

HABILITATION THESIS REVIEWER'S REPORT

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Habilitation thesis

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Democracy as Public Justification: Towards a Non-Authoritarian Political Theory

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This thesis explores the case for adopting a minimalist, 'convergence', account of public justification as a strategy for accounting for the legitimacy of liberal democratic institutions in the face of deep disagreement, practical and theoretical. It follows Gaus in concluding that only a minimal, classical liberal, account of democratic institutions can be justified in these circumstances.

The thesis is thorough and scholarly in its approach. It draws together discussions of the conceptual bases of moral and political disagreement and extends this to the sphere of academic disputes about the nature and value of democratic institutions, bringing both under the heading of 'dissonance'. This theme is pursued through successive discussions of the nature of public reason and justification, constitutional law, and human rights. The result is a coherent thesis which clearly forms the basis of an interesting and demanding research agenda.

Reviewer's questions for the habilitation thesis defence (number of questions up to the reviewer)

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Perhaps the central concern in the thesis is with the implications of 'dissonance' for democratic legitimacy. As with any complex argument, a number of questions arise.

The first of these concerns the account of 'dissonance' itself and the role it is meant to play in our deliberations. In *Political Liberalism*, Rawls distinguishes between the 'fact' of pluralism and 'reasonable' pluralism, the latter being a subset of the former. The practical purpose of making this distinction is to differentiate arguments and claims that we may disregard from those which we must take into account in determining whether our own political claims might be justified or not. While the idea of the reasonable has, not surprisingly, been subject to scrutiny (it is not strictly speaking true, I think, that Rawls does not offer a definition of 'reasonable' - in *A Theory of Justice* he distinguishes between the moral powers of persons, the rational and the reasonable, saying that the reasonable person is one who is motivated to

offer others fair terms of social cooperation) it is not immediately obvious that we can dispense with a distinction of this nature as suggested here.

The motive for abandoning it seems to be the thought that it results in an overly exclusive model of public reason/justification (68). We might, of course, want to revise Rawls' own account of the reasonable (although it is not obvious that 'vagueness' is a decisive concern with respect to a moral principle. Mill's harm principle does not specify an exhaustive list of harms, but it still thought to be a useful guide, pointing us towards the sort of consideration we should rely on to guide our deliberations about the legal regulation of thought and action), but there is a cost to abandoning any such criterion of discrimination that is perhaps overlooked here.

This is simply that if we abandon the attempt to distinguish claims that we must take into account from those that we may disregard (I take it that this is the point of contrasting public reason with public justification although whether there can be genuinely 'public' justification without any such constraints is unclear) then it looks like we must fall back on unanimity as the condition of political legitimacy, such that just *any* objection must count against the legitimacy of political institutions. While this would, of course, be a congenial conclusion for a philosophical anarchist, it is not clear that this line of argument can sustain any other account of political legitimacy, including the sort of classical liberal account favoured here.

In sum, the thesis takes the bare fact of disagreement to count against more ambitious accounts of political legitimacy on the grounds that they contain many features that are in fact disputed, but in doing so, does not consider that they have 'proved too much' as it were and that this same account has much more far-reaching consequences than are recognized here, namely that they will also count against the classical liberal account favoured here.

While the rejection of authoritarianism is one I am personally sympathetic to, one concern one might have is that the idea of 'authoritarianism' or 'sectarianism' was used rather freely in the thesis. Given the weight attached to the fact of disagreement in the thesis, however, it might seem that if any position that could in practice be challenged were to count as sectarian, then we would be left with no non-sectarian basis for any account of political legitimacy at all. In the pursuit of a maximally neutral basis for political legitimacy, we would be left with no neutral ground on which to build whatsoever. (the suggestion that a turn to public justification would render democratic theory 'radically open' (36) seems highly contestable. Agonists such as Mouffe see this move as a characteristically liberal attempt to privilege moral argument, for example).

This looks like a significant problem for the sort of classical liberal account preferred here. The premises of this account, 'individualism' etc. - have themselves long been the subject of controversy, from complaints about the atomistic social ontology, to the inadequacy of negative liberty as an account of individual freedom, to say nothing of political freedom. Many of these criticisms, it must be noted, come from within the liberal tradition itself. It is difficult to see why these premises are to be regarded as less controversial than any others, and therefore as open to the charge of sectarianism as any other.

At this point, those who favour such an account have a range of options open to them, such as an attempt to ground it in a Berlinian value pluralism, the assertion of the primacy of negative liberty, or some species of relativism. The line adopted here, however, might be thought to be especially problematic insofar as it appears to be a sort of 'hyper-neutralist' position, i.e. one which aims to be even more neutral than Rawls' political liberalism. Many have concluded that the recent liberal concern with 'neutrality' (Galeotti suggests plausibly that it does not appear before the 1970s) is itself mistaken and must be abandoned. The

account developed here seems to go farther in pursuit of neutrality than most liberal accounts but as it is not clear that it can itself escape the charge of sectarianism, one might wonder if there could have been more reflection here on the plausibility of the neutralist strategy overall. It would have been worth, I think, devoting more attention to the assumption that perfectionisms must be objectionably authoritarian. One thinks here of Raz on the one hand, or of the weak perfectionisms of Nussbaum and Honneth on the other hand.

The appeal to an evolutionary account of social norms as a way of suggesting that they support this particular account of liberal democracy seem to be open to two familiar objections (and perhaps also at odds with the invocation of Karl Popper in the conclusion, given his hostility to historicism). Firstly, it overlooks the influence of what Bentham called 'sinister interests', i.e. the intervention of powerful actors to shape social norms in such a way as to secure or advance their particular interests rather than the greatest happiness of the greatest number. Gibbard himself suggests that something like this is responsible for the way our morality gives priority to rights to non-interference. The suggestion that this 'evolutionary' process is innocent and that it vindicates in some sense one particular libertarian leaning model of constitutional democracy is at the very least open to an alternative and more problematic interpretation. The second objection is simply that, contra Hegel, history has not come to an end (see criticisms of Fukuyama's attempt to revive this thought, for example), and we can infer very little from our history to date as to future developments and therefore have no reason to suppose that this particular model of democracy is the pinnacle of human achievement.

