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## Chapter 5 Open Society as an Achievement: Popper, Gaus, and the Liberal Tradition

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## OPEN SOCIETY AS AN ACHIEVEMENT: POPPER, GAUS, AND THE LIBERAL TRADITION

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The idea of “open society” has experienced a small revival within academic political philosophy in the United States since the publication of Gerald Gaus’s *The Tyranny of the Ideal* (2016).<sup>1</sup> Of course, “open society” has been an influential theme in public discourse since Karl Popper published *The Open Society and Its Enemies* in 1945 (1966a, 1966b), and it has continued to engage thinkers across the political spectrum through the work of the Open Society Foundations, related academic organizations like the Open Society University Network, and think tanks like the Niskanen Center (Niskanen 2022).<sup>2</sup> But within American analytic philosophy departments, the idea of open society has largely ceased to frame debates about the nature of a sustainable liberal political order. This is unfortunate at a time when broad church liberalism needs a robust defense against authoritarian threats, dogmatic partisans, and the decline of liberal democratic norms in many countries. The attention Gaus and others have paid to the idea of open society is, therefore, a welcome development, but I worry that some leading ideas in that revival fail to meet our political moment.

In *The Tyranny of the Ideal*, Gaus reminds us of important core elements of Popper’s account of open society: that being committed to justice is not necessarily the same as being committed to one’s own current conception of justice, that we should always remain open to critical discussion and social diversity, that this has implications for the way we organize ourselves socially and politically, and that such openness suggests a piecemeal approach to solving social and political problems. Gaus extends this line of thought to contemporary debates within political philosophy, arguing that it should limit the role that ideals of justice play in our current collective decision-making about how to organize ourselves.

I regard Gaus’s *The Tyranny of the Ideal*, and his magnum opus *The Order of Public Reason* (2011), as among the most important works in political philosophy

1 Besides Gaus (2016, 2017, 2018, 2021), see, for example, Landmore (2020, 17), Muldoon (2018), Muldoon, ed. (2018), Thrasher (2020), Thrasher and Vallier (2018), and Vallier (2019).

2 Some leading discussions of Popper and open society over the years include Gray (1976), Hacoen (2000), Jarvie (2001), Magee (1985 [1974]), Notturmo (2000), Ryan (1985), Shearmur (1996), Soros (2000), Stokes (1998), and Wolin (2004, 495–503).

in the last generation. Nevertheless, in this chapter I will resist a shift Gaus makes in his final, posthumous book, *The Open Society and Its Complexities* (2021). In that work, and in some writing leading up to it, Gaus moves away from his Popper-friendly position toward a Hayekian vision of open society that instead casts Popper as a false friend of open society. I think this shift in his final works is a mistake that can be instructive about the demands of maintaining open society and the continuing relevance of Popper's work.

Following Hayek, Gaus comes to identify open society as a diverse market society with a minimal legal framework focused on protecting individuals' jurisdictional rights (such as private property rights), within which social morality—our widely shared normative expectations of each other—may spontaneously evolve. On this view, open society is threatened by any attempt to rationally manage or mitigate the results of market processes, because doing so inevitably invokes controversial concrete ends that are imposed on others.<sup>3</sup> The transgressions in doing so are both moral and epistemic. What is striking is that, in his later work, Gaus seems equally suspicious of attempts like Popper's to articulate a broad tradition of fallibilism, tolerance of diversity, and critical exchange as a crucial component of social morality for any open society. As we shall see, Gaus argues that even this relatively thin commitment is objectionably "sectarian" and hubristic because it places conditions on how people hold their beliefs or values, and so is incompatible with a truly diverse open society. By contrast, for Popper, such a tradition is practically necessary to preserve a diverse open society over time.

I will argue that Gaus makes two key mistakes in his later engagement with Popper. First, he comes to associate Popper's fallibilistic problem-solving and piecemeal social engineering with the hyper-rationalism and hubristic forms of ideal theory that he rightly argues are incompatible with open society. In doing so, he presents a false dichotomy between the Hayekian vision and authoritarian or totalitarian alternatives, when in fact Popper is sensitive to many of the same concerns as Hayek.<sup>4</sup> Second, I believe Popper is right that open society depends on developing and protecting a widely shared tradition of fallibilism, tolerance of diversity, and support for critical exchange—what Popper calls "critical rationalism"—to mitigate the threat of devolving into factional and violent states of affairs. As we shall see, for Popper, such a tradition is grounded partly in an attitude of "reasonableness" capable of being adopted by individuals from a wide variety of perspectives. This attitude will challenge some perspectives, drawing a line between the reasonable and unreasonable. But not all line-drawing is equally susceptible to Hayek-style critiques. In Popper's case, the line is drawn to preserve the benefits of diverse open society itself.

