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LIBERAL THEORY AND THE NEED FOR POLITICS

*Steven Shiffrin**

LIBERALISM AND THE GOOD. Edited by *R. Bruce Douglass, Gerald M. Mara, and Henry S. Richardson*. New York: Routledge. 1990. Pp. viii, 289. Cloth, \$49.95; paper, \$15.95.

A common misperception about the conflict between liberalism and conservatism is that liberals characteristically advocate state neutrality about the good life while conservatives believe the state should promote character and virtue. For example, in an influential essay, Ronald Dworkin claimed that the core belief of liberalism is that the state should maintain "official neutrality amongst theories of what is valuable in life."¹ He not only made the normative claim that this core belief is part of the best political theory, but also asserted that it described the beliefs of then contemporary American liberal politicians² from Hubert Humphrey³ to George McGovern.⁴

But it is simply false as a matter of intellectual history and as a description of contemporary liberal politics to suppose that liberalism generally exhibits a commitment to official neutrality about the character of the good life. To be sure, conservative and liberal political theories invariably conclude that the state should take a posture of neutrality about many issues. But liberal democrats have routinely

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1. Dworkin, *Liberalism*, in PUBLIC AND PRIVATE MORALITY 113, 142 (S. Hampshire ed. 1978), reprinted in R. DWORKIN, A MATTER OF PRINCIPLE 181, 203 (1985); accord B. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 11, 57-58, 166 n.10 (1980); J. RAWLS, A THEORY OF JUSTICE § 67, at 442 & § 50, at 325-32 (1971) (after principles of justice are in place, government must "avoid any assessment of the relative value of one another's way of life"); *id.* §§ 60-68, at 395-452 (in original position, decisionmakers have no particular conception of the good, but think a rational plan of life is important).

Dworkin's position on the issue has shifted over the years. See Shiffrin, *Rights v. Goals*, N.Y. Times, June 9, 1985, § 7 (Book Review), at 24, col. 4 (reviewing R. DWORKIN, *supra*). John Rawls' thinking in this area has also evolved. Compare J. RAWLS, *supra*, with Rawls, *The Priority of Right and Ideas of the Good*, 17 PHIL. & PUB. AFFAIRS 251 (1988).

2. Dworkin, *supra* note 1, at 121, 128.

3. *Id.* at 118.

4. *Id.* at 115.

departed from neutrality. John Stuart Mill⁵ and John Dewey⁶ specifically argued, for example, that it was an important part of government's role to support the development of a particular kind of person. Moreover, many liberals have supported museums and libraries, for example, precisely on the ground that such subsidies would support the good life. Indeed, a key difference between liberals and conservatives concerns the question of *what type* of citizen the state should encourage rather than *whether* the state should encourage a particular type of citizen or not.⁷

Ten of the eleven essays collected in *Liberalism and the Good* and edited by R. Bruce Douglass,⁸ Gerald M. Mara,⁹ and Henry Richardson¹⁰ proceed from the assumption that the state need not be neutral about the good life, and they pose a variety of alternatives to the question: what follows from nonneutrality? In addition to the editors,¹¹ the contributors of those essays include a diverse group of thoughtful commentators: Brian Barry,¹² William Connolly,¹³ Amy Gutmann,¹⁴ John Langan,¹⁵ Martha C. Nussbaum,¹⁶ Stephen G. Salkever,¹⁷ Kenneth Schmitz,¹⁸ William M. Sullivan,¹⁹ and Dennis Thompson.²⁰

Bruce Ackerman is the lone representative of the view that the state should be neutral about the good life, and he devotes little space in his otherwise stimulating essay²¹ to defending that premise.²² But

5. See J. MILL, *PRINCIPLES OF POLITICAL ECONOMY* bk. V, ch. XI, § 1, at 941-42; § 8, at 953-56; § 15, at 975-77 (W. Ashley ed. 1809) (7th ed. 1871).

6. J. DEWEY, *LIBERALISM AND SOCIAL ACTION* 30-31 (1935).

7. See generally Shiffrin, *Liberalism, Radicalism, and Legal Scholarship*, 30 *UCLA L. REV.* 1103 (1983); West, *Liberalism Rediscovered: A Pragmatic Definition of the Liberal Vision*, 46 *U. PITT. L. REV.* 673 (1985).

8. Douglass is Associate Professor in the Department of Government at Georgetown University.

9. Mara is Associate Dean for Research in the Graduate School and Professorial Lecturer in the Department of Government at Georgetown University.

