the depth and scope of Ronald Dworkin's scholarship invites favorable comparison with the theories of past masters which display artful command of ideas from diverse intellectual quarters.

"Celebration" might seem an odd choice of term to describe a book comprising 17 critical essays. But the choice is an apt one for the simple reason that criticism is not best understood as a negative exercise. It is, in fact, quite the opposite. Disagreement is one of the most fruitful ways in which people work to make a better world. The hope we all have for moral progress, and for improvements in other important areas of our lives, depends crucially on sustained critical evaluation of *all* views. This, famously, was Socrates' observation, and later, again famously, Mill's. We gain from questioning not just opinions and attitudes we regard as being deeply misguided, but also views that strike us as mostly right, or right for the wrong reasons, and even norms we are convinced provide authoritative guidance on difficult issues. *Ronald Dworkin and His Critics* contains analysis that reflects all of these critical stances toward the subject matter.

The volume is divided into five parts. Part I focuses on discussion of Dworkin's account of political morality which *A Matter of Principle*, and the more recently published collection of essays, *Sovereign Virtue*, both explore. Part II examines a number of policy debates relating to Dworkin's conception of liberal egalitarian justice, hence to the two texts just mentioned. Part III treats the central issues of *Life's Dominion*, which also receive coverage in *Freedom's Law*. Part IV explores key aspects of Dworkin's legal theory as articulated in *Taking Rights Seriously* and in *Law's Empire*. A rough summary of the disagreements raised by Dworkin's critics, now follows.

Dworkin and His Critics takes as its starting point discussion (chapters 1–3) a pair of essays that originally formed part of a series of articles all beginning with the title question: "What is Equality?" It will be useful to set the scene by sketching briefly the content of these two seminal contributions to political philosophy. In "Equality of Welfare," Dworkin launches a multipronged attack on welfare egalitarianism, considering and rejecting in turn *success*, *conscious state*, and *objective* versions of it. Three objections are leveled at welfarism so understood. The first is that there is no one dimension of life that we all value fundamentally and equally. The second is that welfarism is self-defeating: assessment of whether inequalities in the distribution of welfare obtain necessarily involves recourse to a theory of fair shares which, being independent of equality of welfare, requires the latter's abandonment. Dworkin's third main antiwelfarist argument is that welfare egalitarianism cannot avoid catering to "expensive tastes." On the basis of these three

objections and supporting argumentation, Dworkin concludes that we have strong reasons to reject welfarist approaches to equality.

In “What is Equality? Part 2: Equality of Resources,” Dworkin argues for an alternative conception of equality to that of welfarism – equality of resources. Dworkin thinks that we should prefer his theory to any welfarist conception because it offers relatively robust distributive principles, and is faithful to the liberal notion that individuals should be allowed to decide for themselves, within certain parameters, which aspects of life hold value. In context, the theory may be regarded as the linchpin of a more ambitious project in which Dworkin aims to provide “a unified account of equality and responsibility.”

Equality of resources promotes an economic structure that is sensitive to individuals’ choices (or personality) and insensitive to unchosen differences between their mental and physical capacities, including talent levels (personal resources or circumstances). Two necessary conditions of an equal distribution of resources are freedom from envy and true opportunity costs. To illustrate how a distribution could meet the first of these conditions, Dworkin takes recourse to the market device of a hypothetical auction. The auction device is complemented by a liberty/constraint system to guarantee the second condition. An ideal equal distribution of resources is said to obtain when, following an auction in which available resources are offered up in the most abstract form possible and in other conditions conducive to authentic preference, no one would prefer any resource bundle successfully bid for by others to their own. This formulation of ideal resource equality takes no account of differences in people’s natural endowments. How might ideal equality be approximated in the light of these?

