

## *Book Reviews:*

*Justificatory Liberalism* by Gerald Gaus. Cambridge: Cambridge University Press, 1995. xiv + 374 pps.

Traditionally, political philosophy seeks to justify political principles on the basis of something more philosophically fundamental. For example, Mill argues for his Liberty (or Harm) Principle on the basis of a more fundamental utilitarian moral philosophy, which judges actions and policies on the basis of their tendency to maximize utility. Social contract theories (e.g., Hobbes's, Gauthier's) derive political principles from a theory of rationality. Marxist political philosophy relies on a certain conception of human nature, a philosophical anthropology, if you will. Rawls's argument in *A Theory of Justice* appeals to a multiplicity of more fundamental philosophical views. On this way of conceiving of political philosophy, the political philosopher's task is to explain the derivation of the political principles he favors from these more fundamental philosophical views and to explain or justify these more fundamental views themselves.

What is unique and perhaps most interesting about Gerald Gaus's book is his attempt to argue for certain features of a liberal political order on the basis of elements of a theory of knowledge in general and a moral epistemology in particular. Epistemology occupies roughly the same position in Gaus's political philosophy as utilitarian moral philosophy occupies in Mill's political philosophy. Central to Gaus's task, as he conceives it, is to provide a *public justification* for certain features of a liberal political order. A public justification is a justification *to others* for the imposition of organized coercive power that defines state action. To this end, he constructs a general theory of justified belief in Part I (*Personal Justification*) and works out its implications for moral epistemology. Part II, *Public Justification*, further develops and extends this theory in the service of constructing a theory of public justification. Part III, *Political Justification*, applies the results of Part II to argue for certain features of a liberal political order, such as rights and limited constitutional government, the rule of law, and judicial review. The discussion throughout is sustained at a very high level, both in terms of its philosophical sophistication and the quality of the argumentation. This is not a book for those who have no background in epistemology and political theory, which perhaps limits its audience but not its importance.

Gaus's general theory of justified belief is causal in nature; justified beliefs are those that are causally sustained by good reasons. Good reasons are defined relative to a person's belief system (which include inferential norms), as that system might be modified by new information and criticism. The theory of justified belief that emerges is relativistic in that what is justified in one person's belief system may not be justified in another's. This theory is not radically relativistic, however, since a person's beliefs are not immune from criticism and revision. The set of beliefs a person is justified in accepting include not only the justified beliefs he happens to hold, since they also include beliefs that he would or should hold in the light of new information and criticism. Gaus calls this, 'open justification.'

Further articulation of his theory of justified belief requires Gaus to identify its implications for such as issues in epistemology as foundationalism, intuitionism, coherentism, and reflective equilibrium. Epistemologists are fond of making fine distinctions in an attempt to slip between various Scyllas and Charibdises that line the banks of their discipline. Gaus is no exception and can split hairs with the best of them. A distinctive feature of his approach is that his normative account of how people ought to reason is informed by careful attention to psychological findings about how people actually do reason.

In Part II, Gaus extends his theory of justification to the question of what counts as justification in a public context. As noted above, a theory of public justification is needed for questions about the justification for the use of the coercive power of the state. As Gaus says, "Moral commitments . . . . presuppose public reason because they combine two features, demandingness and culpability" (p. 121). If we are not simply to browbeat people into accepting something, we need to give them reasons which they *should* accept, not as a matter of convenience or prudence, but in a moral and epistemic sense. What makes this question difficult for Gaus is the fact that the moderate relativism of Part I leaves open the possibility that a proposition can be justified in one person's system of beliefs that is not justified in another's. His way of dealing with this problem is to argue that for an individual to give a public justification for his belief, it must not only be justified in his system of beliefs; he must also justifiably believe that it is justifiable in the system of beliefs held by those whom he is trying to convince. He may not be successful in convincing these others, and public justification does not require the actual assent of the relevant parties. But, it is necessary to show that the belief is justifiable in the system of his interlocutors, which turns out to impose a heavy—but not impossibly

heavy-burden of proof. Public justification also requires that he expose his belief to discussion and challenge.

One of the most important ways in which a belief can fail to be publicly justified is for it to be *inconclusive*. An inconclusive belief is, roughly, one for which there are good, though not compelling reasons. This situation arises when the burden of proof (as it pertains to others' systems of belief) has not been borne or the publicity requirement has not been met. Gaus believes that reasoned public debates on a host of important issues result in inconclusive beliefs. This may be true even if a more "generic" version of the belief is publicly justified. For example, a commitment to a system of rights might be publicly justified, even though a commitment to a more specific conception of rights may be inconclusive. This notion, which Gaus calls, "nested inconclusiveness," is extremely important for what follows in the remainder of Part II and Part III, where Gaus seeks to give a public justification for fundamental liberal principles.

