

Philosophy 267
Spring, 2013 Graduate seminar on Political Liberalism.
Dick Arneson

Class meets Tuesdays 1-4 in HSS 7077 (The Phil. Dept. seminar room).

The topic of this seminar is “political liberalism.” This phrase is associated with recent doctrines advanced by John Rawls, but others have latched onto the idea, and versions of it can arguably be found in writers as far back as Locke and even Hobbes.

The rough idea is that in a complex modern society that does not go in for clearly unacceptable tyranny in an attempt to police its members’ thoughts, there will always be wide diversity of belief among people as to what is good and worthwhile, how we should live our lives, and what we morally owe to one another. This is the fact of pluralism. The point is not merely that reasonable people will disagree with those who are not reasonable, not thinking straight. People who seem normal and reasonable by ordinary standards will tend to fan out in allegiance to different and opposed ethical beliefs. The political liberalism idea is that there is a problem lurking in pluralism of belief for political legitimacy. The liberal legitimacy norm holds that it is illegitimate and hence morally unacceptable to use state power to impose on people coercively in ways that could not be justified by appeal to doctrines that all reasonable members of society can reasonably accept. This is a unanimity requirement of a sort.

In his later writings Rawls seeks to show that a political conception of justice that draws its content from shared ideas latent in the public culture of democratic societies can become the object of an overlapping consensus. People disagree about what is right and good, but each reasonable person from her own evaluative standpoint can endorse the properly constructed political conception of justice. This conception includes a set of moral principles together with an intuitive rationale for them. Exercises of state power in accordance with this political conception can thus be legitimate and acceptable according to the liberal legitimacy norm. Rawls advances his own theory of justice, the doctrine he calls “justice as fairness,” as a candidate political conception of justice, but he acknowledges there may be other conceptions of justice that could play this role of being the object of an overlapping consensus in a society run according to the conception.

A lot evidently turns here on what counts as a “reasonable” person and “reasonable” acceptance or rejection of ethical doctrines. According to Rawls the idea has ethical and epistemic content. A reasonable person accepts the fact of pluralism and does not seek to impose his own ethical beliefs on others in violation of the liberal legitimacy norm. Reasonable persons “desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept.” Being free includes having the capacity to cooperate with others on fair terms and having the capacity to work out a conception of the good and a plan of life, to pursue the plan, and to revise one’s views on these matters if that seems appropriate. Being equal includes equally having the capacities just described at or above a threshold level and in consequence having the same fundamental moral status as all other such persons. Understanding that people are free and equal, the reasonable accept that all have certain basic rights, rights to freedom of thought and speech and association and broad liberty to live as one chooses and the right to a democratic say. The function of the state is to respect and protect these rights.

Reasonable people have capacities to reason and deliberate and set ends. If a person affirms a comprehensive doctrine, it will be reasonable in the sense of somewhat suited to its purpose. A reasonable doctrine organizes values and integrates them with a view about the nature of the world to yield prescriptions about how we should live, covering major ethical issues, and is

associated with a tradition of thought that may evolve over time but does so in ways that are somewhat responsive to reasons and evidence. Rawls says that given the “burdens of judgment,” we should expect people’s allegiances to differ; the burdens of judgment include such matters as that different life experiences may make different considerations in favor of doctrines salient and that even people who agree as to what considerations are relevant may attach very different weights to the various considerations in forming their beliefs. The burdens of judgment appear to apply to people’s empirical belief acquisition and maintenance as well as to their ethical belief acquisition and maintenance.

Members of society have a right to a democratic say over its political institutions. In the democratic process that determines how state power will be exercised, people are to appeal to public reason--shared reasons drawn from a political conception of justice that all can reasonably accept. Sectarian appeals, including appeals to controversial doctrines such as utilitarianism and Kantianism, are eschewed, justification of public policies is conducted in terms of reasons all can share. Rawls sometimes says the domain of public reason is limited to constitutional essentials and matters of basic justice. This means that with these in place, further exercises of state power are acceptable if they respect basic rights and are selected by a democratic process justified by public reasons. On nonbasic matters, people are at liberty to advocate and vote as they choose; the outcome of the political process on such issues is fair because it emerges from a fair process.