Postauction wealth holdings will become progressively unequal owing both to different choices people have made and to unchosen relative differences in their natural capacities – state of health and levels of talent. Resource egalitarianism does not permit the state to redistribute wealth to mitigate inequalities that are traceable to “personality,” that is, to lifestyle choices, preferences, tastes, and so forth, with which an agent identifies (choice). But it does mandate compensation to people whose resource shortfalls are traceable to “brute bad luck” (chance) like genetic-based disease. In a society governed by equality of resources, what an individual is compensated for, and by how much, is modeled on the results of the appropriate hypothetical insurance scheme. There are two principal schemes: one is geared to deal with health-related misfortune, the other with morally relevant differences in talent between individuals. Respectively these schemes are designed to be as sensitive as possible to individual choices about which aspects of health and occupation matter most. Through hypothetical insurance models Dworkin seeks to translate welfarist concerns into the language of money, and to introduce individual responsibility for whether and how measures are taken to alleviate inequalities in wealth that are not traceable to choice. The above discussion informs real world practice with respect to wealth distribution in a variety of ways, including the endorsement of progressive taxation and state-run health insurance.

The personality/circumstance distinction drawn by Dworkin in equality of resources circumscribes personal and collective responsibility and is, he tells us, the backbone of our wider ethics and morality. Its prominence in Dworkin’s account of political morality has been the subject of much theoretical wrangling and is the subject of chapter 1.

G. A. Cohen in “Expensive Taste Rides Again” reaffirms his allegiance to a position he calls “equality of access to advantage,” a position of which welfare is a part, and which endorses government compensation for expensive tastes. The chapter, ambitious in scope and rife with detailed argument, declares a refutation of Dworkin’s resourcist conception of equality, and mounts a defense of Cohen’s access view (throughout the chapter, but particularly in sections XI through

coda XII, as well as in the appendix). For Cohen, the importance of the expensive tastes issue is not confined to the debate over which conception of equality is most attractive, important as that may be. It is also relevant to the more general and much bigger question of whether or not the marketplace is a just forum (section VII). The first three sections of the chapter set the stage; Cohen clarifies distinctions and terms, specifically Dworkin's broad criticisms of welfarism, and the phrase "expensive taste," and offers a reformulation of his own approach. In sections IV and V where he assesses various of Dworkin's arguments against compensation for expensive tastes, Cohen aims principally to undermine Dworkin's main objection, and, strikingly, to demonstrate that Dworkin has quietly performed a "U-turn" on the justice of such compensation. The thrust of Cohen's chapter as a whole, however, is not to cast Dworkin as friendly about the issue, rather it is to present Dworkin as a misguided egalitarian whose conception of equality misses completely, and unfairly, an important element of human well-being.

Miriam Cohen Christofides, in chapter 2, also finds fault with Dworkin's theory of equality for failing to live up to its egalitarian aims, namely the elimination of inequalities in wealth stemming from differences between individuals' talent levels. Her central contention is that Dworkin assigns an unacceptably greater weight to the interests of individuals who are more talented. She supports this first by taking issue with Dworkin's claims that the talented would envy the untalented in a talent auction, and that such a scheme would lead to the slavery of the talented in particular. Cohen Christofides then objects to Dworkin's view that maintaining a lower level of insurance premiums (which has the consequence of lower levels of compensation to the untalented) is necessary both to avoid the enslavement of the talented, and to avoid failure of the envy test. Here she argues that the enslavement of the untalented under the proposed lower premium arrangement is just as likely a possibility as enslavement of the more talented under a higher premium. In addition, Dworkin's own solution to the problem presented by unequal talents results in the failure of the envy test. He cannot therefore, Cohen Christofides stresses, plausibly argue that we should prefer a strategy that restricts insurance premiums for the untalented on the grounds that if we didn't, the envy test would not be met. Cohen Christofides wraps up her assault on Dworkin's treatment of talent by pointing out that Dworkin supplies no solid argumentation for favoring his hypothetical insurance scheme over the talent auction.