3 For a succinct introduction to Hayek's approach to these issues, which also provides something of a guide to Gaus's final book, see Hayek (1966).

4 This false dichotomy is a dominant feature of Hayek's own writing.

The need for a liberal tradition such as Popper describes is what I mean by saying that open society is an *achievement*.<sup>5</sup> To obtain the benefits of diversity and to avoid its pitfalls, we must cultivate certain norms within our social morality, and protect them once established. In this chapter, I can only begin that argument by showing that Gaus's concerns about Popper's "sectarian" defense of open society largely miss their mark.

## Gaus's Criticism of Popper

As mentioned already, the main argument of *The Tyranny of the Ideal* is self-consciously an update of Popper's broadly epistemic argument against fascism, communism, and other authoritarian or totalitarian schemes. In that book, Gaus is on the side of Popper against anyone who might believe that they can know with confidence the concrete blueprint of ideal society and thereby reverse engineer answers for our nonideal circumstances. Instead, Popper and Gaus argue that to find what is better, we must admit that we do not know what is best. Moreover, because we will never be in a position to assert confidently that we have arrived at the ideal, we must commit *indefinitely* to an open society allowing for perspectival diversity, critical exchange, and piecemeal reforms. While we might approach the ideal over time, we must always remain committed to open society—even if (in principle) the ideal might in some ways conflict with open society. Like Gaus, I think this is an extremely important argument in the history of liberalism, due not only to Popper but also to Mill (1977) and Dewey (1993a, 1993b).<sup>6</sup>

Gaus seems initially to accept Popper's position that our epistemic limitations still allow for rational efforts to make piecemeal improvements in policy and law—within what he calls the "neighborhood" of our current social world (Gaus 2016, 81)—subject to critical re-evaluation. But in an essay entitled "The Open Society and Its Friends" (2017), he comes to regard Popper as a defender of an objectionably "sectarian" model of open society that fails to respect and include some of the populist elements in American society today. Gaus's critical fire in that article is aimed less at the populists or reactionaries than it is at other defenders of open society. Why?

Gaus argues that in Popper's view the open society is "defined by opposition to 'superstition,'" rejection of religion, and "devotion to reason" such that those who "reject secularism, follow traditional rules . . . and are skeptical of our ability to rationally understand our society, are essentially classified among the enemies

5 For further discussion of open society as an achievement, see Shearmur (1996, 151–3). Shearmur argues ultimately that Popper should have embraced a more Hayekian vision.

6 For elaboration of Mill's commitment in *On Liberty* to ongoing free discussion and social experimentation, see Turner (2013). Much of Dewey's expression of similar ideas is in the context of democracy as "a way of life." He writes: "Democracy is the faith that the process of experience is more important than any special result attained . . ." (1993b, 244).

of open society” (Gaus 2017, 3). This view is “arrogant” and “condescending” and “encourage[es] a retreat to the very reactionary tribalism it opposes” (Gaus 2017, 3). The sectarian defenders of open society themselves become enemies of open society because their conception of open society involves “dismissing religion as superstition, traditional norms as bigoted and oppressive” (Gaus 2017, 16). The sectarian defense, Gaus writes, “begins by supposing a correct perspective on justice” rather than appreciating the “foundational insight” that “the admissible perspectives are many and varied” and trying to understand how many diverse perspectives “can share a moral and political framework” that participants can see as consistent with their deepest convictions, which “all can see as beneficial” (Gaus 2017, 16).

