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Review

Reviewed Work(s): *Illiberal Justice: John Rawls vs. the American Political Tradition* by David Lewis Schaeffer

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As to its substantive contents, the book is a delight—entertaining, original, fresh, creative, genuinely amusing, and not merely innovative, but surprisingly incisive and insightful. Remarkably, Burgess succeeds at offering numerous thoughtful insights on the way to showing how Keith Whittington’s originalism can be likened to a romance novel (chap. 2); how Ronald Dworkin’s constitutional perfecting theory bears likeness to the soap opera, “One Life to Live” (chap. 3); how Derrick Bell’s critical race theory can be compared to classic tragedies but also to the alien abduction tales often found in supermarket tabloids (chap. 4); how *Bush v. Gore* can be likened to the phase in the life of gay people when their gayness has become obvious to virtually everyone but they are still claiming to be straight (chap. 5); and how *Lawrence v. Texas* bears similarities to the makeover show, “Queer Eye for the Straight Guy” (chap. 6).

This brief summary, like the brief dish descriptions on the menu of an excellent restaurant, cannot do justice to the richness, nuance and sophistication of the book as a whole. It masterfully carries off the difficult task of simultaneously entertaining and enlightening.

Still, the dutiful reviewer should raise some questions. When Susan Burgess says that she wants to open up constitutional discourse, to transform and reconstitute judicial power in more democratic directions (chap. 7), the reader understands that Burgess has in mind the notion that democracy carries more meaning than merely electorally majoritarian. At some level all of us Americans can agree with her. We all will recognize the good sense of Abraham Lincoln’s warning that to allow a majority to enslave a minority on the basis of skin color would imply the legitimacy of enslaving everyone whose skin is just slightly less pale than the median tone. And if skin tone, why not gender, why not sexuality, why not left-handedness, and so on? So far, so good. But beyond this one point, then (that meaningful democracy cannot be sheer majoritarianism), what does Susan Burgess mean by democratic authority? She never really answers this for her readers. Her hope is that her techniques of parody and humor will open up new vistas for her readers’ imagination, “bring new worlds into being” (127). Perhaps it will. But I believe her readers would have benefited had she pushed herself to an epilogue wherein she offered some sort of mapping of the terrain of this new world of reconstituted democratic authority. Democratic in what sense? Linked to judicial power in what way? Perhaps this will come in her next book.

Leslie F. Goldstein, *University of Delaware*

*Illiberal Justice: John Rawls vs. the American Political Tradition.* By David Lewis Schaeffer. (University of Missouri Press, 2007.)

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Most scholars who have written on the moral and political philosophy of John Rawls appreciate Rawls’s accomplishments and share his basic approach. In both these respects, Schaeffer differs. Rather than becoming enmeshed in the vast analytical literature, he considers Rawls work in “relation to the American political tradition and to the substantive tradition of political philosophy that arose with Plato.” (x) As the book’s title indicates, he believes that, assessed against these standards, Rawls does not measure up. Schaeffer denies that Rawls’s work “constitutes a contribution either to substantive political philosophy or to the reasoned pursuit of justice.” He also denies that Rawls’s work is “genuinely philosophical” (315).

In terms of structure, the work is an unfriendly commentary. The first nine chapters discuss *A Theory of Justice*, with Schaeffer devoting a chapter to each chapter of Rawls’s work, frequently going through the work section by section. After briefly summarizing Rawls’s position, Schaeffer pounces, harshly criticizing whatever he finds questionable or with which he disagrees. The remainder of the book examines Rawls’s later works, though less closely. *Political Liberalism* receives two chapters, and Rawls’s essay on the idea of public reason and *The Law of Peoples* one brief chapter each. The greatest strength of the work is Schaeffer’s careful scrutiny of *Theory of Justice*, including the often overlooked Part III of the work.

