

The Linacre Quarterly

Volume 50 | Number 2

Article 12

5-1-1983

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Recommended Citation

Roach, Richard R. (1983) "[Book Review of] *Social Justice and the Liberal State*, by Bruce Ackerman," *The Linacre Quarterly*: Vol. 50 : No. 2 , Article 12.

Available at: <http://epublications.marquette.edu/lnq/vol50/iss2/12>

Social Justice and the Liberal State

Bruce Ackerman

Yale University Press, 1980, 416 pp., \$17.50.

Ackerman has given us another look at what is perhaps the most important moral and political struggle of our day. On the one side are those of us who believe, as did Pope John XXIII, that God's law is immanent in human nature. On the other side are Ackerman's kind of liberals who believe all political organizations ought to be neutral regarding questions of good and evil. Good Pope John wrote in his famous encyclical *Pacem in Terris* that peace depends upon the moral order revealed by God in the human nature He created:

Peace on earth, which all men of every era have most eagerly yearned for, can be firmly established only if the order laid down by God be dutifully observed.

The progress of learning and the inventions of technology clearly show that, both in living things and in the forces of nature, an astonishing order reigns, and they also bear witness to the greatness of man, who can understand that order and can create suitable instruments to harness those forces of nature and use them to his benefit.

But the progress of science and the inventions of technology show above all the infinite greatness of God, Who created the universe and man himself. He created all things out of nothing, pouring into them the abundance of His wisdom and goodness, so that the holy psalmist praises God in these words: 'O Lord our master, the majesty of thy name fills all the earth.' . . .

How strongly does the turmoil of individual men and peoples contrast with the perfect order of the universe! It is as if the relationships which bind them together could be controlled only by force.

But the Creator of the world has imprinted in man's heart an order which his conscience reveals to him and enjoins him to obey: 'This shows that the obligations of the law are written in their hearts: their conscience utters its own testimony.' . . .

But fickleness of opinion often produces this error, that many think that the relationships between man and States can be governed by the same laws as the forces and irrational elements of the universe, whereas the laws governing them are of quite a different kind and are to be sought elsewhere, namely, where the Father of all things wrote them, that is, in the nature of man.

(Excerpts from the first six paragraphs of the encyclical, N.C.W.C. translation, St. Paul Editions.)

In sharp contrast, Ackerman says:

. . . nobody has the right to vindicate political authority by asserting a privileged insight into the moral universe which is denied the rest of us. A power structure is illegitimate if it can be justified only through a conversation in which some person (or group) must assert that he is (or they are) the privileged moral authority:

Neutrality. No reason is a good reason (for exercising power) 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 (pp. 10-11).

For Ackerman, political power should be exercised under constraints generated by, and scarce resources allocated according to, the deliberations of a universal

dialogue in which no one claims to know what actually is good when another citizen participating in the dialogue claims he cannot see it, and in which no one claims superiority of any kind. All participants must be able to say to each other, "I'm at least as good as you are" (p. 66 and throughout the book). Thus Ackerman proposes another liberal convention in the face of what he thinks is legitimate agnosticism regarding the natural law.

The dilemma is real. Either morality is conventional and subjective (e.g., Ackerman's liberalism), or it is part of the real order of things which we do not make up — i.e., morality is objective, as in Pope John's understanding of the nature of man.

[There have been many attempts to circumvent this dilemma and find a middle ground. Kant, for example, set the tone for the German Enlightenment by proposing a middle ground between these two positions. Morality would be subjective in that he claimed no knowledge of reality apart from man's mind as a source for moral principles, but it would have certain "objective" characteristics in that he mistakenly believed that we could find substantive universal principles immanent in our reason apart from any metaphysical or religious knowledge of realities beyond our reason. I believe that this effort, allowing for notable exceptions such as Alan Donagan's recent work, has notoriously failed to result in anything practically different from the conventional morality of liberalism. Donagan's book, *The Theory of Morality* (University of Chicago, 1977), which stands in wonderful contrast to Ackerman's, does not have the political clout of the latter's brand of liberalism, and seems impotent in the face of it. One reason is that Donagan, the Kantian, cannot ground the traditional morality of the family in reason alone, and without that morality his opposition to abortion, for example, is without force. So once again the middle-ground collapses, practically speaking, into the conventional morality of liberalism.]

