

Justin Bernstein

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Berman Institute of Bioethics, Johns Hopkins University
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AOS: Bioethics, Ethics, Social and Political Philosophy

AOC: History of Social and Political Philosophy, History of Ethics, Metaethics, Philosophy of Race, Philosophy of Law

APPOINTMENTS

Berman Institute of Bioethics, Johns Hopkins University September 2018-Present
Hecht-Levi Postdoctoral Research Fellow

EDUCATION

University of Pennsylvania September 2011-May 2018
PhD in Philosophy

Dissertation: *An Act-Focused Theory of Political Legitimacy*

Supervisors: Samuel Freeman (Penn) and Alexander Guerrero (Rutgers)

Committee: Errol Lord, Kok-Chor Tan

University of Wisconsin-Milwaukee September 2008-May 2010
MA in Philosophy

Thesis: *Moral Requirements, Moral Reasoning, and the First Two Formulations of Kant's Categorical Imperative*

Supervisor: Julius Sensat

Committee: Carla Bagnoli, William Bristow

Vassar College August 2002-May 2006
BA in Philosophy (with honors)

Thesis: *Teleology and the Fact-Value Separation*

Supervisor: Michael McCarthy

SCHOLARLY PUBLICATIONS

“Public Health Ethics,” *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta.
(forthcoming, with Ruth Faden and Sirine Shebaya)

“Rockland County’s Proposed Ban Against Unvaccinated Minors: Balancing Disease Control, Trust, and Liberty,” *Vaccine*, published online June 10, 2019. (first author with Taylor Holroyd, Jessica Atwell, Joe Ali, and Rupali Limaye)

“The Case Against Libertarian Arguments for Compulsory Vaccination,” *Journal of Medical Ethics* 43 no. 11 (2017): pp. 1-5.

“Why Free Market Rights are Not Basic Liberties,” *The Journal of Value Inquiry* 49 Iss. 1-2 (2015): pp. 47-67. (with C.M. Melenovsky)

POPULAR PUBLICATIONS

“All Children Should Have to Get a Flu Shot,” *The New York Times*, March 1, 2018. (with Ezekiel Emanuel)

“The Implications of Libertarianism for Compulsory Vaccination,” blog for *Journal of Medical Ethics*, April 24, 2017.

SELECTED PAPERS UNDER REVIEW/IN PROGRESS

“Beyond the Right to Rule: A New Framework for Political Legitimacy” (*Revise and Resubmit*)

“The Case for ‘Contributory Ethics’: Or How to Think about Individual Morality in a Time of Global Problems” (*Revise and Resubmit*) (with Travis Rieder)

“The Natural Duty of Justice, Climate Change, and Consumption” (*Under Review*)

“A Role-Based Theory of Politically Legitimate Action” (*Under Review*)

“Anti-Vaxxers, Anti-Anti-Vaxxers, Fairness, and Anger” (*Under Review*)

“Against the Public Goods Conception of Public Health” (*Under Review*) (first author with Pierce Randall)

“Being Wrong, Being Wronged, and Fairness: The Case of Vaccine Hesitancy”

“Fifty Degrees of Political Legitimacy”

“Constitutivism and the Possibility of Error”

“You Should Eat Less Beef” (with Anne Barnhill, Ruth Faden, Rebecca McClaren, Travis Rieder)

“The Promise and Perils of Lab-Grown Meat” (with Anne Barnhill, Jan Dutkiewicz, Ruth Faden, Rebecca McClaren, Travis Rieder)

AWARDS AND HONORS

- DCC Graduate Fellowship** April 2016
University of Pennsylvania, Program on Democracy, Citizenship, and Constitutionalism
One of three recipients across all Penn Graduates
- Dissertation Completion Fellowship** March 2016
University of Pennsylvania
*One of twenty-four recipients across all Penn graduate students
(Declined to accept DCC Graduate Fellowship)*
- Graduate Fellowship for Teaching Excellence** May 2014-June 2015
University of Pennsylvania, Center for Teaching and Learning
One of thirteen recipients. Departments nominate candidates
- Penn Prize for Excellence in Teaching by a Graduate Student** April 2014
University of Pennsylvania
*One of ten recipients out of 159 nominated Penn graduate students
Undergraduates nominate candidates*
- Benjamin Franklin Fellowship** August 2011-May 2016
University of Pennsylvania
- Chancellor's Graduate Student Award** September 2008
University of Wisconsin-Milwaukee
- Ordan Prize Winner** May 2006
Vassar College
Given for General Excellence in Philosophy and Excellence in Teaching
- Nochlin Prize Winner** April 2006
Vassar College
Given for an Exceptionally Good Senior Thesis