One line of objections against political liberalism so construed questions the idea of the “reasonable.” Suppose the best theory of justice is the one that best reflects the reasons there are. It would be affirmed by an ideal reasoner after ideally extended deliberation. People who are “reasonable” in Rawls’s sense might well reject the best theory of justice, since you can be reasonable in Rawls’s sense provided you are reasonable enough; you might still add up two and two and get five or make some subtler mistake and base your acceptance and rejection of conceptions of justice on good enough but mistaken reasoning. So the legitimacy requirement may well block the choice of the best theory of justice. In this picture, legitimacy and justice can conflict, and why give any weight to legitimacy?

Another line of objections questions the asymmetrical treatment of the good and the right in political liberalism. The burdens of judgment apply to issues about what’s good as well as to issues about what’s right (just or fair); yet political liberalism seems to be built on the assumption that sensible people must agree to disagree about the good but can attain unanimity on matters of what’s morally right and just. So the conception of justice to which all Rawlsian-reasonable people can subscribe will be neutral on controversial conceptions of value and metaphysics (and empirical fact?). But Rawls’s conception of justice and any close relative of it will be a controversial conception of justice; why is enforcement of controversial doctrines of right OK when enforcement of controversial ideas of good is not? Pluralism is a red herring here. Let there be many valuable goods and ways of life. Still, it might still be that the just state is not neutral on the good, but is duty-bound to promote and facilitate people’s living good, choiceworthy lives and avoiding bad, squalid ones. In a slogan, the just state, to be fair to its members, ensures they have fair opportunity for good lives. Joseph Raz, who pursues this line of thought, denies that the perfectionist state that seeks excellent lives for its members will be committed to illiberal intrusion and interference with people’s lives, because autonomy, for modern times, is a master value, and requires wide freedoms.

Others revise the political liberalism idea in order to render it not vulnerable to such criticisms. Martha Nussbaum and Jonathan Quong in different ways fit this description. Quong tries to solve the justice versus legitimacy problem by revising the overlapping consensus idea. The object of the overlapping consensus idea is a core set of liberal notions, roughly the ethical content of the

idea of a reasonable person and reasonable doctrine described at the bottom of page 1 of this description. By definition, reasonable persons embrace these core ideas about people as free and equal and as having certain basic rights, which the state must above all respect and protect. Reasonable persons are not sectarian; they oppose using state power to advance controversial ideas of good that people who are reasonable in the sense here explained can reject. This spare core liberalism can't be just assumed correct; it needs a justification. From this point, the unanimity requirement is relaxed. The task then is to use practical reason as best we can to fashion a theory of justice, consisting in a set of fundamental principles that specifies the shape of the basic institutions and basic structure of society. The theory that results will be controversial, and being fallible, we cannot be sure it is correct. Some citizens will reject it. But even if they reject it, if it is rationally related to the core liberal notions, they can reasonably accept it (either acceptance or rejection would be reasonable). So the theory of justice actually being implemented, if it falls within an acceptable range, is one all reasonable citizens can reasonably accept, even if some actually reject it. But if we have done our practical reason job properly, the theory implemented will be best, or at least, best relative to the evidence we have available or practical deliberation now, with our current cultural resources. Much the same goes for choice of institutions and laws and public policies on the basis of the accepted theory of justice. There will not be one true way in which principles of justice must be implemented. So long as the implementation of principles that is being carried out is within an acceptable range, the state has legitimate authority, commands our allegiance—the implementation in place, if we are lucky, is one that reasonable people could reasonably accept, even if particular reasonable people actually disagree. “Could reasonably accept” is weaker than “does reasonably accept,” so the unanimity requirement that the Quong version of the liberal legitimacy requirement imposes is weaker than Rawls's. The reasons here are reasons we share, based in our commitment to the core liberal notions.

