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Book Review

Arthur R. Landever
Cleveland State University, a.landever@csuohio.edu

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Original Citation

Arthur R. Landever, Book Review, 25 Cleveland State Law Review 138 (1976) (reviewing R.M. Unger, *Law in Modern Society*, Free Press (1976))

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BOOK REVIEWS

KNOWLEDGE AND POLITICS. By Roberto Mangabeira Unger. New York: Free Press. 1975. Pp. 336. \$12.95.

LAW IN MODERN SOCIETY — TOWARD A CRITICISM OF SOCIAL THEORY. By Roberto Mangabeira Unger. New York: Free Press. 1976. Pp. 309. \$12.95.

*Reviewed by Arthur R. Landever**

Roberto Mangabeira Unger's *Knowledge and Politics* offers some insights into the function of classical liberalism in today's society. The author launches a total assault upon classical liberalism as a mode of thought and as an institutional and cultural setting which focuses upon freeing the individual personality from all manner of group and governmental restraints. The thrust of the author's argument is that such liberalism is inadequate as a framework to address the central problems of a society, *i.e.*, establishing a meaningful balance between order and freedom. Such a model, says Unger, can provide no coherent theoretical structure to resolve the several contradictions that exist within society.

These antinomies include a recognition of subjective human desires over which reason cannot prevail, together with a supposed reliance upon reason as a means to comprehend the world around us. He also cites an awareness of subjective value choices in the group and domination by a powerful will in the bureaucracy, along with supposed impersonal rules which are to govern institutions in a democratic society. While liberalism presupposes neutral, general laws, it is not capable of providing standards upon which such laws can be selected or applied. Such contradictions appear in our American legal system frequently. For example, contract law is, at once, a means merely of accommodating the desires of individuals who strike a bargain as well as a device to restrict subjective wishes (as in procedural requirements of notice and hearing, and presumably in rules of interpretation of the contract). On occasion, it serves as a method of totally denying the wishes of one of the contracting parties because the agreement is deemed unconscionable. Indeed, such limits are grounded upon values which may by no means be commonly shared.

To the author, classical liberalism's central weakness lies in its conception of an individual's goal — to strive exclusively for independence from others and from the society. Unger's concepts of "self" and "the organic groups" are offered to provide a framework of reflection and values more in keeping with the human condition. According to Unger, the accomplishment of classical liberalism lies in its recognition of the individual's distinctiveness, in contrast with the medieval conception of the

* A.B., J.D., Ph.D., New York University; Professor of Law, Cleveland State University College of Law.

person whose status was frozen and whose identity was invisible within the group. Yet such distinctions present only one side of any meaningful examination of the human personality. The other is integration, *i.e.*, a recognition that one is part of the world around him, who functions and develops within a group environment. Accordingly, there are shared values or ideals, toward which all should strive — harmony with nature, human sympathy (seeing others not merely in class or role terms, thus seeking to enlarge their participation in society), and concrete universality (viewing the individual as distinct, while being part of humanity).

It is to the author's credit that he directs our attention to the dual aspects of the human personality. Modern psychology recognizes the individual's need to be part of a larger group and institutional environment. Individuals will strive to "escape" from a too narrowly conceived freedom of isolation. Unger's identification of shared values also provides a useful contribution to our thinking about the nature of freedom. As pollution threatens our ecosystems, we have come to realize that we must function in a delicate balance with the world of nature. As we see groups (*e.g.*, women's liberation) struggling to remove the bonds of cultural restrictions, we better understand that humans must not be viewed simply in class or role terms. We recognize that we must reflect, not only upon the individual as such, but also upon our common humanity.

Nonetheless, Unger's critique has substantial limitations. First, his attack is upon a conception of liberalism that no longer exists. His notion of liberalism in classical form seems frozen in an 18th century/early 19th century mold, a doctrine which presumably saw freedom only in terms of a total separation of the individual from the oppression of group and government, and reason as an answer to revealed truth. Such a narrow viewpoint is not central to modern liberalism. It should be evident that in the 20th century, at least, liberalism is more creed and pragmatic approach than clearly delineated doctrine.¹ Today, persons who call themselves liberals march to varying beats of drummers — the *laissez-faire* economist urges selfish choice to determine the nature and level of production while the constitutionalist emphasizes institutional safeguards to check arbitrary powers. Whereas the democrat calls for enlarging the franchise, the rationalist continues to see human reason, however faulty, as the means to improve the human lot. The proponent of universal education sees each individual as potentially capable of development and contribution. Whereas the welfare-statist demands a more positive government assurance of equal opportunity and provision of material needs, the liberal religious individual sees no inconsistency between rationalism and divine inspiration.

Unger contends that there are irreconcilable contradictions within liberalism. These, of course, may be a function of the use of such an outmoded view of the notion. Moreover, it is understandable that there

¹ See, *e.g.*, Smith, "Liberalism," 9 International Encyclopedia of Social Sciences 276 (1968).

are contradictions within liberalism since in its development it has translated itself into social institutions and party platforms. In doing so, it has seen fit to compromise, sacrificing symmetry and purity for feasibility. In addition, it has had to deal with the inevitable conflicting tendencies within the human spirit — desires for material satisfaction, human development, privacy, free association, stability, individuality, and equality.