Philippe Van Parijs, in chapter 3, provides a comprehensive examination of what it means to give *due weight* to the claims of people who suffer deficits in their natural endowments. His specific questions are: does justice require deviation from an equal distribution of external endowments (as that is specified by Van Parijs) to take account of differences in talent? If so, how? Unlike the two thinkers just discussed, Van Parijs's conception of political morality shares Dworkin's theoretical slant. However, he argues that his view, "undominated diversity," which he pits against Dworkin's theory of equality throughout the chapter, does a better job of respecting the central tenets of Dworkin's approach than do Dworkin's own proposals. Van Parijs's inquiry is part of a broader endeavor, that of devising a plausible conception of distributive justice that takes diversity of talent into account. It also forms part of a long-term project in which he attempts to determine and justify the conditions under which an unconditional basic income would be granted to everyone.

Chapter 4 shifts the focus of discussion to the relationship between liberty and equality. In the third essay in Dworkin's "What is Equality" series, reprinted in *Sovereign Virtue* under the same title, "The Place of Liberty," Dworkin argues that certain liberal rights are *constitutive* elements of equality rather than independent considerations that conflict with it. The crux of his view is that a system of baseline rights is *required*, if market procedures (like the

auction) are to legitimize outcomes. Michael Otsuka's chapter focuses on demonstrating that Dworkin's various attempts to reconcile liberty and equality are unsuccessful. Otsuka begins by challenging Dworkin's presupposition of the *compossibility* of the envy test and the realization of the principle of abstraction. Necessary to Dworkin's account of ideal equality is a maximally sensitive liberty/constraint system, which he derives from the "principle of abstraction." According to this principle, resources in the initial auction must be offered in as abstract a form as possible to afford the greatest flexibility possible in the matching of bids to plans and preferences. Otsuka notes that the abstraction principle condemns any laws constraining gift-giving. This is a problem, Otsuka argues, because the bestowal of gifts frustrates the envy test by allowing some recipients to become wealthier than others. Moreover, Dworkin's proposal that gifts should be regulated by a tax modeled on hypothetical insurance does not wholly avoid frustration of the envy test. Furthermore, and importantly, Dworkin's more recent response to the problem undermines his reconciliation project. Dworkin now thinks that two *competing* egalitarian demands are relevant to gift-giving: the first is provided by the envy test, the second by the principle of abstraction. Otsuka argues that this compromise between the envy test and the principle of abstraction *prevents* the reconciliation of the two values of liberty and equality. All Dworkin's "reconciliation" amounts to is "a demonstration that the conflict between liberty and equality is a competition intermixed with cooperation, which takes place wholly within the boundaries of distributive equality, rather than a conflict between equality and the external demand of liberty."

Following the publication of the "What is Equality?" series, Dworkin sought to cement his liberal egalitarianism in ethical foundations. Up until his "Foundations of Liberal Equality," which appears under the title of "Equality and the Good Life" in *Sovereign Virtue*, the focus of Dworkin's political theory had been on establishing an account of the "right" principles of justice – not the "good." The general failure on the part of liberals to furnish an account of the good life in their theories has elicited harsh criticism from postmodernists, perfectionists, conservatives, and communitarians. Dworkin answers the general criticism by introducing his *challenge model* of the good life. On this model, the critical value of a life is evaluated not in terms of its objective *impact* in the world, but in terms of the Aristotelian notion of a skillful performance. One reason to prefer this model to that of impact is that it allows that events, achievements, and experiences can have ethical value even when that value resides *within* lives.

Two parameters are central to the challenge model: justice and ethical integrity. Dworkin embraces the Platonic thesis that living well is living justly. He regards justice as specifying what an appropriate challenge involves, and also what the appropriate response to that challenge might be. The liberal state may therefore permissibly enforce justice. The second parameter of the good life, ethical integrity – the idea that the kind of life individuals lead should accord with their *own* convictions about the kind of life they ought to be leading – does not, in most cases, support state paternalism. This is because a life cannot be improved by forcing individuals to pursue a course of action or hold beliefs that they do not endorse. Thus neutrality, which Dworkin previously regarded as axiomatic to political morality, becomes in "Foundations ..." a theorem. Government is neutral in operation but not neutral in terms of avoiding appeal to abstract claims about the good.

