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Critical Notices

Justificatory Liberalism: An Essay on Epistemology and Political Theory. GERALD F. GAUS. Oxford University Press, 1996.

Liberalism is a position in politics and in political philosophy, and this book defends a version of it. But the argument is not built on political principles, or on convictions about the legitimacy of power relations, or on explorations of the concepts of law or of justice. Liberalism is here understood as a thesis about when it is appropriate to make moral demands, which is not necessarily a matter of politics at all. The liberal answer, Gaus argues, is that moral demands are to be made only when they can be justified to the person they are made against. Liberalism, then, is a position in moral philosophy, and political implications are eventually held to follow from it.¹ But this road from morality to politics is, according to Gaus, thickly paved with epistemology. The book's *raison d'être* is this methodological thesis, that the liberal ideal of individualistic justification is best understood as using the idea of justified belief rather than justified action. Gaus hopes to blur the distinction between theoretical and practical reason to some extent, mainly on behalf of theoretical reason. The first of the book's three parts, then, is an intelligent critical survey of contemporary epistemology, along with the development of a distinctive epistemological position, centered on the idea of "open justification." Roughly, propositions a person would accept after the revisions in beliefs she's committed to are justified to that person, whether or not she actually accepts them. I will not consider the case for this conception of epistemic justification, but turn to Gaus's development of moral and political liberalism.

The second of the three main parts of the book concerns "public justification," but not yet "political justification," which is the topic of part Three. Part Two does, however, concern proto-political matters. Gaus argues that the public nature of justification required by his epistemological arguments leads to familiar liberal political principles of free speech, toleration, and a moderate right not to be imposed upon by others, though so far no legal conclusions are drawn. Toleration and freedom of speech, as we know from Mill, are not only a matter of the limits of law, but putative principles of social life more generally. A principle of toleration, for example, is drawn from the claim that many practices and ways of life are openly justified to their adherents. So many moral demands cannot be justified to those adherents, even if they are justified to those who would make the demands. You may be justified in thinking homosexuality or religious fundamentalism is wrong, but that doesn't mean you can justify that claim to others. That depends on whether they are committed, on the basis of their actual beliefs, with argument and information, to accepting this claim. If not, then their views ought to be tolerated despite justified objections.

Gaus argues that in a general and vague form such broad principles are publicly justifiable, but no particular interpretation is. Justification is hard to come by, and many individuals will be openly justified in sticking with their preferred but con-

¹ Contractualism would count as a liberal approach to moral theory too, by requiring acceptability to all according to standards of *practical* reason. Gaus's theory is much like contractualism, but substituting the standards of *theoretical* reason as the canons of acceptability of moral demands.

troversial interpretations of these liberal principles, so no single interpretation can warrant any moral demands. Of course, political life will require specific actions based on particular interpretations of these and other principles, and this problem is the subject of the third part, "Political Justification." Since specific moral demands are rarely publicly justifiable on their merits, they can only be justified in terms of their having been produced in a certain way—for example, by a certain political procedure. Even if no specific moral demands are justifiable on their own merits, many of them can be justified under the description "product of process *p*."

A law, let us say, is legitimate if its coercive enforcement by the state is morally justified. Impartiality can, intuitively, lend legitimacy to a law. Gaus argues that this point can be openly justified, and that this justifies the rule of law, but Gaus's epistemic conception of justification is not deployed to establish this, and he relies instead on more familiar practical arguments (pp. 197-99). If the question is whether the rule of law is epistemically justified to all, we ought to look at some diverse range of basic beliefs that might at first seem unlikely all to have this commitment, and then to see why in fact they all have it. We don't get such an argument. More generally, Gaus's methodological thesis, that liberalism is more about epistemic than practical reasons,² seems to point in an unusual direction when we ask why an impartial law is more legitimate. A contractualist approach, by contrast, might explain the connection between a law's impartiality and its legitimacy in terms other than impartiality and legitimacy. For example, it might say that practically reasonable people, each pursuing their own aims without insisting on special treatment, could never all agree to any partisan legal regime. Gaus's cognitive approach to acceptance and rejection, however, leaves this question aside and asks whether all theoretically reasonable people would cognitively accept the proposition that legitimate law must be impartial. What reason there might *be* for accepting it—a contractualist account, or some other—is not taken up. The difference is striking and it is entirely deliberate. Gaus doubts that any philosophical account of such things as why legitimate law must be impartial will be epistemically justifiable publicly. Contractualism, then, would not be available as a warrant for moral or legal demands whether or not it is correct. (If, as seems possible, contractualism implies otherwise, Gaus must hold that it is not correct.)

