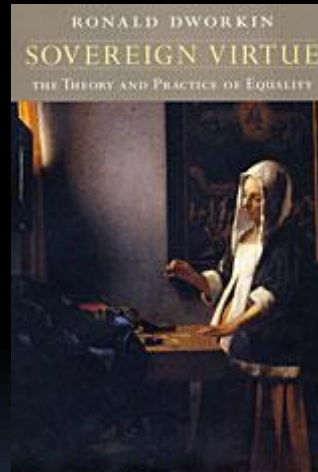



Sovereign Virtue : The Theory and Practice of Equality
(Harvard University Press, 2000)

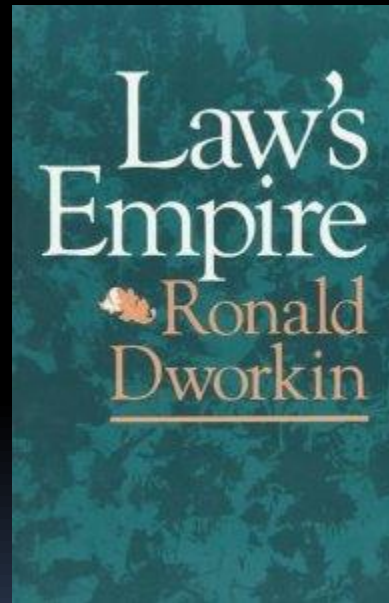




謝世民
中正大學哲學系
2013/12/12

RONALD DWORKIN'S *SOVEREIGN* *VIRTUE* : 導讀

Law's Empire (Harvard University Press,
1986)



我的問題

- *Sovereign Virtue* 提倡一套以「同等關懷與尊重」 (equal concern and respect) 為最高原則、烏托邦式的分配正義論 (相對於公平政治程序論和正當司法程序論而言)。
- *Law's Empire* 提倡一套以「原則一貫」 (integrity) 為最高原則、適用於具體政治社群的立法論與司法裁決論 (What should the law be? What is the law?)。
- *SV* 與 *LE* 之間有什麼關係呢？
 - 就我的閱讀和理解，*SV* 是 *LE* 的續篇，*LE* 和 *SV* 加在一起，才構成德沃金完整的法理論 – 雖然 *SV* 中的兩篇關鍵論文 (第一章和第二章) 比 *LE* 較早出版。
 - 如果我們接受 *LE* 中的法理論，那麼我們就必須接受 *SV* 中的政治哲學嗎？德沃金自己答案當然是肯定的。他的理由或論證是什麼？

烏托邦式的政治哲學

- [Utopian political theories] study social justice from the point of people committed in advance to no government or constitution, who are free to create the ideal state from first principles. (LE 164)
 - The ideal of a fair political structure (**fairness**)
 - The ideal of a just distribution of resources and opportunities (**justice**)
 - The ideal of equitable process of enforcing the rules and regulations that establish the ideals of fairness and justice (**procedural due process**)



Sovereign Virtue (Harvard University Press, 2000)

- *Sovereign Virtue* 提倡一套以「同等關懷與尊重」（equal concern and respect）為最高原則、烏托邦式的分配正義論。



Sovereign Virtue (Harvard University Press, 2000)

- *Sovereign Virtue* 提倡一套以「同等關懷與尊重」（equal concern and respect）為最高原則、烏托邦式的分配正義論。
 - 德沃金如何界定和辯護『同等關懷與尊重』？

Political legitimacy

- **Equal concern** is a precondition of political legitimacy - a precondition of the majority's right to **enforce** its laws against those who think them unwise or even unjust. (2000: 2)

Equal concern as sovereign virtue

- A political community that exercises dominion over its own citizens, and demands from them allegiance and obedience to its laws, **must** take up an impartial, objective attitude toward them all, and each of its citizens must vote, and its officials must enact laws and form governmental policies, with that responsibility in mind.
- Equal concern, as I said, is the special and indispensable **virtue** of sovereigns. (2000: 6)




Why?

Why?

- 國家通常會以強制的手段去保護人民的法律權利、或去要求人民恪盡他們的法律義務，而這樣的強制作為具有道德正當性，僅當人民確實有道德義務去尊重其他人的法律權利、恪盡自己的法律義務。(LE, 191)
- 『國家同等關懷和尊重其人民』與『人民有守法義務』兩者**密切相關**。



Justice for Hedgehogs (Harvard University Press, 2011) , p. 321

- Legitimacy is a different matter from justice. Governments have a sovereign responsibility to treat each person in their power with **equal concern and respect**. They achieve **justice** to the extent they succeed.
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Justice for Hedgehogs (Harvard University Press, 2011) , pp. 321-22

- Governments may be **legitimate**, however—their citizens may have, in principle, an obligation to obey their laws— even though they are not fully, or even largely, **just**.
- They can be **legitimate** if their laws and policies can nevertheless reasonably be **interpreted** as recognizing that the fate of each citizen is of equal importance and that each has a responsibility to create his own life.
 - A government can be **legitimate**, that is, if it strives for its citizens' full **dignity** even if it follows a defective conception of what that requires.