One way this arrogance manifests itself is in the willingness to impose changes on an unwilling public through the courts. Gaus’s main example of self-righteous, sectarian overreach on behalf of open society is the Warren Court—the period of the US Supreme Court in the 1950s and 1960s that reinforced the civil rights movement in the United States. Although Gaus supports some of the Court’s decisions (even some of the most controversial ones it seems), he also claims that the Warren Court created a rights revolution that went well beyond what could be accommodated by social morality, and so invited backlash.<sup>7</sup>

The basic problem—which Gaus says is “fueled by left-leaning professional philosophy” (Gaus 2017, 14)—is a failure to recognize sufficiently the way that social morality is a publicly supported set of shared expectations and rules that provide social stability and coordination by upholding practices of holding each other accountable. In an open society, he argues, this social morality is constructed out of the evaluative perspectives of all of us (more or less). We threaten social morality when we claim to have grasped the one true morality and impose it on others; doing so is inconsistent with the essential coordinating, practice-sustaining role of social morality.

In place of what he sees as the sectarian defense of open society, Gaus proposes a nonsectarian, Hayekian defense: “One that seeks basic rules for social and political life that not only can be endorsed given the widely diverse perspectives in our society, but understands how this diversity might be harnessed to promote mutual benefit” (Gaus 2017, 16). In *The Open Society and Its Complexities*, he then argues that only market processes can sustain social morality in an open society, precisely because they do not involve us in imposing our views on others and they respect the limits on what any individual can know concerning the appropriateness of any social morality for a complex society like ours. Each of us has our own purposes. The political and legal structure exists merely to help reconcile those different purposes for mutual benefit by facilitating spontaneous

7 This struck me as a surprising example. Much of the civil rights legislation was justified not by appeal to some concrete ideal of social or distributive justice, but rather by appeal to basic fairness or impartiality at the level of the abstract rules of society that I might have thought both Hayek and Gaus would accept.

social evolution, and should not introduce some other social purpose or concrete ideal in the process. Gaus is also optimistic that the more egalitarian and rule-following elements of human nature will help to preserve a diverse open society against the introduction of dominance hierarchies.

What Gaus offers in place of Popper's "sectarian" defense, then, is a Hayekian view, according to which "the open society is an evolving moral, legal, and economic framework that encourages toleration, trust, mutually advantageous interactions, and the flow of information ... [and] the core of the open society is free and willing cooperation of strangers on the basis of rules that allow each space to effectively pursue her aims and values" (Gaus 2017, 2–3).

There is a great deal more one might say about both Gaus's and Hayek's views. Much of that will have to wait for another time. In the remainder of this piece, I will push back on the representation of Popper's view as objectionably sectarian, to challenge what Gaus sees as the available conceptions of open society. Popper's account is not sectarian in the ways Gaus claims. But he does believe that the establishment of norms of toleration and trust—which Gaus acknowledges are essential to the open society—are a precarious achievement. If that is correct, then we cannot rely on the nonsectarian, Hayekian vision.

## Resisting Gaus's Criticism

Let us begin by noting that Popper is not "devoted to reason" in the way Gaus suggests. Popper's entire career was devoted to rejecting the same overconfident rationalism that Gaus rejects, and to articulating a critical rationalism that embraced intellectual modesty but allowed us to make intellectual progress through careful, fallible, intersubjective criticism. It was Popper who rejected "utopian engineering" in favor of "piecemeal engineering" in *The Open Society and Its Enemies* (Popper 1966a, 158).

It is true that the urgency Popper felt in articulating critical rationalism was not just to reject utopianism or overconfident rationalism, but also to avoid irrationalism or antirationalism.<sup>8</sup> For example, in response to the political realist Hans Morgenthau's denying the possibility of bringing power under the control of reason and suppressing war, Popper writes: "But clearly, he proves too much. Civil peace has been established in many societies, in spite of that essential lust for power which, according to Morgenthau's theory, should prevent it. He admits the fact, of course, but does not see that it destroys the theoretical basis of his romantic contentions" (Popper 1996a, 260). I believe a similar point applies also to Hayek and Gaus: in rejecting overconfident rationalism we needn't give up on rationalism or the social sciences altogether. Gaus writes, "Critical to Hayek's analysis of complex social systems ... is our inherent inability to predict specific states of the system and, so, to plan or control them with any degree of precision" (Gaus 2021, 11). But it is not clear why the limits of reason should rule out the

8 For a useful discussion, see Birner (2014).

sort of careful, piecemeal intervention that Gaus himself had seemed to allow in *The Tyranny of the Ideal*. As Václav Havel once wrote:

I am opposed to holistic social engineering. I refuse, however, to throw out the baby with the bathwater ... I believe, as Popper does, that neither politicians, nor scientists, nor entrepreneurs, nor anyone else should fall for the vain belief that they can grasp the world as a whole and change it as a whole by one single action. Seeking to improve it, people should proceed with utmost caution and sensitivity, on a step-by-step basis, always paying attention to what each change actually brings about. (Havel 1997, 205, 206)

For Popper, critical rationalism that respects our epistemic limits means committing only provisionally to piecemeal reform in light of our best available social science. He proposes that we experiment with “blueprints for single institutions”: “health or unemployment insurance ... arbitration courts, or anti-depression budgeting or educational reform” (Popper 2008, 56); “institutions for securing civil peace” and prevention of international aggression (Popper 2008, 58); new kinds of life insurance, new kinds of taxation, a new penal reform (Popper 2008, 59). These might have broad repercussions, but “without re-modelling society as a whole” (Popper 2008, 59). With piecemeal reforms, he argues, we are able to make continual adjustments as we go, fitting things together. Moreover, “if they go wrong, the damage is not very great, and a re-adjustment not very difficult” (Popper 2008, 56).

Popper is also not antireligious. In a 1969 interview, he says “I do think that all men, including myself, are religious. We all believe in something more important and more – it is difficult to find the right words – than ourselves” (Popper 2008, 49). He further states that “some forms of atheism are arrogant and ignorant” (Popper 2008, 49). But, in line with his critical rationalism, he also argues that *everyone*—atheists, agnostics, and religious alike—must work not to turn “ignorance into anything like positive knowledge” (Popper 2008, 49). Popper does not care much about where our ideas come from, but he cares a great deal about what we do with them once we have them. What he rejects is dogmatism that would interfere with openness to criticism, learning, and peaceful resolution of differences. Irrationality for Popper is not located in the source of one’s ideas, or in the failure to have the “correct” ideas, but in one’s unwillingness to subject those ideas, whatever their sources, to serious critical examination. But that is no objection to religion in and of itself. Many religious people are willing to engage others’ ideas with an open mind. With Samuel Butler, one can imagine Popper saying, “It is in the uncompromisingness with which dogma is held and not in the dogma or want of dogma that the danger lies” (Butler 1998 [1903], 318).

Moreover, Popper is not antitradition. In his “Towards a Rational Theory of Tradition,” he argues that “all social criticism, and all social betterment, must

refer to a framework of social traditions” (Popper 1989, 132) and that the “long-term ‘proper’ functioning of institutions depends ... [on] traditions” (Popper 1989, 134). He recognizes that “institutions are never sufficient if not tempered by traditions,” and that when we consider changing traditions, we should “never forget ... the merit which lies in the fact that they are established traditions” (Popper 1989, 132). These are hardly the words of someone who fails to recognize the importance of starting from where we are, and of respecting existing practices. But it is entirely consistent with such a view to argue that open society may require new traditions. Because of our tendencies toward dogmatism and close-minded “tribalism,” he says we should introduce a “new tradition—the tradition of tolerance” and an “attitude ... that considers existing traditions critically” even as we respect them (Popper 1989, 132).

Popper further recognizes the significance of what Gaus calls “social morality” for social stability and coordination. In his “Public Opinion and Liberal Principles,” he argues:

Among the traditions we must count as the most important is what we may call the “moral framework” (corresponding to the institutional “legal framework”) of a society. This incorporates the society’s traditional sense of justice or fairness ... This moral framework serves as the basis which makes it possible to reach a fair or equitable compromise between conflicting interests. (Popper 1994, 157)

It is true that Popper argues that everyone should be open to the improvement of our shared traditions and moral framework. But his recognition of the limits of reason as well as his sensitivity to religious belief, tradition, and social morality bears little resemblance to the sectarian arrogance of Gaus’s description. This poses a problem for the Hayekian vision insofar as it presents itself as the only alternative to authoritarianism or totalitarianism.

## Conclusion: Popper on Reasonableness

What makes Popper’s view sectarian (if at all) is not that it expresses an arrogant rationalism, invokes a concrete ideal, or rejects religion and tradition. Rather what makes Popper’s view sectarian (if at all) is that, in order to sustain a diverse open society, he argues for the protection of a tradition of fallibilism, tolerance of diversity, and critical exchange in addition to the active cultivation of an “attitude of reasonableness” (Popper 1989, 355ff).