10. Richardson is Assistant Professor in the Department of Philosophy at Georgetown University.

11. Richardson, *The Problem of Liberalism and the Good*, p. 1; Douglass & Mara, *The Search for a Defensible Good: The Emerging Dilemma of Liberalism*, p. 253. The latter essay provides an overall analysis of the contributions to the book with much penetrating criticism.

12. Barry, *How Not to Defend Liberal Institutions*, p. 44.

13. Connolly, *Identity and Difference in Liberalism*, p. 59.

14. Gutmann & Thompson, *Moral Conflict and Political Consensus*, p. 125.

15. Langan, *Catholicism and Liberalism — 200 Years of Contest and Consensus*, p. 105.

16. Nussbaum, *Aristotelian Social Democracy*, p. 203.

17. Salkever, "Lopp'd and Bound": *How Liberal Theory Obscures the Goods of Liberal Practices*, p. 167.

18. Schmitz, *Is Liberalism Good Enough?*, p. 86.

19. Sullivan, *Bringing the Good Back In*, p. 148.

20. See *supra* note 14.

21. Ackerman, *Neutralities*, p. 29.

22. He has sought to defend the premise elsewhere. See B. ACKERMAN, *supra* note 1, at 355-78; Ackerman, *Why Dialogue*, 86 *J. PHIL.* 5 (1989).

at one point, he lashes out at a nonneutral form of liberalism, suggesting that a departure from neutrality would involve the state in making "all sorts of intolerant public pronouncements about the nature of 'human flourishing'" (p. 39). This brief argument invokes a standard range of liberal fears — from the ugliness of prejudice to the brutality of a state that limits freedom. But fears of this sort do not haunt the rest of the essays in this book. The contributors — all to the left of the American political spectrum's center²³ — believe a progressive form of politics may be maintained without resort to state neutrality.

Of course, everyone believes that the state should be neutral about some things. In my view, however, the quest for official neutrality about the good life is one of political theory's best examples of a dead end.²⁴ Worse, it has diverted scholars from asking questions that are approached but not addressed in this book. I propose, however, to sneak up on those questions by considering some of the themes that run through the essays: first, the objections raised by the contributors to liberal neutrality, and second, the postneutral alternatives posed by the commentators. In the end, I will fault most of the contributors for their conception of the relation of theory to practice. The essays are very much worth reading, but the book is representative of a dominant perversion of political theory, one that gives us "political theory" without politics.²⁵

I. AGAINST LIBERAL NEUTRALITY

To claim that government should be neutral about the good is not to claim that government should be neutral about everything. The case for liberal neutrality draws on a distinction between the right and the good: the state, say proponents of liberal neutrality, should be neutral with respect to competing conceptions of the good, though not with respect to the right. Thus liberal neutrality supposes that individuals are free to pursue their conception of the good without governmental interference, but liberal neutrality also maintains that no person should be free to pursue a lifestyle that infringes on the *rights* of others.

Certainly some such distinction is necessary to make the argument for liberal neutrality even plausible. Government cannot, for example, be asked to tolerate the lifestyle of the murderer. Many of the objections to liberal neutrality center on the difficulty of determining what "rights" are (and adjudicating between rights when they come into

23. I draw this conclusion from the evidence of the essays and in most cases nothing else. From that evidence, many of them are not far from the center, and most of the authors are liberals, not radicals.

24. See Shiffrin, *supra* note 7, at 1134-74.

25. See generally B. BARBER, *THE CONQUEST OF POLITICS* 3-21 (1988).

conflict) without resorting to some particular conception of the good. Similarly, the possibility of defending systems of property or philosophies of education while adhering to the principle of neutrality has been called into serious question.²⁶ In short, these objections support the conclusion that the neutrality principle, if conscientiously adhered to, would leave government unable to address appropriately the most fundamental institutional issues.

The essays in *Liberalism and the Good* do not rehash these now commonplace criticisms. Indeed some of the essays lead into fascinating territory. Henry Richardson, for example, objects that a polity adhering to liberal neutrality would experience a "drastic narrowing of the public debate" because liberal neutrality would unfairly require citizens to "check their deepest convictions at the door" (p. 18). One could reply to Richardson, however, that American liberals of all stripes to a greater or lesser extent ask citizens to "check their deepest convictions at the door." Citizens are discouraged by the Constitution from suggesting that the state should promote good Catholics, Presbyterians, or Jews.²⁷ Most liberals are deeply troubled by a political argument that the Pope or the Bible "says so." Liberals characteristically support a high wall between church and state. But what I find particularly interesting about Richardson's objection is that it highlights the tightrope nonneutral liberals routinely walk. That is, they encourage political arguments about the good life at the same time they seek to delegitimize religious arguments in political life.

