

# 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.<sup>1</sup> 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-

<sup>1</sup> 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,<sup>2</sup> 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.

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