The engagement with political science perspectives is interesting, but I had two concerns here. Firstly, that it was not clear whether we should give the same weight to disagreement within academic disciplines as we should within moral/ political argument more generally. It was not clear, on the one hand, that academic disputes were necessarily having much impact on political disputes, or, on the other hand, that pointing out the way essential contestability revealed that apparently neutral conceptual disputes actually turned on conflicting values would shore up the case for Gaus-style public justification instead of simply fueling neo-Nietzschean scepticism about the enterprises of political philosophy and political science (there's an alarming echo of this in the suggestion that control of political language can enhance political power (24)). Again, there seems to be a risk here of proving too much, i.e. of underestimating the radical implications of some of the positions taken here.

Related to this, the discussion of Arrow's impossibility theorem did not seem to strengthen the case for Gaus-style public justification as it is only concerned with showing the difficulty of finding a model of collective decision-making consistent with the apparently uncontroversial assumptions it specifies. But as we are concerned rather with the question of legitimacy, I wasn't convinced that this result from formal democratic theory had much bearing on this question, especially as it would pose the same challenge to the sort of minimalist democratic arrangements preferred.

I did wonder if the turn to political science treatments of democratic politics might serve to broaden the account of challenges faced by contemporary democracies beyond the traditional liberal concern with ethical (conceived narrowly in terms of personal projects) and religious pluralism. This might have included some consideration of the challenge posed by populist movements for example, the way economic inequalities might be skewing democratic politics (even Rawls touches on campaign financing as a problem) or a concern with the way that existing institutions were failing to engage citizens adequately. It's not immediately obvious, for example, that moral pluralism poses much of a practical challenge to the political legitimacy of liberal democratic institutions even if it poses a philosophical challenge. I can't help but think of the Irish example - deep moral disagreements over

abortion, divorce, and more recently equal marriage have been politically important but seem to have had little impact on the legitimacy of the Southern state, while in the North, political legitimacy has been very much in question, but the cause of this cannot be traced back to deep moral or ethical disagreement, but simply to the practical incompatibility of recognizing demands for both British and Irish sovereignty over the territory.

Incidentally, while the suggestion that the majority decision rule could be justified on the grounds that it means fewer people's preferences are frustrated (53) is intriguing but open to the objections that this neglects intensity of preference, that supermajorities should then be preferred to simple majorities, or that anarchy is to be preferred as this would eliminate preference p-frustration associated with majority voting.

As the thesis appealed to the desirability of a more 'political' account of the issues of legitimacy and justification, it was a little surprising that the account provided was relatively narrowly focused in the end. The fairness of political procedures, background inequalities, consequentialist considerations about the impact of govt. policy all seem to have a significant bearing on questions of political legitimacy, and against this backdrop, the Rawls/Gaus concern with the legitimacy of constraints on certain types of moral reasoning, while relevant, does appear somewhat limited. Admittedly, the appeal to the 'political' can rely on a range of different contrasts, from Waldron and Bellamy who are simply critical of an overly legalistic approach to constitutional issues, to the agonism favoured by post-structuralists like Mouffe et al.

That aside, the exclusive reliance on parliaments and political parties will strike many political theorists as an overly narrow view of democratic politics (Ireland's experience is that parliaments have been a brake on moral innovation (115) as most political change in this regard has been achieved in the informal public sphere and through popular referendums, most recently supported through the citizens' assembly mechanism). Given that Mair's work on the decline of parties as sites of popular mobilization was cited, it was a little surprising that the resulting model relied so heavily upon them, and that there not more attention given to deliberative democratic institutions. The rediscovery of political parties by political theorists might then strike some as coming rather too late. The relation between the moral argument for 'convergence' justification and these institutional preferences was not immediately clear and one might wonder why this model of moral justification was thought to rule out institutional innovations such as citizen assemblies. This was an area in which one might have expected a little more engagement with Habermas' discourse theory of democracy for example. Why we should regard parties as the exclusive conduit of communication between informal and formal public spheres is unclear (Habermas' account of communicative rationality was dismissed rather too quickly earlier on, I thought (23)).

Finally, there is an appeal in the conclusion to the presumably liberal value of 'minding one's own business' as a support for liberal democratic institutions. While liberals are no doubt right to value self-restraint necessary to both civility and toleration, it seems unlikely that this will be adequate to support liberal democratic norms and institutions to the extent that a) norms cannot maintain their grip if deviation is not *sanctioned* by others. This is, of course, also true of the norms of civility and toleration themselves. b) democratic politics necessarily relies on the idea that some things are the business of *all* citizens (the *res publica*) meaning that invigilating and challenging others with respect to their political projects is precisely the business of the democratic citizen. This raises a question not only about the neutrality of the particular classical liberal model of political institutions endorsed here, but about the long standing dispute as to whether liberalism is genuinely compatible with democracy (I take it that most versions of liberalism are, to the extent that they draw on egalitarian and republican sources, as canonical figures such as Kant, Mill, and Rawls do, but that more libertarian

accounts such as those found in von Humboldt or Berlin assume that these are logically distinct and separable in practice).

Conclusion

The habilitation thesis entitled "Democracy as Public Justification: Towards a Non-Authoritarian Political Theory" by Pavěk Dufek **fulfils** requirements expected of a habilitation thesis in the field of Political Sciences.

Date: 1.5.2020

Signature:

