

## *Political Reasonability*

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### I

According to Stephen Macedo, '[liberal], democratic politics is not only about individual rights and limited government, it is also about justification ... political justification ... understood politically.' 'Political justification,' he asserts, 'is a core liberal goal.'<sup>1</sup> Gerald Gaus, similarly, writes that the 'idea of public justification is at the heart of a contractual liberalism.'<sup>2</sup> Very many other contemporary political philosophers believe that the politics of a liberal polity must be justifiable to its citizens. In what follows I shall seek to understand the basis for such a belief and, in particular, to expose two possible sources in the views of Locke and Kant. Neither source, I shall argue, provides any warrant for the demand in question. First the bald claim — that the politics of a polity needs justifying — must be unpacked. By way of initial clarification I shall say something about, respectively, 'justification' and 'politics.'

Justification consists in the provision of reasons that can be or are accepted. Henceforward I shall understand 'political reasonability' as the insistence that politics — in the sense yet to be specified — should be justifiable, that is, supported by reasons, to those who are, in the appropriate way, affected by some instance of it. There is an important modal contrast between actual and possible justification. The contrast applies

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1 Stephen Macedo, 'The Politics of Justification,' *Political Theory* 18 (1990), 280 & 298

2 G. Gaus, *Value and Justification: The Foundations of Liberal Theory* (Cambridge: Cambridge University Press 1990), 456

both to the reason-giver and to the reason-receiver. The reason-giver is the person or agency who is under the obligation to justify their actions. The reason-receiver is the person or agency who is owed a justification — owed it we may here presume in virtue of being affected by or of suffering what the reason-giver has done. Thus we have four possibilities.  $\emptyset$  is justified iff  $X$  (who is the source of  $\emptyset$ ) does give/could give a reason for  $\emptyset$  to  $Y$  (who is affected by or who suffers  $\emptyset$ ) that  $Y$  accepts/could accept. There is a still further possible complication.  $X$  may be thought obliged to give a reason not only for what she has done or is doing to  $Y$ , but also for what she proposes doing to  $Y$ . Some, for instance, think that included among the political actions requiring justification are proposals for the exercise of power, such as standing for office or casting a vote.

It is important at this stage merely to recognise the basic contrast between an actual giving (and accepting) of reasons and a hypothetical giving (and accepting) of reasons. Further, we should acknowledge that the terms of the hypothetical can be variously specified. Some, for instance, may use a qualifying phrase such as ‘could accept in principle.’ Others will want to employ something like the qualification ‘if reasonable’ as follows.  $\emptyset$  is justified iff  $X$ , if reasonable, could give a reason for  $\emptyset$  to  $Y$  that  $Y$ , if reasonable, could accept.

What must be justified by the provision of reasons? The bald claim above stated this to be ‘politics.’ There are at least two ways in which the ‘political’ can be distinguished from the non-political. The first offers a division between spheres of activity: a basic, if not always clear and certainly not uncontentious, distinction between private and public actions. Thus liberals do not think that I have to give reasons to my fellow citizens for my decision to join the Catholic Church, or for my marriage to Jane, or for my support of my local sports team. However, I do owe my fellow citizens an account of my support for laws and policies that seek to implement Catholic doctrine, or that outlaw single-sex marriages, or that secure exclusive state funding for certain kinds of organised sports activity.<sup>3</sup>

The second way to draw the contrast between the political and the non-political turns on an identification of who or what engages in

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3 Note that I am probably also required to give you reasons for those of my actions that adversely affect you but which do not fall within the political sphere — for instance, the action of assaulting you in the privacy of your home. I am accountable to others for some at least of my non-political acts. What is at issue is the fundamental distinction between ‘public’ or political acts, and private non-political acts. It should not be thought that we are accountable to others only for the former.

political action. Here there is a wide and a narrow construal of 'political.' On the narrow construal only the state (its agencies, personnel, etc.) engages in political action. On the wide construal we, the citizens, engage in political action whenever we perform any of a range of acts. A non-exhaustive list would include campaigning on behalf of a political party or interest group, running for office, attendance at a political rally or march, and — most centrally and paradigmatically — voting.