In this account, a rock-bottom commitment is to neutrality across controversial conceptions of good. The ideal of autonomy itself is controversial, rejected by some reasonable people. The just state avoids the sectarianism that precludes its uses of state power being morally legitimate and hence unacceptable. The core liberal notions imply the rejection of what Quong calls the “liberal perfectionist thesis: It is at least sometimes permissible for a liberal state to promote or discourage particular activities, ideals or ways of life on grounds relating to their inherent or intrinsic value, or on the basis of other metaphysical claims.” Instead the liberal state confines itself to providing its citizens access to a fair share of resources and a fair framework for interaction and leaves people to live as they choose. What quality of life people end up with under such conditions is not the state's business, and not the proper business of us collectively in any sense. For Quong, the requirement of state neutrality applies to nonbasic matters that are politically settled as well as to constitutional essentials and basic justice. Quong then holds that the political liberalism idea best conceived requires us to be more resolutely antiperfectionist than Rawls supposed.

Nussbaum worries that Rawls goes astray in putting any epistemic content into the idea of the reasonable citizen. Any such content will end up identifying members of society who are perfectly willing to embrace a political conception of justice and avoid sectarian uses of politics and cooperate with others on fair terms as unreasonable. They will then be excluded from the class of reasonable persons and in effect demoted to second-class citizenship. People in modern society do not just follow what Rawls calls reasonable comprehensive doctrines, they follow patently irrational ideals of life such as New Age mysticism. And even major religions, even Christianity with its rationalist trappings, embrace inconsistency: *Credo quia absurdum*. Nussbaum takes her bearings from her reading of religious freedom and rejection of religious establishment. In this view a commitment to religious liberty requires the state to take no stand

whatsoever on religious controversy, to refrain from saying that this doctrine is irrational and that other one makes more sense and to refrain from basing any selection of public policy on any controversial claims including agnosticism and atheism as controversial claims. According to Nussbaum, liberalism generalizes from religious liberty and liberty of conscience to liberty to pursue one's own vision of the good as one sees fit. Nussbaum says that when it comes to our common political life, we should insist on practical reason and following the arguments where they led. But in private life, individuals are left free to follow their own path, and the state on pain of becoming embroiled in sectarian religious establishment must scrupulously refrain from criticizing any path as irrational or promote reliance on practical and theoretical reason to guide our private lives. Some may follow practical reason, some may follow the tea leaves; so long as people are reasonable in the sense of accepting and complying with a liberal theory of justice, assessing and grading the ethical ideas that guide their private lives is not part of the state's job. Respect for persons dictates that a just society does not criticize the ethical views of people who are reasonable in the sense of being firmly disposed to embrace principles of justice that respect rights and treat all as free and equal.

One question that arises for Nussbaum's view is how her relaxed idea of the reasonable can allow this notion to fix the allowable content of a theory of justice that can satisfy the liberal legitimacy requirement in the Rawlsian way. The uses of state power, to be legitimate, must be justifiable by appeal to moral principles that persons cannot reasonably reject. The standard of reasonableness sets the level of this requirement; if anything whatsoever counts as reasonable, then the legitimacy requirement sets a very high bar, because there is effectively no constraint on how reasonable or sensible you have to be for your rejection of society's policies and laws to make it the case that those laws are illegitimate and we ought not to be administering and enforcing them. She seems to be assuming that the practical reasoning and theoretical reasoning of the New Ageists and Flat Earthers and others who qualify as reasonable persons embracing reasonable doctrines on her purely ethical and nonepistemic interpretation of *reasonableness* will have no effect whatsoever on what the content of the theory of justice that a just state endorses is to be. How is this so? Nussbaum asserts a dualism of public sphere and private sphere standards of reason, but how does one maintain the dualism? A reason is a reason, some might say.

