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Truth and Politics: A Symposium on Peter Simpson's *Political Illiberalism: A Defense of Freedom*

Gerard V. Bradley

There is no more important question in thinking about life—and actually living—in political community than whether it is to be permeated by, and purposefully oriented around, the main truths about human flourishing. It is at least paradoxical that, precisely when the state and its law and political life are shaping people's lives more and more, the professed roots of all this influence are growing thinner, more shallow. Lawmakers who profess and in many cases even think they should be “neutral” about values are more involved with how persons' lives go than, perhaps, ever before.

Of course, any community which has lost faith in the truth about human well-being is going to be quite befuddled by the question. But the perennial centrality of the question about truth and politics can be obscured for understandable reasons. One is the immediate urgency of so many practical challenges, such as settling the defense or state budget, protecting against terrorist attack, or deciding what to do about a nuclear-armed North Korea (and then doing it). Attention to the fundamental question is attenuated, too, by focus upon diffuse problems which affect nearly everyone daily, such as getting good healthcare coverage or creating jobs. Significant public debates about moral issues affecting policy are still common. But they tend to be episodic, and wary of getting down to foundations. When Americans argue today about immigration policy and capital punishment, for instance, they rely upon profound ethical beliefs. All too often, however, they link these commitments not to the objective moral truth at the heart of the matter, but instead to past practices (“traditions”), or to communal identity as a matter of fact (“it's (not) who we are!”).

Appeals to extant consensus often provide a simulacrum of political discourse about real human well-being. Sometimes this appearance is reality. But these arguments are often routed back to the restricted and somewhat artificial realm of legal reasoning. Constitutional law frequently raises issues which cannot be resolved justly without openness to the most basic metaphysical and moral questions, such as: who counts as a “person” with a right not to be intentionally killed?, and: what is the nature of the pre-political human associations (marriage, family, church), which the political community should be dedicated to serving? America's judges in constitutional cases have taken for themselves the deciding

vote in settling many such matters. But they typically deny that they consider questions of moral truth, much less of their integral relationship to the common good. Simply put: liberal jurists *say* that they would impose no one's "moral code" but instead define the "liberty" of all, while conservatives *say* that they eschew all "moral philosophy" in favor of deep textual and historical analysis.

Social agreements to provide everyone with effective access to real human goods like health, education, knowledge, and culture activity and experience make it appear that the community is relying upon a full-orbed account of politics and the human good. And these discussions do sometimes get all the way down to genuinely foundational matters. But citizens who would extend the relevance of moral truth to the law of marriage and abortion, for example, are widely denounced as misguided about how "public reason" in our "pluralistic" democracy actually works. So, although part of everyday political life seems to operate *as if* it were open to the truth about human well-being, a considerable part does not. And in the part that does, appeals to "American values" typically displace appeals to truth. The second order narrative that we commonly tell ourselves (or, are told) resolutely brackets questions of the truly good and worthwhile.

There is then both challenge and opportunity for any incisive critic of this *status quo*. The ideology of "neutrality" is formidable and rationalizes much agreeable immorality for many. But it is also fragile, partial, and finally incoherent. Wholesale reform of the substance of our political thought is an uphill climb.

And the need is urgent. The uneasy alliance of intermittent, almost frank recognition of truth in politics with forgetfulness and abstention matters greatly. Even if this bracketing is only fully operational chiefly regarding what today are called "private" matters of faith, family, marriage, sexual morality, and the overall acquisition of virtue, the wages of this bracketing are enormous. Given the pervasiveness of law in society today, persons' behavior is made to conform to allegedly value-neutral law at every turn. The massive influence of the modern state upon its host culture and whole social milieu means that countless people are deprived of proper public support for—and may even be blocked in—their efforts to live well. They may even be deprived of effective access to knowledge of the genuinely good life.

The bracketing clouds our understanding of what we think about even when we reach correct moral conclusions about, for example, torturing terrorists, protecting civilians abroad from wanton attack, and admitting refugees. Too often the right answers to these (and other) questions are thought to rest, not so much in moral truth, as in an unstable mixture of heady idealism, vague rights-rhetoric, factual contingencies, and national self-interest,

This dominant meta-discourse has been most famously thematized and defended by John Rawls. The family of political moralities of which Rawls is reigning patriarch form an entrenched understanding of political life. This cohort of commitments is usefully called *liberalism*. It is hegemonic. And it is at the root of the paradoxical ever-growing state, resting upon increasingly shallow foundations.

Perhaps it is even "virtually axiomatic" that liberalism is the only way to protect freedom in the modern world, as Peter Simpson says in the Introduction to his

full-scale challenge to the hegemon, *Political Illiberalism*. This challenge is the subject of this Symposium issue of *The American Journal of Jurisprudence*.

The book's title, Simpson writes, is a "play" on Rawls's *Political Liberalism*. But Simpson's is not chiefly an analytical engagement with contemporary liberalism, or with Rawls. It is (in Simpson's description) an attempt to "deconstruct" liberalism, and to present "an alternative account of political phenomena and political theory that, while polemically called political illiberalism, is a truer account of political liberty than liberalism has put forward."¹ The "essence" of it is that "politics is and must be about comprehensive visions of the good." Liberalism is *not* about such visions, and it should therefore be replaced.