Ackerman is proposing a new convention to replace earlier ones such as the traditional social contract and Utilitarianism's felicific calculus or even more recent conventions such as Rawls's justice as fairness, because critics have demonstrated that these conventions cannot consistently generate principles for constraining political power where such constraint is absolutely needed. Ackerman believes his convention will succeed where others have failed.

It is regrettable that Ackerman exhibits no real knowledge of how natural law theorists and others who defend knowledge of an objective moral order propose constraining the power of the state, because Ackerman's only real appeal is to a sense of fair play in the face of a bug-a-boo. He believes that claims to know the truth about what is objectively good lead to paternalism and even to tyranny. Ironically, liberalism's historical failures, both in the face of the rise of private economic power under liberal capitalism and in face of the rise of modern tyrannies, particularly of the Nazi and Communist varieties, provide persuasive reasons for believing (as I do) that liberalism cannot generate effective principles, let alone self-consistent principles, for the constraint of power. Liberalism leads, as C. S. Lewis said, to *The Abolition of Man*.

The principal reason for liberalism's failures is clear in Ackerman's work. No liberal convention, not even Ackerman's, includes everybody within the convention; so, not every instance of innocent human life is protected from arbitrary killing by either the state or private individuals. (Directly killing the innocent would be wrong even if thought not to be "arbitrary.") Some human beings are left out of all conventions. To include everybody, we must appeal to truths about which liberals insist on remaining agnostic. In effect, we must appeal to knowledge of the sacred value of every innocent human life. This truth has been greatly amplified, if not simply discovered, by Hebrew-Christian faith. I might say that it has been very especially amplified in our day by the transcendent knowledge and religious faith of Catholics like Pope John XXIII and Pope John Paul II.

Ackerman's liberal convention excludes, at least, unborn babies. No unborn baby can say to a citizen, "I'm at least as good as you are," because the baby cannot yet speak. Ackerman, with that blindness the psalmist called foolishness, does not see that the exclusion is arbitrary. He thinks it is well-reasoned. But no amount of specious reasoning can discount the fact that a vast number of innocent and flourishing human lives are terminated (i.e., directly killed) by those who practice abortion. The "reason" this group is singled out for slaughter is not a reason; it is as arbitrary as using race as a "reason" for discrimination. I repeat that directly killing the innocent, which is what abortion is, would be wrong *even if* choosing to allow the direct killing at will of members of this group (which consists of unborn human babies) were not arbitrary. But in fact it is arbitrary, and the fact that its arbitrariness is merely disguised by specious reasoning means that inevitably some citizens will argue effectively that yet another group can be excluded from the convention and therefore killed at will by either the state or private individuals. Unborn babies are simply not the only people who cannot insist that "I'm at least as good as you are," and you have got to be able to maintain that in order to belong to Ackerman's convention.

For example, I do not think that many who accept Ackerman's arguments for abortion will find his arguments against infanticide compelling. Ackerman believes the "right" to an abortion is so broad that he will allow the majority to restrain abortions only when they are instances of what he would consider wanton cruelty — people conceiving babies (he calls them fetuses) *only* for the fun of having them aborted. In the face of this concession he actually thinks the following argument would check infanticide:

By the time a fetus is viable outside the womb, the problem (of killing) has changed in two respects. First, the biological parents have had time to consider whether they *want* to be parents. While the right to abortion typically protects against the failures of contraception, this rationale seems weaker when the parents allow so many months to pass. Second, once the infant is viable, some other adult may want to take on the task of child rearing. The question, then, is whether a "natural" parent has the right to kill the child rather than transfer it to a parent who wants to "adopt" it.

