

Michigan Law Review

Volume 80 | Issue 4

1982

Social Justice in the Liberal State

Michigan Law Review

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



Part of the [Law and Philosophy Commons](#)

Recommended Citation

Michigan Law Review, *Social Justice in the Liberal State*, 80 MICH. L. REV. 721 (1982).

Available at: <https://repository.law.umich.edu/mlr/vol80/iss4/22>

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

SOCIAL JUSTICE IN THE LIBERAL STATE. BY *Bruce A. Ackerman*.
New Haven: Yale University Press. 1980. Pp. xii, 392. \$5.95.

The publication of John Rawls's *A Theory of Justice*¹ in 1971 stands as a milestone in the history of liberal political philosophy. *Social Justice in the Liberal State*, by Bruce Ackerman, is the latest attempt to rival Rawls's contribution to liberalism. Employing the Socratic conception of political dialogue, this approachable book espouses political programs typical of left-of-center "liberal"² politics as practiced in modern America.

Ackerman characterizes political theory as a dialogic process where individuals critically evaluate each other's assertions of power.³ As the book progresses, the dialogue becomes a stylistic device in addition to a defining trait of political theory as a cast of hypothetical characters challenge one another for power. Ackerman places three restrictions on the characters' quest for political principles. The first two dialogic constraints, the requirements of "rationality"⁴ and "consistency,"⁵ are uncontroversial; indeed, they furnish the basis for any meaningful dialogue in Western thought. The constraint that Ackerman labels "neutrality"⁶ is more provocative. The very foundation of liberal political theory,⁷ this principle holds that no citizen may defend his power by asserting that his conception of the good is intrinsically better than those of his fellow citizens. Ackerman devotes the bulk of his book to developing the concrete political positions that follow from the neutrality principle. He divides this effort into two parts, sketching the features of both utopian and real-world liberal positions.

1. J. RAWLS, *A THEORY OF JUSTICE* (1971).

2. The philosopher's "liberalism" may be quite unrelated to what bears that name in the political arena. In this sentence, "liberal" is meant in its second sense.

3. Power is used here in its broadest sense. It includes not only the power of political office, but also the power to own property, to operate an automobile, to eat when one is hungry; in short, the power to do anything that humans can do.

4. "*Rationality*: Whenever anybody questions the legitimacy of another's power, the power holder must respond not by suppressing the questioner but by giving a reason that explains why he is more entitled to the resource than the questioner is." P. 4.

5. "*Consistency*. The reason advanced by a power wielder on one occasion must not be inconsistent with the reasons he advances to justify his other claims to power." P. 7.

6. Neutrality. No reason is a good reason if it requires the power holder to assert:
(a) that his conception of the good is better than that asserted by any of his fellow citizens,
or
(b) that, regardless of his conception of the good, he is intrinsically superior to one or more of his fellow citizens.

P. 11. The second element — that no citizen may assert his intrinsic superiority to any other citizen — seems to be a corollary of the first — that no one may assert an intrinsically superior conception of the good.

7. See *Three Concepts of Liberalism*, *THE NEW REPUBLIC*, Apr. 14, 1979, at 45, 47 (dialogue between Bryan Magee and Ronald Dworkin).

Social Justice first examines basic political principles in a fantastic setting uncomplicated by the scarce resources and imperfections of the real world. The fantasy involves members of a spaceship crew who debate how to structure a new world. The new world has only one resource, "manna," that can be converted into any of the more tangible resources that people use. The characters accept the three dialogic constraints of liberalism and rely on a Solomonic Commander to interpret and enforce those constraints. The most basic conclusion to emerge from the spaceship dialogue asserts that manna must be distributed equally. Because no party may assert a superior conception of the good, the crew reasons that each person has an equal claim to manna.

Ackerman next considers several issues related to future generations. Regarding intergenerational trusteeship and inheritance, he argues for both intergenerational and intragenerational equality. Each member of a new generation must begin with an equal share of manna, and the share must be at least as large as the initial share given to each member of the preceding generation. *Social Justice* also addresses popularly disputed issues such as contraception, abortion, and genetic manipulation, resolving them all in fashionably liberal ways.⁸ Liberal education receives substantial treatment. Ackerman claims that education too often seeks to mold children into the mirror images of their parents. He believes that education should expose students to as many ideas as possible, so long as those ideas are not, like Nazism, antithetical to the neutrality principle. As the budding citizen develops a respect for the multiplicity of thoughts and values of others, parental and other educational restrictions gradually may be lifted so that he may become a full-fledged citizen of the liberal state.

All in all, Ackerman paints a rosy picture of the liberal utopia. This enviable world allows free intellectual exchange and also perfectly screens all the activities of some individuals from others who do not wish to be affected. I may, if I choose, smell my neighbor's barbecue (unless he chooses to screen it from me), but I need not smell his car's exhaust fumes.

