

Beyond Hegemony: Towards a new Philosophy of Political Legitimacy

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Darrow Schechter, *Beyond Hegemony: Towards a new Philosophy of Political Legitimacy*, Manchester: Manchester University Press, 2005, vii+200pp, £55 (hbk), ISBN 0719060885

Darrow Schechter's new book is an original intervention in the discourses of law, legitimacy and the relationship between humanity and nature. It is also a very difficult book and practically impossible to summarise. Schechter tackles an extremely complicated subject-matter and its dense prose makes no concessions to the reader. Two main lines of arguments run through the text; one is the relationship between legality and legitimacy; the other concerns the mediation of humanity and nature in politics. Schechter attempts to ground a theory of political legitimacy by focusing on the concepts of reason, legality and legitimacy. Kant and Marx are his natural starting points for this project, because '...Kant is interested in the conditions of possibility of experience, knowledge and freedom. The key to discerning those conditions is to be found in the mediation between humanity and nature. For Kant that mediation is rational and legal' (8). Marx of course analyses the humanity-nature relationship through his concept of labour and the legal character of this mediation through a critique of private property. This is an exciting way to conceptualise the relationship between these two thinkers, and it enables Schechter to drive a wedge between Kant and contemporary liberalism, which claims Kant as its natural ally. The problem with liberalism, as Schechter sees it, is that it limits legitimacy to legality, while attempts to define the good on grounds of extra-legal legitimacy have turned out highly authoritarian (as in state

socialism). What is sought, then, is a theory of legitimacy that arises from an immanent critique of the relationship between liberalism and law and has as its basis a non-reified humanity-nature relation based on non-instrumental knowledge.

Besides Kant and Marx, Schechter turns to critical theory, legal theory and the guild socialism of G.D.H. Cole in order to argue his case. While he has written about some of these traditions before, Schechter now argues that only in the context of a critique of liberal legitimacy and an alternative conception of legitimate law can his earlier advocacy of guild socialism (*Radical Theories: Paths beyond Marxism and Social Democracy*, Manchester: Manchester University Press, 1994) and his critique of state sovereignty (*Sovereign States or Political Communities? Civil Society and Contemporary Politics*, Manchester: Manchester University Press, 2000) be maintained. In the latter book, Schechter argued that the public sphere, community and recognition offered a framework for a humanist conception of freedom beyond instrumental reason, but in the light of the critique of extra-legal legitimacy developed in the current book, this humanist conception itself becomes questionable.

In a first step, Schechter tries to show that the legitimacy of liberalism rests on a misconception of the relationship between legality and legitimacy. In the liberal tradition the priority of the right over the good is widely held to be the defining feature of the specific liberal form of legitimacy, which is formal in nature. In Schechter's words, it eschews 'forced reconciliation'. Thus in liberal theory the political analogue to Kant's 'epistemological humility' is the separation of the spheres of private property as system of needs from the law which acts as arbiter. Yet forced reconciliation is common place in liberal practice, be it in authoritarian, pragmatist or populist form (e.g., Keynesianism and corporatism). Furthermore, the classical liberal position is not neutral. The adoption of legal measures 'is in large measure an instrument in the struggle for hegemony' (33). The wholesale critique of legality which has ensued as a result, however, offers no better solution. Therefore, the critical force of the liberal argument for a legal form of legitimacy

ought to be retained and extended in the direction of a judicial practice that transcends the limits of individual autonomy as instrumental-rational pursuit of self-interest. For, otherwise, a legitimation crisis looms, where legality is not legitimate: 'when forms of law are out of step with the cognitive content of reason, law forfeits the epistemological dimension that separates modern law from other more or less hegemonic models of public authority...' (36). Thus while Schechter thinks that liberalism's formalism and abhorrence of forced reconciliation bolsters it as a postmetaphysical philosophy which safeguards individual freedom against authoritarianism, the configuration of property and law as outlined above leads to a commodification of need which represents external nature as a threat, while policing human nature through a variety of disciplinary strategies for the purpose of control.

In a second step, Schechter fleshes out his claim that attempts to arrive at a concept of legitimacy devoid of legal form offer no superior solution to a theory of legitimate law. This is argued through an investigation of 1) state socialism as an attempt to find extra-legal legitimisation for law and 2) the way in which new social movements interact with the liberal state. The latter relationship is seen as one whereby the state legalises needs whose legitimacy can be successfully argued for by new social movements. In both cases no real reconciliation is achieved between legality and legitimacy. In the first case, legality is devoid of any epistemological content, in the second the scope of the legal is extended (when needs of certain groups such as women or homosexuals are recognised as legitimate and taken into the legal framework) while the relationship between legality and legitimacy remains unchanged.

Schechter frames this analysis with a theoretical *tour de force* through nine hundred years of German philosophy which is fascinating, but not always explicitly connected to the main issue at hand. The section starts with an analysis of Hegel's critique of Kant and Marx's critique of Hegel: Hegel objects to Kant that the forms of our knowledge are not

eternal but shaped by our engagement with the world (the dialectic of thought and institutions is codified in law). This opens up the horizon for a reconciliation of spheres which are bound to remain separate in Kant's view, for example that of legality and legitimacy where the latter is rooted in a form of praxis which is not divorced from knowledge. Marx takes this critique one step further and argues that it is the practice of labour and law which constitutes the social world out of the synthesis of humanity and nature, rather than thought. This focuses the argument back on the relation between humanity and nature. But, Schechter argues, Marx is not radical enough, because he neglects the relationship between humanity and human nature in favour of that between humanity and external nature. Conversely, a lot of contemporary critical theory in the footsteps of Nietzsche and Freud emphasise humanity's relationship with human nature at the expense of questions concerning the democratic relationship between humanity and external nature. What is lacking is a connection between these two strands of thought.

The lesson Schechter draws from this is that 'only forms of law which meet the condition required by the greatest possible transcendence [of need] will be more than merely instrumentally rational and strategically legitimate' (107-8). Private property and commodity production are not compatible with such a form of law. Instead, Schechter appeals to the guild socialism of G.D.H. Cole. Cole had argued for a form of socialism which produces on the basis of the needs of its producers. This approach to production would see the relation between humanity and external nature determined by the members of the community on the basis of knowledge about both their needs and the available resources. The legal organisation of this community would therefore be essentially knowledge-based, the link between law and epistemology re-established.

Finally, Schechter has something to say about the reconciliation with inner nature; his approach to this question is influenced by Adorno and Horkheimer's *Dialectic of Enlightenment*. Like them, he sees human

nature oppressed by the drive to dominate external nature. But, in the view advocated by Schecter, external nature is mediated by need and the possibility arises for human nature to express itself legitimately, because it is the source of this need. As he puts it, 'production for need undertaken against a background of epistemological legitimacy is a form of production that brings out the individually aesthetic component of the knowledge process without which production is commodified and legitimacy is instrumental' (171). This argument is dependent on and needs to be defended through an engagement with theories of mimesis and aesthetic rationality as they can be found in the work of the Frankfurt School and related theorists. However, Schecter's discussion of these issues is sweeping rather than detailed, as the book generally gives the feeling of being a programmatic statement, rather than a full defence of its claims. This is a pity, especially because a mass of exciting ideas can be found here but the cursory way in which they are introduced leaves the reader to do a lot of the work him- or herself. One can only hope that Schecter will keep working on these issues in more detailed studies; here he has made only an excellent start.

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