

THE 2000 KUYPER LECTURE

Response

By Jonathan Chaplin ©
Institute for Christian Studies

Defining Public Justice in a Pluralistic Society

In Response to
James W. Skillen's lecture

American Statecraft: A New Art for the 21st Century

September 29, 2000
Washington, DC

Defining Public Justice in a Pluralistic Society

Jonathan Chaplin

The French political theorist Anthony de Jasay opens his book, *The State*, with an arresting question: “What would you do if *you* were the state?” De Jasay is not asking what platform you would run on if you were running for elected office, but the more difficult question of what *criteria* you, if you imagined yourself as the institutional agent called “the state,” would employ in deciding how to act. He goes on:

It is odd that political theory, at least since Machiavelli, has practically ceased asking this question. It has devoted much thought to what the individual subject, a class or an entire society can get out of the state, to the legitimacy of its commands and the rights its subjects retain in the face of them.... These are vitally important matters;... Is it, however, sufficient to treat them only from the point of view of the *subject*, what he needs, wants, can and ought to do? Would not our understanding become more complete if we could also see them as they might look from the *state's* point of view? (Blackwell, 1985, p. 1).

James Skillen's fine lecture can be read as a powerful appeal to view the world from the state's point of view, to take the reality of the state as an institutional agent with full seriousness, and to ask ourselves how we together, as members of the state, would frame its central purposes. To do this, he argues, we need to acquire guiding political principles, principles of “statecraft.” De Jasay's own response to his opening question is shaped by a very influential methodology in political science and public policy-making, namely rational choice theory. That methodology supposes that criteria for what states should do can be identified by analogy with the choices which a rational, self-interested individual might make, given a determinate set of resources and constraints. This, I believe, is a deeply flawed approach to the project upon which Skillen has invited us to reflect. But de Jasay's question is, nonetheless, precisely the one we need to ask today as our states undergo structural transformations of a scale we have not yet seen.

Skillen answers that question against the comprehensive background of a biblical vision of creation, redemption and human nature: the complex institution we have come to call “the state” is neither merely a means for sustaining social order, nor an arbitrary social construct, nor a mere instrument of individual self-interest, but rather a historical response to the inescapable imperative arising with ourselves for just public relationships, an imperative rooted in the divinely created structure of human social order and reaffirmed in redemption. Political community, he proposes, is about securing for human beings a lawful arrangement of their public interactions that embodies the requirements of justice. The defining purpose of political authority is the constitution of a community embodying what he calls “public justice.” So, if *you* were the state, Skillen says – at least if you correctly grasped the nature of your calling - you would not be preoccupied with institutional survival or expansion, nor with defending your own “national” interests against supposed competitors, nor with redesigning your society from the top down according to some comprehensive ideological plan, nor with trying to get away with doing as little as possible on the mistaken assumption that the best government is the least government. Rather you would be reflecting in a deep and

sustained way on how to put in place a web of just public relationships within which your citizens, as individual persons and in their multiple and diverse relationships, communities and associations, could flourish in freedom and responsibility. That would be your guiding principle, whether you were deliberating on welfare reform, monetary policy, environmental pollution, or strategic defence. And Skillen's account implies that the awesome task facing Christian citizenship today, in all its many manifestations, is to bend every effort to nudge the states we actually live with a little bit closer to that divine calling.

Since I find myself in essential agreement with Skillen's presentation of a Christian perspective on the state, my remarks will take the form of a critical elaboration on some of his central notions. [Note: For a brief statement of a similar perspective on the state, see my 'Faith in the State: The Peril and Promise of Christian Politics' (Institute for Christian Studies, 1999).] My focus will be his discussion of "Statecraft and the Plural Structure of Society," since in that section clarity about the term "public justice" is at a premium. Regretfully, I must confine myself to the application of that principle within states, leaving aside the mounting challenges associated with its global dimensions. [Note: See Luis Lugo, ed., *Sovereignty at the Crossroads: Morality and International Politics in the Post-Cold War Era* (Rowan & Littlefield, 1996). See especially the chapter by Justin Cooper, which develops a public justice approach to international relations.]

In the political thought of Kuyperian Calvinism, which the Center for Public Justice under James Skillen's leadership has so imaginatively put to work in the contemporary American context, each of the two terms in the definitive phrase "public justice" have quite precise meanings. I want to say a few words about each and suggest yet further work that lies ahead.

