

University of Michigan Law School

University of Michigan Law School Scholarship Repository

Reviews

Faculty Scholarship

1983

Review of Social Justice in the Liberal State

Donald H. Regan

University of Michigan Law School, donregan@umich.edu

Available at: <https://repository.law.umich.edu/reviews/84>

Follow this and additional works at: <https://repository.law.umich.edu/reviews>



Part of the [Public Law and Legal Theory Commons](#)

Recommended Citation

Regan, Donald H. Review of Social Justice in the Liberal State, by B. Ackerman. *Phil. Rev.* 92, no. 4 (1983): 604-7.

This Review is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Reviews by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

BOOK REVIEWS

The Philosophical Review, XCII, No. 4 (October 1983)

SOCIAL JUSTICE IN THE LIBERAL STATE. By BRUCE A. ACKERMAN.
New Haven, Conn., Yale University Press, 1980. Pp. xii, 392.

Bruce Ackerman's goal, in *Social Justice in the Liberal State*, is to provide a new foundation for liberal political theory. Ackerman is dissatisfied with both utilitarian and contractarian defenses of liberal political institutions. Indeed, he writes most persuasively when he is criticizing utilitarians and contractarians, though his criticisms are largely familiar.

Ackerman's positive thesis is that liberal theory should be reorganized around the idea of "neutral dialogue." Thus, political theory is about the distribution of power, private as well as public. Every exercise of power may be questioned by anyone who feels disadvantaged by it. Questions must be answered, giving rise to dialogue. An exercise of power is legitimate only if the power-holder can defend it in dialogue by adducing a "neutral" reason why he should have the power he claims.

Obviously, a great deal turns on the definition of "neutral" reasons. Ackerman defines them by exclusion. A reason is *not* neutral if it appeals to the intrinsic superiority of the person who offers the reason, or if it appeals to the superiority of that person's conception of the good over the conceptions of the good entertained by others. Note that for Ackerman a "conception of the good" need not be a "perfectionist" conception. On the contrary, all forms of utilitarianism depend on some conception of the good, in Ackerman's terminology. "Neutral dialogue" therefore does not admit utilitarian arguments.

So far, I have been reporting elements of Ackerman's theory which are explicit. So far, also, it is unclear how Ackerman would convict a follower of Robert Nozick of illiberality, as he plainly wants to. Why cannot someone defend her wealth, and thus her private power, on the ground that she

BOOK REVIEWS

was just lucky in having rich parents who made her their heir? Similarly, why cannot someone in a rich country argue that current residents of the country are entitled to preserve their wealth by excluding poor immigrants, saying, "I, or my forebears, got here first?" Are not luck and first appropriation neutral reasons? They do not seem to be excluded by the criterion for neutrality reported above. Ackerman's answer, in effect, is that they may be neutral, but they are not neutral *reasons* because they are not reasons at all. Time and again, in the sample dialogues which appear throughout the book, a speaker attempts to justify her power by appeal to something like luck or first-appropriation. The dialogue is never allowed to terminate on such an appeal. The fact that dialogues never terminate on such an appeal confirms my claim that for Ackerman luck and first-appropriation do not count as reasons. Furthermore, the party making the appeal is always asked by her interlocutor whether she means to claim that luck or first-appropriation makes her or her conception of the good intrinsically superior. The implicit premise, plainly exhibited even though it is never stated, is that nothing can be a *reason* why one of the parties to a conflict should have her way *unless* it asserts the intrinsic superiority either of that party or of her conception of the good.

Observe now the operation of what I shall call "Ackerman's Guillotine." Unless a purported reason in favor of one party asserts the superiority either of that party or of her conception of the good, it does not count as a *reason* why she should prevail. But if it *does* assert that she or her conception of the good is superior, it is a *nonneutral* reason and therefore inadmissible into liberal conversation. Taken together, these rules make it impossible for a participant in neutral dialogue to say anything to the purpose. (In a few dialogues, Ackerman does allow something of substance to be said—for example, he allows appeal to the Rawlsian notion that certain inequalities may benefit all parties affected. These dialogues either involve explicit consent to an inequality by a party who is present, in which case the underlying conflict has vanished, or else they involve judgments about the hypothetical consent of absent or future parties, creating a variety of new problems for Ackerman which he does not recognize.)