A final criticism of the book is directed, not at its thesis, but at its execution and style. The work is woefully lacking in concrete examples. Consequently, the passage through this philosophical treatise is a difficult one, and meaningful reflection is handicapped.

In sum, although the work is of some interest, its attack appears misplaced and its approach too abstruse.

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Law in Modern Society excites the imagination while helping the reader comprehend and grapple with the tensions inherent in modern Western legal systems. The work builds upon the author's *Knowledge and Politics*, but in its sharper focus and execution, it is far superior.

Unger analyzes the character of legal systems in different societies, contending that such a focus can provide increased understanding about the nature of law. More significantly, it can furnish clues, although no clear answers, to what he calls "the predicament of social theory." The predicament is the agenda of unresolved questions posed by classical social theorists: How is society to be studied and the information to be conveyed? What binds society together? How is modern society in the West different from other societies?

The author first identifies three main types of law: (1) customary law, in which shared values, translated into modes of interaction and reciprocal expectations of conduct, bind the society; (2) bureaucratic law, where government, now seen as distinct from society, imposes express regulations upon it; (3) the legal order (*i.e.*, the rule of law system), a still narrower conception in which the rules promulgated by government are imposed through general legislation uniformly applied by distinct legal institutions. Bureaucratic law and the legal order have arisen, he states, to meet the crisis of order caused by the decline of customary law.

Seeking to determine the circumstances in which the different kinds of law have emerged, Unger whisks the reader off to faraway lands and distant times. He briefly sketches the social settings and legal systems in ancient China, India, Israel, Athens during the "golden age," and imperial Rome. Though Israel came closest, declares Unger, none developed what the author maintains are the two preconditions for a legal order — group pluralism (social group interaction in which no single group is dominant or viewed as having the inherent right to govern) and a higher law justified by a transcendental religious doctrine. Taken together, they provide a basis for legitimate criticism of existing legal systems.

Professor Unger considers the range of social structures — tribal, aristocratic, classical liberal (democratic Britain and nondemocratic Prussia in the 18th and 19th centuries), post-liberal welfare states, traditionalistic (modern Japan), and revolutionary socialist (People's Republic of China). In all modern societies, he observes, there is a gap between the ideal of community and shared values on the one hand, and the reality of personal dependence, on the other.

The author confronts the reader with what he views as a basic flaw in liberalism, common to classical and post-liberal versions — society's seeming incapacity to justify its exercise of governmental power. The tensions within liberal society are the result of an interplay of several components. There exists, he says, an ideal of private individuals seeking their own self-interests under neutral rules of law which promise both freedom and equality; a reality of hierarchy, however open and changing, in which some groups are dominant and seek preference; the illegitimacy of such rank order, yet inability to eliminate it; and a recognized need for government by collective judgment, yet no consensus of how to determine and implement shared values. Thus, every criterion for distribution of the society's scarce resources becomes suspect.

In addition, the author contends that post-liberal legal practices promote an erosion of the rule of law. However restrictive, formal justice, (*i.e.*, application of legal rules without regard to choices among competing values) at least provided uniformity and some certainty in the law. Post-liberal society has rejected formal justice as unfair. It has substituted a range of undermining devices: the use of open-ended standards (concepts of public interest, fair market value, unjust enrichment); procedural limitations upon contract and distribution (adhesion contract rules); outright interference (minimum wage requirements); and statutory construction in which discovered purpose is held to negate even express language in a statute to the contrary. These and other techniques all serve to create *ad hoc*, unstable, and unpredictable results which seem less like legal rules and more akin to the language of political and economic debate.

In this book, as well as in his *Knowledge and Politics*, Unger appears to caution against employment of any single perspective, correctly judging that no one aspect or perception can accurately portray the complexity and commonality of human social life. Synthesis is his effort, and on several levels. Thus, the person must be seen as possessing both a distinct identity and a need for integration in a group existence; formal law is to be tempered by principles of solidarity grounded upon shared values; the social setting must be examined from a double perspective — that of the actor as well as the observer — in order to avoid analysis either too divorced from historical events or too caught up in them. The social scientist must be able to incorporate metaphysical conceptions of human nature and knowledge and he must also synthesize political concerns about developing social organizations which satisfy our longing for community, yet strengthen individual autonomy.

Professor Unger forces us to reflect upon the substantial problems

implicit in systems of law in general, and in the Western legal systems in particular. The inevitable struggle within liberalism to justify uses of power continues, as does the effort to moderate harsh rules with ad hoc adaptations. Other elements cause the brew to boil — rising expectations concerning one's rights, accelerated changes in consciousness affecting perceptions about the family, legal institutions, the work ethic, group pressures for government benefits, as well as technological and environmental change.

The wonder is that the Western legal systems, with such internal conflicts, and with the concept of democracy itself under attack, still survive. That they do suggests that they are able to maintain at least a tentative accommodation among the conflicting forces within them. But such accommodation is possible only so long as the individual can place restraints upon himself and thus recognize his dual private and social needs. Accordingly, the judge must be ever zealous to assure that his desire to do justice based on his own subjective notions does not overwhelm his responsibility to seek and apply identifiable core meanings in legal rules to given sets of facts. More importantly, no doubt, each person must work to temper subjective desires by a recognition of values shared — a basic loyalty to constitution, a belief in obligations toward others, and a broader meaning to life in community.