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Publicity

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Publicity and Political Legitimacy

Publicity is a broad topic, potentially spanning many others. I will consider publicity primarily as a feature of what I will refer to as the political justification requirement. Publicity is an aspect of the moral demand that political arrangements be justified to their subjects. This means that political justification should be public in these ways: it should be transparent; it should represent common knowledge; and it should be grounded in shared values. So understood, publicity is a condition of the legitimacy of political authority and of the justice of political institutions. Justice and legitimacy are aspects of the morality of institutions (*see* AUTHORITY; CITIZENSHIP; JUSTICE).

In taking this angle on the topic, I am treating publicity as a positive value. I do not address publicity, understood more broadly, as a value that might come into conflict with the values of confidentiality and privacy (*see* CONFIDENTIALITY; PRIVACY).

Publicity as an aspect of the morality of institutions is shared widely by liberals, even if it is contested by some (*see* LIBERALISM). The value of publicity bears a natural affinity with the social contract tradition, spanning such thinkers as Locke, Rousseau, Kant, Rawls, and Habermas (*see* CONTRACTUALISM; KANT, IMMANUEL; LOCKE, JOHN; RAWLS, JOHN; RECIPROCITY; ROUSSEAU, JEAN-JACQUES; SOCIAL CONTRACT). These thinkers share the idea that legitimate political institutions are the product of social agreement. They argue that social agreement presupposes public justification and is not possible without it. When political institutions are legitimate, the exercise of power through them by officials can be morally permissible. When institutions lack legitimacy, there are good moral grounds to challenge the permissibility of the coercive exercise of political power. Liberals in this tradition maintain that legitimacy is important because coercion requires special justification (*see* COERCION). When the exercise of political power lacks the support of public justification and fails to secure social agreement, it thereby fails to satisfy a morally relevant requirements.

We might think of the publicity requirement as applying either broadly or narrowly. Narrowly applied, public political justification is addressed to the essentials of a political constitution: the most basic matters of justice, reflected in the distribution, through political institutions, of basic rights and liberties; and in the imposition of institutional constraints on inequalities in opportunities and wealth (Rawls 2001: 28, 46–8, 90–2). More broadly applied, the publicity requirement could be understood to govern decision-making about any matters of public concern. The value of publicity, broadly construed, is thought by some to imply a requirement of democratic deliberation in political decision-making (*see* DEMOCRACY). This requirement might be taken either to be hypothetical or to require actual deliberation. A hypothetical construal of a democratic deliberation requirement maintains that decision-making about matters of public concern is legitimate only when it could be the subject of agreement among reasonable deliberators. By contrast, defenders of the idea that public political justification requires actual deliberation maintain that legitimate decision-making must be maximally inclusive and actually carried out by political subjects. On this way of thinking, only outcomes representing actual agreement are legitimate.

In what follows I will consider publicity both as a possible requirement of the justification of constitutional essentials and, more broadly, as an aspect of democratic decision-making.

Publicity as Transparency

I have claimed that the publicity requirement has three dimensions: transparency, common knowledge, and common values. I have also suggested a possible fourth dimension: democratic deliberation. The transparency requirement challenges norms of government secrecy – particularly concerning the basic rationale for political institutions – and it also supports, more generally, a norm of political governance. Secrecy is dangerous because it fosters corruption. Public accountability

is an important source of pressure on officials to conduct their business honestly and in the public's interest (Sen 2009: Ch. 16). Official claims to advance the public interest should be open to public scrutiny and challenge, and the public's interest itself should be identified through measures that are open to public deliberation. These possibilities require certain institutional protections: freedom of conscience, freedom of speech and of the press, freedom of association, freedom of information, and rights to political participation.

I have just stressed the connection between transparency and accountability. Secrecy can also be thought to be objectionable when its rationale is paternalistic. Many liberals are skeptical of paternalistic rationales for political arrangements. The idea is that the subjects of political power should have access to the basic principles of political order and that the justification of this order should be addressed to its subjects rather than to administrators, bureaucrats, or leaders with special knowledge or insight. Public political justification emphasizes the moral standing of political subjects, and paternalistic rationales for secrecy threaten that standing.

Liberal anti-paternalism emphasizes a conceptual distinction between "the right" and "the good." Transparency is a requirement of right or justice. This is because it connects with the value of autonomy. Many liberal philosophers argue that the good of subjects is inadequate justification for restrictions on transparency. On the dominant view of legitimacy and justice, with the notable exception of John Stuart Mill, a liberal morality of institutions requires respect for the autonomy of political subjects, whether or not respect for autonomy can be justified in terms of what most advances a person's own good or, more generally, the social good (see MILL, JOHN STUART). Autonomy characterizes the source of the reasoning and agency of political subjects. Liberals understand legitimate political institutions to express the collective will of autonomous subjects as a matter of right. This idea is central to Immanuel Kant's political philosophy.