The Meaning of "Justice" in "Public Justice"

It has been a hallmark of classical Protestant political thought to designate the divinely established purpose of the state as the establishment of "justice." Typically, this has referred to the function of "retributive justice" apparently being alluded to in Romans 13 (and to which Skillen alludes), although even early on some Protestant writers, notably those on the more radical wing of the Reformation (within which I include early Calvinism and Puritanism), also included elements of what we have come to call "social justice." Some contemporary evangelical Protestants have revived and deepened this tradition, and, partly in response to the gauntlet thrown down by liberation theology, have reminded us that biblical justice involves more than mere criminal retribution, but also a satisfaction of the basic material needs of human beings, especially for the poor. Justice has also always been central to the Catholic understanding of the purpose of the state, though this purpose is conceived more capaciously as promoting "the common good", with justice as one of its central dimensions rather than as the definitive purpose of the state. A useful distinction is then often made between just relations among individuals – commutative justice – and across different sectors of society – distributive justice.

So designating the purpose of the state as the promotion of "justice", in its various modes, has a long historical pedigree in Christian thought. But as it functions within the Kuyperian perspective, the content of "justice" has come to be fleshed out in the light of distinctive, pluralistic social theory which seeks to give due recognition to every kind of legitimate social relationship, community and association, and the rights and responsibilities attaching to them. While it affirms the indispensable importance of

individual rights and duties, it also seeks to honour those of parents, families, churches, schools, corporations, unions and many other social bodies, as well as encompassing the many diverse kinds of relationship among them, such as those constituting highly complex webs of interaction such as “markets”.

Adherents to this social theory therefore rejoice that the reductionist liberal polarization between state and individual which has enfeebled political thinking for so long, is now being superseded by a richer account of the linkages between the state, the market and civil society. Yet even that account they find wanting, because of its liability to overlook some of the vitally important qualitative distinctions between very different entities falling within these catch-all categories, such as that between charitable bodies and churches, both of which are lumped together as “institutions of civil society”, or that between profit-making and non-profit enterprises, a distinction concealed if the single term “market” is used. The Kuyperian insistence is that *every one* of the types of social body just mentioned deserves recognition *on its own terms*, and that each contains its own unique domain of rights, duties and authorities - its own “sphere of justice”, to use Michael Walzer’s apt phrase. This model also enables the various modes of justice I mentioned earlier - retributive, commutative, distributive, social, and so on - to be situated within a coherent framework. To my mind a large part of the appeal of the Kuyperian conception of “justice” is that it provides the best prospect of a comprehensive account of these multiple spheres and modes of justice. [Note: For assessments and critical reflections on this Kuyperian conception, see Luis Lugo, ed., *Religion, Pluralism and Public Life: Abraham Kuyper's Legacy for the Twenty-First Century* (Eerdmans, 2000).]

The model is not, of course, without its detractors. Let me mention briefly just one reservation sometimes entered against a Kuyperian model. At several points in his lecture (and frequently in his writings), Skillen refers to our society as “differentiated” and to the state as a “differentiated state.” As he explains, this term refers to the phenomenon of institutional autonomy which, as many social theorists have observed, seems to mark the modern age in comparison to pre-modern societies. For example, whereas in the past, kinship groups would exercise economic functions, or churches, landed interests or craft guilds political functions, or political rulers ecclesial functions, or families the function of arranging marriages, and so forth, in modern society each of these diverse social functions has come to be reserved to separate institutions each operating independently. Specific social functions are now correlated to specific institutions with a degree of clarity and continuity not seen in earlier cultures.

Skillen regards this state of affairs not simply as some contingent western historical development but as an expression of the historical unfolding of our many-sided divine callings. The plural structure of our modern society reveals the multifaceted character of our being made in the image of God. But this notion of differentiation has evoked the charge that the biblical story of human cultural unfolding - the human response to the cultural mandate - is here being read through the filter of an essentially western, modernist reading of historical development. For does it not seem to imply, so the criticism goes, that cultures which are less differentiated than western civilization are culturally immature, even perhaps less able to image God? Evaluating particular cultures according to the norm of differentiation can be a hazardous enterprise, and more work needs to be done to detach that norm from possible Eurocentric interpretations. Most of us would be fairly certain that the independence of the church from state control would everywhere be a healthy development, and that some version of constitutional democracy is likely to deliver relatively more justice and stability than other governmental forms. But, in the light of

current western levels of divorce, can we be entirely confident any more that the institution of arranged marriages leads to less stable marriages than we have in the West? Or, against the background of escalating levels of western social inequality, go on complacently assuming that the concentration of economic activity within the extended family or clan is less conducive to economic flourishing than the capitalist enterprise? There isn't time to address such questions now, and in any case I doubt they could be adequately addressed without a substantial input from non-western Christians.