A broader issue is whether the liberalism without perfection view of social justice embraced by Quong and Nussbaum is viable. The issue here centrally involves assessment of the liberal perfectionist thesis. Quong criticizes perfectionism by attacking Joseph Raz, whom he regards as the most formidable representative of the doctrine. One question is whether the critique of Raz succeeds. Another question is whether, independently of the upshot of Quong versus Raz, there are versions of perfectionist justice that can withstand the thumping they get from the political liberalism approach.

In recent writings Jerry Gaus embraces a more radical conception of the political liberalism project. On his understanding, followers of Rawls and their perfectionist critics and advocates of the Quong-Nussbaum antiperfectionism are one and all sectarians. Gaus's project is to characterize the conditions that must be met if the claim to authority present in ordinary moral demands is to be vindicated.

Gaus sees the problem of legitimate authority as arising even before we are considering building a state and using state power for our purposes. Consider people living side by side. One claims that another is acting wrongly and is morally obligated to stop doing what she is doing—say the person addressed is trampling the other's garden. Morality involves rules established as regulating interaction. One person then has authority over another. "Morality makes my actions your business, and so gives you standing to tell me what I must do." Why is this claim to

authority OK, if it ever is, so that enforcing moral rules is not just a matter of some people pushing other people around? We cannot appeal here to unanimous agreement on reasons: there is no agreement to be had here. People occupy different perspectives, and will accept different considerations as reasons. This is true not just for actual us, but also for idealized versions of ourselves, members of the public who reason better. Unless I have, from my own evaluative perspective, good and sufficient reason to accept the rule you claim I must follow, the claim to authority is illegitimate. That means a rule has legitimate moral authority for a group of people whose actions the rule purports to regulate only if each member of the public (associated with a single actual member of the group) has sufficient reason to accept the rule. Gaus wants to hold fast to the unanimity requirement for justified moral authority. He interprets it as follows: each member of the public would prefer, from her own evaluative standpoint, that in this domain of conduct there be this proposed rule enforced rather than no rule at all. In this relaxed sense of acceptable, there will be sets of rules acceptable to all.

The trouble is, there will be too many such sets of rules. There is no reason to expect we get overlapping consensus on one unique set of rules. There is an eligible set of combinations of rules acceptable to all. Even when we rule out the proposed sets of rules that are Pareto dominated by some other set and this less acceptable to all, we still are left with an optimal eligible set, with no basis for choosing among them. But just as it would be authoritarian for me to just impose my morality on you even if you have no good reason to accept it from your standpoint, it would be authoritarian for me to impose my favored choice of one option from the eligible set—others can rationally reject this presumption on my part. So the problem of authority looks insoluble.

Gaus's idea at this juncture is to note that if we are lucky, one particular option within the optimal eligible set will have special moral merit. This is the one that people have actually come to coordinate their behavior on and come to use to regulate their interaction. If there are a hundred sets of acceptable rules in the optimal eligible set, then even if I have my own ranking of the hundred from most to least preferred, if others are actually coming to coordinate on one, call it X, I will come to have reason from my own perspective also to embrace and follow X even if X is not near the top of my own ranking of sets of moral rules.

In this way history can resolve the problem of multiplicity and the lack of a uniquely acceptable and hence authoritative code to follow. If we are lucky enough to live in a social setting where there is coordination and convergence on a particular moral code from the optimal eligible set, then given that fact, I will have reason to go along as well, from my perspective, and you will have reasons to go along as well, from your perspective, and so with all of us. The problem of authority is solved by unanimous agreement. Note, each of us has sufficient reason to follow the going, accepted moral code, not the particular code each of us separately regards as best or grooviest or most fair.

What about politics? Notice that nothing guarantees that the moral code actually entrenched in our society is within the optimal eligible set. We may be coordinating on some rotten set of rules. Given its entrenchment, we may have reason to conform, but not to develop allegiance. The state can by its coercive and coordinating actions move us from a rotten moral code to a better one, one lying within the efficient eligible set. The state can move us from Jim Crow to a nondiscriminatory nonracist moral code, and swiftly induce coordination on the new code. Unfortunately, a state can just as well by exercises of power get us to jump from a current moral code that lies within the eligible set to something far worse that lies outside it. So states can improve or worsen our situation, so far as solving the legitimate authority problem goes.