It is easy to see already that Simpson's alternative account is not "illiberal" in the most straightforward sense of the term—that is, *opposed to liberty*. There is nothing corporatist or statist or collectivist about Simpson's alternative. He undertakes to show how badly societies today have veered off the course of organizing themselves to help people lead self-directed lives, by and through free choices towards moral and religious truth. He affirms that people are free and moral. He considers persons to be equal in their radical capacity for goodness. But he recognizes the many unequally distributed—some external and some internal—impediments which life presents to the successful pursuit of perfection through choice. And so, in one of the most provocative parts of the book, Simpson speaks sympathetically of the obligation of those who have attained a fuller measure of virtue to tutor those who are, he says, "inferior" precisely in the pre-requisites for discerning the truth and for making worthwhile practical decisions in accord with it.

Simpson's book raises not only philosophical questions. He is also keenly interested in institutions and administration. Among the most thought-provoking parts of the book is his exuberant defense of localism, even to the (partly impish, I should think) defense of the decentralization of the Articles of Confederation. At the heart of Simpson's more practical concerns, though, is what he calls the "modern state." He asks if anyone who is committed to a politics which really would help people to achieve their own perfection in a certain fullness, and with a certain ease, can put up with this colossus any longer. "The message and conclusion of the book may be expressed fairly simply. The modern state is despotism, and to seek liberty within it is illusory. Human politics requires the devolution of authority to local communities on the one hand and a proper distinction between spiritual and temporal powers on the other."² Simpson raises the crucially important question, whether the institutions and practices of modern politics could survive reclamation of political theory by his sort of "illiberalism."

This challenge is not a polemical or impish flourish. It might well be true (as I think it is) that our present constellation of practices—democracy, a written Constitution, a market economy, elections and independent courts, a vigorous state—*could* promote genuine well-being. These mainstays of our political culture

¹ Peter L.P. Simpson, *Political Illiberalism: A Defense of Freedom* (New Brunswick, NJ: Transaction Publishers, 2015), ix.

² *Ibid.*, x.

are not as such inhospitable to being oriented in a decisive way to the truth about human flourishing. But it might also be true that converting them now, and gearing them to repair the grave damage they (and their guiding liberal philosophy) have done to our culture and to people's possibilities for perfection, is as a practical matter all-but-impossible.

The strategy and argument of Simpson's book parallel the most important scholarly work over the last generation or so in legal and constitutional theory. H.L.A. Hart strove to found a sound jurisprudence on foundations which avoided commitments on most basic questions of human flourishing. Since the publication of John Finnis's *Natural Law and Natural Rights* in 1980, however, that possibility has come under very serious question. Finnis's central thesis—that the “viewpoint” of one who is fully practically reasonable, “is the viewpoint which should be used as the standard of reference by the theorist describing the features of legal order” [15] – has become a focal point of jurisprudential debates over foundations.³

Lawmakers too must be guided—keep in their mind's eye—a sound understanding of genuine well-being. Judges are, to be sure, most often largely constrained by authoritative legal norms enacted by others (including by other judges and even the same judge on an earlier occasion). But very often the judge is called upon to synthesize ill-fitting lines of authority or to renew and extend one line or even to fill-in with little authoritative guidance a gap in the law, to engage in “interstitial” judicial lawmaking—even in constitutional cases!

Whether and to what extent the antecedents of contemporary Rawlsian liberalism can be found in Hobbes, Locke and other historical sources (including the American founders) is an important focus of the symposiasts' attention. Fair enough: Simpson advances sufficient genealogical claims to warrant the ripostes. In my judgment, however, the matter of antecedents is secondary to the case Simpson makes against present forms of liberal theory and political community. *This* target Simpson describes accurately enough to make his case compelling.

This target may be as old as the Constitution—or older. But it is *at least* a few generations old. Yves Simon perspicuously diagnosed this same “liberalism” (his word) in a 1942 scholarly article. Simon wrote that this ideological construct was coming to the fore in some Western societies. By its lights, the mind is vouchsafed no freedom from the requirements of “logical and experimental truth” and so none in regard to science (the synthesis of logic and experience). But “as regards the so-called transcendental sphere,” the construct demands that “the individual should be granted an unlimited freedom of assertion and denial.” As a worried Simon put it, these “liberties cannot be safeguarded unless society adopts an attitude of complete indifference toward transcendental objects, and professes some kind of agnosticism.”⁴

³ John Finnis, *Natural Law and Natural Rights*, 2d ed. (Oxford: Oxford University Press, 2011; 1st ed., 1980), 15.

⁴ Yves R. Simon, “Beyond the Crisis of Liberalism,” in *Essays in Thomism*, ed. Robert E. Brennan (New York: Sheed & Ward, 1942), 267.

The stakes of the debate ignited or re-ignited by Simpson are especially high. For starting no earlier than the late 1960s, liberalism has smuggled into its characteristic “neutrality” narrative a profound, if still largely unacknowledged, reliance upon a thin conception of the good. Today’s variant of liberalism claims to privatize questions of the good. But it is scarcely neutral about the possibility of moral truth: liberalism characteristically brands claims about true flourishing as either brute facts about what some people happen to maintain (often termed a “majoritarian” viewpoint), or as the “subjectively true” thus, objectively speaking, arbitrary) opinions of someone or other. Traditional conceptions of flourishing are marginalized as mere opinion, while any “individuality” (that is, “authentic”) is approved as, well, as good as it gets.

The *AJF* gathered together about a dozen scholars with relationships to contemporary liberalism ranging from warm embrace to icy at the Notre Dame Law School on September 29 – 30, 2016. Each was invited to comment on Simpson’s theses. The result was a very frank but never acrimonious exchange of views. After the meeting each submitted a final draft of his remarks to Simpson, whose reply to his interlocutors appears in these pages, and carried forward a debate that should not stop here, or any time soon.

