



Public & Private. Legal, Political and Philosophical Perspectives

Maurizio Passerin d'Entreves and Ursula Vogel (eds.)

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The subject of the book is an under-theorised area of political theory of wide interest and appeal. After an introductory chapter by the editors, the book is divided into two parts, comprising four contributions under the heading of 'philosophical and political perspectives' and four chapters on 'legal perspectives'.

There are two terrific chapters. The penultimate chapter, Nigel Simmonds' 'Justice, causation and private law', pursues a lucid and engaging exploration of the problematic definition of the difference between public and private law. In the course of analysing a lively debate Simmonds develops some important insights which impinge directly onto and deepen the understanding of issues in analytical political theory and (for example) about deliberative democracy. The discussion goes well beyond a narrow legal framework, investigating the complexities involved in the dilemma of a society and its rules accommodating conflicting claims between individual and collective responsibility. In the final chapter, 'Private contract and public institution. The peculiar case of marriage', Ursula Vogel analyses three constructions of marriage law since medieval times in Europe and discloses a series of thought-provoking links between the public and private realms, again with a much wider relevance to political theory. In a tightly written and crisply illuminating argument she traces changes in marriage law in the context of wider social and public values, and tracks changes over time in the definition of the intersection of public and private with respect to the constitution of gender.

Shane O'Neill provides a sound discussion and critique of Rorty's anti-foundational political theory, in 'Private irony and the public hope of Richard Rorty's liberalism'. O'Neill's exploration of problems with the consequences of this conception of the public/private distinction is illuminating. Jean Cohen's 'Is privacy a legal duty? Reconsidering private right and public virtue in the domain of intimacy', is concerned with applying 'privacy analysis' to the law relating to gays and lesbians in the US military. Specifically, it describes clearly problems arising from the legal, moral and political repercussions of the Clinton 'compromise' over gays in the US Army.

Some of the essays provide a clear overview of their topic. Dario Castiglione's 'Public reason, private citizenship' develops a familiar critique



of Rawls and Ackerman, but there is no clearly specified sense of what ‘public’ and ‘private’ rule in or rule out in this chapter as the terms are never directly discussed or defined. Maurizio d’Entrevès presents a clear if uncritical overview of Arendt’s theory in ‘Public and private in Hannah Arendt’s conception of citizenship’, though the title promises more than it delivers, since he concentrates upon Arendt’s specification of the public sphere. He only deals with one aspect of the private sphere, namely private interests, does not discuss the relation between public and private, which for Arendt was strictly dichotomous, and does not address the deeply problematic implications of Arendt’s notion of the private sphere as natural. Christine Sypnowich’s ‘The civility of law: between public and private’ develops a specifically North American perspective familiar to readers of Kymlicka on the role of the rule of law in the liberal defence of privacy. The title of Hillel Steiner’s chapter, ‘The “public–private” demarcation’ is misleading, as it does not accurately describe the content of the essay (that public and private are not asymmetrical), and it is not the demarcation between them that is examined. The argument of the chapter hangs on counter-arguments to a ‘thesis’ which is given no references whatever, and there is no discussion of what the force is of the relation being asymmetrical.

But the main problem with the book lies in the weakness of the editors’ introductory chapter. The opportunity to provide an overview of the theme of public and private, historically and analytically, as a sound framework for the subsequent chapters, was not taken up. The book would have been much strengthened by the development of an analysis of the concepts and their forms of relation and disjuncture over time. The opening chapter misses the chance to explore whether and when the terms public and private form a distinction or a dichotomy; instead the two are used interchangeably. The chapter could also have said, but does not say, something about the relation between the perspectives on public and private offered, respectively, by political philosophy and law.

The introductory chapter spends a mere page and a half on the general theme before going on to introduce the topics of the subsequent chapters. Beyond stating that the public/private distinction is ambiguous, multifaceted, that the boundary between public and private is shifting, listing Weintraub’s four versions, and referring to Benn and Gaus’ conclusion that public and private are ‘complex-structured concepts’ (open to contestation and complex), but saying nothing more to justify the reference to the term, nothing is developed about the pair. Weintraub’s specification is presented without discussion or justification, and without reference to any primary political theorists. The specification of the ‘liberal paradigm’ on page 10 does not correspond to the one laid out on page 1. One of the most serious problems is that not one of the different accounts of the public/private distinction described



in the subsequent chapters corresponds exactly to any of the four formulations in Weintraub's typology.

In consequence, the overall impression is that, despite two excellent chapters, the whole book is less than the sum of its parts. The book's subtitle is misleading—the chapters are not 'perspectives' on a common theme or central question, but a set of very loosely connected essays on disparate themes.

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