The second step in the development of the liberal program is Ackerman's most difficult. *Social Justice* resorts to a "second-best" argument, and attempts to apply the principles developed in the spaceship fantasy to the real world. In the real world, the technology that enforces liberal ideals is neither perfect nor free. Ackerman admits that statesmen may legitimately disagree about how the liberal state can best promote self-fulfillment in a world of scarcity. Liberal citizens can justifiably use a variety of procedures to resolve their

8. Contraception: "a fundamental right of all citizens." P. 126. Abortion: allowed in most situations, but not, e.g., because the parents are unhappy with the fetus's sex or eye color. Pp. 127-28. Genetic manipulation: not allowed. Pp. 120-24.

good faith disagreements. Majority rule, for instance, satisfies the neutrality principle because it does not purport to recommend one political view as intrinsically superior to another. Ackerman nevertheless concedes that a good lottery meets the same requirements of a "neutral" decision-making process.

Ackerman is careful to exclude from the political arena only exploitative policy choices, those that harm a particular group of citizens. He realizes that the problem of exploitation is not magically self-solving. Controls are needed in the real world to preserve the very possibility of liberal dialogue.⁹ Here, *Social Justice* becomes vulnerable to criticism. The book fails to address how the liberal polity decides where controls may legitimately be imposed — where statements or activities are so insufficiently neutral that they must be prohibited. In the dialogues, all the characters accept the Commander's judgments regarding neutrality. In real life, however, the meaning of neutral principles is not so transparent. Because no litmus test exists to determine whether given statements or activities adhere to the neutrality principle, one expects that citizens will have good faith disagreements.¹⁰

A more general shortcoming flaws Ackerman's attempt to apply fantasy-derived principles to the real world. The hardest and most important choices that liberals must confront are the ones given the shortest treatment. How, one might ask, can resources be allocated for future generations when the number and preferences of those generations cannot be known with perfect prescience? Similarly, how should resources be allocated when distributional flaws render truly equal distribution impossible, or when all may starve because the equal distribution is too small? Unfortunately, Ackerman provides little guidance on these troubling issues.

In the book's final part, Ackerman attempts to justify liberalism's foundational principle of neutrality. He first criticizes Rawls's justice-as-fairness and utilitarian theories for simply assuming their first principles. According to Ackerman, Rawls's theory ultimately depends on unquestioned "intuitions" that, in fact, might mask cultural biases. And the utilitarian, he maintains, presupposes that his own pleasure does not generate a moral claim superior to that presented by the pleasure of others, a stance that Ackerman finds anti-individualistic. In contrast to its two competitors, Ackerman's dialogue-based theory purports to take nothing for granted. The author suggests that four independent justifications exist for the neutrality principle and, hence, for the liberal state: "realism about the cor-

9. These are classified as input controls, *e.g.*, banning authoritarians from government office; process controls, *e.g.*, a system of checks and balances; and output controls, *e.g.*, a bill of rights.

10. This seems especially true since Ackerman's citizens, unlike those behind Rawls's veil of ignorance, must make decisions with full awareness of their earthly vested interests.

rosiveness of power; recognition of doubt as a necessary step to moral knowledge; respect for the autonomy of persons; and skepticism concerning the reality of transcendent meaning" (p. 369).

Social Justice, however, says little about the reasonableness of these "four . . . main highways to the liberal state" (p. 369). These principles clearly stand in need of justification: The autonomy of persons and moral skepticism, for instance, are not universally accepted propositions in our own culture, let alone the rest of the world. Since Ackerman has distanced himself from metaphysics, intuitionism, and "pure reason," it is not clear how he can finally support the neutrality principle. Ultimately, Ackerman's state may depend on an unexamined acceptance of liberal principles, and *Social Justice* may not be exempt from the criticisms that it registers against Rawls and the utilitarians.

On one level, *Social Justice* succeeds in bringing a coherent framework to the disparate policies advocated by modern liberals. Stylistically, the dialogues, while at times sounding like stilted expressions of the philosopher's preconceived outcomes, make Ackerman's effort more accessible than much political philosophy. On a more basic level, however, Ackerman ultimately ignores the earthly reality that liberal democracy — or any political system — is a means that men use to attain deeply felt substantive beliefs rather than an end in itself. By divorcing the political system from substantive goals, Ackerman offers a possibly unique creature: an end-less means. Its uniqueness, though, does not guarantee its rightness. "An open mind is a great idea," wrote journalist Heywood Broun, "but if you make it your primary aim in life, what you'll end up with will more resemble a cave of winds."¹¹

11. Quoted in P. SEEGER, *THE INCOMPLETE FOLKSINGER* 3 (1972).

Social Justice in the Liberal State is also reviewed by Wolfe, *Liberal Foundations for Liberalism?*, 1981 PUB. INT. 125; Walzer, Book Review, *NEW REPUBLIC*, Oct. 25, 1980, at 39; Orwin, *As Good As You*, N.Y. Times, Oct. 19, 1980, § 7 (Book Review), at 14.