

for “economic.” In this way, he elides a major difference between the Marx of 1843, who had yet to develop a real critique of capital, and the Marx of 1871. To the later Marx, even the Commune’s radically insurgent democracy, one that in his eyes had famously smashed the state, constituted a necessary but insufficient step if it could not move on to free the working class from the rule of capital.

Abensour also ties his interpretation of Marx to contemporary debates in democratic theory, especially the discussions of democracy and of anarchy in the work of Claude Lefort and Reiner Schürmann, as well as earlier writings by Hannah Arendt and Emmanuel Levinas.

Overall, this book makes a most significant contribution. It offers a fresh and generally persuasive interpretation of Marx, while also addressing some contemporary issues within democratic theory.

Imposing Values: An Essay on Liberalism and Regulation. By N. Scott Arnold. New York: Oxford University Press, 2009. 504p. \$74.00 cloth, \$35.00 paper.
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The topic of this book is what the author calls “the modern liberal regulatory agenda.” It is “about the dispute between modern liberals and classical liberals about the proper scope of government regulation” (p. 116). N. Scott Arnold canvasses what he sees as the core justificatory arguments of the opposing sides. But he devotes his most detailed attention to what he calls “noneconomic” regulation, which he characterizes as “kinds of regulation more commonly justified by moral arguments or even by appeals to considerations of justice” (p. 120). Under that heading, moreover, his specific concern is not with tax and transfer policies but with restrictions on property rights in employment relations, health and safety regulation, and environmental land use regulation.

The major substantive claims made in this long and somewhat winding book are these. First, the central issue beneath the competing arguments that “modern liberals” offer on behalf of their putative “regulatory agenda” in the aforementioned areas and those offered by classical liberals to explain their opposition to it concerns the property rights that should govern the ownership of productive assets and the distribution of income. Classical liberals accord strong and extensive property rights to individuals and give these a status on a par with political and civil liberties. In contrast, Arnold argues, arguments offered by modern liberals on behalf of their favored regulatory restrictions upon private property can be understood only by attributing to them the belief that “the state has some sort of priority of ownership of what is otherwise private property” (p. 329).

Second, Arnold identifies three principal argumentative strategies by which partisans on one side of this debate might try to persuade those on the other side. One of

these is to argue that principles they share support their favored outcome. These are “common ground” arguments. Another is to argue that their favored policies can be based on their opponents’ own distinct principles. These are “convergence” arguments. Another still would be to try to persuade the opposition that their favored norms regarding the proper role of government do not apply well in certain particular cases or circumstances. These are styled as “conversion” or “unprincipled exception” arguments. Arnold argues that the former two strategies seem doomed to failure, given the nature of the disagreements involved and that only the last kind of arguments have any real chance of succeeding. After carefully reviewing what some of these arguments might be in the several areas within the regulatory agenda at stake, he concludes that there are “decent conversion arguments” for almost all of the modern liberal regulatory policies excepting the Endangered Species Act and the Clean Water Act. Among these decent arguments, however, only a relative handful could be expected to receive support from classical liberals.

In the face of the extensive remaining areas of reasonable disagreement, Arnold argues that three procedural requirements must be met by those who seek to impose their conception of the proper scope of government upon others: a democracy requirement, a transparency requirement, and a public justification requirement. The first of these requires that policies be enacted through a legislative process, rather than by courts or bureaucratic agencies. Transparency requires the specification of who benefits from and who bears the costs of regulation. The public justification requirement is logically and functionally akin to John Rawls’s account of the constraints of public reason. It requires that regulatory policies be based upon stated reasons that avoid logical fallacies, deal seriously and fairly with opposing arguments, and not depend upon what Arnold calls “principled sectarian arguments.” Sectarian principles are reasonably contestable moral claims, such as those about distributive justice or natural rights; and Arnold would bar these for the same basic reason that Rawls would exclude comprehensive moral and religious views from public reason—that is, they “cannot be rationally persuasive for those who have different principled views” (p. 358). In the final chapter of *Imposing Values*, Arnold subjects a number of the regulatory statutes covered in the book to his standards of procedural legitimacy and finds that almost all of them failed the test in one way or another.

The author wears his classical liberal sympathies on his sleeve. But he follows his own mandate to take opposing arguments seriously, and his useful case studies and his survey of pertinent conversion arguments provide a good point of departure for constructive conversation and debate. There are many arguments and observations that could be made in that context, but since I have at my disposal only as many words as Arnold had pages, I shall settle for two.