In any event, the point I want to stress here can be supported, I think, even by those who cannot entirely endorse the notion of differentiation assumed in Skillen's account. It is that, whatever else justice in our own society might imply, it certainly involves honouring the distinctive responsibilities and rights arising from what Skillen calls "the plural structure of society".

But what precisely are those responsibilities and rights? Unless we can answer this question with some degree of specificity, designating the task of the state as "promoting justice" won't supply us any meaningful guidelines for what states should do. To extrapolate Skillen's account, we might say that justice cannot be understood primarily as a procedural matter, or as a derivation from individual rights, or as a codeword for equality or "respecting difference" (though it may include elements of all of the above). The content of justice, in this perspective, is given by the legitimate responsibilities and rights of individuals, their plural communities and associations, and those arising from the complex and diverse relationships between each of these. So to know what *political* justice means, we have to understand the normative design of a plural *society*, to discern what kinds of relationships and activities are conducive to a flourishing human social life, and what rights and responsibilities promote that flourishing. It goes without saying that this is inescapably demanding and controversial in a society characterised by deep spiritual and moral dissensus, a point to which I'll return.

The Meaning of "Public" in "Public Justice"

So we already have our work cut out clarifying the meaning of the term "justice". Our workload isn't lightened when we attempt to put some meaning into the term "public." The point of qualifying the justice for which the state is responsible as "public" justice is to indicate in a more explicit way both the scope of and the limits to its legitimate authority. Many issues of justice pertaining to interpersonal relationships or within independent communities or associations, and many others besides, are properly dealt with by the agents concerned and involve no recourse to political authority. So, when parents decide on the choice of school for their children, it is *prima facie* illegitimate for public officials to gainsay that essentially familial choice. And when private businesses decide on the price of a product, no government, *prima facie*, has the competence to override that essentially economic judgment. The specific "sphere of justice" associated with different kinds of community or association defines a space in which the state should have no legal authority (which is not to say that a community or association is exhausted in its sphere of justice, as I shall soon point out). These spheres of justice fall outside the public competence of the state.

The term "public" is employed routinely in lawmaking, public policy, and judicial adjudication, often in the context of an appeal to "the public interest." Yet the term cannot be defined independently of some larger political theory within which it functions and which shapes its concrete employment. In classical political thought, for

example, the public realm was regarded as including virtually everything that fell outside the domestic sphere of the household - on that expansive definition, much of what businesses, universities and even churches do today would be in line for potential state control. Skillen's usage suggests a much tighter circumscription: the public realm is that which falls outside, not merely the household, but also the internal spheres of all the multiple communities and associations that make up the plural structure of society, as well as outside the sphere of individual freedom. On this view, what qualifies as public space is relativized as the many non-political expressions of our social nature move into the foreground.

But, some might ask, isn't this simply a Christian pluralist gloss on an essentially liberal definition, in which an over-extended private realm forces the public realm to the margins? Have we not capitulated to an eviscerated individualist notion of the public? I think not, for two reasons. First, the "private sphere" is not just the sphere of the individual but also a social sphere, a realm of multiple, independent communities, and associations and relational networks. Second, on this view the public realm is not simply defined negatively as what is left over after we take away the rights of individuals and communities; is also implies a positive task of establishing an enabling environment which other social bodies cannot supply. [Note: Stanley Carlson-Thies develops a parallel point with greater specificity in 'Toward a Christian Social Policy,' his response to the 1997 Kuyper Lecture by Senator Dan Coats. See Dan Coats, *Mending Fences: Renewing Justice Between Government and Civil Society* (Center for Public Justice/Baker Book House, 1998, pp. 63-73).] The "public interest" is not the sum of private interests, but rather the condition for the flourishing of those interests. Indeed one of Skillen's most searching claims is that such an individualist definition itself harbours potentially statist tendencies. As he puts it [in the first version of his lecture]: "while libertarian individualists argue for a minimalist government that maximizes individual freedom regardless of inequalities, liberals at the other end of the spectrum can support extensive governmental action that 'interferes' in any area of life whatsoever to expand the autonomy and equality of every individual. In other words, the individualist foundation recognizes no boundaries for government except individual freedom..." (24-25).

But in the wake of two decades of what I regard as aggressive social engineering by movements of the New Right, I think we must go further and say that even libertarian (or neo-liberal) individualists, contrary to their professed desire to minimize government, are often ineluctably drawn to endorsing big government in order to police the socially disruptive consequences of what Pope John Paul II, in his marvelous encyclical *Centesimus Annus*, calls the "idolatry" of the market (CA 40). This is why what he condemns as a "radical capitalist ideology" can go hand in hand with an enthusiasm for more public spending on police, prisons, and the military. And it also helps explain how a well-intentioned desire to slim government down can, paradoxically, bring about the increased centralization of the public sector - which is why a former British enthusiast of Thatcherism (Simon Jenkins), now turning, disillusioned, to an older, more organic form of conservatism, can write a book entitled, *Accountable to None: The Tory Nationalization of Britain* (Penguin, 1995).

