Comments on Paul Gowder, "Making Space for Rosa Parks"

Andrew Sabl
Public Policy and Political Science, UCLA
sabl@ucla.edu
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Paul Gowder's paper is stimulating and original. His account of how virtuous states are more stable, on average, than non-virtuous ones, so that a politics of stirring things up will on average make polities better through a process analogous to evolution (just as random mutation makes for organisms better suited to their environments through natural selection) is particularly inventive and will, I hope, provoke wide discussion. Let's call it the "ratchet of political virtue" to facilitate that.

I'd like to discuss both some of the paper's distinctive contributions and some ways in which it seems to fall short. I'll say at the outset that I come from political theory more than philosophy, which will affect my assumptions a little and my vocabulary a lot. Throughout, I'll try to avoid matters that simply separate the worldviews of Rawlsians and Kantians from everyone else's (e.g. the question of whether it really makes sense, as suggested on p. 9n7, to see "anarchism" as the natural alternative if a consensus on rational standards of moral judgment cannot be established). What's at issue internally to this paper's assumptions is too important to get bogged down with that.

I apologize in advance for these comments' length: I lack time to make them shorter.

1. p. 2. I actually think that what Paul regards as a simple, preliminary assumption is actually not so. This is Premise 1: "Citizens of a democracy are praiseworthy (virtuous) as *citizens*, ceteris paribus, to the extent they contribute to their state's instantiating the things that are virtuous for states to instantiate (*public virtues*), such as justice, respect for liberty, social equality, the common welfare, and a democratic decision-making process." I'd prefer "values" to "virtues" where states are concerned; more on that below. More substantively, I've argued (and am on record as arguing[1]) that people in stable liberal democracies *disagree* quite fundamentally about "the things that are virtuous for states to instantiate." For instance, Paul's list is more or less that of a moderate egalitarian. Yet not everyone, or even most people in most liberal democracies, believes that we should aspire to become an egalitarian society. Those that think we should aspire to be another kind of polity, e.g. a society that encourages Millian individualism or bourgeois self-reliance, will envision different public virtues, and therefore different private ones that are instrumental to achieving the public ones. There are a few core public values that everyone has to agree on for liberal democracy to work at all, but these are very few and the correspondingly uncontroversial citizen virtues are therefore very few too: only toleration and nonviolence, in my view.

[1] Andrew Sabl, "Virtue for Pluralists," *Journal of Moral Philosophy* 2, No. 2 (July 2005): 207-235.

Thus a less generous set of assumptions about what our agreed values are will lead, through something like Paul's arguments, to very different conclusions. The "public virtues" step is actually doing a great deal of work. (Ben Saunders's comments make a similar point.) Even in Rawlsian terms, it is not at all clear that his list of public virtues lies within the preconditions of political liberalism as opposed to being a matter for reasonable disagreement. (Paul is, consistent with his argument, skeptical about reasonable disagreement—but that's a big step, and requires in particular explaining why the burdens of judgment either don't exist or aren't important.)

2. p.10f. Paul's main argument suggests, though of course it cannot prove, that "citizen leadership promotes the virtues of states [in ways that do not] depend on the content of the norms promoted by citizen leaders, or their correctness" (p. 10)—subject to a reasonableness criteria that does a great deal of the work but actually rather less (by design) than in most Rawlsian theory. I think he's actually quite convincing. But the question is what *else* citizen leadership with a given content will promote.

If I propose banning contraception, I may be very sincere and in my own mind public spirited. Nor will I be taking aim at a discrete and insular minority (the standard around 34-5). (I may be disadvantaging women, but this probably begs the question with respect to the arguments that the contraception-banner would adduce—and besides, women are not a minority and can perfectly well mobilize for their political interests.) In fact, if I recall, John Hart Ely in *Democracy and Distrust* uses a ban on contraception for this reason as an example of a policy that is very stupid but that courts should *not* strike down. There could be all kinds of good political effects, better political competition and such, as a response to the need to combat my proposal. Still, if my proposal were adopted it would have very bad *nonpolitical* effects; it would make us all worse off (though perhaps not worse citizens or less public-spirited) and reduce our opportunities. If a court, defying Ely, struck the ban down, there's some chance that an effective citizen movement could agitate around court appointments so as to put the ban back into effect. Thus I think the whole discussion, with its admirable recognition of politics and political science, must be balanced by an acknowledgment that politics isn't everything. If I propose something that's bad for my fellow citizens, I may still be subject to criticism in *moral* terms even if what I do makes politics more vigorous and even if it makes *politics*, narrowly, work better over time. This is not a small point, but one that postmodernists and "agonistic" theorists regularly ignore too.