Schaeffer believes that Rawls’s project is plagued by general aridity and abstractness. Its “essential limitation” is Rawls’s “failure to consider the substantive views of justice and the good held by real human beings and the actual context of political life in which those views are advanced and debated—to say nothing of the teachings of the Western philosophical tradition as a whole” (224). In opposition to what he views as Rawls’s moral relativism, Schaeffer posits the truths of nature and/or natural right, as expounded by selected political philosophers. More particularly, he views the representative individuals in the original position as far removed from actual human beings, while their reasoning bears little resemblance to actual constitutional or political deliberations. Rather than being deeply informed about the way people actually live and the great strengths of the political and economic systems they have erected,

Rawls constructs an abstract evaluative framework, the contents of which are generally selected on an ad hoc basis, in order to advance Rawls's particular moral and political objectives. Schaeffer argues that, if implemented, Rawls's proposals would not help the least advantaged nearly as much as the economic and social mobility of the American system, while the punitive redistributive taxes mandated by the difference principle would impede economic growth. He views many of Rawls's ideas as dangerous, e.g., the latter's view of civil disobedience and conscientious refusal, which could lead to anarchy (chap. 6). Schaeffer is deeply suspicious of the entire enterprise of assessing institutions according to abstract moral standards and disparages what he calls "moral theory"—in quotation marks (e.g., 177–79, 183). For all Rawls's talk of preserving liberty, his work constitutes a threat to the liberties of actual citizens, a tyrannical reign of "left-liberal" judges, inspired by Rawls's ideas (esp. 180–86). All in all, Schaeffer views Rawls as guilty of ingratitude, for not adequately appreciating the blessings of American society (230–32) and *Theory of Justice* as dangerous utopianism: it exhibits "the same dangerously utopian and potentially fanatical spirit that characterized the totalitarian ideologies that generated so much evil during the twentieth century" (227). Schaeffer likens it to the views of "radical Islamists" (227).

This plethora of criticisms is obviously a mixed bag, ranging from the interesting and perhaps plausible to the bizarre, absurd on its face. How well does Schaeffer make his case? Although he does not discuss the analytical literature, he runs through many standard criticisms of Rawls it has produced. These include the weakness of Rawls's arguments for the difference principle, questions concerning Rawls's notion of desert, his unfair depiction of the utilitarian alternative to justice as fairness, and insurmountable problems with Rawls's conceptualization of liberty in the work. There are others as well. But because of his unusual perspective, Schaeffer is able to add important points that are less familiar. These include valuable discussions of Rawls's generally thin accounts of political institutions, which do not adequately recognize problems associated with political power, and numerous specific problems with both the accounts of the good and of moral psychology that Rawls develops in Part III of the work.

But as a critic of Rawls, Schaeffer also makes important errors. To take a glaring instance, he misunderstands the original position and the role it plays in Rawls's thought. He repeatedly uses the abstract character of the representative individuals

who inhabit it as a basis for criticizing Rawls's view of human nature. Along similar lines, Schaeffer commits the howler of having Rawls attribute the so-called "circumstances of justice" to the original position rather than to the societies to which the eventual principles of justice are to apply (56). Much else that he says is confused or downright wrong. For instance, on economics, the difference principle, by definition, cannot damage the least advantaged. It mandates whatever measures would be best for them, including a completely free market, if that in fact would work best. Clearly, Schaeffer should have spent more time with the analytical literature.

This is Schaeffer's second attempt to write a critique of Rawls. His previous book, *Justice or Tyranny? A Critique of John Rawls's A Theory of Justice*, was published in 1979. In his Preface, Schaeffer says that the tone of that work "was sometimes inappropriate for making [his] points effectively" (ix). Though he has apparently tried to correct this fault in his new book, he still has trouble keeping down insulting and nasty asides (e.g., 135, 142, 162, 194, 203, 214, 227, 229, and many more, 325–32, *in toto*). This would be a much better book, if Schaeffer had exercised more restraint. Much of the work is devoted to substantive political issues. Schaeffer presents a comprehensive right-wing agenda and in effect denounces Rawls for not supporting it. The work's vehemence virtually guarantees that it will be taken seriously only by readers who share Schaeffer's political views. However, a more important problem in regard to concerns of political philosophy is that Schaeffer has not developed an effective critical strategy.

The value of criticizing some work from a particular standpoint depends heavily on the standpoint. Throughout the philosophical literature, this is generally not a problem, as most of Rawls's critics share his basic methodological assumptions, which are largely accepted in Anglo-American political philosophy—due in no small part to Rawls's influence. Because Schaeffer's work is in the form of a commentary, he does not present a sustained account of his critical standpoint, let alone detailed defense of it. Although looking at Rawls from the perspective of the traditions that interest him has the advantages I have noted, this material—at least in the way Schaeffer uses it—raises a nest of problems.