Chapters 5 and 6 take Dworkin to task on this development in his political thought. In chapter 5, Richard Arneson complains that the counterfoil to the challenge model, the model of impact, is so effete that it has little comparative value. In addition, Arneson contends that Dworkin's challenge model confuses the ideas of "an admirable life and a choice-worthy . . . life." In the light of this confusion, even were the challenge model to support Dworkin's liberal egalitarianism, he

argues that the support would be worthless because the challenge model is unsatisfactory. Arneson, a proponent of equal opportunity for welfare, further argues that the challenge model offers no compelling reason to endorse equality of resources. It says nothing to dissuade us from the view that the theory is misguided because it prohibits conferring benefits on an individual when doing so imposes no costs on others. Arneson also argues that Dworkin is wrong in supposing that the challenge model supports the idea that distributive justice should be resource-oriented and not welfare-oriented. This is because when the challenge model is properly conceived it is utterly irrelevant to the resources/welfare issue. Lastly, Arneson presses for the rejection of Dworkin's view of liberal tolerance on the grounds that it is extremely illiberal.

Matthew Clayton pushes Dworkin on the issues of neutrality and ethical integrity from a different angle, in chapter 6. Clayton asks whether Dworkin's rejection of state paternalism can plausibly be extended to support his liberal position with respect to the "sacred." As I elaborate in more detail below when introducing Part III of this volume, Dworkin understands disputes over abortion as being fundamentally disagreements about the *detached* value of life's sanctity – where detached connotes the idea that no one's interests or rights are at stake. Dworkin defends a neutral position on virtually all matters of detached value, including abortion. Taking the case of abortion as his example, Clayton seeks to demonstrate that it is far from clear why the ideal of ethical integrity is sufficient to settle the question of abortion. He argues that Dworkin offers no reason for why respect for life's impersonal value should not also figure as a parameter of well-being. If justice may be enforced politically, even though people disagree about the best interpretation of justice for a free and equal society, why cannot the sacredness of life, which people also disagree about, likewise be enforced at the level of political morality? Clayton insists that Dworkin needs to supply an account of why the ideal of ethical integrity with respect to detached values trumps our reasons to protect those values at a deeper philosophical level, in his account of political morality.

Part II of *Ronald Dworkin and His Critics* contains discussion of a range of policy matters. The first of these is Will Kymlicka's theoretical exploration of cultural structures, and language and group rights. Kymlicka's chapter 7 references a plethora of real world examples, to provide detailed analysis of a response made by Dworkin to the general communitarian objection, to wit, that liberals neglect the social preconditions that make possible freedom of choice. Kymlicka charges that Dworkin's writings on cultural structures have implications for both liberal theory and government policy that Dworkin has ignored, and moreover that these raise serious challenges to liberal constitutionalism as that traditionally is conceived of. He identifies three questions raised by Dworkin's remarks concerning the relationship between individual choice and cultural structures:

- (1) how do we individuate cultural structures?;
- (2) is individual choice tied to membership in one's *omni* culture, or is it sufficient for people to have access to some or other culture?;
- and (3) what if a culture is structured so as to preclude individual choice, for example, if it assigns a specific role or way of life, and prohibits any questioning or revising of that role?

Kymlicka demonstrates that while Dworkin's own suggested answers are attractive they are by no means uncontroversial. In addition, Kymlicka argues that Dworkin's account leads naturally to a liberal justification of *group rights* – an implication he doubts Dworkin would be happy to accept. This is because if choice requires culture, and culture requires language, then developing a just language policy would seem to be one of the first priorities of liberal theory. Yet, Kymlicka complains, Dworkin has never engaged with the issue of language rights.

In chapter 8, Lesley Jacobs explores the issue of universal access to health care in relation to Dworkin's liberal egalitarianism. Dworkin has made two contributions to public debate over how health care should be distributed: "Justice in the Distribution of Health Care" and "Will Clinton's Plan Be Fair?," reprinted with amendments as chapter 8 of *Sovereign Virtue*. Social decisions about health care spending should, according to Dworkin, be a function of what individuals would in just circumstances spend. On Dworkin's account, assuming an initial just distribution of resources, and also that information has been made available about the effectiveness and costs of various health care options, all individuals must be responsible for deciding for themselves what the relative importance of health care is to other goods. Thus Dworkin's insurance approach is a reflection of his idea that health care distribution must be "ambition-sensitive." The emphasis on individual choice allows him to treat social choices about health care spending as an aggregate of individual choices and also makes individuals directly responsible for health.

