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*Ethics for Adversaries: The Morality of Roles in Public and Professional Life* by Arthur Isak Applbaum

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## BOOK REVIEWS

### Political Theory

**Ethics for Adversaries: The Morality of Roles in Public and Professional Life.** By Arthur Isak Applbaum. Princeton, NJ: Princeton University Press, 1999. 288p. \$29.95.

Dan Sabia, *University of South Carolina*

Impressive substantive knowledge, analytical rigor, and Kantian and liberal democratic commitments are all in play in this careful exploration of the morality of roles in adversary institutions. Extending the concept from its usual location in accounts of legal, especially criminal, representation in the American legal system, adversary institutions and professions are conceived as practices in which role players like business executives, lawyers, public officials and bureaucrats adopt partisan and limited, and therefore often conflicting, perspectives and interests, and claim the right to intentionally harm others, on the ground that such partiality, conflict, and conduct will help promote or secure valued outcomes or goods such as prosperity, justice, and legitimate government.

The "central question" addressed in the book is how acting in an adversary institution and role can morally justify or "morally permit actions that otherwise would be morally wrong" (p. 10). Many common justifications are examined, and all are found to be "weaker than [often] supposed." Adversary "institutions and the roles they create ordinarily cannot mint moral permissions to do what otherwise would be morally prohibited" (p. 3).

A very brief account of the main justifications considered, and criticisms made, follows. Adversaries may try to defend themselves by appealing to role prescriptions, including permissions to harm, as if their mere existence justified compliance. But the argument of chapter 3 is that roles have no "independent moral force or . . . grounding," and therefore cannot by themselves create moral obligations or permissions to do anything, much less anything wrong (p. 45). Another defense, explored in chapter 4, is that a role which has moral value imposes on its occupants moral obligations "to defer to authority and comply with its rules," including the common rule demanding neutrality, or the suspension of personal judgment regarding the substantive merits of what one is supposed to do (p. 60). Focusing on civil servants in a liberal democratic setting, the author contends to the contrary that the suspension of political and moral judgments regarding both the legitimacy and justice of authoritative orders and policies is unacceptable since the morality of the role and its obligations presuppose the legitimacy of both and of any actions they may prescribe. Unreflective deference is never justified; resistance and disobedience sometimes is.

Ensuing chapters canvass more interesting and challenging defenses. Chapter 5 examines "the strategy of redescription" or the claim that professional practices and roles "create new ways of acting that can be judged only by the rules of the practice" (p. 10). Rules governing the legal profession, for instance, permit or require a variety of deceitful actions which, however, are said to be misdescribed as deceitful; actually, these actions are forms of zealous advocacy, and they are legitimate, even obligatory, and cannot possibly be moral wrongs. Acknowledging that this strategy tracks compelling accounts of how social practices can constitute action descriptions (by, e.g., John R. Searle, *Speech Acts*, 1969), the author nonetheless mounts a successful critique of it. The essential point is that the strategy fails because it forgets that institutionally constituted action descriptions (or redescriptions) are not exclusive or even privileged. Although it is true

that "practice-defined descriptions can be judged only by the terms set out by the practice," it is not true that a "practice-defined description is the only apt description" (p. 91). Thus, while advocacy that involves misleading jurors or litigants is on most accounts of legal practice truly good or competent legal behavior, it is also deceitful behavior that needs to be, if one cares about morality, justified. Moral scrutiny is not blocked by redescription.

