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978-0-521-86856-3 - The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World

Gerald Gaus

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The Order of Public Reason

A Theory of Freedom and Morality in a Diverse and Bounded World

In this innovative and wide-ranging work, Gerald Gaus advances a revised, and more realistic, account of public reason liberalism, showing how, in the midst of fundamental disagreement about values and beliefs, we can achieve a moral and political order that treats all as free and equal moral persons. The first part of the book analyzes social morality as a system of authoritative moral rules. Drawing on an earlier generation of moral philosophers such as Kurt Baier and Peter Strawson as well as current work in the social sciences, Gaus argues that our social morality is an evolved social fact, which is the necessary foundation of a mutually beneficial social order. The second part considers how this system of social moral authority can be justified to all moral persons. Drawing on the tools of game theory, social choice theory, experimental psychology, and evolutionary theory, Gaus shows how a free society can secure a moral equilibrium that is endorsed by all, and how a just state respects, and develops, such an equilibrium.

Gerald Gaus is the James E. Rogers Professor of Philosophy at the University of Arizona. He was previously professor of philosophy and political economy at Tulane University. He is the author of a number of books, including *On Philosophy, Politics, and Economics* (2008); *Contemporary Theories of Liberalism* (2003); and *Justificatory Liberalism* (1996). His essay "On Justifying the Moral Rights of the Moderns" won the 2009 American Philosophical Association's Kavka Award.

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The Order of Public Reason

*A Theory of Freedom and Morality in a Diverse and
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GERALD GAUS

University of Arizona



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To Andrea

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The enemies of liberty have always based their arguments in the contention that order in human affairs requires that some should give orders and others obey.

F. A. Hayek, *The Constitution of Liberty*

We need not, perhaps, insist upon just the same answer for all; but, if we take the question seriously, we must insist on *some* answer for all.

P. F. Strawson, "Social Morality and Individual Ideal"

[A] society's morality is the joint product of the moralities of its individual members. As far as its content is concerned, individual members are its joint makers, not merely its subjects.

Kurt Baier, *The Rational and the Moral Order*

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Preface

"The fox knows many things, but the hedgehog knows one big thing." Perhaps by now, invoking Isaiah Berlin's famous distinction risks banality, but it is more than just an interesting contrast. Philip Tetlock, in his wonderful book *Expert Political Prediction*, has shown that it has a genuine basis in different cognitive styles. Overall, and of course with many important exceptions, moral, social, and political philosophy is the clash of the hedgehogs. Often political philosophers actually characterize themselves as defending one supreme value – "I'm an egalitarian" or "I'm a libertarian." But even when hedgehogosity is not quite so blatant, moral, social, and political philosophy is often the clash of well-defined schools with well-defined programs: Aristotelians, virtue theorists, perfectionists, Kantians, Humeans, utilitarians, deontologists, expressivists, realists, intuitionists, naturalists, moral sense theorists, and on and on. And when philosophers are dissatisfied with the current state of philosophy and seek to advance a new view, they almost always see the need to ensure that it qualifies as a fully fledged hedgehog view. Thus many moral philosophers who have been impressed by the need to take empirical evidence seriously go on to insist that moral philosophy really is simply cognitive psychology. One experimental moral philosopher once objected to me: "I have no idea what people are talking about when they invoke the idea of rationality." All that old rationality talk is out, and now it is just the study of cognitive processes. Philosophy as the clash of the hedgehogs is central to our pedagogy. The standard philosophy course is a con-

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frontation of the Great Hedgehog views on a topic – a tour of theories that assert a simple truth and seek to fit all the moral, social, or political phenomena into that single truth. The outcome of the course is typically that all have some insight and all fall short. But the next semester we begin, once again, with the clash of the Great Hedgehogs.¹