Jacobs' core claim is that Dworkin's approach to equality, in particular the feature of ambition sensitivity, is not compatible with a policy of universal access to health care. Universal access requires in-kind transfers, argues Jacobs, whereas Dworkin's entire theory is geared toward cash compensation for resource shortfalls relating to health. Recall that a necessary condition of an initial ideal equal distribution of resources is that the resources that go up for auction should be offered in the most abstract form possible. Jacobs observes that the principle of abstraction demanding this appears to proscribe all policies, including any health care policy, that are not as sensitive as possible to the plans and preferences of individuals. Therefore, Jacobs argues, Dworkin's *prima facie* commitment to cash transfers that flows from ambition sensitivity supplies strong grounds for the view that there is general incompatibility between the requirement of ambition sensitivity in his theory and the use of in-kind transfers in the real world. Jacobs considers three possible egalitarian grounds, which might be drafted in to support in-kind transfers: efficiency, externalities, and superficial paternalism. None of these, he argues, are capable of justifying the sort of in-kind distribution involved in the provision of universal access.

Paula Casal and Andrew Williams address in chapter 9 an issue that has been underexplored both by Dworkin and the literature on procreative justice, namely the effects that procreative decisions can have on third parties. To start on their answer of how equality of resources would deal with this issue they, along with Dworkin, assume that individuals have the legal right to determine the size of their families. Then they proceed, drawing from discussions in economics, to identify that having children can generate two kinds of effects: positive and negative externalities. Following from there, they examine and reject the suggestion that for reasons of fairness the costs of reproduction should be shared by parents and nonparents who benefit from the public good of additional children. Finally, they argue that when overpopulation threatens, resource egalitarianism ideally demands that parents bear the costs of their actions. Casal and Williams conclude by favoring an asymmetric approach to cope with the third party effects of procreation. If parents produce a public good, there is no reason from justice (as fairness) to require that that activity be subsidized. However, when procreation threatens a public bad, justice (as equality of resources) requires parents to be taxed when they have children.

In "Playing God, Genes, Clones, and Luck," reprinted as chapter 13 in *Sovereign Virtue*, Dworkin advances the striking claims that recent developments in genetics threaten to undermine a large chunk of our ethics and morality, and therefore to pitch us into moral free-fall. As noted above, the chance/choice distinction sets the parameters of personal and collective responsibility in Dworkin's conception of political morality. The possibility of controlling the genetic fate of our offspring afforded by human reproductive cloning and genetic engineering would seem to

weaken the force of that distinction. This has implications for current ethical views regarding the right to reproductive freedom and the liberal precept of bodily integrity, the critical moral background in Dworkin's theory that informs these practices, and also for Dworkin's analysis of how the effects of brute bad luck on lives might be checked. The contention I develop and defend in chapter 10 is that Dworkin's moral free-fall hypothesis is motivated by recognition that much of his *own theory* is compromised by new facts from genetic science, and so, if anyone, it is him, not us, confronting a crisis in morals. I first cast doubt on Dworkin's idea that simply being aware of the power to control the sort of people who come to exist, is psychologically destabilizing. Dworkin only thinks it is, I argue, because the centerpiece of his normative account of equality and responsibility relies so heavily on the idea that people may be fairly held responsible for the lives they make against a background of social luck – in an age of biological control, what traditionally was regarded as genetic luck is now better characterized as social luck. I then examine two areas of morality: procreative freedom and distributive justice, to make clear that while the “new genetics” does pose challenges to our ethics and morality, familiar approaches in moral and political philosophy can cope with these challenges, hence moral free-fall is not imminent. Dworkin promotes his conception of ethical individualism to guide policy in the future world he considers. I argue that this conception is not so much a solution as it is part of the problem. In endorsing the idea that people may act on most of their detached ideas of what gives meaning and value to human life, I suggest Dworkin's theory is ill-equipped to cope with all those cases in which people eschew technologies that would secure for their offspring some species-typical normal functioning. Moreover, I suggest both that government should promote such a standard, and that Dworkin's theory cannot, at least not comfortably. In the final subsection of my chapter I bring to light the implications for Dworkin's egalitarian theory of genetic fate being controllable, the main of which concerns his hypothetical insurance scheme. This scheme is rendered virtually impotent in a world in which parents have the power to control procreative outcomes; in practice, Dworkin's liberal egalitarianism becomes the uncomfortable bedfellow of libertarianism.