Reflection on another essayist's objections against liberal neutrality further exposes the thin character of the distinction between legitimate talk of the good life and illegitimate political uses of religious arguments. In order to run a government, it is necessary to determine what minerals, plants, and animals can be put to human use, but to answer these questions, as Martha Nussbaum explains, forces us beyond neutrality about the good:

[D]ecisions about how and whether plants, minerals, and animals are to be taken for use require a conception of good human functioning in rela-

26. See V. HAKSAR, *EQUALITY, LIBERTY, AND PERFECTIONISM* (1979); Shiffrin, *supra* note 7, at 1134-74; see also J. RAZ, *THE MORALITY OF FREEDOM* chs. 5, 6 (1986); Galston, *Defending Liberalism*, 76 *AM. POL. SCI. L. REV.* 621 (1982). In his contribution to the collection, Ackerman emphasizes that the neutrality principle is a conversational constraint rather than a method of evaluating consequences (pp. 38-40), but he does not try to demonstrate in this particular essay that power struggles can regularly be resolved without preferring one conception of the good life over another. His main ambition in *Neuralities* is to analyze the "building blocks of power" (p. 30) and to show that certain criticisms of the neutrality principle rest on a misinterpretation of the concept. In that connection Ackerman suggests that it may have been a mistake to use the word neutrality because it has led to confusion. See also Rawls, *supra* note 1, at 260 (stating that the term "neutrality" is unfortunate and observing that he avoided it in *A Theory of Justice*).

27. U.S. CONST. amend. I. Of course, they are not prohibited from doing so, but people are chilled from advancing proposals when the chances of success are small, and amending the Constitution is a formidable task.

tion to other species and to the world of nature. In short: to answer any of the interesting, actual political questions about resources and their allocation through programs and institutions, we need to take some stand, and do all the time take a stand, on the Aristotelian question, "What human functions are important? What does a good human life require?"²⁸

It requires this much and more. To take a stand on the relation of human beings to animals and nature is to entertain a fundamental question which itself may be religious: what is the place of humanity in nature or in the universe? For that matter, to ask what is the good in life is to ask about the meaning of life. And whether or not that is a religious question, many millions are inclined to provide a religious answer.

Nonneutral liberals therefore must explain why the good should be admissible in political life in a way that the religious is not. Kenneth Schmitz maintains that the "*political* separation [of church and state] was preceded by the *epistemological* eviction of religion from 'intellectually respectable' conversation. Reduced to mere opinion or belief, it was to be left wherever other private things are kept" (p. 92). Brian Barry puts it more delicately, but his point is perhaps even more brazen. He maintains that a liberal outlook includes the "belief that no religious dogma can reasonably be held with certainty" (p. 45). Read in context, this is neither a claim that beliefs in general cannot be held with certainty, nor a claim resting on a distinction between religious beliefs and religious dogma. Rather Barry is asserting that a part of the "liberal outlook" is that religion is specially dubious.

No doubt, many liberals find religious beliefs to be dubious. But Barry's position expels too many liberals from liberalism — whether "liberal" means philosophical liberal or political liberal. Consider the role of religion, for example, in the philosophy of liberals such as John Locke,²⁹ Martin Luther King, Jesse Jackson, George McGovern, or Mario Cuomo.

Nonneutral liberals do not routinely rely upon skepticism about, or hostility toward, religion to justify distinguishing the place of the good from the place of religion in public life. Rather, a recurring contention over the years has been that a polity divided along religious lines would be too divisive to maintain stability. The irony of this position is palpable. Liberals ordinarily are the first to be associated with our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."³⁰ It now ap-

28. P. 212 (footnote omitted). See also the essays in the collection by Schmitz (pp. 92, 99) and Sullivan (pp. 170-71). See generally K. GREENAWALT, RELIGIOUS CONVICTIONS AND POLITICAL CHOICE 98-114 (1988); Shiffrin, *supra* note 7, at 1136-40.

29. See, e.g., A. RYAN, PROPERTY AND POLITICAL THEORY 14-48 (1984); C. TAYLOR, SOURCES OF THE SELF 234-47 (1989).

30. New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964).

pears, however, that our commitment is that debate on public issues be uninhibited, robust, and wide-open, but not too uninhibited, robust, and wide-open.