Impartiality comes in at least two varieties: the one just mentioned is impartiality in a law's content, or its non-discrimination. There is also impartiality in a law's source, its having been produced in a process that doesn't systematically favor the input of some citizens over others. This second kind of impartiality—I'll call it procedural fairness—also adds to a moral demand's legitimacy. But Gaus argues that these kinds of impartiality are not good enough; to warrant moral demands in an openly justified way, a demand must have its origin in a process that also has some tendency to get the right answer. This leads to a conception of democratic legitimacy that depends on certain epistemic qualities of democratic deliberation.

I now turn to two arguments in the book having to do with the relation between public reason and political justification.

² This is my gloss. Gaus prefers to see it as a blurring of the very distinction.

Gaus vs. Political Liberalism

Gaus argues that proper political justification does not guarantee stability, despite (as he thinks) the aims of, e.g., Rawlsian theory. Gaus argues that Rawls's political liberalism is objectionably populist, and that his own theory is not (pp. 132ff, 214, 231). Rawlsian theory holds that a political justification cannot appeal to any consideration or argument that any reasonable citizen would reject. Rawls also hopes this approach to justification will make it possible to achieve stability on the basis of actual acceptance, by enough people, of public justifications. Even supposing all reasonable citizens do in fact accept proper public justifications, stability plainly depends on whether enough people are reasonable. If most people are not reasonable, and many or most unreasonable people rejected the public justifications, then the justifications would be fully proper but powerless to produce a stable political association. Rawlsian theory does not, I believe, assume that proper justifications will guarantee stability. It does assume that if enough people are reasonable then proper justifications would lead to stability. But this seems to be necessarily true, as a matter of the very concept of a reasonable person. If any reasonable person can reject a certain doctrine, then that doctrine is no part of a proper political justification. So in any proper justification, every part of it will actually be accepted by all reasonable people (all people when reasonable). So if enough citizens are reasonable, the justification will be widely embraced and so a powerful source of stability.

Gaus's charge of populism is based mainly in the worry that political liberalism, by giving so much weight to *common sense*, will count, as valid justifications, even doctrines or arguments that some reasonable citizens have no reason to accept.³ After all, there is little reason to think that the stamp of common sense is either necessary or sufficient for something to count as a genuine reason. Some common sense is crazy, and some uncommon sense is rationally mandatory. Rawls is led to court common sense, Gaus argues, out of his hope to induce stability. This is the populism in political liberalism that grounds Gaus's central objection to it.

Gaus writes as though, according to political liberalism, any doctrine or inference rule that is accepted by "common sense" is automatically available in political justification, and also that nothing else is available. The problem with this interpretation is that the actual level of acceptance of a doctrine is no part of the political liberal's account of a legitimacy-providing justification. The idea of a proper justification may be ambiguous: one standard, the ideal of public reason, tells citizens how they ought publicly to reason with other citizens about political matters; a second standard, the liberal principle of legitimacy, tells us when a proffered political justification is indeed justifying. It is crucial to distinguish these in at least Rawls's political liberalism. The standards of public reason may be met without meeting the principle of legitimacy, and *vice versa*. The role of common sense is entirely derivative and plays no fundamental role as a standard of legitimacy. If the contents of common sense diverge from what all reasonable

³ See Gaus, p. 132, point (5), the "accessibility condition." Gaus cites such passages in Rawls as the following: "the basic structure and its public policies are to be justifiable to all citizens, as the principle of political legitimacy requires. We add to this that in making these justifications we are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial. *Etc.*." PL 224-25.

persons can accept, then it is the latter that sets the standard for proper justification from the standpoint of legitimacy. Nevertheless, the concept of common sense comes in as an appropriate, but imperfect, guide for citizens who wonder which doctrines are available to them in political justification, which doctrines are within the limits of public reason. Obviously no one can know every other reasonable citizen's views and determine in each case whether all must accept a certain claim or inference that is in question. A citizen normally discharges her duty of civility, the duty to respect the bounds of public reason, by, among other things, staying within the conclusions of common sense and the relatively uncontroversial conclusions of science.