The commitment to public justification leads directly to liberal toleration and freedom of thought and expression. Gaus also maintains that a commitment to civil peace and the protection of what Locke called "civil interests" (e.g., life, liberty, personal property) can also be publicly justified by hypothetical social contract arguments. How these and other liberal principles are to be interpreted remains contentious, however, since particular interpretations of these principles are inconclusively justified. The problem here is partly practical and partly moral. The practical problem is that some interpretation of these and other principles must be accepted and enforced for social life to go on, but there is a moral dimension to the problem, since people disagree about what it is *right* to do. In other words, it is not a mere coordination problem. This leads Gaus to adopt what he calls an "umpire" model of political authority. Although the umpire is not assumed to have any special moral wisdom or authority, his job is to resolve these disputes, as best he can determine, in a way that is consistent with the generic conception that has been publicly justified.

There seems to be a problem with this model of political authority, however. The task of the umpire is to interpret some generic conception (e.g., the right to freedom of speech), which effectively means choosing among a number of inconclusively justified particular interpretations. Those who lose out as a result of the umpire's decision can, as a practical matter, be made to see the wisdom of accepting whatever the umpire's decision is, provided that the bounds are the generic conception are not exceeded, but it is hard to see how or why they have any moral reason to accept that interpretation. By hypothesis, the

particular conception being enforced is not conclusively justified, even if the more generic concept is. He does not adequately explain how the justification of the generic conception (of, e.g., rights) extends to whatever particular conception the umpire adopts.

In Part III, *Political Justification*, Gaus attempts to give a public justification for an umpire who rules through law and all that this entails. This requires him to justify the rule of law, which involves three elements: (i) the rules by which the umpire adjudicates conflicts must apply equally to all citizens and must not permit arbitrariness on the part of the umpire (the rule of law vs. the rule of men), (ii) the personal freedom of individuals must be protected against the state, i.e., individuals have rights, (iii) these rights must be recognized and enforced by an independent judiciary. He also argues that government must be limited in scope to adjudicating conflicting interpretations of generic conceptions and to those policies that everyone has conclusive reason to embrace (whether or not they actually embrace it). This gives a fresh perspective on the classical liberal demand for (strictly) limited government. Unlike libertarians, who believe that the chief evil of modern governments is that they violate very powerful (and hard to justify) rights, Gaus's argument implies that the relatively unlimited majoritarianism of modern governments is unjustified because it violates the demands of public justification.

Part III also discusses the role and rationale of the legislature and the judiciary. The legislative branch is to track as closely as possible publicly justified morality, and Gaus discusses some of the problems and challenges this poses for institutional design in Chapter 13. Chapter 14 explores the implications of justificatory liberalism for democracy and political equality, and Chapter 15 considers challenges to the conception of democracy developed in Chapter 14. Chapter 16 explores the role of the judiciary and the justification for judicial review.

The overall organization of Part III is not as clear as it might be. The author seeks to give a public justification for a variety of liberal principles (or features of liberal political institutions), but it is not as clear as it might be how these various principles fit together, what has been omitted, and why. One feature of the liberal order that Gaus explicitly abjures from discussing is the existence, extent or nature of private property rights in the means of production. Actually, there are two issues here that can be usefully distinguished. On the one hand, there is the question of whether a liberal society should have some form of private ownership or some form of social ownership of the means of production. Nearly all liberals believe in the former, and it would seem that a generic conception

of private property rights should be publicly justifiable. The other question concerns the extent and nature of private property rights in the means of production. Here there is considerable disagreement among liberals, and a rough dividing line can be drawn between classical liberals and "new" liberals on just this question. As Gaus rightly notes (p. 161), the mere fact that there is considerable disagreement about this question does not mean that a (successful) public justification for some position on this question is not forthcoming. Undoubtedly, accomplishing the latter task would be a monumental undertaking. On the hand, the former task—publicly justifying a generic conception of private property in the means of production—would seem to be more manageable. Liberal socialists would disagree, but that does not mean that such a justification would be inconclusive. At the very least, it would have been useful for the author to say something about the contours of that argument, even if working it out fully would have made a long book even longer.

Overall, *Justificatory Liberalism* is a demanding but rewarding book. It offers a fresh perspective on many of the traditional questions of political philosophy and opens new lines of argument to resolve some of them. It repays careful study and reflection.

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