Of course, the divisiveness argument may be right. Moreover, if religious argument were a more vital part of political dialogue, religion might be the long run loser. Nonetheless, to discourage the discussion of religion in political life has its costs. It tends to undercut the importance of morality and of humane values in public life. Indeed, some writers have written of the liberal polity as the "naked public square."³¹ If the exclusion of religion from public life even colorably implicates a "naked public square," a public life in which debate about the good life were no part of political dialogue threatens to be utterly barren and shriveled.

If liberal neutrality's implications for political dialogue are unattractive, they are also at odds with our intuitions as to how conflict is ordinarily resolved. As Henry Richardson observes:

When a single person's values conflict with each other, it makes little sense to suggest that she come to terms with this conflict by bracketing, or excluding from her internal dialogue, the claims of the contending values. Instead, she must try to come to some sort of reflective resolution, taking everything into account. The model of first-personal political judgment carries this sort of idea, which contrasts sharply with neutrality, to the level of society. [p. 21]

To put it another way, instead of neutrality, why is it not appropriate to balance and accommodate values?

One of the most recent attempts to justify a regime in which one conception of the good is not preferred over another has been to characterize such a regime as proceeding from premises shared within the culture³² or as "implicit or latent in the public culture."³³ Thus the goal as characterized by John Rawls is not "a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal persons."³⁴ In a sense Rawls is now relying on a hermeneutic justification, one that is claimed to rise out of an interpretation of the deepest

31. R. NEUHAUS, *THE NAKED PUBLIC SQUARE* (1984). Although the criticism is most often advanced by conservatives, sophisticated defenses of the view that religion must play a prominent role in political life have been put forth by scholars who are left of the political spectrum's center. See R. BELLAH, R. MADSEN, W. SULLIVAN, A. SWIDLER & S. TIPTON, *HABITS OF THE HEART* (1985); K. GREENAWALT, *supra* note 28; M. PERRY, *MORALITY, POLITICS, AND LAW* (1988). For criticism of the notion that religious views should play a role in judicial decisionmaking, see Fallon, *Of Unspeakable Ethics and Constitutional Law: A Review Essay*, 56 U. CHI. L. REV. 1523, 1544-52 (1989) (reviewing M. PERRY, *supra*).

32. Rawls, *Justice as Fairness: Political Not Metaphysical*, 14 PHIL. & PUB. AFFAIRS 223, 229 (1985).

33. *Id.* at 231 n.14; see also Rawls, *The Idea of an Overlapping Consensus*, 7 OXFORD J. LEGAL STUD. 1, 6 (1987).

34. Rawls, *supra* note 32, at 230.

intuitions of the culture. With respect, however, I regard this as a form of “forced hermeneutics,” one that dips into the culture momentarily to seize on general abstractions of freedom and equality only to leap even further up the ladder of abstraction to the veil of ignorance. Moreover, by moving toward an interpretive justification, this form of liberalism exposes itself to critiques that have long been applied to interpretive methodologies from the genealogists to the deconstructionists. As William Connolly puts it: “By saving his theory from one set of criticisms Rawls opens it to another set of debates.”³⁵

Finally, Bruce Ackerman argues that a nonneutral regime will by definition make “all sorts of intolerant public pronouncements about the nature of ‘human flourishing’” (p. 39). I suppose it would declare that poetry is better than pushpin. Why is that so bad? Of course, the fear is that the state will do more than make declarations about human flourishing, but will interfere with liberty where it has no business. To that Brian Barry suggests “those with a liberal outlook [should] go on the offensive and promote liberalism actively. . . . [G]iven the choice between trying to persuade nonliberals to accept the principle of neutrality and trying to discredit their beliefs, I think the second is clearly the better option” (pp. 56-57). Barry concedes that we may be headed for a “new Dark Age” (p. 57), but argues that liberals have a better chance of discrediting the beliefs of nonliberals than of persuading them to hook their star on the chariot of liberal neutrality.

II. ALTERNATIVES TO LIBERAL NEUTRALITY

Liberals and conservatives generally exhibit different priorities in their attempts to promote particular aspects of a good life. Contrast, for example, the Tory emphasis of George Will with the liberal accent of John Stuart Mill. In *Statecraft As Soulcraft*, Will states, “Proper conservatism holds that men and women are biological facts, but that *ladies and gentlemen fit* for self-government are social artifacts, creations of the law.”³⁶ But consider Isaiah Berlin’s description of the ideals of John Stuart Mill:

[W]hat he came to value most was neither rationality nor contentment, but diversity, versatility, fullness of life — the unaccountable leap of individual genius, the spontaneity and uniqueness of a man, a group, a civilization. . . . [H]e set himself against the worship of order or tidiness, or even peace, if they were bought at the price of obliterating the variety and colour of untamed human beings with unextinguished passions and untrammelled imaginations.³⁷

Although Mill is infrequently cited in *Liberalism and the Good*, his

35. P. 66; see also Sullivan’s criticisms. P. 152 (exposes liberalism to the problems associated with philosophical relativism).