Another justification of harmful advocacy behavior, discussed in chapter 6, appeals to rules of the game. The defense is that victims consent to, or as a matter of fairness must accept, their treatment, much as players in a game of poker must accept being targets of deceit. The key criticism of the consent argument, made before by many writers (e.g., Sissela Bok, *Lying*, 1978, and Dennis Thompson, *Political Ethics and Public Office*, 1987), is that it asserts what is usually false: Victims of adversary practices typically do not consent to being mistreated. The argument from fair play reflects a careful reworking of well-known literature asserting, and questioning, the idea that persons may incur obligations to do their part in a just scheme of cooperation by virtue of their voluntary acceptance of benefits provided by others in that scheme; the reworking holds that permissions to harm persons are justified if they accept or receive benefits in a just scheme. The author's basic criticism of this argument is that, at least in games of market competition, electoral politics, and adversary law, consumers, citizens, and litigants are typically neither advantaged by, nor do they voluntarily seek, the games' benefits. "Business managers, public officials, and lawyers may satisfy the conditions of fair play in their deceptive or coercive dealings with one another," however, so when they are deceived or coerced they "may have no reasonable grounds for complaint" (p. 135).

In the longest and most technical chapter of the book, chapter 7, the author explores defenses that reflect and develop debates between consequentialists and Kantians concerning the permissibility of intentional harm. Considerable effort is expended establishing a "conceptual case for morally permissible violations of persons [on nonconsequentialist or Kantian grounds]" (p. 173). When refusing to violate a person(s) is "self-defeating" because the person(s) will suffer a more serious violation as a result, or when refusing is "Pareto-inferior" because the person(s) will suffer anyway and others will as well, a Kantian can ("with reluctance and regret") justifiably violate the person(s), knowing that "reasonable" persons would, ex ante, consent to such treatment (pp. 150, 165). After making this "conceptual" argument, the author (with unintended irony) explains that it provides little help for those who would defend most of the violations adversary practices permit, since those practices typically permit violations in circumstances that would not warrant reasonable consent (although there are exceptions which the author describes).

A final defense, or set of related defenses, is examined in chapter 7, where the focus is on appeals to the social goods secured by adversary institutions. One central criticism of such appeals is that they characteristically exaggerate the good results adversarial practices manage to produce. Another is that, even if some adversary practice does produce, overall, good outcomes, this can at best justify institutional permissions to harm but not, necessarily or automatically, intentional harming. This is so for two reasons: First, particular cases of harming may not serve, they may even undermine or subvert, the ends which justify institutional permissions; second, even if the end and action of an adversary agent in a particular case does serve good institutional

purposes, intentionally harming others is not thereby justified. Good ends alone do not justify wrongful behavior.

This last point, of course, is a conclusion compelled by the author's commitment to Kantianism; it is not, therefore, wholly compelling. It would not persuade adversaries and defenders of adversarial practices who knowingly embrace some variety of moral consequentialism. Perhaps the central weakness of this thoughtful book is the author's admission that "if consequentialism is the correct moral theory, there is no serious objection to an adversary institution that produces enough social good to outweigh . . . the bad" (pp. 176–7). A related weakness is his relative neglect of what might be termed the phenomenology of role playing, which can explain not only why adversaries and other role occupants may be deaf to the demands of morality but also may make particular moral judgments of which he cannot approve (see, e.g., Elizabeth Wolgast, *Ethics of an Artificial Person*, 1992).

Because I have focused on the central question addressed by the author, I have neglected other chapters, and virtues, in the book. Well-written, full of interesting cases and real and imagined examples, Applbaum has drawn on much of his previously published work to present an illuminating and forceful critique of the arguments even good people in professional and political life employ to justify the bad things they do. For those interested in role morality and professional ethics, and who appreciate the style and results of analytical moral and political philosophy done by the likes of Nagel and Williams, Rawls and Dworkin, David Luban and Dennis Thompson, *Ethics for Adversaries* is a must read. Undergraduates would probably find it a hard go.

**Why I Am Not a Secularist.** By William E. Connolly. Minneapolis: University of Minnesota Press, 1999. 210p. \$29.95.

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This is the latest in a series of works in which Connolly has been interrogating liberalism and its fellow travelers. Drawing on thinkers such as Nietzsche, Foucault, Deleuze, and Arendt, he has become one of liberalism's deepest and most original critics today. And he is one of liberalism's most valuable critics, in part because his own intellectual journey begins with the experiences and preoccupations that led to liberalism. This is evident in the title of this work, which echoes and pays homage to Bertrand Russell's *Why I Am Not a Christian*, a text that is very much in the tradition of the secularism Connolly criticizes. It is also reflected in an engaging biographical story that introduces the work, in which Connolly describes how at a tender age he came to be an atheist. But for Connolly, liberalism generally and secularism in particular do not provide viable accounts of these experiences, or answers to these concerns.

