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Comments on Christopher McCammon's "Is Liberal Legitimacy Utopian?"

Christopher McCammon's defense of Liberal Legitimacy hopes to give a negative answer to the question posed by the title of his paper. Specifically, McCammon argues that David Reidy's critique of Rawls's Liberal Principle of Legitimacy, which Reidy grounds on reasonable disagreement, does not prove that Rawlsian legitimacy is impossible to achieve. Reidy's criticisms rely in part on his interpretation of Rawls's reciprocity criterion—an interpretation that McCammon offers a critique of. Augmenting McCammon, I will begin by highlighting another possible problem spot in Reidy's account: "reasons all can accept". For his part, McCammon gives a helpful response to Reidy by distinguishing epistemic reasonableness and cooperative reasonableness, effectively shifting the argumentative burden back to Reidy. I say that he shifts the burden, rather than decisively defends liberal legitimacy, since I think questions remain about the quite significant distinction McCammon alerts us to. It isn't clear, for one, what interpretation of the reciprocity criterion is active in cooperative reasonableness. Additionally, the distinction between epistemic and cooperative alone may not be enough to reassure us that liberal legitimacy is possible among reasonable citizens who disagree. We may wonder if consensus-oriented deliberation, even if it issues in agreement, will actually result in agreement on the right kind of principles. One might worry that reasonable disagreement in comprehensive doctrines could force any possible consensus away from those principles that might govern a fair system.

What makes Reidy's attack on Liberal Legitimacy possible is an especially strong interpretation of Rawls's reciprocity criterion. Reidy argues that Liberal Legitimacy

embodies the moral ideal of reciprocity (in justification), an ideal he thinks can be given a weak and a strong interpretation. The weak interpretation, which Reidy rejects as implausible, understands reciprocity as requiring the justification of principles in terms that others “*could* reasonably affirm” (Reidy, 266). Rawls clearly does not want it to be the case that one could, for instance, justify propositions solely from within one’s own comprehensive viewpoint, working under the assumption that others *could* agree with you after adopting your doctrine. In the strong interpretation, which Reidy ascribes to Rawls, justificatory reasons must avoid reasonable rejection. If our judgment is burdened about an issue and some sufficiently well informed citizen does not endorse a principle meant to address it, no legitimate solution is forthcoming. Reidy argues that in some cases (such as institutional design, for example), reasonable rejection will undermine legitimacy. Any proposed principle will provoke reasonable rejection, so the strong interpretation means that no legitimate principles exist, on Reidy’s view.

Before discussing McCammon’s response to Reidy’s critique, I want to make a parallel case against Reidy. A recent paper by James Bohman and Henry Richardson provides the impetus for this move by questioning the notion of “reasons that everyone can accept.”¹ These authors argue similarly to Reidy when rejecting legitimacy interpreted via the weak reciprocity criterion. However, they also suggest that strong interpretations of reciprocity ultimately rely on substantive normative restraints on reasons, not simply the hypothetical acceptance of all reasonable comprehensive doctrines. Rawlsian justification does not mean, according to Bohman and Richardson,

¹ Bohman, James, and Henry S. Richardson, “Liberalism, Deliberative Democracy, and ‘Reasons that All Can Accept,’” *Journal of Political Philosophy*, (2009), 1-22.

fitting freestanding principles into “the various comprehensive doctrines that happen to exist,” which would make it resemble Reidy’s strong interpretation (B&H, 7). They argue that the main work of legitimation is done by standards, such as some understanding of reasonableness that sets out the *way* citizens should accept reasons; it enjoins them to have certain commitments and motivations as they deliberate with one another. This contrasts with the idea that reasons should be acceptable to everyone. This argument bears some resemblance to the one that McCammon makes, since both of them emphasize that some substantive, less procedural, standard (reasonable cooperation in McCammon’s case) governs Rawlsian legitimacy, not only hypothetical agreement over principles. Bohman and Richardson’s view is worth mentioning, since they make clear that a normative standard is what is running the show. I will suggest that McCammon does not elaborate the standard he ascribes to Rawls fully.