36. G. WILL, *STATECRAFT AS SOULCRAFT* 90-91 (1983) (emphasis added).

37. I. BERLIN, *FOUR ESSAYS ON LIBERTY* 176-77 (1969).

spirit is echoed in many of its contributions. Thus Barry observes, “[T]he spirit of critical thinking and the practice of autonomous decision-making favored by the liberal outlook can be fostered by positive state action” (p. 46). Just as Barry invokes a “critical inquiring spirit” (p. 46), so Stephen Salkever maintains that “[t]his liberal conception of the good life is . . . inseparable from a kind of ironic stance toward oneself, an unwillingness to take any one of my present beliefs or commitments too seriously” (p. 188). Moreover, Salkever highlights the role liberal institutions, particularly courts and the universities, have played in fostering the habits of mind associated with the Socratic, critical, self-examining, ongoing dialogue encouraged by liberalism. Liberal theorists, he argues, have failed to appreciate that the support of particular human virtues is compatible with the “core of liberal theory” (p. 168).

Whether purporting to speak for or against liberalism, the contributors frequently observe the extent to which human beings are socially constituted. Salkever “calls attention to the way in which institutions and practices help shape preferences and characters” (p. 176). Schmitz notes that, “in the end and from the beginning, our individuality is situated in what is neither wholly mine nor wholly yours, but ours” (p. 98). And Langan points to humans as “social beings” possessing rights not as “creatures . . . in a pre-social state of nature but as an aspect of their shared life in a social and political community which is necessary for their fulfillment” (p. 111).

Recognition of our social embeddedness as humans, however, bears no necessary connection to communitarianism. William Connolly, for example, is fully aware of the extent to which social and political institutions structure our identity, but he argues for a militantly individualistic assault on these institutions. For him, the “good life is one in which creative tension is generated between the claims of individuality and commonality” (p. 82).

In a different way, Martha Nussbaum moves from an appreciation of the culturally induced character of preferences to advocating a political system which would guarantee each individual a meaningful opportunity to lead a flourishing life. She believes that it is possible to offer a much thicker conception of the good than has been advanced by Rawlsian liberals, and she admirably succeeds in that venture. Indeed, many Rawlsians may find her analysis to be a helpful articulation of goods that all humans share. Moreover, she effectively criticizes the liberal preoccupation with material resource distribution.

Ultimately, Nussbaum’s conception of the good becomes more than many liberals would care to swallow in political practice. Indeed, her approach might be called a form of radical Aristotelianism — radical, for example, in that the good life for Nussbaum does not merely consist of sufficient money and commodities, as well as protected liber-

ties, but it also requires freedom from forms of labor that are “monotonous and mindless, and demanding in their time requirements” (p. 230). Her approach calls for a “searching examination of the forms of labor and the relations of production” (p. 231). Like liberalism, however, Nussbaum’s Aristotelianism is individualistic³⁸ in that its chief focus is how to make each individual flourish.

By contrast, William Sullivan proceeds from the premise that “[i]nstitutions are recognized patterns of interaction which define an order of mutual recognition in which individual identities are formed” (p. 155) to an antiindividualistic communitarian vision rooted in religious and republican traditions. Sullivan’s communitarian vision embraces a public discourse focused on the common good:

By requiring participants in the public argument to demonstrate how their proposals can enable all of us to live decently together, the idea of the common good offers a significant advantage over a discourse based upon individual rights advanced in abstraction from the defining goods of the political association. Over time, such a framework could help individuals and groups to reinterpret their interests in ways more conducive to the discovery and forging of agreements. [p. 162]

Sullivan’s theme, albeit intelligently and originally presented, is by now all too familiar in the legal literature.³⁹ But even though familiarity breeds a certain amount of contempt, and even though the decade of the eighties is behind us, the common good is still underemphasized. As I will ultimately argue, this country promotes passivity, selfishness, and greed at the expense of the critical, virtuous citizens whose development the contributors of the book advocate. Nonetheless, a liberal might fear that in Sullivan’s regime — despite his best intentions — the drive for consensus might marginalize the dissenters and the different.⁴⁰ Overall, however, my impression is that the contributors as a group forcefully demonstrate that there is a nontotalitarian world, a progressive world, beyond liberal neutrality — at least in “theory.”