Throughout, Schaeffer presents a consistent point of view, supported by references to innumerable sources, ranging from Aristotle, to the *Federalist Papers*, to *Wall Street Journal* editorials and a bevy of conservative commentators. However, the reader is

generally asked to accept this material—including frequently controversial interpretations of specific thinkers—on faith. The fact that Locke or Montesquieu says  $x$  may provide some reason to believe  $x$ , but in itself, that reason is not very strong. This problem is especially severe in regard to Schaeffer's political preferences, with which he bombards the reader, while providing little reason to accept them. To the extent that Schaeffer provide arguments, these do not remedy the problem. He frequently refers to what is true according to nature, occasionally human nature or the human good. But aside from appealing to what various thinkers are alleged to have said about these enormously controversial subjects, Schaeffer provides no indication of what developed defense of his standpoint would look like. To compound matters, the great figures in the history of political theory regularly disagree. And so it is necessary to choose some rather than others. What determines Schaeffer's choice of material? He never raises the problem and shows no sign of recognizing that it exists.

In *Theory of Justice*—in a passage Schaeffer does not discuss—Rawls writes: “A conception of justice cannot be deduced from self-evident premises or conditions on principles; instead, its justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view” (Rev. ed., 19). In criticizing Rawls against a backdrop of what he, like the authors of the Declaration of Independence, apparently views as self-evident truths, Schaeffer misconstrues both the nature of Rawls's tasks and why they remain of the highest importance.

George Klosko, *University of Virginia*

*The Young Marx: German Philosophy, the State and Human Flourishing.* By David Leopold. (Cambridge University Press, 2007.)

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At the heart of David Leopold's latest book is the conviction that the early Marx invites a consideration of the state and of human experience fabled to be awaiting us beyond it without a false sundering of these issues or a concocted disparity in their rational, empirical, or visionary purchase. The book is refreshingly free of a number of misplaced redemptive compulsions, especially on the heels of insistent gestures to the early Marx in the work of many Hegelian Marxists (including some in the Frankfurt School) that give Marx fervent praise for being a “philoso-

pher” and thus in more elite company than, for instance, a manifesto-writer commissioned by the League of Workers or an indigent vitriolic critic drawing up spindle depreciation schedules. Chest-heaving invocations of the romantic, young, *still* philosophical Marx seem cloy and complicit in comparison to Leopold's book which subtly manages various pressures—those of the continental rifts between readings of Marx, the rupture between Soviet and Western Marxisms, the Marx with and without Engels, and the shape of the narrative that threads Marx's early and late works. The book adds to our understanding of each of these broad interpretive and historical issues attached to Marxist thought and legacy by explicitly focusing on the politics of the state and the notion of human emancipation, without ever becoming sanguine or righteous. It does so with a humour that is a relief from both the off-putting fervour and seriousness of many deployments of the young Marx and the contrived lightness of many readers, who, in affording Marx a kind of power over language and circumstance, perform either a narcissistic or a fetishistic rite, depending on whether this affords them power or an excuse to feel powerless. Leopold's patient pursuit of the political can double as an engaging intellectual history of Marx and his Young Hegelian buddies navigating the so-called Hegelian burden—demystifying, diversifying, and occasionally jettisoning it.

Leopold confronts various schools of thought and their scripted inheritances somewhat nonchalantly and irreverently; he is clear that the modern state is not a lost cause for Marx, that we'd be irresponsible in letting it be so, and that Marx's resistance to the universal morality of rights and the self-righteousness of political emancipation has to be interpreted not absolutely, but contextually. Leopold's setting aside of what he calls “Famous Quotations” is liberating, whether in terms of sorting through the codified hagiographies of Marx's debts and Marxists' debts, or of a spirited take on whether Marx would have been as dead or as alive as an Aristotle or a Kant, or as transient a voice as an Alexandre Kojève or a Henry George, without the “artificial sustenance” provided by the Soviet Union (13). Leopold returns to the early Marx to see how the initial frame of the relation between the state and the human anticipates Marx's later work, where the lack of “blueprints” is not merely to be romanticized or explained away to epistemological comfort, but understood more critically, even as a reaction to utopian trends around him. Leopold addresses a series of puzzles, including, among others: How are Marx's