For some it is the social or political order as a whole that must be justified to citizens. Consider these representative quotations. Liberals, Jeremy Waldron says, 'demand that the social order should in principle be capable of explaining itself at the tribunal of each person's understanding.'<sup>4</sup> 'Liberals,' according to Gerald Gaus, 'insist that moral and political principles are justified if and only if each member of the community has reason to embrace them. Liberals thus stress *public justification*.'<sup>5</sup> By contrast, other writers think that what is in need of justification is *any* political action construed broadly. Consider thus Will Kymlicka, who writes that 'Liberal citizens must give reasons for their political demands.... Liberal citizens must justify their political demands in terms that fellow citizens can understand and accept as consistent with their status as free and equal citizens.'<sup>6</sup>

Before suggesting a way forward let me enter some cautionary comments. What I am trying to do is expose the lack of foundation for a view which I am attributing to liberalism and liberals. Yet liberalism is, and has historically been, a heterogeneous family of doctrines, perhaps unified only by the according of a certain priority to individual liberty. Some liberals — notably those in the utilitarian tradition — do not make the demand that politics be publicly justifiable. Again, the writers I have quoted above declare their affiliations to subtly distinct doctrines or ideas — for instance, 'contractual liberalism' or 'liberal democratic politics.' Finally, as I have been arguing, there are differences even amongst those who subscribe to the broad view under critical consideration as to what exactly must be publicly justified. Some, following Rawls, hold only that 'constitutional essentials' should be the object of reasonable agreement; others seem to maintain that any political measure or action must be rationally justifiable to those it affects.

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4 Jeremy Waldron, *Law and Disagreement* (Oxford: Blackwell 1999), 61

5 G. Gaus, 'Public Justification and Democratic Adjudication,' *Constitutional Political Economy* 2 (1991), 251

6 Will Kymlicka, 'Education for Citizenship' in his *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship* (Oxford: Blackwell 2002), 296-7

I do not wish to deny or obscure these distinctions and differences. However, I do think that a large group of prominent and influential contemporary liberal political philosophers share a belief that something in the nature of the political, however it is exactly specified, demands the provision of justificatory reasons. What might this be? Let me suggest that these various writers share an understanding of what it is about the political that necessitates its justification. An action, a set of principles, an 'order' is 'political' — and as such in need of justification — insofar as it is or essentially involves an exercise of coercive power. The 'moral core' of a liberal order, says Macedo, is a 'commitment to public justification: *the application of power* should be accompanied with reasons that all reasonable people should be able to accept' (emphasis added).<sup>7</sup> 'Moral and political principles' need justifying in this context inasmuch as they regulate an exercise of power and order the coerced distribution of benefits and burdens. I can argue for a particular principle of justice — such as one giving priority to the least well-off — and show its merit by contrast with other conceptions of justice. I can do so whether or not the principle in question governs the institutional arrangements of a society. But if the principle does regulate the terms of social cooperation then it will be enforced by coercive measures. It then stands in need of justification inasmuch as individuals are subject to the exercises of power that effect the requisite transfers of goods.

What citizens 'demand' is an exercise of coercive power. This is, I think, why some believe that the act of voting is, in the appropriate sense, a political act. In one place when discussing the conditions for people conjointly to exercise coercive political power over one another Rawls asserts, in passing, that exercising coercive political power over one another is 'something we inevitably do as citizens by voting, if in no other way.'<sup>8</sup> The phrase 'if in no other way' suggests that he thinks that voting is the paradigmatic case of ordinary citizens exercising political power over others.

I shall for argumentative effect assume the broader interpretation without committing myself to that construal. However, to the proponents of either view I offer the following simple dilemma. If the political is defined narrowly as encompassing only the actions of a state then it is relatively easy to see why politics is in need of justification. However, it is also important to be able to show why the actions of a state differ from

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7 Stephen Macedo, *Liberal Virtues, Citizenship, Virtue and Community in Liberal Constitutionalism* (Oxford: Blackwell 1990), 40-1.

8 John Rawls, 'Reply to Habermas,' *The Journal of Philosophy* 92 (1995), 146

those of a political agent, such as a citizen voting, in a morally relevant way. If, by contrast, politics is defined broadly to include the actions of the voter it is much harder to see why her actions, even if described as political, need justification in the same way as the actions of the state.