III. POLITICAL THEORY WITHOUT POLITICS

A progressive world is not around the corner. Is this an objection? Of course not. But my objection is bolder. The worlds depicted in

38. Nussbaum’s approach is also communitarian: she believes affiliation and political participation with others is essential for “fully good human functioning.” Pp. 233. In the form of communitarianism that Nussbaum espouses, individualism and communitarianism run together, not in opposition (as they do in much Aristotelian writing).

39. I do not mean to suggest that Sullivan is a Johnny-come-lately to discussions about communitarianism, republicanism, and public policy. In fact, some of Sullivan’s best work in this area precedes the work of academic lawyers. See W. SULLIVAN, *RECONSTRUCTING PUBLIC PHILOSOPHY* (1982).

40. For a response, see Alexander, *Talking About Difference: Meanings and Metaphors of Individuality*, 11 *CARDOZO L. REV.* 1355 (1990).

many of these essays are *inconceivable*. Moreover, steps to move toward these worlds could be counterproductive.

Reconsider Ackerman's world of liberal neutrality. I do not believe anyone among us thinks even for a moment that a political society will ever banish conceptions of the good from political discourse. The theories of Rawls, Dworkin, and Ackerman are not merely conceptual constructs, but political impossibilities.⁴¹ This in itself may not be objectionable. Sometimes utopian theory can serve as a regulatory ideal, something we want to move toward even though we know it will always be beyond our grasp. The small steps we take toward the goal may not be as large as we would like, but we are better off for having taken them.

This, however, is not the case with the worlds of Rawls, Dworkin, or Ackerman. For liberals to press the theme of neutrality at the expense of their conception of the good is a form of "unilateral disarmament" (Barry, p. 57).

Although Amy Gutmann and Dennis Thompson in their contribution to *Liberalism and the Good* maintain that the proposal they put forth has "practical value" (p. 145), it ultimately seems to be plagued with similar difficulties. Rightly, in my view, they believe that liberal neutrality does not permit enough room for debate and disagreement about moral issues in politics. Recognizing that consensus about the good is not achievable, they instead seek consensus about "the conditions for political discussion of enduring moral disagreement" (p. 144). Essentially, they argue that citizens should treat each other with mutual respect, an injunction that "requires a favorable attitude toward, and constructive interaction with, the persons with whom one disagrees" (p. 134). Citizens who manifest mutual respect are open-minded, prepared to find the good in their opponent's position, ready to compromise when it seems reasonable, and set to abandon an initial position when the opponents have made "unanswerable objections" (p. 135). Gutmann and Thompson argue that the fostering of characters disposed toward mutual respect — which they characterize as a "distinctively democratic" character — would lead to both social good and individual virtue (p. 135).

This proposal presents an interesting shift away from liberal neutrality. If we cannot base a liberal society, or build a consensus, by transcending conceptions of the good, perhaps we can agree about how we will disagree. Moreover, Gutmann and Thompson believe their perspective is not merely procedural because it would place many more moral issues on the public political agenda, and it would seek to

41. Even if there were a political will to prohibit reference to the good in political discourse, consider the difficulties and implications associated with enforcement. Cf. K. GREENAWALT, *supra* note 28 (arguing that attempts to keep religion out of public life are for the most part ill-considered and naive).

promote a moral perspective, a citizenry that would look toward the common good, and ultimately, a public morality (p. 143).

But surely no one, including Gutmann and Thompson, believes that a society of "mutual respecters" is ever going to be realized. The interesting question is whether or not we should consider it a regulatory ideal. Would it be socially valuable if *everyone* treated each other with mutual respect in political life? Put another way, suppose that most people treated each other according to the mandates of Dale Carnegie,⁴² but that a substantial number of individuals with strong interests in the outcome of the process pressed their claims in the strongest of terms without any demonstrated interest in compromise. I would think that in the latter case the system would get the benefit of the strongest form of adversarial conflict, but would still be left with the capacity for accommodation and compromise.⁴³ If *everyone* exhibited mutual respect, I envision an antiseptic faculty meeting in which hostile motives are disguised and the real arguments are made behind closed doors (or in a transparent public code) rather than in a genuinely open public discourse. This is not the intention of the Gutmann/Thompson proposal, but I think it would be its real world existence, assuming even the possibility of its realization on a national political stage.