First, the core notions that there is such a thing as “the modern liberal regulatory agenda” and that it is fundamentally about “imposing values” seem odd and misleading in some respects. And the problems here disrupt the synergy between the early chapters of the book, which seek to provide “a comprehensive survey of the differences between classical liberalism and modern liberalism regarding the proper scope of government” (p. viii), and the case studies that follow. The general arguments articulate more closely with the tax and transfer policies that Arnold sets aside as not amenable to conversion arguments, whereas the policies in the case studies arguably are 1) somewhat heterogeneous, not only topically but morally and politically as well; 2) not driven so much by fundamental conceptions of property as by pragmatic efforts to cope with market imperfections and collective action problems; and 3) often pursuant to broadly shared goals rather than to competing “values.” For example, when it comes to pharmaceutical regulation, all parties presumably would like to make all safe and effective drugs expeditiously available while minimizing the serious health hazards to people who unwittingly take dangerous drugs. The disputation arises over the best trade-offs to make at the level of second-best theory and over somewhat ideologically driven, divergent speculative claims about what would happen in the absence of regulation.

Second, I would argue that Arnold’s depiction of competing conceptions of property rights as the fundamental axis of disagreements between classical and modern liberals is misleading and eccentric (in the literal sense of being improperly centered). Few modern liberals, I believe, would actually embrace the claim of state sovereignty over the control and distribution of resources that Arnold repeatedly attributes to them. Even people like Rawls who take socioeconomic equality as the morally proper default position recognize the moral propriety of the “legitimate expectations” any society has to establish in order to govern the acquisition and distribution of wealth and productive assets; and these always and necessarily instantiate entitlements to unequal private holdings. Most modern liberals would go still further to 1) respect and endorse the proportional desert of unequal holdings, and 2) recognize the role of private property rights as instrumental to the important moral good of personal autonomy, the important economic good of prosperity, and the important political good of dispersed social power. Where they part company with classical liberals comes from 1) their keen awareness that, as even Robert Nozick concedes, neither established nor market distributions are deserved “all the way down”; 2) an insistence upon considerably more expansive conceptions of public goods and externalities than classical liberals try to enforce; and 3) their different understanding of the nature and moral lineaments of political associations in general and of democratic societies in particular.

It is the last of these disagreements, I would argue, that constitutes the genuine axis of the dispute between classical

and modern liberals over the proper scope of government—with the disputes over property rights and public goods derivative from and ancillary to it. And here, somewhat ironically, it is the so-called modern liberals who are the political philosophical conservatives. That is, they agree with Aristotle (and Mill, in his *Considerations on Representative Government*) that animals grazing on a hillside do not by virtue of this mere proximity constitute a political association worthy of the name. Similarly, they would endorse Burke’s appalled rejection of the notion that a political association should be conceived as akin to “some low trade in pepper or calico” and his affirmation that it instead embodies a partnership, animated by common goods and moral purposes, and extending over generations. In a good democratic society, they would finally argue, these animating purposes include a commitment to civic equality and to the creation of social arrangements that offer all citizens the real opportunity to pursue good and happy lives.

Tough Choices: Structured Paternalism and the Landscape of Choice. By Sigal R. Ben-Porath. Princeton:

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Contemporary liberal political theory has as one of its central tenets the rejection of state paternalism toward adults. A paternalistic state substitutes its own judgment for that of its subjects, for the good of the latter. The liberal objection to a paternalist state is that it infantilizes its subjects by treating them as if they do not know what is good for them, or as if they lacked autonomy. According to Sigal R. Ben-Porath, this categorical antipaternalism is based on an untenable reverence for unregulated choice.

The aim of *Tough Choices* is to critically examine the contemporary view of choice and to defend what Ben-Porath dubs “structured paternalism.” To develop an acceptable understanding of the proper balance between choice and state intervention, it is argued, we need to know how people actually go about choosing. The author believes that liberal political theory has failed to adequately incorporate insights from the empirical literature on choice and rationality, in particular the prospect theory developed by Amos Tversky and Daniel Kahneman. In place of the idealized understanding of choice and autonomy characteristic of liberal theory, Ben-Porath’s structured paternalism proceeds from the limited rationality of actual choices. She defends state intervention that increases the dual values of civic equality and well-being, over and above the irrational choices people often make for themselves.

The two first chapters of this well-organized and elegantly written book lay out the general theoretical framework. Chapters 3–6 deal with specific instances or cases of regulation of choice, from the intimate sphere and the case of children to cultural diversity and finally to school choice. In