

Book Reviews

Justice and Judgment. By Alessandro Ferrara. (London and Thousand Oaks: Sage Publications, 1999).

In the last decade and a half, political philosophy of all persuasions has descended with varying degrees of reluctance from the high road of universalizing theory to incorporate much greater sensitivity to the cultural and historical contexts within which particular normative justifications of given social and political arrangements make sense. In *Justice and Judgment*, Alessandro Ferrara charts this descent among some of the great hedgehogs of liberal democratic theory, scrutinizing five theories of justice – the theories of John Rawls, Jürgen Habermas, Ronald Dworkin, Bruce Ackerman, and Frank Michelman – for their increasing reliance on what he calls a “judgment model” of justice. The rise of the judgment model, according to Ferrara, reflects a shift in the nature of normative justification in political philosophy during the past decade. The precise dimensions of this shift are the subject of Ferrara’s important new book.

The cognitive operation of judgment and the kind of “validity” it can achieve is notoriously difficult to define. In his own exploration of the crucial but frequently underestimated role of judgment in moral reasoning, Charles Larmore writes, for example, that “the inability of Aristotle, Smith, and Gadamer to give a general account of what the exercise of moral judgment consists in is not lamentable, but exemplary.”¹ The very nature of the activity of judgment lies in our inability to provide reconstructible rules for the way in which a particular result has been achieved, or, to put it somewhat more positively, the nature of judgment lies in its ability to deliberate without the benefit of pre-given rules. Drawing on Immanuel Kant’s critical theory of judgment, Ferrara distinguishes between reflective and subsumptive (or determinate) judgment. The latter is the capacity for applying a general rule by *subsuming* particular instances under it – it is less consequential for Ferrara’s purposes, but serves to underpin the strict separation between a principle and its application characteristic of generalizing universalist approaches. Reflective judgment, on the other hand, is a kind of reasoning in which “only the particular is given and the universal has to be found for it. . . .”² This latter type of low-altitude reasoning, which proceeds by example rather than by rules, which can never achieve demonstrable universal validity but is nevertheless not arbitrary, which remains bound to particular social contexts and intersubjective construals of experience but nevertheless can achieve trans-contextual, non-parochial significance, is, according to Ferrara, increasingly accorded a “foundational” role in recent political theory. “What we can see emerging from contemporary political philosophy,” he suggests, and I think correctly, “is perhaps the beginning of a third resurrection of Kant’s philosophy, linked this time with a critical re-appropriation of themes and figures of thought drawn from the third *Critique*” (2).

The first part of *Justice and Judgment* brings the rise of the judgment model into relief in the internal development of the thought of Rawls, Habermas, Dworkin, et al. in five tightly argued chapters (one devoted to each thinker). Ferrara shows that the increasing role accorded to the judgment model of normative justification is discernible especially in the more recent works of these theorists, but also that none of them have gone far enough in espousing it systematically. The second part of the book then turns from critical textual analysis to a systematic argument for Ferrara’s own judgment view of justice – a conception he ultimately grounds in a postmodern sense of identity or normative standpoint he calls “reflective authenticity.”

We can approach Ferrara's argument most easily by comparing it to Dworkin's. By "reflective authenticity," Ferrara understands a normative perspective that shares much with the interpretive stance of "integrity" in the generation of legal norms which Ronald Dworkin develops in *Law's Empire*. Ferrara's judgment view of justice does not begin with Dworkin's insights, nor does he end up in the same place, but there are considerable parallels.

Recall how Dworkin describes constitutional legal adjudication as a creative interpretive activity that requires reflection upon the identity of a political community, its history, and the shape of its practices. "A judge who believes that abstract justice requires economic equality," writes Dworkin, "cannot interpret the equal protection clause as making equality of wealth, or collective ownership of productive resources, a constitutional requirement, because that interpretation simply does not fit American *history or practice*, or the rest of the Constitution" (76). To judge of this sort of "rightness of fit" is, according to Dworkin (and Ferrara), analogous to interpreting a work of art, that is, to engaging in aesthetic judgments. Dworkin illustrates this claim with his famous chain novel analogy. He compares the practice of adjudication with the work of a group of novelists charged with the project of writing a single serial novel, each novelist adding only one chapter, picking up where the previous one left off, each having "the job of writing his chapter so as to make the novel being constructed the best it can be."³ In so doing, the serial novelist "must take up some view about the novel in progress, some working theory about its characters, plot, genre, theme, and point, in order to decide what counts as continuing it and not as beginning anew."⁴ In other words, his creative interpretation must impose meaning on the text, while the text at the same time constrains and acts as a check on possible interpretations. There is no point in trying to establish the original novelist's intention, since the chain novel is an ongoing creative project, shaped through accretion, and admitting of no "correct" answer. Nevertheless the different intentions of the successive novelists fuse to the extent that they are all participants in a practice. Each novelist's ascription of purpose or meaning to the plot, the characters, the style of the text before him, will draw on the values associated with the practice of writing and reading novels.