Would it be desirable to encourage people to treat each other with mutual respect nonetheless? In general, why not? Yet one can at least question whether someone who, for instance, acts venally merits respect.⁴⁴ Moreover, in practice, an emphasis on mutual respect could, by tending toward compromise, bias the political process in a centrist direction, a result that is acceptable only if one thinks a centrist direction is desirable.

Any emphasis on mutual respect would at least have to be accompanied by a concomitant encouragement of a citizenry prepared to challenge existing authorities, customs, habits, and traditions.⁴⁵ Political and social processes are already biased in directions that encourage conformity and that reward certain modes of being while placing others at the margin. As William Connolly puts it in his brilliant contribution to the collection:

42. D. CARNEGIE, *HOW TO WIN FRIENDS AND INFLUENCE PEOPLE* (1936).

43. This is an overall judgment. The system would work in some contexts, but not in others.

44. Gutmann and Thompson state that their principles "govern the relations among citizens who hold morally legitimate though fundamentally opposed positions on public policy." P. 134. Gutmann and Thompson recognize that reasonable people can disagree about the question of what should count as a moral position especially in particular situations of conflict. Pp. 130-31. Nonetheless, they do not discuss the question of how much interpersonal respect is in order when opponents hold, or are perceived to hold, morally illegitimate positions or when opponents insincerely profess a belief in morally legitimate positions or are perceived to do so. On many occasions, such perceptions could occupy the field.

45. See generally S. SHIFFRIN, *THE FIRST AMENDMENT, DEMOCRACY, AND ROMANCE* (1990).

[T]he paradoxical element in the relation of identity to difference is that we need personal and collective identities to be, while the multiple drives to stamp truth upon the identities stamped upon us functions to convert difference into otherness and otherness into scapegoats created and maintained to secure the appearance of a true identity. To have a true identity is to be false to difference while to be true to difference is to sacrifice the drive to a true identity. [p. 61]

Connolly seeks an alternative both to communitarianism and to liberal individualism because both tend to depoliticize political arrangements and personal identity, by treating that which exists as "normal" or natural. According to Connolly, liberal individualism postulates a model of a rational or normal individual, and it encourages a "juridical conception of politics [that] tends to downplay the degree of politics, militance, and struggle required to establish space for individuality in a liberal society" (p. 73).

Thus Connolly believes that a

range of existing political settlements becomes politicized if a significant element of the populace credibly and insistently refuses to treat them as natural, thoroughly rational, reflective of a dialogic consensus or grounded in a higher direction and if another cluster of participants evinces agonistic respect for this orientation even while opposing it. [p. 81]

Connolly sees advantages to this approach over communitarianism whose underlying ontology must "receive a more consensual and secure endorsement" (p. 81) than he thinks possible. Fair enough. Community cannot be achieved unless values are shared, and communitarians are hard pressed to answer how humane values will come to be shared. But Connolly's account of militant dissent implies a sunnier approach to the problem of change than seems warranted. From his account it is unclear why those who seek to politicize existing settlements would not be marginalized as kooks or scapegoats by the vast majority.

Indeed, my chief criticism of *Liberalism and the Good* is that the essays (including Connolly's, albeit to a lesser extent than the others) fail to live up to what Ackerman sets out as the requirements of any "plausible political theory" (p. 30). Stating that he is interested in the realities of power (p. 43 n.7), Ackerman maintains that theory needs to address the basic problems of political life and then present solutions to them. For most of the contributors, the devil is a theory of liberalism that promotes alienated, materialist, selfish individuals. But even if the liberalism of John Rawls, Bruce Ackerman, and Ronald Dworkin were guilty of every sin laid out against it, that liberalism surely does not direct America. In a book in which contributor after contributor wants to promote a particular type of model citizen there is spectacular inattention to the forces in American society that promote particular conceptions of the good life.

One could focus on many aspects of American society. I will settle for a glimpse of one important slice. American television is organized as an advertising medium. An American child is exposed to literally hundreds of thousands of powerful commercials during the course of his or her upbringing.⁴⁶ What commercials say to American adults and children many times an hour is that the acquisition of products is vitally important for human happiness and for a sense of identity. This commercial deluge surely has some impact. Daily exposure to televised commercialism seems to promote a hedonistic, acquisitive, materialistic, self-seeking, money-hungry culture and a privatized, nonengaged citizenry.⁴⁷

Wholly apart from the advertisements themselves, corporate control of the mass media and the need to secure advertising revenues helps determine the character of the programs aired and the programs not aired, the news we hear and the news we do not hear.⁴⁸ The print medium is also affected by the need to attract advertising revenue. It too presents a distorted image of human beings and a sanitized version of corporate products.⁴⁹ So too, corporate control of public spaces creates and reflects the image of the human being as shopper⁵⁰ in an antiseptic world.⁵¹ In short, much of American society is structured to encourage⁵² the creation of citizens worthy of a corporate

46. Comment, *Unsafe for Little Ears? The Regulation of Broadcasting Advertising to Children*, 25 UCLA L. REV. 1131, 1136 n.27 (1978) (former chair of the FCC cited as calculating that average high school graduate would have seen 350,000 televised commercial messages, more than 21,000 per year).