In any case, I think that the argument would be stronger if it considered instances of leadership that are not *politically* tyrannical (as with the racism example [p. 25], as usual a bad and theoretically pernicious case) but simply *bad* by the moral lights of "lots of us." (Disagreement here is fine: if different chunks of people each think that each of several respective instances of practice X is very dangerous, we might all have reason to discourage the whole practice. Lots of constitutional theory is based on this idea.)

2a. In response to this, Paul's argument on 25-6, essentially a populist *tu quoque* argument that state leaders may be as immoral as citizens, seems quite strong. But it of course isn't uncontroversial. One could argue, with Dworkin and, to a lesser extent, Gutmann, that certain elites (those who've been to law school) are, or can be made to be, better moral judges than the rest of us. Dworkin precisely believes in moral expertise (not in the sense that elites have better starting points, but simply that they weigh competing considerations more deftly and so on).

More credibly, one could believe not in moral but in *political* expertise. On this account, skills like compromise, rhetoric, and so on require kinds of training, reflection, and above all experience that ordinary citizens lack. Something like *this* assumption probably underlies the assumption that citizen leadership is dangerous. (Rosa Parks didn't lack political expertise. But she was in fact a highly trained and longstanding civil rights activist, not the ordinary middleaged woman of lore.) I actually think that much of the division between political theory and political philosophy turns on the question of whether one thinks that political expertise exists and is valuable.

3. p. 11f. on Riker: the arguments in this section assume that Riker is right. But Gerry Mackie's *Democracy Defended* gives strong reasons for supposing that he isn't. It's a complicated book, but two of Gerry's key points are (1) skeptical: Riker's examples of cycling collapse on examination and it is not clear that any others exist; (2) an argument from ideological coherence: ideologies, by durably associating opinions on one issue with opinions on other, theoretically unrelated, issues, have the effect of collapsing the issue space and making cycling very uncommon. A couple of books have rebutted Mackie (a recent *Perspectives on Politics* discussed them, though I don't have the citations at hand), but at the least one can't assume that Riker simply is state of the art.

I do think Paul has a potential rebuttal to Mackie that empirical political scientists lack. That is: from a normative perspective, ideological collapsing of the issue space is morally undesirable, since we should aspire as citizens to judge each question on the merits and to bring up new issues that current ideological configurations obscure (Riker precisely uses civil rights as the example more than once). Mackie describes how ideological politics avoids Riker's problems. Perhaps Paul describes how we can avoid Riker's problems *without accepting the deformations of ideology*, or at least not all the time.

4. p. 17 on "state virtue" starts by saying "we don't even say a society is virtuous unless it is stable." Actually, in my experience we don't say a *society* is virtuous at all. It's a very strange locution. (Rawls calls justice a "virtue of social institutions," but that usage too is surely either metaphorical or poor.) Call me an old-fashioned Aristotelian, but a virtue seems to me a state of character that conduces to certain actions. Applying "virtue" metaphorically to states does yield interesting possibilities, but things aren't simple. I see two possibilities.

(a) The "virtues of states" is shorthand for the virtues of the individuals in it. When all or almost all (by some definition whose aptness must be specified) of the citizens in a polity possess virtue X, the state may loosely be said to possess it

too. That's fine, but opens up a huge can of worms, since on any modern account of politics, states can accomplish good things when their citizens lack a direct disposition to value them. The reverse is true too: states can suffer because of tendencies that would be salutary in private, as with Keynes' paradox of thrift (not too different from Mandeville's earlier "private vices, public benefits"). Given this, the shorthand may prove extremely misleading.

(b) Alternatively, the "virtues of states" could be seen as virtues that arise as an emergent property out of state institutions. A state with no army will be "peaceful" with respect to other states even if its citizens are violent individuals; a state may, on Thomas Nagel's and other accounts, be "just" if it accomplishes redistribution through the tax system while leaving individuals free to be as selfish as they want in private life. (G.A. Cohen opposes the latter on moral but not, I don't think, empirical grounds.)