Publicity as Common Knowledge

A second dimension of the publicity requirement is dependence on common knowledge. Liberals maintain that ordinary subjects of political institutions are capable of understanding the reasoning involved in political justification. Justification is not the province of experts and specialists, but of the common judgment of political subjects. John Dewey was especially concerned about the role of experts in a democratic society and about the threat presented to democracy by the rule of an administrative and technocratic elite (see DEWEY, JOHN). The impression that governmental affairs are technical matters that are properly conducted by experts inhibits the public and its organization into effective political action (Dewey 1927: 123–4, 138). Politics thus becomes another business, and one that is inept at serving the public interest. Dewey thought that free and open public inquiry, debate, and persuasion are crucial to democracy (1927: 208). A commitment to the idea that justification should be the product of the judgment of political subjects connects with a presupposition about

the rationality and reasoning abilities of political subjects, and also with the social importance of building a resource of common knowledge for the effective conduct of political affairs. The common knowledge aspect of the publicity requirement draws attention to the value of public education and to the importance of support from the government for the advancement of science and of other arenas of academic learning. Dewey also proposed that we rethink our notion of intelligence so that we conceive of it not individualistically, but collectively (1958: Ch. 6).

The common knowledge aspect of publicity raises important challenges, however, for thinking about how to defend input from experts in procedures of public decision-making. Expert testimony can be important for sound judgment and decisions. An overly strict common knowledge requirement might seem irrational, naive, or shortsighted. Still, recognition that the source of much of our knowledge comes from the testimony of other people might seem to threaten notions of autonomous reasoning and judgment.

The role of experts might be rendered compatible with the requirement of public political justification, provided that expert input is qualified by certain caveats and safeguards. Publicity may require simply that the expert judgments be in principle laid out and that experts acknowledge their sources and make them available (Richardson 2012: 103–5). Furthermore, certain institutional protections – freedom of expression and of association – are minimal conditions designed to ensure that the testimony of experts can be contested and is not itself merely a function of entrenched political power. Finally, an important safeguard can be found in the reversibility of political and legal decisions that rely on expert testimony – provisions for appealing or calling into question the determinations of experts (Richardson 2012: 105–7).

Public Reason

The third aspect of the publicity requirement of political justification demands that political justification express shared values. It is important that the justification of basic political institutions depend on shared values rather than on the values of one interest group (or morally contested point of view) or another. Otherwise justification is bound to lack grounding in general (or reasonable) agreement. Political liberals, in contrast with comprehensive liberals, maintain that public justification can be grounded in general (or reasonable) agreement only when it avoids affirming the truth of moral, religious, or metaphysical doctrines about which reasonable persons are bound to disagree. Political liberals argue that public justification must acknowledge what John Rawls refers to as the fact of reasonable pluralism: under free institutions we should expect reasonable people to disagree about matters of comprehensive morality, religion, and metaphysics (Rawls 2001: 3–4, 40, 84; *see* VALUE PLURALISM). Comprehensive liberals dispute this, maintaining that any plausible version of liberalism will justify political values by reference to more fundamental and expansive ethical principles, principles that apply to nonpolitical as well as to political domains of conduct.

According to political (not comprehensive) liberalism, since a social order under free, democratic institutions will not be one in which people accept the same religious and moral reasons, public justification in a free society should be based on a narrower

set of political values, including a commitment to fair cooperation, basic rights, the rule of law, and mutual toleration. The idea is that political values, and not the broader religious and moral philosophies in which they may variously be embedded, provide the terms of public justification. Political values offer what Rawls and other political liberals refer to as public reasons (see PUBLIC REASON). Their view is that the demand for public political justification will only be met through public reasons, not through contested moral, religious, or metaphysical values.

Public reasons, therefore, are reasons that could justify political arrangements for a wide range of moral and religious views, because they represent a reasonable point of convergence among people who disagree about many broader questions of value and meaning. Political liberals maintain that a commitment to public reason means that, in making political choices about matters of basic justice, we should justify these choices through reasons that do not suppose the truth or unique value of our broader moral beliefs or religious faith. We should justify our political choices through reasons that could be acceptable to reasonable persons who disagree with us on this wider range of important questions and we should not attempt to justify matters of basic justice by reference to comprehensive doctrines.

The Scope of Public Political Justification

This takes us back to questions about the scope and nature of public political justification. Taking a fairly narrow view of scope, Rawls maintains that the ideal of public reason applies to the perspective of officials on matters of constitutional essentials (1997: 767–70). Elected officials and judges should justify through public reasons the positions they take on constitutional essentials. Other political decisions need not meet this strict standard of justification. Rawls supposes that the norms of public reason are too abstract and indeterminate adequately to underwrite decision-making on a wider set of questions.