47. See generally S. EWEN, CAPTAINS OF CONSCIOUSNESS: ADVERTISING AND THE SOCIAL ROOTS OF THE CONSUMER CULTURE (1976); C. LASCH, THE CULTURE OF NARCISSISM 72-74 (1979); M. MILLER, BOXED IN: THE CULTURE OF TV 11-24, 49-50, 324-31 (1988); Benn, *White Noise: The Long, Sad Story of TV Criticism*, VOICE LITERARY SUPP., Dec. 1990, at 14; M. POSTMAN, AMUSING OURSELVES TO DEATH (1985). But cf. J. FISKE, READING THE POPULAR (1989); J. FISKE, UNDERSTANDING POPULAR CULTURE 20-21 (1989) (exploring resistance and evasion to advertising and finding popular culture to be "potentially, and often actually, progressive" but "accepting the power of the forces of dominance"; see also M. SCHUDSON, ADVERTISING, THE UNEASY PERSUASION: ITS DUBIOUS IMPACT ON AMERICAN SOCIETY (1984) (critical of advertising in many respects, but stressing its limits).

48. See, e.g., B. BAGDIKIAN, THE MEDIA MONOPOLY (2d ed. 1987); D. KELLNER, TELEVISION AND THE CRISIS OF DEMOCRACY (1990); Collins & Skover, *The First Amendment in an Age of Paratroopers*, 68 TEXAS L. REV. 1087, 1098-1107 (1990).

49. See, e.g., Steinem, *Sex, Lies & Advertising*, MS., July/August 1990, at 18; Lee & Solomon, *The Buck Comes First*, DISSENT, Fall 1990, at 525.

50. Even if it were correct to say that humans are "natural" shoppers (*homo shoppicus*), which it is not — many hate to shop, though perhaps the rest are "naturals" — it is a big step to the conclusion that society should emphasize shopping to the degree American society does.

51. See, e.g., H. SCHILLER, CULTURE, INC.: THE CORPORATE TAKEOVER OF PUBLIC EXPRESSION 98-106 (1989); Morse, *An Ontology of Everyday Distraction: The Freeway, the Mall, and Television*, in LOGICS OF TELEVISION: ESSAYS IN CULTURAL CRITICISM 193, 198-99 (P. Mellencamp ed. 1990).

52. The role of corporate money and power in the political process contributes to the difficulty of securing systematic political change. See, e.g., T. FERGUSON & J. ROGERS, RIGHT TURN: THE DECLINE OF THE DEMOCRATS AND THE FUTURE OF AMERICAN POLITICS (1986); Easterbrook, *What's Wrong with Congress?*, THE ATLANTIC, Dec. 1984, at 57, 70-79; Green,

paradise.⁵³

Not a single contributor to *Liberalism and the Good* regards the citizen of the corporate paradise as an ideal that a society should foster. Yet the issue of corporate power is not discussed in these essays. Perhaps the contributors are so attached to liberal theory that they cannot bring themselves to question the arrangements of our political economy. More likely, as I have suggested, their understanding of theory permits them to ignore too much of politics and practice. Whatever the cause, the essays are provocative and worth reading, but flawed. Politics, in general, and corporate power, in particular, cannot be ignored if any realistic assessment is to be made of the kind of citizenry we want to promote and the forces that prevent us from doing so.

Political Pac-Man, NEW REPUBLIC, Dec. 13, 1982, at 18; Stern, *The Tin Cup Congress*, 20 WASH. MONTHLY, May 1988, at 23.

53. There are good reasons to reject state socialism as a form of political economy, but a capitalist system need not be a corporate paradise. For that matter, state socialism need not be the only form of socialism. See, e.g., ESSENTIAL WORKS OF SOCIALISM (I. Howe ed. 1976); M. HARRINGTON, THE NEXT LEFT (1986); 25 YEARS OF DISSENT: AN AMERICAN TRADITION (I. Howe ed. 1979).