Ferrara emphasizes how, in Dworkin's view, determinations of the justice of a given situation, like the chain novelist's aesthetic judgments, exhibit a blend of several types of judgment that act to check one another. Such judgments, Ferrara agrees, are neither merely subjective, nor can they be described as deductive, or objective and disinterested. Dworkin's interpretive practice of Constitutional adjudication, like the chain novelist's work, is guided by the immanent standard of the *integrity or self-congruence* of the project as a whole: of the past and ongoing identity of the political community in the case of the Supreme Court Justice, and of the coherence and unity of the novel in the case of the serial novelist. So too, Ferrara holds it to be "central to the judgment view . . . that the meaning of justice cannot be understood apart from the meaning of the self-realization of a collective identity" (180).

Ferrara argues that Dworkin's model of integrity finally elaborates a broad, judgment-based normative approach that is not confined to the law, but is ultimately equivalent to the notion of authenticity or of "making the most of one's life" (79). I here leave aside how Ferrara substantiates this claim. Ferrara's judgment model of justice, however, explicitly takes the modernist bull by the horns and makes the notion of "authenticity" – or more precisely, "reflective authenticity" – central to normative justification, both at the level of individual ethical-existential choice, as well as at the level of collective political choice. As Ferrara puts it, "the ordering function of justice conceived along judgment lines vis-à-vis conflicting claims is exerted via a reflective judgment concerning how a given solution to a practical problem at hand will affect the overall chance of the political project institutionalized in the political community to lead the identity of the political community to a fully fledged fulfillment" (192).

The many implications of this move are both powerful and potentially controversial. First, if Ferrara's argument goes through, justice or right cannot be "as radically different from the pursuit of

the [common] good . . . as the deontological conceptions of Kantian descent [such as Rawls' and Habermas's] would invite us to think" (180). This mistake on the part of deontological liberals is intimately tied to a second, more general one. The rationalistic deductive models of justice which are now on the defensive have typically conceived of the problem of justice as arising in circumstances where conflicting parties with differing conceptions of the good life are competing for limited resources. This vision of justice as the *application of some impartial principle*, arrived at in advance and independently of the particular terms of the controversy, raises a fundamental motivational question. Right somehow levitates at the very top of the iceberg in these accounts, failing, by the very separateness of the proposed principle from the parties' desires and conceptions of the good, to account for the motivational force that justice can and frequently does hold for us. By viewing justice in terms of its contribution to the fulfilled life, Ferrara can give a much more plausible account of why justice matters to us. Individual parties to a conflict are already meaningfully invested in the conflicts in which they participate to the extent that "the superordinate identity formed at the intersection of the contending identities" contributes to the constitution of the identity of the actor, "for example, via the actor's self-constitution through seeing herself through the eyes of the generalized other" (188). Parties who ignore what justice requires – which is the same as "what the superordinate identity formed at the intersection of the contending identities requires in order to attain its own fulfillment" (188) – do so at their own peril.

An obvious challenge to Ferrara's identification of justice with the fulfillment of the identity of the political community is that such a formulation of what justice requires appears to license a totalitarian politics. This challenge goes to the very heart of the question whether it is possible to find alternatives to the traditional liberal model of abstracting from conceptions of the good and leaving behind thick accounts of what matters to us when we enter the liberal political arena to settle our conflicts. Ferrara does not abandon the ideals of impartiality, of equal respect, or of the pursuit of our own conception of the well-lived life. How these are intricately reformulated by the justice view of judgment, however, cannot be addressed in the space of this review.

In both approach and substance, Ferrara's trenchant analysis of contemporary theories of justice, and his own "Kantian construction" of a normative point of view from within *praxis*, combine the virtues of both Analytic and Continental traditions of philosophy in a manner deeply rewarding for the reader. In order to appreciate the depth and complexity of the author's theory of justice, it is important to remind the reader that the epistemological foundation for Ferrara's normative approach is further developed in Ferrara's *Reflective Authenticity*.⁵ There he develops, among other things, the ethical-existential dimensions of his normative approach, the significance of Kant's concept of aesthetic reflective judgment for our understanding of normative validity, and also the psychoanalytic sources of his concept of authenticity. Together, the two books make a substantial contribution to contemporary moral and political philosophy.

Michael Halberstam

NOTES

1. Charles Larmore, *Patterns of Moral Complexity* (Cambridge & New York: Cambridge University Press, 1987), 19.

2. Immanuel Kant, *Critique of Judgment* (Indianapolis: Hackett, 1987), intro. IV.

3. Ronald Dworkin, *Law's Empire* (Cambridge, MA: Belknap, 1986), 229.

4. *Ibid.*, 230.

5. (New York: Routledge, 1998).