For those reasonable persons who can yet reject a given attempt at justification, it fails to justify the political action in question, and fails to place duties of compliance on those dissident reasonable citizens (though there is no evident reason for thinking this undermines the legitimacy of the law or policy as applied to others). Indeed, if I know of such reasonable dissident citizens this knowledge presumably should override the more permissive common sense standard of public reason; I should not seek the political action in question unless there is some way for the dissident to avoid its being coercively imposed on her. Her rejection is morally decisive in this way, even if it differs from common sense. So the standard of public reason could be met in a way that would not adhere to the liberal principle of legitimacy. Where this is known, the principle of legitimacy is apparently morally superior, and forbids offering the ostensible justification.

So public reason does not guarantee legitimacy. Likewise, citizens may misbehave by offering inappropriate reasons for a political policy, and yet the policy might yet be legitimate on other grounds offered by others, or not offered at all. Legitimacy does not require adherence to public reason.

Gaus exaggerates, as many have done, the connection in political liberalism between legitimacy and stability.⁴ Political liberalism does not appear to have the populist features he objects to.

Reflexivity

The distinction between legitimacy and public reason is helpful in assessing another of Gaus's arguments. Gaus argues that liberal justification contains no "principle of reflexivity." That would be a principle that requires that the theory of justification itself be justifiable to all reasonable people, just as it requires of all other norms. He points out that Betty might have a justified belief that she has justified norm N to Alf, while Alf, holding a different theory of justification, believes that he is justified in rejecting N. We might ask, why should Betty's theory determine whether the justification is successful? And this might lead us to demand that the theory of justification itself be justifiable to all. Gaus rejects this. He says that Betty is only required to have a *justified belief* that N is justifiable to Alf (pp. 177-78).

This may conflate the requirements of public reason with the requirements of legitimacy. Gaus elsewhere is clear that legitimacy requires that norms or doctrines be openly justifiable to every citizen, not just that they be believed to

⁴ Rawls's use of the word "stability" can be misleading, as Rawls seems to recognize in a recent corrective passage. See PL, Introduction to paperback edition, p. xxxix, note 5.

be so by whomever is offering them as reasons. So Betty's belief that she has justified N to Alf is no guarantee that she has actually done so, and so it is no guarantee that the justification is successful from the standpoint of legitimacy. From the standpoint of public reason, which is a requirement about how we should reason politically with other citizens, Betty may well have done her duty so long as she is justified in believing she has openly justified her reasons to Alf. This may be what makes Gaus's lenience with Betty seem plausible. But the requirements of public reason can be met without meeting the requirements of legitimacy, as we saw earlier. If we concentrate on what the standards of justification are from the standpoint of legitimacy, then the question about reflexivity still stands: If norms and doctrines used as public reasons must be justifiable to all, what criterion of "justifiable" is operative? Gaus agrees, I think, that its being believed to be justifiable would not be enough for legitimacy, even if it is all that can be asked of the citizen offering the justification.

Furthermore, it would be odd to think that the truth (in this case the truth about the nature of justification), merely as such, could be sufficient for legitimacy here even though it is not sufficient anywhere else in political justification. Yet what blocks this unless the liberal principle of justification is reflexive—applies to itself? There is no apparent logical difficulty in the reflexivity requirement and no compelling reason to exempt it from its own strictures.⁵ If we can eventually appeal to the truth merely as the truth in this way, it is no longer clear why we couldn't appeal to it at an earlier point: why isn't the religious truth also simply politically authoritative even despite reasonable disagreement? Gaus denies that religious truth as such is politically authoritative, since the political authority of a norm or doctrine depends on justifiability to every person. Why does he make an exception for theories of justification themselves? If no exception is made, they are "reflexive."

Gaus takes a rigorous and original approach to contemporary issues in political philosophy. His cognitive and epistemic twist on liberal theory probably leaves insufficient room for basic features of practical reason in a collective context. On the other hand, questions of cognitive rejectability are more important than liberal theory has so far recognized. For this, and many other reasons, Gaus's book deserves to be seriously studied by anyone interested in the philosophical foundations of liberal moral and political theory.

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Idealism and Freedom: Essays on Kant's Theoretical and Practical Philosophy. HENRY E. ALLISON. Cambridge: Cambridge University Press, 1996. Pp. 217.

Ever since his *Kant's Transcendental Idealism: An Interpretation and Defense* (1983) and *Kant's Theory of Freedom* (1990), Henry E. Allison's work on Kant has received and deserved as much attention as anyone's. This welcome collection amplifies directly on the main themes of these two earlier books. In addition to one new essay, "Transcendental Idealism: A Retrospective," the volume contains

⁵ I consider closely related matters in detail in, "The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth," forthcoming, *ETHICS*, 1998.