PEER-REVIEWED PRESENTATIONS

Legitimate Actions Without the Right to Rule American Philosophical Association, Central Division, Chicago PPE Society, New Orleans	February 2020 March 2019
Distrust Due to Injustice: How Should Health Practitioners Respond? American Society of Bioethics and Humanities Conference, Pittsburgh	October 2019
Against Principled Thresholds: A Conventionalist Defense of Abortion American Society of Bioethics and Humanities Conference, Pittsburgh	October 2019
A Role-Based Theory of Legitimate Action” Rocky Mountain Ethics Congress XII (<i>Accepted but declined to attend</i>)	August 2019
Does Reasonable Distrust of Government Justify Vaccine Exemptions? Rocky Mountain Ethics Congress X (Poster)	August 2017
Legitimacy, Instrumentalism, and the Demandingness Objection(s) Rocky Mountain Ethics Congress IX (Poster)	August 2016
Kantian Rationalism and The Groundwork Strategy Rocky Mountain Ethics Congress VI (Poster)	August 2013
Critical Reflections on Martha Nussbaum’s Political Liberalism U. Memphis Graduate Student Conference	February 2012
Constitutivism and the Possibility of Error Brandeis Graduate Student Conference	March 2011

INVITED PRESENTATIONS

The Moral Significance of Vaccine Hesitancy: Being Wrong and Being Wronged University of North Carolina, Parr Center for Ethics	March 2019
Race and Vaccine Acceptance Penn Teach-In: Panelist on Vaccine Denial	March 2018

SELECTED COMMENTS GIVEN

George Sher’s “The Consciousness of a Conservative” Rocky Mountain Ethics Congress X	August 2017
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Serene Khader’s “Decolonizing Individualisms” Penn Minorities and Philosophy Conference, Global Feminisms	March 2017
George Sher’s “How Bad is it to be Dominated?” Rocky Mountain Ethics Congress IX	August 2016
Jason Brennan’s “A Libertarian Case for Mandatory Vaccines” American Philosophical Association, Eastern	January 2016
Stephen Henderson and Kelly Sorenson’s “Search, Seizure, and Immunity…” Rocky Mountain Ethics Congress VI	August 2013

TEACHING EXPERIENCE

As Lead Instructor

Johns Hopkins University , Political Philosophy and Public Health Ethics	January-May 2019
University of Pennsylvania , The Social Contract	January-May 2018
University of Pennsylvania , Biomedical Ethics	January-May 2016
University of Milwaukee-Wisconsin , Introduction to Philosophy	January-May 2010
University of Milwaukee-Wisconsin , Introduction to Philosophy	September-December 2009

As Teaching Assistant

Johns Hopkins University , Foundations of Bioethics	September-October 2018
University of Pennsylvania , Biomedical Ethics	September-December 2017
University of Pennsylvania , Philosophy of Mind	January-May 2015
University of Pennsylvania , Ethics	September-December 2013
University of Pennsylvania , The Social Contract	January-May 2013
University of Pennsylvania , Philosophy of Law	September-December 2012
University of Milwaukee-Wisconsin , Philosophy 101	January-May 2009
University of Milwaukee-Wisconsin , Philosophy 101	September-December 2008

Guest-Lectures Delivered as a Hecht-Levi Fellow

“Ethics In Public Health” US AID STAR Intern Program	November 2019
“Public Health Ethics” Johns Hopkins, Foundations of Bioethics	September 2019
“Public Health and Philosophy” Johns Hopkins, Panel on Public Health, Philosophy, History, and Values	September 2019
“Ethics and Vaccination” Johns Hopkins, Global Bioethics Training Program	June 2019
“What Is Public Health Ethics?” Johns Hopkins, Admitted Students Weekend	March 2019

Workshops Taught as a Penn Center for Teaching and Learning Fellow

“Best Teaching Practices”	March 2015
“Strategies to Prepare Your Students for Class”	February 2015
“Effective Group Work”	October 2014