Some deliberative democrats, however, argue that the ideal of public reason applies considerably more broadly. They maintain that political decision-making should, generally speaking, be accomplished by considering what could be justified to one's fellow citizens on the basis of shared political values. While the norms of public reason are abstract and generic, public reasoning gains content when it is actually carried out, and this gives it broad scope.

Disagreement about the proper scope of public reason raises interesting questions: How strong is the requirement of democratic deliberation for political legitimacy? Which value-directed activities and relationships do not require justification through public reasons? How should we appropriately construct the realm of the private?

Publicity as Democratic Deliberation

As I have suggested, disagreements about the scope of public reason are related to a dispute about whether public political justification requires actual public deliberation or whether its conclusions could be specified in advance, through reasoning

about hypothetical agreements between reasonable persons. Jürgen Habermas criticizes Rawls for elevating the philosopher's perspective and for maintaining that deliberation need not be actual (*see* CRITICAL THEORY). Habermas (1995) contests the notion that the outcome of public political justification could be foreseen in advance of actual deliberation. This connects with concerns he voices about fixing the content of a political constitution over time without requiring that it be ratified anew by subsequent generations. Rawls places Habermas in the Jeffersonian tradition, requiring renewed commitments, over time, on fundamental constitutional arrangements (Rawls 1995: 160).

Rawls' own view supposes that hypothetical consent to just constitutional arrangements is binding across generations (2001: 159–60). He believes that, so understood, the burden of justification encourages an appropriately strong sense of responsibility. Rawls also resists Habermas's charge that his work privileges the philosopher's perspective. Rawls affirms that philosophy, like any other intellectual pursuit, is in the public domain, in the broadest sense. Its conclusions are subject to scrutiny through rational criticism. In this broad sense, all reason is public (Rawls 1995: 139–42).

The Public Sphere

Habermas's work on the subject of publicity is far-reaching, extending well beyond the themes I have thus far discussed, and incorporating sociological dimensions. He addresses the relationship between the social acceptance of a requirement of public political justification and a broad notion of the public sphere – mediating between private interests and the public space controlled by government. His early work, *The Structural Transformation of the Public Sphere* (1989 [1962]), traces the emergence, function, and collapse of what he refers to as "the public sphere." He argues that a bourgeois public sphere as a space of literary, cultural, and eventually political discussion emerged in the late 1700s and was later co-opted by the competing aims of consumer capitalism. In particular, a public sphere in which matters of politics were critically debated came to be displaced by the profit-oriented motives of major media sources and by their preoccupation with the public advertising and marketing of consumer goods. The control of information and communication through a profit motive does not advance the ideal of public political justification and democratic legitimacy. Habermas's analysis of the decline of the public sphere bears a certain resemblance to Noam Chomsky's criticisms of the mass media's role of undermining democracy (Chomsky and Herman 1988).

Recent work inspired by Habermas examines the expansion of public spheres in an era of global technologies and, in particular, of the Internet. This opens a new chapter of thinking about potentially transformative notions of political participation and democratic deliberation. Global developments in technology, politics, economics, and law have also inspired philosophers' discussion of the notion of a global public reason. Work by Joshua Cohen (2007), for example, examines the extension of public reason globally and its relationship to global politics and law.

Cohen offers a model for extending liberal thinking about the requirements of political inclusion and global justice. He urges us to loosen our understanding of the difference between politics and public reasoning, and he points to expanding realms of public political deliberation. He also argues for broadening norms of political inclusion, so that they do not presuppose democratic citizenship.

It is clear from my discussion that the value of publicity bears a close relationship to other values that comprise a liberal political philosophy: agreement, public justification, legitimacy, and justice. It also bears an important relationship to broader topics I have only mentioned: confidentiality, privacy, political participation, democracy, and the sociology and politics of a variety of public spheres.

See also: AUTHORITY; CITIZENSHIP; COERCION; CONFIDENTIALITY; CONTRACTUALISM; CRITICAL THEORY; DEMOCRACY; DEWEY, JOHN; JUSTICE; KANT, IMMANUEL; LIBERALISM; LOCKE, JOHN; MILL, JOHN STUART; POLITICAL OBLIGATION; PRIVACY; PUBLIC REASON; RAWLS, JOHN; RECIPROCITY; ROUSSEAU, JEAN-JACQUES; SOCIAL CONTRACT; VALUE PLURALISM

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Pufendorf, Samuel von

Michael J. Seidler

Samuel (Freiherr) von Pufendorf (1632–94) was ennobled (by Charles XI of Sweden) at the end of his life mainly for his historical works, yet he was as well or better known by then for his moral and political thought. He was the main German representative of so-called modern natural law (Tuck 1987; *see* NATURAL LAW), whose articulate, systematic elaboration of the genre also made it serviceable more broadly in many other national contexts. His works appeared in hundreds of editions and translations in the major European languages, both before and after his death, spawning multiple commentaries, refutations, and imitations; and his ideas shaped intellectual discourse, academic pedagogy, and even politics for over a century.