An alternative view on justice and legitimacy: Philip Pettit

- The reason why there is an issue about the justice of any social order is that that order may assume any of a variety of forms and different individuals may take different views about the merits and demerits of those variations, particularly from the point of view of how they and their kind fare under the arrangement.
- The reason why there is an issue about the legitimacy with which a social order is imposed is of a different kind. It derives from the fact that every state that imposes a social order does so coercively and, on the face of it, coercion means that the state deprives its citizens of their **liberty**. The state enforces taxation, imposes its laws on pain of penalty, and submits citizens to punishment—perhaps even capital punishment—if they fail to obey those laws.
- The problem of legitimacy is how to reconcile such political submission with personal freedom, identifying a sort of regime that can coerce citizens without depriving them of their freedom.

An alternative view on justice and legitimacy: Philip Pettit

- The justice question is whether the coercively imposed order is acceptable or justifiable or desirable. If just, people are obliged to endorse and comply with the laws.
- The legitimacy question is whether **the coercive imposition** of the order is acceptable or justifiable or desirable. If legitimate, **people are morally obliged to accept the regime.** (2012: 60)

An alternative view on justice and legitimacy: Philip Pettit

- The difference between obeying the laws and **accepting the regime** comes out in the case where citizens judge that the social order imposed is unjust in various ways but recognize that nonetheless it is legitimate.
 - The legitimacy requires citizens to oppose the laws they take to be unjust, if indeed they choose to oppose them, only within the system; it requires them to explore only the avenues that the system leaves open, where those avenues include, at the limit, civil disobedience.

原則一貫

- 對任何國家而言，一項法律命題成立，若且唯若，從一組能夠為這個國家的整個法律實務提供最佳的建構詮釋之分配正義原則、政治公平程序原則和司法正當程序原則出發，這項命題可以被推演出來。（LE 225）
- 德沃金所謂的「提供最佳的建構詮釋」指的是：這組分配正義、政治公平程序、司法正當程序原則不僅與這個國家的法律實務若符合節，而且在政治道德上，也會使得體現這組原則的法秩序，相較於體現其它一切夠格的（也能夠與法律實務若符合節的）替代原則而言，是最好的法秩序。

以原則一貫為最高原則的立法論與司法裁決論

- Integrity asks those who create law by legislation to keep that law coherent in principle. (LE, 167)
- Integrity asks those responsible for deciding what the law is to see and enforce it as coherent in that way. (LE, 167)

原則一貫與守法義務

- 人民有守法的道德義務，當且僅當這個國家的整體法律實務確實展現了原則一貫性，也就是說，確實體現了一組與其整體法律實務若合符節、而且在政治道德上最佳的分配正義原則、政治公平程序原則和司法正當程序原則，並由這組原則決定人民的法律權利和義務。（LE: 213）

原則一貫與守法義務


- 原則一貫之所以能夠說明「人民守法義務」以及「國家強制人民守法的道德正當性」，乃是因為：
 - 第一，體現「原則一貫」的國家，是一個依據同一組分配正義、政治公平程序、司法正當程序原則去統治其人民的國家，不會因人而異，因此在一個抽象意義上，就是一個賦予人民「平等地位」、把人民視為「平等的人」來對待的國家；
 - 第二，德沃金認為，一組能夠為現代國家（只要不是極度邪惡的國家）的整個法律實務提供最佳的建構詮釋之分配正義原則、政治公平程序原則和司法正當程序原則，就內容而言，多少都是對「國家應該平等關懷和尊重其人民」一種「說得過去」（雖然可能不是最正確）的詮釋。（LE: 213）


資源平等與原則一貫的關係


- [Equality of resources] is the goal of law purified, the community's star in its search for integrity seen from the standpoint of justice alone. (LE: 408)



Law beyond law

- “The law we have, the actual concrete law for us, is fixed by inclusive integrity. This is law for the judge, the law he is obliged to declare and enforce. Present law, however, contains another law, which marks out its ambition for itself; this purer law is defined by pure integrity. It consists in the principles of justice that offer the best justification of the present law seen from the perspective of no institution in particular and thus abstracting from all constraints of fairness and process that inclusive integrity requires.
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- This purified interpretation speaks, not to the distinctive body or institution, but directly to the community personified. It declares how the community's practices must be reformed to serve more coherently and comprehensively a vision of social justice it has partly adopted, but it does not declare which officer has which office in that grand project." (LE: 406-07)