The final comment on the justification of the political is that it is thought of as something that can be *demand*ed. It is not normally described only as an ideal. Note, for instance, the occurrences of the prescriptive ‘must’s in the quotation from Kymlicka. What follows is an attempt to understand the source of this demand. Why do liberals think that political reasonability is a requirement of the liberal polity? I shall argue that the demand is motivated by two ideas of quite distinct provenance — a Lockean idea and a Kantian idea.<sup>9</sup> Further, I shall argue that when these two sources are distinguished and properly understood neither can be seen to provide a convincing justification for political reasonability. Or, at least, they do not do so for political reasonability in the forms most commonly defended. That is not to say that political reasonability does not remain any less of an ideal of liberal politics. What is to be criticised is the view that we are *required* to be politically reasonable.

## II

Political reasonability is then the demand that political actions must be justified. What motivates this demand? Let me suggest that there are two very different sources of this motivation that I shall term the Lockean and the Kantian. I do not intend by these descriptions that the relevant ideas can be found explicitly and unequivocally expounded in the writings of, respectively, John Locke and Immanuel Kant. As a matter of fact I shall make far greater appeal to the work of Locke in expounding the Lockean idea than I shall appeal to the work of Kant in expounding the Kantian idea. However, on the whole, I intend only that the ideas in question can be seen as deriving their inspiration from claims that are recognisably but generically Lockean and Kantian in spirit.

In essential summary the contrast between the two ideas is as follows. The Lockean idea is that the exercise of coercive power is a limitation of

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9 A. John Simmons, ‘Justification and Legitimacy,’ *Ethics* 109 (1999) 739-71 offers a contrast between Lockean and Kantian approaches to the question of the relationship between the justification of the state and state legitimacy. But he does not address the general issue of political reasonability. Nor does he look at the relationships between justifying reasons, consent, and treating the other as a means to one’s political ends.

individual liberty, and that such an exercise is warranted only if it is freely consented to. The Kantian idea is that the exercise of coercive power is the treatment of the other solely as a means, and that such treatment is warranted only if the other is given reasons she can accept for being so treated. I shall cast doubt in each case on the thought that the demand for political reasonability can be derived from the idea in question.

Showing that there is no warrant for political reasonability in ideas of, respectively, Lockean and Kantian provenance for the demand shows only so much. It does not show that political reasonability is not something that ought to be demanded. There may well be other grounds on which the demand is based. However, if the Lockean and Kantian sources of the demand are discredited, something very important will nevertheless have been achieved. Locke and Kant are two of the most important figures in the prehistory of contemporary philosophical liberalism. Or, at least, they are frequently and explicitly acknowledged as such by its defenders. Thus it would be interesting to learn that writers seen as central to the intellectual formation of contemporary liberalism cannot be pressed into service as defenders of an ideal currently viewed as being at its very core.

### III

The basic Lockean idea is expressed with admirable clarity and directness by Locke himself: 'Man being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own *Consent*.'<sup>10</sup> According to Locke, man's natural state, that is, the condition of man in the imagined or hypothetical absence of law and government, is one of equality. Specifically, this is an equality not of merit, virtue, or excellence but of jurisdictional freedom, that is, of not 'being subjected to the Will or Authority of any other Man.'<sup>11</sup> The natural state is morally — and not in any actual sense temporally as we shall have reason to repeat — prior to government. That is just to say that the first state morally constrains the permissible forms of the second. What is possessed of natural right in the natural condition cannot be taken from persons in the creation of civil government.

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10 John Locke, *Two Treatises of Government*, A Critical Edition with an Introduction and Apparatus Criticus by Peter Laslett (Cambridge: Cambridge University Press 1960), II, §95

11 *Ibid.*, II, §54

In the absence of government and in their natural state men are equal in their freedom and independence in that none is subject to the power or authority of any other. Government *is* the subjection of individuals to the exercise of power and authority. 'Political power' is 'a Right of making Laws,' with penalties for non-compliance using 'the force of the Community, in the execution of such Laws.'<sup>12</sup> Thus, political society stands in need of justification. Justification is secured from the fact that men deliberately 'quit' the state of nature and 'resign' their exercise of natural power 'up into the hands' of the state thereby created.<sup>13</sup> In essence men freely give up their natural freedom in order to have and to enjoy their political freedom.