McCammon does, however, challenge Reidy at the right point. McCammon argues that reasonableness can be thought of epistemically, meaning that proposals are plausible given the evidence, and cooperatively, meaning that proposals are acceptable relative to some *telos*. Reidy, he suggests, emphasizes epistemic disagreement when Rawls is actually most concerned with cooperative reasonableness. Just because all proposals are reasonably rejectable epistemically does not mean that reasonably cooperative individuals won’t be able to agree on one of the options, given their shared commitment and motivation to find consensus. People might be able to endorse some disputed or uncertain principle as reasonable from the perspective of a shared goal, as McCammon demonstrates through his case of a family stranded in the Sahara. In the absence of any clear epistemic consensus, the principle of a coin toss still might find the

endorsement of cooperatively reasonable people, he suggests. As a result, Reidy's examples of epistemically reasonable people disagreeing do not hit their target and Liberal Legitimacy may still avoid being "wildly utopian."

Since McCammon is criticizing a critique, it makes sense that his discussion does not establish all of the positive details of cooperative reasonableness. However, I want to take this opportunity to point to places where doing so would more clearly establish Liberal Legitimacy's non-utopian character. To begin with, it is hard to say how exactly the distinction McCammon makes between epistemic and cooperative plays out. It seems that, for cooperation, a well-informed (but non-cooperatively-reasonable) person's rejection of a principle does not make it illegitimate. The disagreement that matters is among those people motivated to find principles for fair social cooperation between free and equal citizens. In a move similar to Bohman and Richardson's, McCammon says that among groups that share this goal "the reasonable is a *standard* of cooperation."² Yet how strong or weak is this standard of shared acceptance? Must all similarly motivated citizens endorse it, merely accept it, or just be unable to reasonably reject it? Should their acceptance be actual, or just possible, for a principle to be legitimate? Do citizens try to guess what others would accept when they propose reasons or do they just suggest what they find most epistemically reasonable? To put these questions another way: what exactly does this standard of reasonable cooperation demand of citizens and the principles for social cooperation they propose? The reason these questions matter is that it's conceivable the problems Reidy elaborates at the epistemic level could arise again at the cooperative one. Just because some Marxists, libertarians, and so on are cooperatively

² Emphasis added.

reasonable, should we assume they actually *will* find legitimate principles for social cooperation? And once the norm of reasonableness is elaborated, which groups and principles will count as reasonable? Answering these questions requires that McCammon spell out further the reciprocity operative in cooperative reasonableness, while dispelling possible Reidy-esque worries about the standard being under- or over-demanding.

Pushing my concerns a bit further, one could doubt that, even if consensus is possible among cooperatively reasonable people, they might not be able to find truly *legitimate* principles of social cooperation. To be fair, McCammon only asserts that Reidy *hasn't* shown that we can't find principles for "social cooperation" among cooperatively reasonable people. Yet making that point isn't sufficient for demonstrating that Liberal Legitimacy isn't utopian. To see why, imagine a group of cooperatively reasonable people with wide ranging comprehensive views. When these people come to a consensus on principles for fair social cooperation between free and equal citizens, it's conceivable that the principles that actually are able to gain acceptance may be quite inadequate by the lights of most deliberators. Since the people deciding are cooperatively reasonable, they are willing to sacrifice their considered, comprehensive views for the sake of agreement. In a society where enough deliberators give up their considered view for the sake of cooperating, the ultimate result could be epistemically unreasonable as a principle for fairness, freedom, or equality. Legitimizing coercion on such a basis seems quite problematic, especially if one suspected that every possible case was this way. One could call Liberal Legitimacy utopian by suggesting that any agreement reached, through a kind of epistemic leveling down, will be insufficient *qua* principles of fair social cooperation. The consensus of reasonable cooperation (given reasonable disagreement)

will eliminate the possibility of epistemic reasonableness, according to this critique. Perhaps McCammon anticipates this objection in a footnote where he says Liberal Legitimacy is necessary, yet insufficient for complete justification of coercion. However, it is not clear whether he thinks this response is adequate to my proposed objection.

Even if one dismisses the leveling down case as implausible, it is worth wondering why we have reason to think it will not obtain and what resources there are to defend the Rawlsian view. Additionally, I think it remains important to spell out the content of cooperative reasonableness more clearly, in such a way that it is not overly weak or overly strong in the normative constraint it provides. These answers will give a better sense of how utopian such a principle of legitimacy is. At such a point, it should be clear how the Liberal Principle of Legitimacy is or isn't possible. Given McCammon's sense that it is only a partial justification of coercion, however, it is also important to give an account of what the principle lacks. Only then can we determine if Rawlsian legitimacy is the proper measure of states and societies marked by reasonable disagreement.