

**Philosophy 338A**  
**Philosophy of Law**  
**2017**  
**Note Thirteen**

A BRIEF FOLLOW-UP

Our in-class discussion today (Thursday, March 2<sup>nd</sup>), was excellent, and provides welcome occasion for brief further reflection. To that end, here are some thoughts of my own.

1. *Not politics and not ethics*

We were talking about hidden bias, and concentrating on those cases in which the bias is bad, that is, when it is a disposition to think ill of things of kind K, judge them inequitably and harbour false expectations about their past, present or future conduct. Although bias is often expressed openly and aggressively, and is frequently disgraceful beyond words, that's not what we were talking about on Thursday. Our focus was on bias that is hidden and unbidden. This, of course, presents us with two critical questions. If the bias in question is hidden, how can we tell who has it? Assuming that it is actually a diagnosable state of affairs, to what extent does it causally impact upon behaviour?

In our reflections on these matters, it is important to keep it in mind that this is a course on legal reasoning. Although many of the matters we've been discussing throughout are subject to still-unsettled political and moral contention (and often enough high levels of reciprocal high dudgeon), that is no business of ours. In this course, nothing is litigated on ideological grounds, political or moral. What counts here is the logico-epistemic quality of the reasoning in regard to matters of law.

2. *Socially endorsed voicings of true generalizations*

Sometimes generalizations about groups are true, even when they reflect upon them negatively. For example, some, not all, of the generalizations about white supremacists in the United States are true. One of the things that isn't true is the generalization that anyone who agrees with anything white supremacists say is herself a white supremacist. When white supremacists speak their mind, they unleash the furies of those who hate and fear them. Those who do so feel free to give their views full-throated voice and large streetwise presence to the positions they oppose. In such cases, speaking out is widely considered to be a civic virtue and a moral duty. If fascism is everywhere about, we must denounce it. But, note well that denunciation is no substitute for the impartial assessment of the reasoning that purports to support it.

3. *Socially resisted voicings of true generalizations*

The generalizations of which we've been speaking in section 2 and will speak more of now in this one are about hot-button social issues of existential importance. When bias involves judgement about things of a certain kind and by virtue of the fact that they are things of that kind, generalization plays a large operational role. Sometimes these kind-generalizations are factually false. Sometimes they are as a matter of fact true. Consider those cases in which generalizations reflect badly on the things of which they are factually true. Often a question arises about the extent, if any, to which it is wise, prudent or helpful to give voice to those true generalizations or

to embed them as motivating premisses for social action. Sometimes the right answer is that some truths are best not spoken of. Sometimes that's true. Sometimes it is very seriously not true. The question of how to determine in a principled and coherent way which is which is a vexed and difficult one subject to high levels of contextual sensitivity. I mention this here to register a straightforward observation about it. It is not a matter on the order paper of this course.

#### 4. *Power*

Mind you, there are lots of professionally respected people in various sectors of the university, not so much in philosophy departments perhaps, in which my distinction between politics and truth (I put this loosely) is rejected. Some of those people are political relativists about truth, not only about truth in politics but everywhere else in which truth secures a purchase. Long ago, Francis Bacon observed that knowledge is power. Today's relativists go a step further. They say that truth is power, and that power is the power of dominant political elites. Truth is entirely a matter of political coercion. It is entirely possible for people who hold such a view to reason as follows about true generalizations which it is politically unwise to give voice to. On that view, no negatively nuanced generalization could be true, that is true in actual fact, unless it were a politically correct generalization.

I have only one thing to say about the political relativity of truth thesis. If true (pardon the pun), it licences big-box scepticism. Of course, relativists will say that big-box scepticism is the product of political oppression that has long since passed its sell-by date. Well, lord love a duck!

I could also add that nothing I've been saying in this section has assumed that any one of you is in the power-relativistic camp about truth. But I could introduce you to people in Canada's universities who are indeed in the ambit of that doctrine. In our case, all I can tell you is that if the shoe fits you, then wear it.

Thanks to all participants Thursday for a spirited and talented discussion. I hope we'll have more of it in the days ahead.

#### 5. *Finally*

I forgot to say that everyone should read chapter 14 on probability before next Tuesday.