This is not a case of a person's freedom being exercised in order that, or with the consequence that, this very freedom is thereby limited. That would be the case when someone voluntarily enters with another into a slavery contract. Rather, it is a case of one's natural freedom being exercised in order to secure a greater freedom, that is, freedom under the protection of the law of the whole community constituted as a polity. For Locke does not rule out the possibility in principle of persons enjoying their natural rights (to life, liberty and property) in a state-less state. However, he thinks that the 'irregular and uncertain exercise' of power by different individuals within the state of nature exposes all to 'inconveniencies' that only political society can remedy and remove.<sup>14</sup>

It is thus noteworthy that Locke thinks that the very same freedom can be exercised and enjoyed both in a state without government and in political society. He judges only that the enjoyment of freedom in the natural condition is 'very uncertain,' 'very unsafe, very unsecure,' and 'constantly exposed to the Invasion of others.'<sup>15</sup> Locke does, of course, insist upon a distinction between a state of 'liberty' and one of 'license.' The distinction consists in whether or not man exercises his will within or outside the laws of nature that are accessible to reason.<sup>16</sup> Nevertheless, Locke allows that men can, in a state of nature, 'without a common Superior on Earth, with Authority to judge between them' live together 'according to reason.'<sup>17</sup> Hence individuals can, in principle, enjoy their

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12 Ibid., II, §3

13 Ibid., II, §86

14 Ibid., II, §127

15 Ibid., II, §123

16 Ibid., II §6

17 Ibid., II §19

liberty outside government if they live within the bounds of the law of nature. The Lockean idea of freedom is thus quite distinct from that notion of freedom to be found in another tradition of political philosophy. This holds that freedom — or a freedom worthy of the name ‘liberty’ — can *only* be exercised and enjoyed under the rule of government. It is not that less freedom is enjoyed or that freedom is enjoyed less securely outside the polity. There is *no* freedom in the absence of law. Hegel and Rousseau are the most obvious and prominent members of this other tradition. Arguably, Kant also belongs to this tradition, something to which I will return.

I leave these questions of how to understand political freedom to one side. The basic Lockean idea that needs to be emphasised is as follows. Since the exercise of coercive political power is necessarily the limitation of the freedom of those subject to it, such power must derive its warrant from the freely given agreement of these same individuals. As Waldron expresses it, the fundamental liberal idea is that ‘a social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it.’<sup>18</sup> How does the Lockean idea ground the demand for political reasonability? I think it does not do so at all. The reasons it does not have to do both with the scope of and with the essential nature of the agreement to the exercise of political power. I will take each in turn.

#### IV

For Locke, it is the consent given by individuals as individuals that is necessary and sufficient for the passage from a state of nature to civil government, that is, for the creation of a political community. Once inaugurated, this community, or single ‘Body Politic,’ is empowered to act, that is, to pass laws and implement policies in the name of all. But, crucially, it is not required that each individual must consent to each and every act of the state she has consented to have legislate and execute policy in her name. Further, by her initial consent she has given up in perpetuity — subject to certain constraints — the jurisdictional freedom she would enjoy in the absence of lawful government. [He], that has once, by actual Agreement, and any *express* Declaration, given his *Consent* to be of any Commonweal, is perpetually and indispensably obliged to be and remain unalterably a Subject to it, and can never be again in

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18 Jeremy Waldron, ‘Theoretical Foundations of Liberalism,’ in his *Collected Papers 1981-1991* (Cambridge: Cambridge University Press 1993), 50

the liberty of the state of Nature.<sup>19</sup> Of course what is consented to is a government bound by the terms of its originating contract. So it is not true that consent is given, in perpetuity, to a government whose subsequent exercise of its power is unconstrained. Individuals do not consent on just the one occasion to whatever the government might latterly do.

Nevertheless, consent is, strictly speaking, given once and once only, to a state whose subsequent actions do not require the consent of those subject to them. That leads critics of Locke to note that consent 'figures prominently ... in the formal inauguration of the state, but in the actual operation of government it is relegated to a back seat.'<sup>20</sup> However, that is not all that needs to be said. For Locke, it is obvious that once constituted, a political community acts by a majoritarian decision procedure. The political community has been constituted as 'one Body' and 'it being necessary to that which is one body to move one way; it is necessary the Body should move that way whither the greater force carries it, which is the consent of the majority.'<sup>21</sup> Those who are in a minority are bound by the majority's decisions.