So Skillen's notion of the scope of the "public" realm is neither a classical nor a liberal individualist one. As he puts it [in the first version], "the political community is neither the all-embracing whole of human self-realization...nor an unnatural intrusion upon freedom" (28). The public realm refers to that social space within which individuals and communities or associations interact with each other in ways that transcend their own unique rights and responsibilities.

But at what point do we enter it? This is impossible to determine in an *a prioristic* way, but we might put it this way: no human activities are ever absolutely beyond the scope of the public realm, but that realm does not go “all the way down.” It does not envelope the unique “spheres of justice” of individuals or their various social bodies, but embraces only one limited dimension - the public dimension - of such activities. So while parents can choose their children’s school, they do not exercise absolute sovereignty over their children -- as was more or less the case in the ancient Roman *pater familias*. They must, for example, respect the physical and emotional integrity of their children, and where this is seriously violated, a *public* offence has been committed which will require action by the state. To put this differently, we could say that children’s rights to such integrity do not derive from the *family’s internal sphere* of justice but from the *children’s public status as citizens*. So when the arm of the state removes a child from an abusive family, it is not “interfering” in the internal rights of the family - no family has the “right” to abuse its children - but simply requiring parents to respect their children’s public rights. Likewise, businesses may determine pricing, production methods and so forth, but they do not exercise absolute sovereignty over their employers - as at times appeared to be the case in the mid-nineteenth century industrial England from which Karl Marx drew much of his incriminating evidence. So they may not, for example, compel them to work excessive hours, or dismiss them at will; and, today, many states have judged that they may not pay them less than a minimally decent wage. When restrictions on such supposed absolute economic sovereignty were progressively introduced into western states, some employers and their philosophical advocates cried foul and accused governments of encroaching on their economic freedom. In *Centesimus Annus*, John Paul II reiterates the historic reply of orthodox Christian social thought to such a shriveled notion of freedom: “freedom in the economic sector [must be] circumscribed within a strong juridical framework which places it *at the service of human freedom in its totality...*” (CA 42) (my emphasis). I read this as a rather more formal statement of the old adage that “freedom for the pike is death for the minnows.” Earlier popes might have said that “commutative justice” should be balanced by “distributive justice.” To use Skillen’s illuminating metaphor, we could say that the economic freedom of the entrepreneur or shareholder must be “interwoven” with the claims of other stakeholders under the norm of public justice. As he puts it [in the first version]: “[P]ublic justice means that everything interwoven in the public order maintains rather than loses its unique identity, jurisdiction, competence, and authority before God. The metaphor of...interweaving suggests that the distinct colors and textures of the different threads being interwoven are all maintained” (25). And this must occur in such a way that “the public commons must not be stolen or dominated by one organization or group in society nor controlled by one or another interest group for private advantage.”

The purpose of the state, then, is given by the principle of public justice: issues of justice arising within the public realm are matters that the state must address in some way. Those pertaining to the spheres of justice of non-political bodies fall outside its competence, as indeed do issues which may have public scope but which evoke no questions of justice (changing fashions, for instance). What I have been doing in effect, in the last few paragraphs, is simply offering a commentary on Skillen’s seminal point that the authority of the state is “universal” yet not “exhaustive” or “omnicompetent.” It is universal - it doesn’t stop at the factory gate; but it is not omnicompetent - it must respect genuine entrepreneurial freedom even when addressing issues of public justice arising within the factory gates.

Precisely how the process of political “interweaving” takes place is a complex question, but something needs to be said about it because this is where the concrete questions of public policy *start* - and the Center for Public Justice has done innovative work spelling out how such questions might be answered, especially in the areas of educational choice and welfare reform, which can stand as exemplars for at least some other policy areas. [Note: The area in which I would most like to see a public justice approach developed is economic policy, and some directions on how this might be done in the context of globalization were suggested in the 1999 Kuyper Lecture, delivered by Professor Bob Goudzwaard. See *Globalization and the Kingdom of God*, (Center for Public Justice/Baker Book House, 2001).] And for those who find themselves impatient for policy outcomes and restless with the elaboration of principles, it should be noted that merely *positing* the norm of public justice isn’t supposed to tell us what to do, but, like all normative principles, to put us to work. The implementation of public justice by the state will (and already does) occur at many points in the political system and will take numerous forms. It should govern action at local, state, federal, and indeed transnational levels, and action taken by executive, legislative and judicial agencies, at all of those levels. And in each level or organ it can require many different instruments: constraints, commands, empowerments, conditions, provisions, benefits, entitlements, and so forth. Which of these is most likely to bring about a particular just public relationship is a matter of prudential judgment taking all circumstances into account. [Note: And statecraft guided by public justice will also explore how the structure of state institutions themselves need to be recrafted, such as by opening up new avenues of representation for those alienated or effectively disenfranchised by the current system.]