A fox approach to moral, social, and political philosophy might appear necessarily antitheoretical. Bernard Williams was a foxy philosopher (well, in our sense, at least), and he was also generally against theorizing about morality. But to appreciate the diversity of a phenomenon, and the ways that different schools and methods have contributed to our understanding of it, is not to abandon the idea that we may develop a unified and coherent account of it. A foxy theory will be complex, and it will draw on a variety of approaches. It will be sensitive to the relevance of new data, and so it must allow that its conclusions are revisable (at the same time it will resist turning the study of empirical phenomena into the new hedgehog truth of philosophy). A foxy theory need not take everything on board, singing the bland refrain that “everything is wonderful in its own way.” But it will be sensitive to the fact that the complexity of the moral and social world cannot be captured by one value, one method, or one school. Its theory will not be a deduction from one core truth or insight, but a piecing together of many truths that leads to a bigger and, one hopes, true picture. It may even have a central concern or worry. A fox is not one who cannot be moved to answer a single question; it is one who sees the complexity of the answer.

The attentive reader may well have guessed that I aim to present a foxy account of social and political philosophy in this work. This work advances a theory that forms a unified picture of what I call “social morality,” and the ways that it relates to the political order. We shall see, though, that unity does not imply simplicity; along the way we will have to grapple with the insights of, among many others, Hobbes, Hume, Kant, Rousseau, J. S. Mill, T. H. Green, P. F. Strawson, Kurt Baier, S. I. Benn, R. M. Hare, F. A. Hayek, David

¹ Of course it will be objected that we include Hume – a fox! But is he just turned into the “empiricist” hedgehog, to be contrasted with the great rationalist one?

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Gauthier, Alan Gewirth, Kenneth Arrow, John Rawls, James Buchanan, and Amartya Sen. We will draw on game theory, experimental psychology, economics, sociological theories of cultural evolution, theories of emotion and reasoning, axiomatic social choice theory, constitutional political economy, Kantian moral philosophy, prescriptivism, and the concept of reason and how it relates to freedom in human affairs. I am convinced that until philosophy turns away from its obsession with clashing schools and approaches, it will be caught in an eternal circle of covering the clash of the hedgehogs but will never advance in grasping complex truths. I am aware, though, that because hedgehogosity is so firmly ingrained in philosophers' minds, unless one's work fits into a hedgehog category, it is unlikely that anyone will pay much attention to it. (How can it be taught? Where do we put it in our syllabus? Is it really philosophy?) My work is often categorized under the "libertarian" label since I argue that human freedom is terribly important, that coercive interferences infringe freedom and so must always be justified to the person who is being coerced. Scanning over the available hedgehog categories, the philosopher's mind stops at "libertarian." That most of my views on freedom and coercion were learned from Stanley Benn, a traditional Labor Party social democrat, never makes much of a difference to the categorization. To this worry one can only quote the great Doris Day: "Que sera, sera."

Perhaps I am a bit of a hedgehog too, for this book is motivated by one central concern: can the authority of social morality be reconciled with our status as free and equal moral persons in a world characterized by deep and pervasive yet reasonable disagreements about the standards by which to evaluate the justifiability of claims to moral authority? My worry, which I try to show should be yours too, is that claims of social morality may be simply authoritarian. One demands that others must do as he instructs because he has access to the moral truth; another admits that she has no access to any moral truth, but nevertheless employs morality as a way to express (or, to use an older language, emote) her own view of what others must do. But what if reasonable moral persons deny the purported truth or are unimpressed by the expressive act? And what if, in spite of that denial, one goes ahead and makes demands,

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blames, punishes, is indignant, and so on at their refusal to comply? In this case, I shall argue, one is just being a small-scale authoritarian. And authoritarians do not respect the moral equality of their fellows. A social order that is structured by a nonauthoritarian social morality is a free moral order: a moral order that is endorsed by the reasons of all, in which all have reasons of their own, based on their own ideas of what is important and valuable, to endorse the authority of social morality. Such a social and moral order is what I shall call “an order of public reason” – it is endorsed by the reasons of all the public. Only if we achieve an order of public reason can we share a cooperative social order on terms of moral freedom and equality. Only in an order of public reason is our morality truly a joint product of the reasons of all rather than a mode of oppression by which some invoke the idea of morality to rule the lives of others.