Popper’s account of reasonableness—laid out most succinctly in his 1948 essay “Utopia and Violence,” and in *The Open Society and Its Enemies*—is almost never discussed, but it anticipates Rawls’s more famous account in broad strokes. On Popper’s account, the attitude of reasonableness has two main elements: first, a willingness to commit to argument rather than violence and, second, intellectual humility and an openness to learning from others (Popper 1989, 356). On

Rawls's account, reasonableness is constituted by two similar elements: a commitment to offering and abiding by "fair terms of social cooperation between equals" and an epistemic component characterized as the recognition of the "burdens of judgment, which leads to the idea of a reasonable toleration in a democratic society" (Rawls 2005, 488). (Rawls also follows Popper in distinguishing reasonableness from a more instrumental notion of rationality.)

Despite the similarities, however, there are also key differences. In particular, Popper's account of reasonableness is thinner because it does not appeal to "fairness" or "equals." It is more thoroughly epistemic than Rawls's account, and so avoids some standard worries about the moral commitments being smuggled into Rawls's political liberalism via his account of reasonableness.

For Popper, the cultivation of a widespread attitude of reasonableness is important not only to support the processes of discovering compromise and learning from others in a diverse society, but more specifically to ameliorate the "strain of civilization" that can lead individuals to reject living in a diverse, pluralistic society altogether and return to the psychological safety of tribalism or factionalism (Popper 1966a, 176). The sustainability of open society depends on reasonableness becoming a central part of our social morality itself:

I believe that we can avoid violence only in so far as we practice this attitude of reasonableness when dealing with one another in social life; and that any other attitude is likely to produce violence ... We all remember how many religious wars were fought for a religion of love and gentleness; how many bodies were burned alive with the genuinely kind intention of saving souls from the eternal fire of hell. Only if we give up our authoritarian attitude in the realm of opinion, only if we establish the attitude of give and take, of readiness to learn from other people, can we hope to control acts of violence inspired by piety and duty. (Popper 1989, 356–7)

The effect of this argument is not to impose a concrete ideal on others, but to show that a diverse open society can be sustained only if it takes a stand for the value of diversity itself and creates identity around the very idea of being open to others.

The argument articulated here reflects, of course, Popper's well-known discussion of the "paradox of tolerance":

Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them.—In this formulation, I do not imply, for instance, that we should always suppress the utterance of intolerant philosophies; as long as we can counter them by rational argument and keep them in check by

public opinion, suppression would certainly be most unwise. But we should claim the right to suppress them if necessary even by force; for it may easily turn out that they are not prepared to meet us on the level of rational argument, but begin by denouncing all argument. (Popper 1966a, 265)

Just as preserving a tolerant society requires not always tolerating the intolerant, so preserving a diverse society requires cultivating an attitude of reasonableness and protecting a tradition of fallibilism, tolerance of diversity, and critical engagement.

Perhaps this is wrong on empirical grounds. But at least we can see that not every way of drawing a limit to diversity is equally sectarian. In particular, if the line is drawn precisely at the point of protecting diversity itself, then there seems to be good reason to draw it from the perspective of open society, even if it is to the detriment of some individuals.<sup>9</sup> Gaus's conflation of Popper's argument with truly sectarian political philosophies should be reconsidered. In thinking about how open society is to be maintained in the context of real-world politics, then, we should ask again whether we can do without reinforcing and protecting liberal traditions and attitudes of the sort Popper prescribes.<sup>10</sup>

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9 A further question, not taken up here, concerns the value of diversity itself as a commitment to individual choice or autonomy versus the value of diversity as an engine of intellectual and social progress. Hayek and Gaus differ from Popper (and Mill and Dewey) in the emphasis they place on these considerations. For a criticism of Millian and Popperian open society along these lines, see Gaus (2021, 95ff).

10 I wish to express my thanks to Christof Royer, John Thrasher, and Ryan Muldoon for discussion of general themes related to this paper, and to the participants at the October 2021 conference on "Forget Open Society?" organized by the Open Society Research Platform at Central European University, where an earlier version of this paper was presented.

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