What will lie within the eligible set? Gaus imposes some prior constraints. The very idea of a moral code rules out candidates that just entrench my interests and the interests of my friends and cronies over others. Gaus thinks that there are certain basic interests stemming from the fact that we are agents that requires rules that entrench freedom of thought and certain basic liberties. A political regime that did not establish and enforce and promote these basic rights would not be legitimate—some would, from their own perspectives, reject the rules it is enforcing. Such a regime's rules would not be included in the eligible set, we can be sure. Beyond that, the optimal eligible set may be quite capacious—that's the problem. Libertarians prefer a robust set of private property rules and no redistribution, but they surely prefer a qualified property regime, such as Finnish social democracy, over no rules at all in the private ownership domain. Social democrats prefer a robust set of redistributive measures that equalize the outcomes of private market transactions, but they surely prefer a less redistributive regime, even a libertarian one, to no property rules enforced by society at all. This means that a wide range of property regimes, from libertarianism to social democracy, will be included in the set of sets of rules that makes up the optimal eligible set.

Regarding Rawls and the variant political liberalism of Quong and Nussbaum, Gaus views them as failing to follow through on their own political liberalism insights. They seek to collect unanimous agreement by restricting the basis of choice to shared reasons, reasons all can share. According to Gaus this won't do. The reasons we all share might well be an insufficient basis for choice for any of us. The reasons we don't share might be less weighty, for each of us, than countervailing individual reasons, different from each, that matter from my perspective or your perspective or someone else's perspective. Suppose we are trying to forge a transportation safety and the reasons we share involve making things safer for pedestrians, but some of us are much more concerned with facilitating air travel, others with facilitating bike travel, others with facilitating car travel, and the reasons we share would taken by themselves justify actions that greatly impede plane, bike, and car travel. The reasons we share may not matter all that much to any of us. So if we insist that we should enforce rules justifiable by appeal to reasons we all share, we end up being sectarian: the rules we say should be enforced will fail to be justifiable to all members of the public.

Gaus ends up affirming this Basic Principle of Public Justification (BPPJ): "A moral imperative φ in context C, based on rule L, is an authoritative requirement of social morality only if each normal moral agent (a) has sufficient reasons to internalize rule L, (b) hold that L requires φ -type acts in circumstances C, and (c) moral agents generally conform to L." This is an autonomy requirement of a sort on moral claims purporting to have authority. Why accept BPPJ? Roughly, Gaus holds that if we reflect on our moral practices, the situations in which we find moral reactive attitudes to be appropriate and inappropriate, the ways in which we decide whether issuing authoritative moral prescriptions really carries weight with us in our decision making, we will find we are committed to the BPPJ. The idea that people are free and equal and deserve a certain respect is not an assumed starting point for Gaus; it follows (or so he thinks) from commitments each of us already has, insofar as we are interested in playing any sort of moral game at all.

Like the idea of the reasonable in the broadly Rawlsian version of the public reason project, the idea of having a "sufficient reason" will play a crucial role in Gaus's way of establishing the legitimacy of the authority of moral and political claims. On this idea, Gaus stipulates that "Alf has (provisionally) a sufficient reason R if and only if a "respectable amount" of good reasoning by Alf would conclude that R is an undefeated reason (to act or believe)." The scare quotes around "respectable amount" are intended to signal that how much reasoning it makes sense to demand of people varies with context; there are costs to engaging in further reasoning, and it

some point it would be unreasonable to demand that Alf reflect more. How much reasoning we can demand varies with what is at stake and varies across social practices. Gaus says more, but we should note that there will be a gap, and maybe a very large gap, between the reasons there are for accepting or rejecting X, and the sufficient reasons Alf would have for accepting or rejecting X if he were to do a respectable amount of good reasoning. Alf only has sufficient reason X if this putative reason is accessible to him. Pointing to this feature of Gaus's position, some will reject his BPPJ.