The idea that morality can itself be authoritarian strikes many as odd. We all know the first line of section 1 of *A Theory of Justice* – “Justice is the first virtue of social institutions, as truth is of systems of thought.” Isn’t morality a wonderful thing? And can we have too much of it? Kurt Baier is less enamored of moral discourse. Consider how he begins his great work, *The Moral Point of View*: “Moral talk is often rather repugnant. Leveling moral accusations, expressing moral indignation, passing moral judgment, allotting the blame, administering moral reproof, justifying oneself, and, above all, moralizing – who can enjoy such talk? And who can like or trust those addicted to it?” Morality does not directly speak to us; it is other people who speak to us, asserting their views of morality as demands that we act as they see fit. Baier’s morality is not an “ideal morality” shorn of all blame, reproof, and guilt. It is our real practice, which makes your activities your neighbor’s business; he calls on morality to tell you what to do, and he will not simply shrug his shoulders and walk away if you ignore his demands. Confronting this actual practice – in which “imperfect compliance” is a central feature – we have to ask “why do we need it?” and “when can its claims to authority be freely recognized by all?” These are the questions I seek to answer in this work.

Of course, many have sought to answer these questions, from Hobbes to Rousseau and Kant, from Gauthier to Rawls. I build on

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their great work, but I also believe that these famous proposals ultimately flounder on one or the other of two main obstacles. Some, such as Hobbes and Gauthier, recognize that the authority of social morality is a prerequisite for social life and so suppose that instrumentally rational individuals could reason themselves into acknowledging such authority as a means to secure their aims and goals. In Part One I show that this enticing proposal fails. Moral rules are required if we are to advance our ends, but they are not merely servants of our ends. Others, such as Kant and Rawls, hold that individuals committed to treating each other as free and equal could, under conditions of impartiality, agree on, or will, a common authoritative social morality. This gets us much nearer the truth, but it fails to take account of the pervasiveness of rational disagreement about the correct impartial morality. There is no compelling way to generate rational agreement on a specific morality in anything approaching the diverse and bounded social world we inhabit. We are left confronting the problem of the indeterminacy of rational justification. In Part Two I analyze and defend several ways in which free and equal persons can cope with this real and deep problem of moral disagreement.

As the reader has no doubt noticed, this is a long book. It is long, partly because I seek to integrate empirical and formal work with normative social and moral philosophy, and so almost every reader will find much that is unfamiliar. Because different disciplines are drawn upon, I seek to explain things carefully as I proceed. I have also found that more compressed presentations of these ideas tend to leave readers a bit disoriented. The crux of the account, taking very seriously instrumentalist reasoning, rule-based reasoning, the moral emotions, actual psychological and social facts while providing a Kantian-inspired framework for normative evaluation that admits the importance of the social evolution of norms, runs against the current of much contemporary social and political philosophy which, as I have said, tends to package up views into fairly neat, identifiable, schools. Unless things are developed systematically, readers understandably revert to their existing interpretive frames (e.g., Hobbesian, libertarian, economic-not-moral, empirical-not-normative, Darwinist, Rawlsian) and so (at least in my view) tend to misinterpret the analysis. As useful as it

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would have been, I have not been able to devise clear abridged paths through the book for readers with different interests. I have, though, provided extensive cross references so that those picking the book up at one place can find where they should look for earlier and later relevant discussions. I have also tried to provide an index that is useful for such readers.