How, the reader may ask, does Ackerman manage to write a long book about a form of conversation in which it is impossible to say anything? The answer comes in two parts. The first problem Ackerman sets out to solve by the use of neutral dialogue involves colonizers of a new planet, who arrive by spaceship with no colorable historical entitlements. The problem is to distribute among these colonists the sole material resource of the planet, a finite stock of a perfectly homogeneous and infinitely divisible substance called manna. Manna can be miraculously transformed by the possessor into any other material good (at finite transformation ratios).

BOOK REVIEWS

Not surprisingly, Ackerman decides that the manna should be distributed equally among the colonists. Also not surprisingly, given Ackerman's Guillotine, the argument is in effect an appeal to symmetry and to the Principle of Sufficient Reason.

Ackerman thinks there is more of an argument than that. He thinks there is one thing everybody *can* say without violating neutrality, namely, "I'm at least as good as you are." This formula is a shorthand form which is also taken to assert, "My conception of the good is at least as good as yours." Now it might seem that if everyone is at least as good as everyone else, and if each conception of the good is as good as every other, then everyone, and every conception of the good, is equal. If everyone is equal, is there not a positive argument for equal distribution of the manna, based on equality of merit? Alas, this will not do. Ackerman cannot take it to be established that everyone, and every conception of the good, really *is* equal. That could be established only by *debating* conceptions of the good, which is forbidden. Even if everyone can say, "I'm at least as good as you are," the words cannot be treated as making a substantive assertion. They can only be taken as a formulaic reminder of the addressee's impotence, under the rules, to say anything significant in his own behalf.

Most political problems, unlike the manna problem, cannot be solved by appeals to symmetry. When Ackerman comes to discussing preventive detention, sexual privacy, or abortion, he simply imports into his treatment the right to be free of physical assault, the right to engage in self-regarding conduct, and the right to control one's body. No serious attempt is made to generate these rights through neutral dialogue. Other problems are dealt with in similarly *ad hoc* fashion.

Ackerman might try to establish, say, the right to be free from assault by the following argument: the would-be assaulter threatens to exercise power over her victim. Her threatened exercise of power cannot be neutrally defended. (This impossibility claim is plainly correct, so long as Ackerman's Guillotine is oiled and sharp.) The putative victim, however, wants merely to be let alone. He makes no claim to power which needs defending. The impossibility of his saying anything therefore does not matter, and he wins. The trouble is that Ackerman is committed to an implicit definition of power on which the victim who claims a right not to be assaulted *does* exercise power in a way the would-be assaulter may challenge. Ackerman never defines "power," crucial though the notion of power is to his theory. Still, he holds that Jones exercises power in a way Smith may challenge when (a) Jones exploits an initial endowment of material resources equal to Smith's initial endowment, by means of genetically-determined capacities which are superior to Smith's, or when (b) Jones bequeaths his justly-earned wealth to his son instead of to Smith (now assumed to be Jones's son's contemporary). Ackerman operates with

BOOK REVIEWS

no ordinary notion about who may demand explanations of what from whom.

If what I have said so far is correct, Ackerman does not provide a satisfactory reformulation of liberal theory. Even so, his book is a useful specimen of contemporary liberal thought. Consider another aspect. The core of Ackerman's position is an unyielding refusal to debate the nature of the good in *political* argument. But Ackerman thinks it highly desirable that every individual should have a conception of the good to be pursued in her own life. The question arises, can one genuinely hold a conception of the good to be pursued by oneself and at the same time believe that that conception of the good has no political relevance? How this is possible is a crucial problem for many contemporary liberal theorists who, like Ackerman, approve of "self-realization." Unfortunately, Ackerman hardly seems to notice the problem. Nor does he deal with an even more obvious objection to his position, which is that he treats as a politically-relevant good the achievement of liberal dialogue among "self-defining" individuals. Ackerman is no apostle of the minimal state. He wants political power to be used to encourage the appearance of "self-defining" individuals (through liberal education) and to facilitate communication between such individuals.

I have concentrated on the core of Ackerman's position and on the difficulties I find there. I should emphasize that Ackerman discusses a long list of specific problems—environmental protection, justice between generations, genetic engineering, the family, education, abortion, affirmative action, immigration, ideal constitutional structure, and the social responsibility of the individual. About these specific problems, he frequently has interesting things to say.

Ackerman also gets points for originality. His book is an attempt at "something completely different" in the liberal line. If his theory actually generated the answers to specific problems which he thinks it generates, it would have certain distinct advantages over existing defenses of liberalism. To my mind, however, the arguments are unconvincing. Ackerman's theory lacks the philosophical interest of the venerable utilitarian and contractarian traditions it is meant to supersede.

DONALD H. REGAN

University of Michigan