According to Gaus, the point of social morality is to induce coordination on patterns of behavior that are better, from the evaluative perspective of everyone affected, than what would ensue if we had no rule at all inducing coordination on this topic or issue, and everyone was simply left to act according to her own evaluative lights. When rules are enforced in the name of social morality that go beyond this, and require say all of us to refrain from gambling on the ground that true morality rightly understood forbids gambling, when some from their own evaluative perspective would reject the no-gambling rule, the rules so enforced are objectionably authoritarian. Built into our idea of morality is the Kantian idea that moral reasons are those one has sufficient reason to follow, and hence in making moral demands on one another we must be regarding one another as free and equal persons, who are obliged to accept the demands only if they have sufficient reason to accept them. Same goes for politics and claims to political authority.

In applying Gaus's public justification proposal, questions arise about how to individuate issues and topics. If someone dislikes redistributive, equalizing political policies, and prefers no politically enforced rule at all regarding distribution to having any, does this rule out redistribution from the eligible set? Maybe not, because someone else may hold that she cannot evaluate private ownership rules without taking them together with redistributive rules, and would favor no property rules at all to absolutely unbending private ownership with no redistribution. And the opponent of redistribution may nonetheless prefer having some property rules including some redistribution to having no enforced private ownership rules at all. Unless there is some canonical correct theory of issue individuation, it may be hard to get determinate verdicts from Gaus's account of how to delineate the eligible set and thus the optimal eligible set. Gaus has thoughts on this.

Questions: Is Gaus following through the logical implications of the political liberalism/public reason project rigorously if the project is properly understood, or is he rather mistaking the nature of the project and driving the political liberalism train off the rails and into error and falsity? If we find the Gaus version of political liberalism unacceptable, does this show that the project itself is ill-conceived and should be abandoned, or rather that Gaus has overlooked or underestimated the resources of the Rawlsian tradition? Does political liberalism rightly understood lead to the strong antiperfectionism that Quong embraces, or to some milder version of antiperfectionism and neutrality on the good? Or is it rather a big mistake to suppose (with the antiperfectionists) that a society could be just and fair independently of whether or not its members are leading genuinely good lives? These questions all strike me as interesting and unresolved, up for grabs.

These are some of the questions we will pursue in the seminar. (There are lots of questions here, and which ones we focus on will largely depend on your own responses to the readings.)

The main readings will be John Rawls, *Political Liberalism* (excerpts!), Jonathan Quong, *Liberalism without Perfection*, Martha Nussbaum, "Perfectionist Liberalism and Political

Liberalism,” and Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (again, excerpts!). These are big books, but each is a fairly easy read. Background discussions include Charles Larmore, *Patterns of Moral Complexity* and some writings by David Estlund characterizing political liberalism; writings by Joseph Raz and Steven Wall and George Sher on political perfectionism; and criticisms of Gaus’s position by David Enoch, Andrew Lister, and others.

The seminar discussions will not presuppose any prior background in moral or political philosophy. So, anyone is welcome. (Rawls’s *Political Liberalism* discussion employs lots of Rawlsian jargon, but this is no harder than learning the nuances of the soul handshake. Rawls has elaborate explanations of his later political liberalism doctrine is related to his earlier theory of justice writings; we’ll pretty much ignore these exegetical issues and just take his political liberalism proposal as a freestanding idea.)

The seminar requirements will be: (1) coming to seminar discussions each week prepared to discuss the week’s readings, (2) making one or more analytical/critical seminar presentations introducing seminar discussion by highlighting some significant arguments or arguments in that week’s readings, and (3) writing a seminar paper essay of about 15 pages on some topic that is reasonably closely related to the main topics and themes and writings canvassed in seminar meetings. Auditors are welcome, and may be asked to pitch in on seminar presentations.

Despite the fact that there are big books on the reading list, we will keep each week’s required reading manageable in size, so that we can make significant progress in assessing the main arguments.

The seminar will satisfy the Philosophy Department core course in ethics and also count toward the ethics distribution requirement.