In short, all individuals severally consent to the creation of a single political community whose subsequent actions are determined by a decision procedure (majoritarianism) which is itself not agreed to but is at best the consequence of a natural fact. Decisions have to be taken by the state. Those which reflect the wishes of the greater number have the greater force. The minority does not consent to these decisions and the majority does so only in the sense that its members severally agree with these decisions. Locke, indeed, does not think that democratic majoritarianism need be the end of the story. The majority may 'put the power of making Laws into the hands of a few select Men.... Or else into the hands of one Man.'<sup>22</sup> Thus the greater number may legitimately create an oligarchy or a monarchy.

The important point is that for Locke individuals exercise their natural liberty only to create a single Community.<sup>23</sup> The laws and policies of that

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19 Locke, §121

20 J.W. Gough, *John Locke's Political Philosophy*, 2<sup>nd</sup> Edition (Oxford: Blackwell 1973), 6. This quotation implies that consent is still in the car but not driving. It might be more accurate to comment that consent isn't even along for the ride.

21 Locke, §96

22 Ibid. §132

23 Ibid. §87, §95, §96, §99, §130

single community, once created, do not require the consent of each and every individual subject to them. Indeed, Locke is explicit that it would be unrealistic to expect such universal consent. It would be 'next to impossible ever to be had.' A constitution on such terms would 'make the mighty *Leviathan* of a shorter duration than the feeblest Creatures; and not let it outlast the day it was born in.'<sup>24</sup>

In this exegesis of Locke I have followed him in using temporal language. Consent, 'once' given by an individual, binds her 'perpetually' and she can 'never again be in the Liberty of the state of nature.' This might suggest that the state of nature is a state literally pre-existing the creation of the polity, and that consent is given at a particular moment in time marking the passage from the former to the latter. But this would be a mistake. For, as Locke himself acknowledges, there seem to be no records of any such original founding contract,<sup>25</sup> and nearly all would interpret him as outlining not an actual but a hypothetical contract, one individuals *would* enter into if placed in a state of nature. Locke's critical point is that a political society is legitimate only if individuals consent to it. They consent to the existence of a single community or body acting as one. It is not that the polity is legitimate because it was brought into existence by the consent of its founding members. Rather, it is a legitimate polity if its very existence as a polity, its being constituted as a single body politic, is consented to by all those in whose name it acts as a single community.

Now, as is commonly acknowledged, Locke's account of how individuals, born and brought up in already existent political communities, do actually give their consent to these communities is notoriously unclear and ultimately indefensible. The appeal is to tacit consent that, Locke says, is given merely by 'Possession, or Enjoyment of any part of the Dominions of any Government'<sup>26</sup> even though he shortly thereafter insists that submission to the laws of a country 'makes not a Man a Member of that Society.'<sup>27</sup>

The problems with Locke's notion of tacit consent are several and well known. However, whatever these problems may be, the function of tacit consent is clear. It is to legitimise the state acting in the name of all as a single political body. Its function is not to legitimise each and every law

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24 Ibid. §98

25 Ibid., §101-5

26 Ibid., §119

27 Ibid., §122

or policy of that state. Or rather law and policy are legitimate inasmuch, *ceteris paribus*, as they are the actions of a state to which consent has been given. The actions of the state must still be within the constraining terms of the original contractual bequest of authority. Individuals do not agree to *any* action the state might perform. They retain their natural rights (to life, liberty, and property) and these limit the possible acts of the body politic.

The giving of consent can be seen as explicit and as consisting in a single, one-off action, such, as for instance, an oath of allegiance, or as implicit and consisting in one's continued 'enjoyment' of the protection of the state's laws. The important point concerns the scope of consent. According to the Lockean idea this is the existence of the state or polity as a single community acting in the name of all. Consent is not given to the individual actions — that is to the laws and policies — of this single community. Consent could not be given to these individual actions by all who are subject to them, as Locke rightly notes. No state could last a day that needed each of its laws and policies to be agreed to by every one of its citizens. Consent does not need to extend to these actions because what has been given legitimacy by consent is the very existence of the state as an agent acting for every one of its citizens (and acting by means of a particular decision procedure).

## V

How does this help with the demand for political reasonability? Not at all. It should be clear enough by now that, on the Lockean account, what requires and what receives a justification through the exercise of consent is the state. More particularly not each and every action of the state is justified but only its very existence as a collective agent acting in the name of all. Now voting is not even an action of the state. But is it not a proposal to use the state in certain ways and thus in this sense an indirect exercise of coercive power? As a minor cavil it is worth pointing out the following possibilities. I might be voting for the repeal of a law and thus for the diminution of the extent of the state's coercive power over us. Or I might be voting in the certain knowledge that I will be in the minority and thus will not see my wishes translated into coercive law. The more substantial point is that in those cases where someone votes for a law or for representatives who will themselves legislate a voter is not herself a law maker or law enforcer. The action of voting is at most the expression of a preference that coercive law be used to certain ends.