OTHER RELEVANT TEACHING APPOINTMENTS

Philadelphia Futures Instructor, Co-Director, After School Program in Philosophy	September 2015-May 2016
Link Community School, Newark, NJ Eighth Grade English Language and Literature Teacher	June 2006-June 2008

GRADUATE COURSEWORK

Social/Political/Legal Philosophy

Topics in Political Philosophy* (Samuel Freeman) (2015, 2016, 2017)
Epistemology and Democracy (Alexander Guerrero)
Topics in Political Philosophy* (Kok-Chor Tan)
Political Authority and Political Obligation (Stephen Perry)
Topics in Political Philosophy (2012) (Samuel Freeman)
Law and Morality of War (Claire Finkelstein)
Feminist Liberalism and its Critics (Andrea Westlund)
International Justice (Blain Neufeld)
The Political Philosophy of John Rawls (Julius Sensat)

Ethical Theory/Metaethics/Philosophy of Action

Ethical Rationalism* (Errol Lord)
Metaethics (Adrienne Martin)
Constitutivism* (Luca Ferrero)
Kantian Constructivism* (Carla Bagnoli)
Moral Norms (Carla Bagnoli)
The Will (Luca Ferrero)
Autonomy, Identity, and the Self (Andrea Westlund)
Collective Agency (Luca Ferrero)

History of Philosophy

Aristotle's Ethics (Susan Sauve-Meyer)
Continental Rationalism (Karen Detlefsen)
The Reception of Kant's Ethics (Paul Guyer)
Kant II (Paul Guyer)
Kant's Practical Philosophy (Julius Sensat)

Metaphysics/Epistemology/Language/Science/Logic

Expertise* (Alexander Guerrero)
Philosophy of Race* (Quayshawn Spencer)
Social Ontology* (Philip Pettit)
Epistemology and its Limits (Daniel Singer)
The Philosophy of Psychology (Gary Hatfield)
Formal Logic (Scott Weinstein)
Proseminar (Gary Hatfield)
Quine, Goodman, and Beyond (Robert Schwartz)
Fundamentals of Formal Logic (Michael Liston)
Philosophy of Language (John Koethe)

***audited**

SERVICE

Referee, <i>American Journal of Bioethics</i>	Fall 2019
Case Contributor, National Bioethics Bowl	Fall 2018
Referee, <i>Social Theory and Practice</i>	Spring 2018
Referee, <i>Journal of Medical Ethics</i>	Summer 2017
Referee, American Philosophical Association: Eastern Division	Spring 2017
Referee, <i>Theoria: A Journal of Social and Political Theory</i>	Fall 2014
President of Penn's Political Philosophy Reading Group	April 2014-May 2018
President of Penn's Philosophy of Race Reading Group	January 2016-May 2018
Member of Minorities and Philosophy, Penn Chapter	January 2015-May 2018
Organizer, Graduate Student Philosophy Conference	November 2012

REFERENCES

Alexander Guerrero

Associate Professor of Philosophy
Rutgers University
Alex.Guerrero@rutgers.edu

Ruth Faden

Philip Franklin Wagley Professor of
Biomedical Ethics
Johns Hopkins University
rfaden@jhu.edu

Samuel Freeman

Avalon Professor of the Humanities
University of Pennsylvania
sfreeman@sas.upenn.edu

Errol Lord

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Anne Barnhill

Research Scholar
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Jeffrey Kahn

Robert Henry Levi and Ryda Hecht Levi
Professor of Bioethics and Public Policy
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jeffkahn@jhu.edu

Kok-Chor Tan

Professor of Philosophy
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Karen Detlefsen (Teaching)

Professor of Philosophy and Education
University of Pennsylvania
detlefs@phil.penn.edu

DISSERTATION ABSTRACT

An Act-Focused Theory of Political Legitimacy

Ordinarily, individuals are not permitted to possess and exercise coercive power by making and enforcing threats to use physical force. States and state actors, however, do possess and exercise coercive power in this way. The question of legitimacy is what, if anything, makes the possession or exercise of such power by states or state actors morally permissible? In my dissertation, I answer this question as follows: particular actions by state officials are legitimate because they produce good consequences, and the degree of legitimacy a state or a particular state institution enjoys is a function of how well it produces good consequences.