Some of the theoretical features of Dworkin's approach to morality touched on in chapters 6 and 10 figure prominently in discussion in Part III of *Ronald Dworkin and His Critics*. Part III concentrates on *Life's Dominion*, in which Dworkin examines two debates that have galvanized the public in many countries: abortion and euthanasia. Dworkin suggests that the debates over these issues have been unhelpfully conceptualized as arguments over rights conflicts. He proposes that controversies on these issues have the character of detached value – they do not relate directly to the interests of individuals – and are therefore properly likened to *essentially religious* disputes about the intrinsic value of human life. Once the kind of disagreement driving people's views on abortion and euthanasia is recognized, it becomes apparent what sort of stance government should adopt with respect to both issues. The liberal position on the freedoms of expression and religious worship is that it is impermissible for the state to direct individuals' views about why life has value, how much value, and how best to respect that value, and also for the state to protect that value. In the cases of abortion and euthanasia the subject of controversy is the intrinsic value of human life; the state must therefore remain neutral in the way required of it with respect to freedoms of expression and religious worship.

In chapter 11, Seana Valentine Shiffrin examines Dworkin's views about respect for and control over autonomy at the end of life. She focuses on Dworkin's argument for the implementation of advance directives that specify what treatment should be given to the permanently demented. The reasons justifying respect of the fully competent adults *do not*, Valentine Shiffrin argues, justify extending that autonomous control over self-regarding life and death decisions to include control

over what should happen to themselves if they become permanently demented. She also charges that Dworkin's conception of autonomy is flawed and that it leads him to disregard the autonomy that demented individuals may be capable of. Finally, she argues that Dworkin's analysis of the duty of beneficence we have to demented people neither does nor can emerge from a neutral stance toward the sacred.

Frances Kamm, in chapter 12, considers Dworkin's views on the moral and legal problems posed by abortion and physician-assisted suicide. Kamm raises numerous objections to and questions about various distinctions and arguments that Dworkin advocates. In keeping with Kamm's own structure, my survey of her "reservations" concentrates first on Dworkin's ideas in *Life's Dominion*, and then on the subject matter of "The Philosophers' Brief on Assisted Suicide," of which Dworkin is a coauthor. As noted in our outline of chapter 6, and also immediately above, Dworkin understands the controversy over abortion as being about the intrinsic value of human life, and thus he recommends a neutral stance on the part of the state toward abortion. Kamm begins by asking whether Dworkin really has a theory of the intrinsic value of life, and concludes that he has a theory of the *extrinsic, but noninstrumental*, value of life. Second, Kamm doubts that the value of life changes in its cause the way Dworkin describes – a fetus conceived by rape, she thinks, has no less intrinsic value just because its life started in the frustration of the woman's life who carries it. Third, Kamm argues that examples are available that show, contra Dworkin, that the intrinsic value of life can be incremental. Fourth, Kamm doubts that Dworkin's use of "inviolability" is correct: his notion of the sacred does not involve inviolability as commonly understood, and it appears to mean merely that a bad thing occurs when something dies or is destroyed. She also maintains that it is misleading to call an entity "sacred" if one thinks only that something bad happens when it is destroyed. Fifth, Kamm tests the implications of Dworkin's "investment waste thesis" and finds it wanting on two main grounds. First she argues that determining how bad the death of a fetus is has more to do with the quality of its properties than investment in the fetus. Then she objects to the idea that an assessment of the relative importance of abortion to two different women should hinge on the extent to which investment in them is paid off.