But in Christian thought “prudence” is not regarded as a morally neutral art which can be invoked to bypass conflicts of principle, as if governing were merely a matter of technique. Different political theories will weight each of the above elements very differently according to their particular biases. Neo-liberals, for example, will favour local and state levels over federal and transnational; judicial adjudication over statute or executive discretion; empowerments and entitlements over constraints and benefits; and so on. What this implies is that a major component of the “statecraft” required by a public justice perspective will be the nurturing of a Christian political prudence, one formed through the seasoned, corporate political experience of addressing concrete issues like welfare reform in the light of a public justice approach. Such statecraft will strive to avoid the neo-liberal distortion I just indicated, as well as those characteristic of liberal egalitarianism, or traditionalist conservatism, or any other blinkered reading of that design of society which expresses the just and gracious rule of God.

Conclusion

To conclude, let me return to -- only to leave wide open -- the dilemma of how we might actually define and reach political agreement on the distinctive rights and responsibilities of the multiple social structures of a plural society, those of schools, families, churches, unions, and the state itself, and so approach consensus on what the role of government is in relation to all of these. For, as I noted, earlier, our society is marked by deep moral and spiritual *dissensus*. To invoke two more of Skillen’s terms of art, our society is not only characterised by “structural pluralism” -- a plurality of distinct kinds of social body -- but also by “confessional pluralism” -- a plurality of

spiritual and moral perspectives on many fundamental questions, *including* the nature of that very structural plurality.

As I remarked above, the rights and responsibilities of distinct social bodies cannot simply be read off social reality unproblematically. Indeed according to the dominant perspective in social theory today, they cannot be read *off* reality at all, but only read *into* reality, since they are purely contingent social constructions designed, some will add, to perpetuate systematically unjust power-relations. In passing, we might note that this latter charge is ultimately self-defeating: the accusation of injustice against a particular social power-relation can only stand if there is some benchmark of what a *just* power relation would look like - so even social constructivists end up having to take a position on what a normative distribution of social authorities would be.

In any event, judgments on such issues are increasingly controversial, as the intensity of the debates, for example, over the public status of same-sex unions, or the nature of a fair global trading regime, make abundantly clear. In such a context Christians must, on the one hand, hold on tenaciously to the universal intent of their claims - we are, after all, seeking to give some account of the structure of the order of creation, not simply informing outsiders of our own religious preferences. But we can hardly fail to notice that those universal claims are increasingly *looking like* just one more proclamation of local, narrative particularity.

In the light of this, Christian political practitioners and thinkers need to acquire sophisticated skills of inter-confessional civic dialogue and democratic coalition-building. This is the worst possible moment to retreat into a defeatist isolation in which we aspire only to keep a flicker of truth alive within an ecclesial community of mutual consolation. Nor is a time to seek *deliberately* to stoke up “culture wars” in order to precipitate some sort of political cataclysm which, we wager, might trigger a moment of national conversion. It is a time for sustaining our vision, steadying our nerve, working for approximations of justice in the avenues that still remain open to us, and then living each day in the light of the hope that beckons us forward.

But what realistic prospect exists of reaching political agreement, never mind moral consensus, on some of the contested questions that currently wrack the body politic? The first thing to say is that this isn't a problem only for Kuyperian pluralists (although it has to be admitted that they do make work for themselves by laying out such a complex arrangement of social furniture). But, second, the divergence of perspectives arising from confessional pluralism is far from complete - and we must identify and nurture whatever areas of agreement still survive. And, third, we have reason to believe that such confessional divergence will never be complete: the very structures of created order are continually sustained by God and so, to some degree, are potentially noticeable by all, whatever their confessional perspective. So although we may increasingly feel that we are a community in Exile, we still have powerful reasons for “seeking the welfare of the city” in which we currently dwell. And as we seek to discern the contours of that welfare, we will need thousands of passionately committed, and politically streetwise, Christian citizens, activists and thinkers to devote themselves to this patient, painstaking task. May the Lord of the harvest of justice send out many laborers into his harvest, for the gathering in may soon be upon us.