In formulating these ideas over the last decade I have benefited from conversations – usually in the form of lively disagreements – with a number of colleagues and students. My great and longtime friend Fred D’Agostino has consistently encouraged my line of inquiry and has offered wonderful advice on how to (and how not to) proceed. Kevin Vallier has provided invaluable insights and has discussed the manuscript with me, as has John Thrasher. My deep thanks to both. Kevin was also kind enough to organize a reading group at the University of Arizona on the manuscript (to which I was periodically invited if I bought the beer). Thanks so much to the members of that group, especially Michael Bukowski, Keith Hankins, John Thrasher, Klye Swan, and Kevin – for spurring me to think more deeply about some important issues. Jon Anomaly, Fred D’Agostino, Peter de Marneffe, and Jon Quong also read a draft of the book; my deep thanks for their comments, questions, and suggestions. I am also grateful for discussions with my terrific fellow political philosophers at Arizona, Tom Christiano and David Schmidtz; Chris Maloney has not only been the best department chair in the world, but a wonderful and supportive friend. Many of the ideas in this book are the result of great conversations with Shaun Nichols over a couple of IPAs. I have learned a tremendous amount from Shaun; this book would have been entirely different if it weren’t for those beers. Many others have commented on various parts of the project. I hope they will not be offended if I simply list them; to fully note my appreciation for their specific help would make this very long book considerably longer. So, my sincere appreciation, and thanks for pressing and assisting me, to, Robert Berman, Pete Boettke, Jim Bohman, Geoffrey Brennan, Bruce Brower, Shane Courtland, Rich Dagger, Derrick Darby, Christopher Eberle, David Estlund, Steffen Ganghof, Michael Gill, Bill Glod, Thomas E. Hill, Brad Hooker, John Horton, Rachana Kamtekar, Julian Lamont, Charles Larmore, David Lefkowitz, Andrew Lister,

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I was fortunate enough to be able to present these ideas in a variety of conferences and colloquia, in which the comments and questions of the audience were immensely valuable. My thanks to the Arizona State University Committee on Law and Philosophy and the members of seminars on rights at the University of Arizona and the University of Kansas in the fall of 2008; the Dutch-American Symposium on Public Reason in Amsterdam in 2008; the Research Triangle Ethics Circle; the Workshop on Equal Respect for Persons held at the University of Genova in 2007; the Political Theory Project at Brown University; the Murphy Institute conference on rights; the seminar on public reason at the University of Arizona in 2007; the Manchester Centre for Political Theory; the Philosophy Departments at the University of Reading, North Carolina State University, Vanderbilt, and the University of Georgia; the UCLA/CATO Institute conference on a common liberalism; the Social Philosophy and Policy Center; the UCLA Political Theory Workshop; the Workshop in Philosophy, Politics and Economics at George Mason University; and various meetings of the American Philosophical Association and the American Political Science Association. My special thanks to all my colleagues and students at the University of Arizona, who make it the best place in the world for me to work, and to learn. The penultimate draft of this book was written while I was a Distinguished Visiting Research Professor at the Murphy Institute at Tulane University; I am deeply grateful to the Institute's former director, Rick Teichgraber III, for his friendship and support for my work over the last decade. Last, and by no means least, I would like to express my gratitude to my Cambridge editor, Beatrice Rehl, who not only encouraged this project, but who was patient and supportive through far too many delays.

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For better or worse, my essays are often initial attempts to work out ideas – attempts that often have significantly evolved by the time I am ready to write it all down in a book. A number of essays have been a part of this project. I have employed parts – but seldom large parts – of these essays at various points in this book. They always have undergone significant changes. The papers that have been most important to this project are “The Place of Autonomy in Liberalism” (in *Autonomy and the Challenges to Liberalism*, edited by John Christman and Joel Anderson); “Liberal Neutrality: A Radical and Compelling Principle” (in *Perfectionism and Neutrality*, edited by George Klosko and Steven Wall); “On Justifying the Moral Rights of the Moderns” (*Social Philosophy and Policy*); “Recognized Rights as Devices of Public Reason” (*Philosophical Perspectives: Ethics*); “The Demands of Impartiality and the Evolution of Morality” (in *Partiality and Impartiality*, edited by Brian Feltham and John Cottingham); “Reasonable Utility Functions and Playing the Cooperative Way” (*Critical Review of International Social and Political Philosophy*); “Coercion, Ownership, and the Redistributive State,” (*Social Philosophy and Policy*); and “On Two Critics of Justificatory Liberalism” (*Politics, Philosophy and Economics*).

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