But am I not when I vote as part of the majority constituting myself as the political community acting as one body? When I vote for  $\emptyset$  (that there should be a law or policy with a determinate content) I thereby express

the wish that coercive political power be deployed to realise a certain end. If, and only if, I find myself in the majority am I not a part of the community exercising its political power over the minority in respect of  $\emptyset$ ? Not according to the Lockean account. That the political community should exercise power over all of its members *everyone already* consents to. 'For when any number of Men have, by the consent of every individual, made a *Community*, they have thereby made that *Community* one Body, with a Power to Act as One Body.'<sup>28</sup> All have given their prior consent to the exercise of political power by the state over all. The manner in which it does so — what laws and policies it implements — is a question of what decision procedure it adopts. Locke thinks majoritarianism is the natural procedure because a single Body must move in the direction that the greater force impels it to. But even if majoritarianism or some other voting procedure is unanimously consented to the fact is that, on the Lockean account, the consent of each to the exercise of political power in the name of all is prior — not temporally but in an order of justification — to the casting of any vote. I have agreed to the state acting in my name, and I may further have agreed to the content of the state's actions being determined by a particular decision procedure. No further giving of consent is needed in order to legitimate my particular actions when I participate as a voter in that decision procedure.

Indeed, the absurdity of seeing political reasonability in this context in Lockean terms is easily exposed. The thought, consonant with the Lockean idea, has to be that the giving and accepting of reasons by citizens for their political actions is necessary in order that consent is forthcoming. The exercise of coercive political power is legitimate only if I consent to it, and I consent to it only if I have been given a reason for doing so. But — to continue the line of reasoning — I am obligated to give my fellow voters and citizens my reasons for voting for  $\emptyset$  that they (if reasonable) can accept. I am obliged to do this because my act of voting for  $\emptyset$  will only be a legitimate exercise of coercive power if my fellow voters consent to the exercise of power to secure  $\emptyset$ . Either way, then, I must give them reasons for  $\emptyset$  that they can accept. This would mean that only a unanimous vote for any law or proposal could render it legitimate. In short consent would be needed to each and every act of the state. This, as Locke pointed out, is not only impossible but otiose once consent has been given to the state (and possibly its mode of legislating). Or I must give my fellow voters reasons for *voting* for  $\emptyset$ , that is for acting *as a voter*. But I do not need to do this if, ex hypothesi,

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28 Locke, §96

everyone, myself included, has consented to our acting in the name of all as a single political body and even to doing so by the means of an agreed decision procedure.<sup>29</sup>

It is, in general, palpably absurd — at least on the Lockean account — to think that I must give my fellow citizens reasons why I am voting as I am, reasons for making the ‘political demands’ I am making. This is so even if one believes that voting is properly regarded as an exercise of coercive political power. The scope of the agreement to the exercise of political power on the classic Lockean account is one that is restricted to the existence of a state, a single political community, acting in the name of all. It does not — and cannot — extend to the actions of the state except, to repeat, insofar as these actions are rendered legitimate *ex ante*, and other things being equal, by one’s agreement to the mode in which the state acts in the name of all. It certainly does not — and cannot — extend to the actions of individual citizens. So much for the question of scope. I turn now to the essential nature of the agreement to the exercise of political power.

## VI

Consent is at least in part an act. It is something an individual does. Of course Smith can consent to  $\emptyset$  by her failure, in specified circumstances and subject to specified conditions, to do anything. ‘Do you all agree to  $\emptyset$ ? I will take silence as consent’ followed by silence may be taken as consent so long as there is an adequate opportunity, at no unreasonable cost to the individuals concerned, publicly to voice dissent.<sup>30</sup> Here staying silent is something the individual does and chooses to do. Consent is also a mental state. Here I follow Heidi Malm in seeing consent as ‘the *signification* of a particular mental state through the performance of a conventionally recognized act.’<sup>31</sup> More precisely, consent is a behaviour that expresses a particular kind of mental state, namely a willing that something may be done.