Kamm's sixth query about Dworkin's approach to abortion raises a number of powerful objections to the idea that the existence of conflicts between values is sufficient to account for the permissibility of abortion. I mention only one such conflict here. Kamm notes that Dworkin considers women to possess both intrinsic nonincremental value (INOV) as well as interests and rights. Fetuses, by contrast, have only INOV. Why is it that when the preservation of a fetus interferes with the rights and interests of a woman, Dworkin favors the dominance of legal rights and interests rather than argue that fetal destruction is an essentially religious matter? Kamm's penultimate area of objection is that Dworkin is mistaken in arguing that views about the intrinsic value of life are fundamentally religious and not *philosophical*. Moral philosophy after all deals not just with interests but also with the sacred. Furthermore, Kamm has the sense that Dworkin employs the term "religious" to connote an area of discourse not subject to rational proof, thereby hiving it off from political debate. In the final section of this part of Kamm's chapter, she takes issue with Dworkin's view that abortion would be impermissible were the fetus a person. Kamm suggests that it is a mistake to argue that: "(1) Either the fetus is a person or it is not a person. (2) It would be permissible to abort it if it is a person. (3) It would be permissible to abort it if it is not a person. (4) Hence, it is permissible to abort it." It is a mistake to argue in this way Kamm says, because even were (2) true of a fetus that was always a person, it may not be true of a fetus who develops into a person.

On the basis of the aforementioned and other arguments, Kamm suggests an alternative to Dworkin's view, before she moves on to discuss euthanasia. In "The Philosophers' Brief on Assisted Suicide," Dworkin et al. argue that if it is permissible to terminate or withhold medical treatment with the intention that the patient die, it is permissible, when a patient consents, to assist in killing with the intention that the patient die. It is impossible to do justice to Kamm's counterarguments here; I shall mention only the bare bones of them. Two reasons offered by Dworkin et al. in support of their proassisted suicide position are that (1) there is no intrinsic moral difference between killing and letting die; and (2) individuals have the right to make decisions of fundamental importance to their own lives, and whether to be killed or let die could be a means of facilitating such choices. With respect to the first of these reasons Kamm concentrates on developing two objections at length, relating respectively to acts/omissions versus killing/letting die, and killing/letting die versus intending/foreseeing death. She broadly agrees with Dworkin et al. in the first area, and offers examples that serve to refine the issues at stake. Kamm's chief counterclaim to the second is that we cannot *always* move from the permissibility of letting the patient die when intending that patient's death, to the permissibility of assisted suicide that involves patients killing themselves. Kamm then moves from the case-based arguments in "The Philosophers' Brief on Assisted Suicide" to the theoretical argument Dworkin et al. advance in favor of physician-assisted suicide. This is the argument that patients have the right to self-determination in areas involving deep-seated moral conviction about their own lives. From this, Kamm argues, they deduce a right to determine when and how they will die. Does this theory endorse, Kamm asks, the permissibility of killing a patient in cases where a person gives important reasons other than terminal illness for wanting to die? If so, it is too broad. Kamm then presents three alternative views to those of the authors of "The Philosophers' Brief on Assisted Suicide" before she concludes with a four-stage argument that supports the idea, against Dworkin et al., that doctors have a *duty* to assist suicide.

Eric Rakowski, in chapter 13, carries yet further discussion of abortion and suicide. Rakowski's critique concentrates on Dworkin's claim that the debates over abortion and euthanasia debates are best conceptualized as disputes about an essentially "religious" notion, the intrinsic value of human life. Although Dworkin's approach to these issues has the attractive feature of courting practical compromise, Rakowski denies that his *reductio* strategy is persuasive. It simply does not capture many of the true reasons people disagree with these practices. When people oppose abortion and euthanasia, he claims, they commonly do so on moral philosophical and not religious grounds. For example, with respect to abortion, opposition is often based on a conception of personal identity and the importance of physical or mental continuity, and concern for the future that an entity might have. The wrongness of suicide and euthanasia is thought to rest on views of what makes a life valuable, the force of advance directives, and of whether personal identity continues when an individual's mental faculties undergo dramatic change. There are also other sources of opposition to abortion, euthanasia, and suicide that properly command the attention of law-makers, such as concerns about unfavorable consequences on health care professionals and wider society, and the exploitation of innocents.