This view constitutes a stark departure from extant theories of political legitimacy, and so in the first part of the dissertation, “Four Theses on Political Legitimacy,” I motivate abandoning more familiar theories. I begin by considering one especially prominent class of theories, ‘will-based’ theories that aim to answer the question of political legitimacy by appealing to the ‘consent of the governed’ or the ‘will of the people’ in some sense. These will-based theories claim that when particular actions are legitimate, this is at least partly in virtue of an act of will on the part of citizens, which grounds the legitimacy and authority of the State. I argue that while these theories are popular, they either encounter significant problems, or they do not enjoy significant advantages over various rival theories.

I then argue that the appeal of will-based theories rests, in part, on the acceptance of two orthodoxies. First, many believe that the legitimacy of the State—macro legitimacy—is necessary or sufficient, for the legitimacy of particular actions by state actors in their role—micro legitimacy. I object, however, that there are good reasons to think there can be illegitimate actions in legitimate states, and legitimate actions in illegitimate states. As such, attempts to ground the legitimacy of the State will be inadequate as an answer to questions about when particular *actions* are legitimate. The second orthodoxy is that authority—the moral power to impose an obligation or reason to obey the law—is a necessary condition for legitimacy. I object, however, that political actions and political institutions can be legitimate even if the state lacks authority or citizens lack a moral obligation to obey the law. That is, concerns about the State’s moral power to impose an obligation to obey or some general obligation to obey law are orthogonal to concerns about the right to make and enforce law.

I then argue that (broadly) consequentialist theories of legitimacy have seemed less appealing than will-based theories because of the two orthodoxies about legitimacy. Insofar as we should reject these orthodoxies, however, we have an additional reason to doubt that will-based theories enjoy the relevant advantages over consequentialist theories. Accordingly, in the second part of the dissertation, “An Act-Focused Consequentialist Theory of Legitimacy,” I present and defend a broadly consequentialist theory of political legitimacy.

A consequentialist theory requires a theory of the good to be produced, so I begin by articulating the good to be produced, Functional Autonomy—the ability to successfully act on one’s authentic values, at least up to a meaningful threshold. I argue that Functional Autonomy is an especially appropriate value to be produced for a consequentialist theory of political legitimacy, generally. I then argue that there is strong moral reason to promote overall Functional Autonomy. In order to realize Functional Autonomy, individuals need to have access to various goods related to our psychological and physical makeup, and they need to be protected against various harms that come from their environment. To provide the requisite goods and protect individuals from the relevant harms, some entity or entities need to accomplish various tasks. And state actors are better at performing at least some of these tasks than private actors or groups if there are two effective divisions of labor. A successful institutional division of labor enables different institutions to accomplish different tasks

needed to, jointly, promote Functional Autonomy. A successful role-based division of labor allows state actors within particular institutions to deliberate and act in specialized ways so as to better realize distinct institutional tasks.

State actors can come to have role-based reasons to deliberate and act in specialized ways, role-based reasons that are ultimately grounded in the successful performance of institutional tasks, which, in turn, are justified by their (joint) role in producing Functional Autonomy. The normative weight of these role-based reasons is determined by how well one's institutional task is advanced if role occupants perform the relevant action or deliberate in the relevant ways. Given this theory of role-based reasons, I argue that particular actions by state actors are legitimate if and only if the state actor's role-based reasons outweigh role-independent moral reasons that count against the performance of the action. And particular states are more or less macro legitimate depending on how well the two divisions of labor produce the Functional Autonomy of citizens.

Before concluding, I argue that the view avoids three traditional problems associated with consequentialism—and that this should make the view that much more appealing. First, I argue that because my view treats Functional Autonomy as the good to be promoted rather than, say, utility, my view is not subject to concerns about the distribution-insensitive character of consequentialism. Second, I argue consequentialism strikes many as a more appropriate theory of political morality than more deontologically oriented views, given the need for political actors to 'dirty their hands,' and our intuitions that favor threshold deontology. Third, I argue that the view eschews demandingness objections that often plague consequentialist theories of interpersonal morality. To claim that morality requires one to only produce impartial value, even if this comes at the expense of various projects and personal relationships, strikes many as repugnant or unduly taxing. But in the context of political action, it would seem repugnant for state actors to indulge their projects and personal relationships at the expense of promoting impartial value.