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- “The courts are the capitals of law’s empire, and judges are its princes, but not its seers and prophets. It falls to philosophers, if they are willing, to work out law’s ambitions for itself, the purer form of law within and beyond the law we have.” (LE: 407)
 - ... So utopian legal politics is ... law still. (LE: 409)

資源平等


- 德沃金如何界定資源平等？
 - 平等關懷和尊重
 - 倫理個體主義的兩原則

Two Principles of Ethical Individualism

- The Principle of equal importance: it is important, from the objective point of view, that human lives be successful rather than wasted, and this is equally important, from that objective point of view, for each human life.
 - Equal objective importance of the success of every human life
- The principle of special responsibility: each person has a special and final responsibility for the success of his or her own life. (2000: 5)



Equality of Resources

- The Principle of equal importance = equal concern
 - The principle of special responsibility = equal respect
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Equality of Resources



- 政府所允許每一個人用以追求他的人生理想、實現他的人生計畫的資源應該一樣多，而至於如何使用自己的配額（share）去追求、實現、修正自己的人生理想與計畫則是個人的事，政府應該尊重每個人的自由選擇。



資源平等

- 第一，德我肯強調，他的資源平等觀並不要求政府時時刻刻重新分配、平等化我們手上可用的資源，而不管每個人在過去所做的是儲蓄性的還是消費的行為。第二，由於人生資源包括外在資源（財貨）與人身資源（健康狀態與各類稟賦才能），而其中外在資源是可轉移的，但人身資源卻是不可轉移的；因此，不可轉移的人身資源如果有差異，資源平等似乎是不可能的。

三項命題

- 命題一：政府對於無人有權主張（claim）的資源，或對我們所共享的資源，不應該允許任何成員使用比其他成員較多的額度，去追求他們的人生理想、實現他們的人生計畫

- 
- 命題二：政府應該對殘障者提供公平的補償，同時政府也不應該允許稟賦才能之差異影響我們之間資源的不平等，除非政府對稟賦才能較差的人提供公平的補償。
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- 命題三：昂貴的偏好（**taste**）不應該受到補償，除非有此偏好者不認同而又無法去除此一偏好。
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資源平等的判準

- 資源分配是平等的，僅當它滿足「零忌妒原則」——也就是說，如果分配完畢之後，有人喜歡別人的配額勝於自己的那份，那麼這項分配就是不平等的

命題一與理想的拍賣市場

- 具有下列特質：第一，所有人被允許用來喊價，
具有一樣多（如以本身無用的蚌殼作為通貨，
的資金的蚌殼數一樣）；第二，無人島上的任何
大家的一件資源都是單獨拍賣的對象，除非有人告訴
一拍賣官他想要買其中一部份，而若是如此，此
拍時這一部份就可再思，改變我們叫價，提議三分
我割這些或那些調整資源，而拍賣官則要試著對每件
拍賣對象每一件資源也都剛好有而且只有一位買主
為止。

命題二

- 人身資源的差異所引發的忌妒可能是無法消除的。公平補償，對德我肯來講，是次好的辦法中最適當的辦法

選擇運氣與純粹運氣

- 當人採取一項有風險的行動，如果這項風險是他們應該預期到而且也有機會拒絕的風險，那麼他們的得或失就是自己的選擇運氣（**option luck**）。而如果這些得或失不是來於他們應該能夠預期到的風險或是他們沒有機會拒絕的風險之結果，那麼他們的得或失就是純粹運氣（**brute luck**）。
 - 什麼是我們應該能夠預期的風險？什麼是是我們有機會拒絕的風險？



保險

- 就是我們試圖將純粹運氣轉化成選擇運氣的設計。

運氣與補償

- 政府無須補償因選擇運氣之好壞所造成的資源差異。
- 政府應該補償因純粹運氣之好壞所造成的資源差異，尤其是沒有保險可買的純粹壞運氣

殘障的假設性保險市場

- 我們不知道自己是否會受困於某一種殘障，但是我們知道受困於此種殘障的人數，因此知道我們可能受困於此種殘障的概然率。
- 我們平均會願意付多少保費、買多大額度的保險，希望在萬一受困於此種殘障時得到補償？

稟賦才能的假設性保險市場

- 我們知道我們的稟賦才能，我們也知道社會所得的結構，但不知道別人的稟賦才能，因此我們不知道自己的稟賦才能總地來說具有何種層次的所得能力。
- 我們希望具有哪一個層次的所得能力、而我們平均又會願意付多少保費，保自己的所得能力不低於我們所選擇的某一個層次？

假設性保險市場作為社會經濟資源分配之論據

- 所得
- 醫療
- 社會福利