Using virtues in this emergent sense is fine (and indeed, some virtues, like "democracy" [p. 21], probably *have* to be used in an emergent sense: no single individual in isolation has a propensity to act democratically). But when used in this sense "virtues" seems an even stranger term to apply to states and their policies. For in the emergent case, it may be that almost nobody, except maybe a few clever statesmen, is actually envisioning the outcome that occurs, nor acting with a view to it. For these reasons I think that the *values* that a state instantiates or expresses should be sharply distinguished from the *virtues* that animate the citizens in it. To assume an automatic connection is magical thinking. And to assume that states' actions can be analyzed in the terms appropriate to those of individuals is just wrong, and against everything Paul argues in the paper in any case.

Now: granting this, one might go on to say that one point of Paul's paper is to explore ways to make the connection *less* magical, by tightening the connection between citizens' opinions and the eventual policies of the states they live under. (Indeed, Paul defends a moderate form of majoritarianism, and the "political autonomy" point in his paper, discussed below, implies something similar too.) But if so, we should still use distinct terms for what's going on. "Everything is what it is"; outputs are not inputs; the policies of states need not arise from the moral intentions of identifiable individuals. Even Rousseau distinguished between the citizens who made the law and the subjects of the law that results, though they be the same people.

5. By the way, the "paradox of thrift" example also points up the potential difficulties involved in distinguishing moral from instrumental expertise (around p. 27). In order to accomplish the economic goals of a modern state, our leaders have to encourage consumption—at the cost of undermining thrift, which might be considered a moral rather than a nonmoral quality. It might even be the case, as Hume and Smith pointed out and Rawls tacitly accepted (to Cohen's horror), that society is better off encouraging a love of wealth than a love of charity if the former will predictably, given human nature, work better at promoting the welfare of the least well-off—even if this incurs a substantial moral cost.

6. On p. 23-4 the natural selection argument is fascinating. (I wonder what the political analogy to *sex* selection is, though: could there be political qualities that prosper because they're attractive though destructive? Is fascism the equivalent of the peacock's crest?) But remember what natural selection does: it kills off those organisms unable to prosper *in a given environment.* The dinosaurs were doing pretty well until conditions changed. In the political case, this could spell trouble. The kinds of values that could be the object of near-universal devotion—leading to domestic stability, in either Rawls' sense or the everyday sense—in a time of war or depression might be very dangerous in more peaceful times, when we need more dissent and so on. Conversely, a full range of civil and political rights might be a fatal hindrance in times of crisis, and no country at war has kept them all intact. (I take this up briefly in the article cited above.) Rawls famously allows a Third World exception to the first principle of justice—going too far, but the idea is not silly. Paul actually could strengthen his argument by acknowledging this: citizen leadership allows for better and speedier *adaptation* to new conditions, not just to "stability" in conditions assumed to be secure and getting a bit better all the time. But this seems to require jettisoning a lot of Rawls' quasi-Kantian assumptions about progress in favor of something much more Humean whereby the proper form of government can, at least in detail, alter over time.

7. "As a citizen, I have the responsibility and the privilege to become an *author* of the ends of the community, if I so choose, and if I can convince my fellow citizens to agree. Such has been the topic of the previous sections. We can call this idea a *principle of political autonomy,…*" (p. 29). Actually, I didn't see anything remotely similar to this topic in previous sections (and this is testable by introspection: without believing that "autonomy" by any definition is a coherent concept, much less something desirable, I endorsed much of the argument to this point). If strong assumptions of autonomy are crucial to the paper, their relevance should, I think, be stated sooner. But I don't think that such assumptions are, in fact, necessary to the rest of the paper. The argument would be stronger if it remained agnostic on such Kantian matters (as Rawls himself professes to do, not usually with success). In fact, Kantian assumptions would seem to be in serious tension with some of the public-choice assumptions about political motivation that abound in the earlier sections. Actually, the ratchet of political virtue argument would seem to address all, or almost all, of the questions to which the principle of autonomy is here adduced as an answer.

This last lets me end with a positive note, though maybe not a welcome one. I actually think that the implications of this paper are more profound than Paul realizes. Proper attention to the questions of leadership, competition, information, agenda-setting and the like, along the lines proposed here, gives the promise of making broadly Rawlsian accounts of justice and liberal democracy seem realistic and attainable even to those who doubt the crypto-Kantian assumptions (that well-ordered societies exist, that social cohesion is based on a universal and durable moral consensus, that it makes sense to take our moral psychology from what would be reasonable rather than what anyone actually does or thinks) on which Rawlsianism normally rests.