

Publicity

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1. Publicity and Political Legitimacy

Publicity refers to an aspect of the moral demand that political arrangements be justified to their subjects. This means 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 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 or privacy. Questions about the proper bounds of confidentiality and privacy in relation to the rights of individuals raise interesting issues that go beyond the scope of this essay, which focuses on the accountability of public institutions. (See CONFIDENTIALITY; PRIVACY)

Publicity as an aspect of the morality of institutions is shared widely by liberals, and is contested by some utilitarians, for whom the value of publicity reduces to its consequences. (See LIBERALISM, SIDGWICK) The value of publicity bears a natural affinity to 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, whether actual or hypothetical. 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 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 a basic criterion of its legitimacy.

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 the existence of certain institutional constraints on inequalities in opportunities and wealth. Rawls (1993: 227-30). More broadly applied, the publicity requirement could be understood to govern decision-making about any matters of public concern. In this broad sense, the value of publicity 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. Defenders

of the idea that public political justification requires actual deliberation, by contrast, 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.

2. Publicity as Transparency

I have claimed that the publicity requirement has three dimensions: transparency, common knowledge, and common values. I also suggested a possible fourth dimension: democratic deliberation. The transparency requirement challenges norms of government secrecy, particularly concerning the basic rationale for political institutions but also supporting, 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 (1981, 2009: 349) Official claims to advance the public interest should be open to public scrutiny, 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, free 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. Liberals typically are skeptical of paternalistic rationales for political arrangements and

wary of manipulative behavior by governmental officials. They believe 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 political subjects, rather than to administrators, bureaucrats, or leaders with special knowledge or insight. Public political justification emphasizes the moral standing of political subjects as both entitled to assess the government's policies and capable of doing so. 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 liberals, with the notable exception of John Stuart Mill, argue that the good of subjects is inadequate justification for restrictions on transparency. 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 good of society. 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.

Autonomous political subjects will view government lack of transparency as insulting. They may also suspect that lack of transparency conceals unjust laws. This suspicion may be warranted even when laws are not in fact unjust. As Bernard Boxill explains, "it does not matter only that laws are just, it also matters that citizens believe that laws are just. If they do not, they are likely to be rebellious, and the stability of the society and the benefits that depend on it will be threatened." Boxill (1992: 231).

Transparency guards against the appearance of injustice, enhances the stability of political institutions, and is a reasonable condition of a government's trustworthiness.

3. 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 democratic society and the threat to democracy of rule by an administrative and technocratic elite. 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 just another business, and one that is inept at serving the public interest. Dewey held that free and open public inquiry, debate, and persuasion are crucial to democracy. Dewey (1927: 208) A commitment to the idea that justification should be the product of the judgment of political subjects connects with a presumption of 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 education and to the importance of support by government for the advancement of science and 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. Dewey (1958: Ch. 6).

The common knowledge aspect of publicity raises important challenges, however, for thinking about how to defend input by experts in procedures of public decision-making. Expert testimony can be important to sound judgment and decisions. An overly strict common knowledge requirement might seem irrational, naïve, or shortsighted. Moreover, recognition that the source of most of our knowledge comes from the testimony of other people might 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 expert judgments could in principle be laid out and that experts acknowledge their sources and make them available. Richardson (2012: 104). Furthermore, certain institutional protections—freedom of expression and association—are minimal conditions 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 collective reasoning—provisions for appealing or calling into question the determinations of experts. Richardson (2012: 105).

4. Public Reason

The third aspect of the publicity aspect of political justification requires that political justification express shared values. It is important that the justification of basic political institutions depend on shared values, rather than the values of one or another interest group or morally contested point of view. 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)

According to this view, since a social order under free, democratic institutions will not be one in which people accept the same religious and moral reasons, justification in a free society will have to be based on a narrower set of values, such as a commitment to fair cooperation, basic rights, the rule of law, and mutual toleration. Rawls refers to these values as political values. Political liberals argue that only political values that can be shared by reasonable citizens, and not comprehensive moral or religious values that are the subject of disagreement, can function as ingredients in public justifications. 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 by public reasons, not by contested moral, religious, or metaphysical values.

Public reasons, therefore, are reasons that could justify political arrangements to a wide range of moral and religious views because they represent a reasonable point of convergence amongst 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 our choices with

reasons that do not suppose the truth or unique value of our broader moral beliefs or religious faith. We should justify our political choices with reasons that could be acceptable to reasonable persons who disagree with us on this wider range of important questions; we should not attempt to justify matters of basic justice by reference to comprehensive doctrines.

Public reasoning can be thought of as a form of “we-reasoning.” It is a form of moral reasoning in which each participant favors options that are collectively available, that is, options that could be acceptable to the group as a whole. Schwenkenbecher (2019: 153). In public reasoning, each member appropriately take the fact of reasonable pluralism into account and proposes only reasons that are sensitive to the values of democracy. In that sense, public reason expresses the perspective of a democratically organized group.(see DEMOCRACY) In this we-mode of reasoning, members of a democratic society act with awareness of themselves as part of a group in which their shared goal is to reach decisions based on reasons that all can accept. Moltchanova (2019: 193) Group decisions that are the product of we-reasoning contrast with group decision-making that results from strategic I-mode reasoning, in which participants are strategically focused on how to advance their own individual interests, for example, by influencing other group members. As a mode of we-reasoning, public reasoning requires the public sharing of information as well as public speech acts of agreement-making, promising, commanding, and performing. Toumela (2005: 335-6)

5. The Scope of Public Political Justification

The demands of public reason raise questions about the scope and nature of public political justification. Rawls maintains that the ideal of public reason applies to the

perspective of officials on matters of constitutional essentials. Elected officials and judges should justify the positions they take on constitutional essentials with public reasons. 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. Cohen (2009). They maintain that, generally speaking, political decision-making should 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 general and abstract, 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 by public reasons? How should we appropriately construct the realm of the private?

6. Publicity as Democratic Deliberation

As I have suggested, disagreements about the scope of public reason is 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) He contests whether the outcome of public political justification could be foreseen in advance of actual deliberation. Habermas (1995). 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 commitments. Rawls (1995: 160).

Rawls's own view supposes that hypothetical consent to just constitutional arrangements is binding across generations. He believes that, so understood, the burden of justification encourages an appropriately strong sense of responsibility. Rawls also resists Habermas's characterization of his work as privileging 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 by rational criticism. In that broad sense, all reason is public.

7. 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* traces what he regards as the emergence, function, and collapse of the public sphere. Habermas (1991). Habermas argues that a bourgeois public sphere as a space of literary, cultural, and eventually political discussion emerged in the late 1700s and was later coopted 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 for-profit motives of major media sources and their preoccupation with

the public advertising and marketing of consumer goods. The control of information and communication by 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 democracy-undermining role in "manufacturing consent." Chomsky and Herman (1988).

More recent work inspired by Habermas examines the expansion of public spheres in an era of global technologies and, in particular, 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 discussion by philosophers of the notion of global public reason. Work by Joshua Cohen, for example, examines the extension of public reason globally and its relationship to global politics and law. Cohen's work 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 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 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, the sociology of a broad public sphere, political participation, and democracy.

SEE ALSO: AUTHORITY; CITIZENSHIP; COERCION; CONTRACTUALISM;
 CRITICAL THEORY; DEMOCRACY; JUSTICE; LIBERALISM; PUBLIC REASON;
 RAWLS, JOHN; SOCIAL CONTRACT; VALUE PLURALISM.

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Suggested Readings

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