Rakowski insists that Dworkin's distinction between intrinsic values and personal interests fails to define relevant spheres of legislation with ample breadth. In Rakowski's view, the real (and difficult) issues for law-makers are the force of a fetus's or psychologically altered person's claims (whatever they may be), whether paternalistic constraints are compelling, and the perils to third-party interests, relative to the loss of personal autonomy and experienced hardships to mothers

or the ailing elderly if their freedom to shape their future were limited in some way. Rakowski concedes that many of these issues may well be intractable. But, in arriving at his conclusion, Rakowski found no reason from Dworkin to set them aside. In the cause of social compromise, Dworkin has shirked the responsibility of engaging directly with a host of issues, due consideration of which is fundamental to the development of adequate state policies and laws governing abortion, euthanasia, and suicide.

The final part of *Ronald Dworkin and His Critics* provides coverage of Dworkin's legal philosophy – the area in which he first gained prominence. The first three essays in Part IV are edited versions of previously published pieces, selected for their penetrating insight into key features of Dworkin's legal theory, namely political obligation, coherence, and integrity. The final contribution is a new essay by Jeremy Waldron which conducts a sweep of Dworkin's legal thought as argued for in *Taking Rights Seriously* and *Law's Empire*, and posits a novel interpretation of Dworkin's rule of law thesis.

In chapter 14 Green takes up Ronald Dworkin's challenge to skeptics about political obligation to "either deny all associative obligations or show why political obligation cannot be associative." Green's subject is the second part of this challenge. He advances numerous arguments to show that Dworkin's account of both associative obligations and political obligation fails. Green also develops an account of consent theory which he argues can accommodate the social dimension of political life, although this is not intended to demonstrate that every citizen has an obligation to obey the law.

In chapter 15, Joseph Raz examines Dworkin's views on integrity and coherence. For Raz, any theory of law that diminishes the doctrine of authority and the role of politics is problematic. He objects *in principle* to any doctrine that requires the courts to adjudicate disputes on the assumption that the law speaks with one voice. Raz's chapter is devoted to exploring the role of *coherence explanations* of law and integrity in Dworkin's *Law's Empire*. After surveying various passages from the text, he attributes to Dworkin the following position: "the law consists of those principles of justice and fairness and procedural due process that provide the best (i.e., morally best) set of sound principles capable of explaining the legal decisions taken throughout the history of the polity in question." This is not a coherence explanation of either law or integrity. Raz considers three objections to his reading of Dworkin. The first relates to Dworkin's references to "constructive interpretation" that imply coherence. The second objection he considers is that since integrity is only one component of law and adjudication, the fact that integrity in adjudication is not committed to coherence does not demonstrate that it is not necessary to base either the law or adjudication on a set of principles exhibiting tight coherence. And the third objection is that it is unfair to ignore the general feel of *Law's Empire*, which indicates that coherence is to be striven for. Raz rebuts each of these objections in turn and concludes that there is nothing in *Law's Empire* to require an endorsement of any presumption in favor of coherence.

Integrity receives sustained treatment by Gerald Postema in chapter 16. Unlike Raz, Postema agrees with Dworkin that integrity is an important value of political morality. But he is also in agreement with skeptics that a compelling case for integrity has yet to be made. Postema attempts to construct such a case. He draws on Dworkin's writings on integrity, but his conception departs from Dworkin's and, where they agree, his arguments sometimes assume a different form from Dworkin's. The first point of disagreement between the two is that Postema objects to Dworkin's notion that the attitude of integrity is a "protestant attitude that makes each citizen responsible for imagining what his society's public commitments to principles are, and what these commitments require in new circumstances." Dworkin's "protestant" attitude misses out, argues Postema,

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