Connolly conceives of "secularism" broadly, as the "wish to provide an authoritative and self-sufficient public space equipped to regulate and limit 'religious' disputes in public life" (p. 5). Thus, secularism offers itself as the alternative to the aggrandizing claims of religious truth to constitute the moral and political center of society, an alternative that becomes increasingly attractive as religious truth becomes religious truths and competing visions lead to sectarian conflict and violence. But in offering itself as the new center for political life, secularism commits the same errors as its traditional antagonists; although only one voice in the conversation, it sets itself up as the single, authoritative source to adjudicate the differences among the others. In doing so it fails to see its own limitations, and it creates its own forms of dogmatism and intolerance, which, ironically, intensify the

very forms of sectarian conflict that it was intended to overcome.

Perhaps the greatest failing of secularism is its faith in reason, or rather a certain conception of reason, one that is blind to what Connolly calls "the visceral register of subjectivity and intersubjectivity" (p. 24). Drawing on various sources, including recent brain research, Connolly insists that thinking, remembering, and feeling cannot be reduced to or modeled in terms of conscious, linguistically formulated processes of thought. Ethical life, similarly, should not be seen as enacting (or conforming our actions to) our beliefs and ideals but includes practices that actively engage "the visceral register of being" (p. 29). Public life cannot even in principle be a matter of pure argument delivering authoritative judgments that all rational citizens must, on account of their being rational, accept; rather, it is "always accompanied and informed . . . by visceral intensities of thinking, prejudgment, and sensibility" (p. 36). And that can be a good thing, since it can lead to creativity and new forms of communication.

Not surprisingly, if there is a single figure with whom Connolly is wrestling in these pages, it is Kant and his contemporary descendants, notably Habermas and Rawls. Much of the book consists of sustained engagements with these figures, but it also addresses the political failings of a secular vision of politics, including the war against drugs, the use of the death penalty, and the debate over a right to assisted suicide. Running throughout these analyses is what we might call a therapeutic intention, an effort to wean us away from the need for unity, for structure, for authoritative centers and control. One of Connolly's favorite images is the rhizome, literally a root-like structure consisting of a system of interconnected roots, tubers, stems, and so on, with no single or main stem to which they all feed. Culturally and politically, Connolly calls on us to embrace what he calls "deep pluralism," whereby we are connected to others in a variety of ways, organizing ourselves into a complex array of partially overlapping and intersecting associations, without the need for a common center, whether it be the idealized nation or the majesty of public reason or even the purity of Arendtian politics. Against the secularist strategy of insulating political life from contested religious or metaphysical views, we should embrace a politics of contestation in which conflicting perspectives are admitted into political life. By embracing these conflicts, rather than seeking to transcend them, we are more likely to come to see the contestability of our own moral sources and to discover new possibilities—new questions, new ways of engaging with others, new alternatives. The strategy of secularism was an effort to avoid conflict by retreating to an ever more rarified conception of the public realm, and it has failed. Instead, we need a "democratic ethos of engagement across multidimensional lines of difference" that is "jointed to a sensibility that affirms the ambiguity of being and the deep contingency of things" (p. 186).

This is an attractive vision. Connolly is correct to argue that the "reciprocal acknowledgment" by all that "no party has shown its perspective to be undeniable" could widen the scope for a "politics of forbearance, generosity, and selective collaboration between interdependent partisans" (p. 187). But one wonders how real a break this is from the politics of secularism. In the first place, secularism also demands that we reciprocally acknowledge the contestability of our own positions, and it is precisely this demand that has been—and is being—resisted by those who seek to embody their own ideals in legislation and public policy. But more important, it is hard to see how Connolly's "ethos of forbearance and