This is *not* a rhetorical question. We have already seen, in chapter 2, that Ascetic *does* have the right to burn his fair share of manna despite the fact that others think he is "wasting" it. Moreover, a day-old infant is no more a citizen than a nine-month fetus. What is required, then, is a liberal argument for denying citizens the right to kill their newborn children while saving their right to consume other forms of material reality in the way they think best.

I can think of at least two. The first emphasizes the rights of the adoptive parents. To make the case easy, assume that the adoptive parents are infertile and that, for second-best reasons, they are denied access to a test-tube baby. It follows that these people have been consigned to a power structure that denies them a prima facie right they may value dearly. A *very* minimal second-best response might be to guarantee them access to children who would otherwise be killed by their "natural" parents.

A second argument extends the principle against wanton cruelty developed in our discussion of abortion. In the present case, the "natural" parents have it within their power simply to pass the child on to another, yet they prefer to kill it instead. What other reason can they give for their action but their desire to impose pain upon mute creation (pp. 128-129)?

Liberalism's ruminations, when they do not abet killing, as in the case of abortion, are simply impotent before Cain's urge to kill. Although sin remains, that fear of God which is the beginning of wisdom, is not completely impotent before the urge to kill the innocent. Knowledge of the objective moral order can lead to that fear.

It seems unnecessary to add that acceptance of Ackerman's liberal convention

would lead to a worsening of the situation in medical practice today, if for no other reason than what we have seen — he rationalizes abortion on demand. Therefore, I do not recommend the book. But if you are not familiar with the contemporary liberal mind, Ackerman's book will abundantly satisfy your curiosity.

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Clinical Ethics: A Practical Approach to Ethical Decisions in Clinical Medicine

Albert R. Johnsen, Ph.D.; Mark Siegler, M.D.;
and William J. Winslade, Ph.D., J.D.

Macmillan, New York, 1982, xvii + 187 pp.

This book is designed to be a desk reference in medical ethics for practicing physicians. It is ordered to the practical resolution of concrete cases that clinicians frequently face, and it explicitly avoids becoming involved in abstruse theoretical arguments, ethical theories and speculation. A very well organized book, it enables physicians to come to ethical judgments in the same manner that they formulate clinical judgments, for the text employs the contemporary medical clinical diagnostic model used in medical practice.

There are many serious problems with this book, the least of which is the belief that one can adequately analyze ethical situations in a manner analogous to the way in which clinical problems are analyzed. The practical ethical judgments and suggestions made in this work are based on a subjective, intuitive, utilitarian and quality-of-life theory of ethics, and little mention is made of the weaknesses of a theory such as this. No justification is given for the adoption of this theory of ethics, and this could easily lead unsuspecting clinical practitioners to believe that there is general agreement about the validity of this theory and the suggestions derived from it. While this book gives very detailed accounts of specific medical cases, the moral principles invoked to resolve these cases are often ambiguous and confused. For example, it is suggested that practitioners ought to respect the desire of some patients to die with dignity and have active euthanasia imposed on them. But elsewhere, readers are warned of the legal dangers of becoming involved in assisting in the death of patients. As a result, the reader is left in a state of doubt as to whether cooperation in this practice should be offered.

The utilitarian and anti-speculative approach of this work creates serious difficulties for the clinical practitioner. This is because the work assumes that sound ethical judgments can be reached by a "rough" weighing of the values involved in specific cases. The problem with this approach is that more than a "rough" weighing of values is required for sound resolution of the truly difficult ethical cases. The difficult moral cases, those which seriously challenge the capabilities of an ethical theory, are those in which the values in conflict are very similar in nature. It is easy to decide what is to be done when one is deciding between silk purses and sows' ears. But when one must compare the equally incomparable