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29 I might of course be thought under an obligation to give my fellow citizens reasons why I am *not* voting if I choose to abstain from participating in the democratic process.

30 A.J. Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press 1979), 79-80

31 H. Malm, ‘The Ontological Status of Consent and Its Implications for the Law On Rape,’ *Legal Theory* 2 (1996), 148-9

There are difficult questions concerning how consent is given and what circumstances defeat its giving. What, for example, shows that the circumstances in which Smith does  $x$ , which would otherwise count as her giving her consent to  $\emptyset$ , are such that she does not consent to  $\emptyset$ . The important point is that consent is *morally transformative*. It changes the moral relationships in which persons stand to one another. When Smith consents to  $\emptyset$  (however she does this) she puts herself under an obligation to others that she will do  $\emptyset$  or allow  $\emptyset$  to be done. Most importantly, consent can bring it about that what, in the absence of consent would be morally forbidden, is morally permissible. Consent is the giving of permission. It is, *ceteris paribus*, wrong for you to strike me. But if I consent to your hitting me — as I might do by agreeing to box with you — then your action is allowable. *Volenti non fit injuria* is a familiar and central precept of law. Locke thought that, other things being equal, the exercise of power by one person over another was wrong because, to repeat, the natural, non-political, condition is one of perfect jurisdictional equality. By consenting to the very existence of a state that exercises power I, and others who consent to its being in existence, render its exercise of power over us legitimate.

Recall now that the demand for political reasonability is, in broad terms, the demand for reasons that someone does or can accept for the exercise over her of coercive political power. The Lockean account is supposed to tie reasonability to legitimacy. The exercise of power is legitimate if I consent to it. So the Lockean account is illuminating only if my giving of consent is grounded in reasons that I am given or can be given for consenting. More particularly the thought must be: this exercise of political power over me by X is legitimate only if I consent to it, and, further and crucially, I only consent to it if X gives me reasons I do or can accept.

Consider then the following two statements:

- (1) P's doing of  $\emptyset$  to Q is impermissible unless Q consents to P's doing of  $\emptyset$  to Q
- (2) P is obligated to give Q reasons to (consent to) P's doing of  $\emptyset$  to Q

Crucially (2) — both with and without the parenthesised words — is not entailed by (1). P is obligated, by (1), *only* to obtain Q's consent to P's doing of  $\emptyset$  to Q if P intends doing  $\emptyset$  to Q.

Consider the following examples. Smith may not have sex with Jones or operate on Jones unless Jones consents to sex with Smith or consents to Smith operating on Jones. But Smith is not obligated to give Jones reasons why Jones should consent to the sex or to have the operation.

But surely, it will be pressed, must Q not have reasons for consenting to P's doing of  $\emptyset$  to Q? Yes. But these need not be reasons *supplied by P*. P acts permissibly if Q consents to P's doing of  $\emptyset$  to Q *whatever* Q's reasons for consenting and *whoever* is their source.<sup>32</sup>

The following *is* true:

- (3) If P intends to do  $\emptyset$  to Q and knows that his doing of  $\emptyset$  to Q is impermissible unless Q consents to his doing of  $\emptyset$  to Q, then he has a reason to obtain Q's consent to his doing of  $\emptyset$  to Q. Further, he thereby has a reason to do that which is a means to the obtaining of that consent, namely to give Q reasons for consenting to his doing of  $\emptyset$  to Q.

However, in the first place, this reason does not amount to an obligation on P's part to provide Q with reasons why Q should consent to  $\emptyset$ . I think that the doctor is under an independent obligation to provide her patients with reasons for any medical procedure she proposes. A doctor is obligated to do that which promotes the well being of her patient and if she believes that a procedure does promote the patient's well being then she ought to persuade the patient to have the operation, that is, give reasons why this would be a good idea. This — revealingly — does not apply in the case of securing consent to sex. P is under no independent obligation (as Q's prospective lover) to give Q reasons why she should consent to sex with him.

Second, P has a reason only to give Q's reasons to consent to P's doing of  $\emptyset$  to Q. This is not a reason to give Q the reasons why he, P, intends (or desires) doing  $\emptyset$  to Q. It is importantly true then that reasons to consent to  $\emptyset$  need not be reasons to do  $\emptyset$  or to have  $\emptyset$  done to one. I may have reasons to agree to the next meeting of our informal philosophical discussion group being held in my house. It is my turn, and I promised that I would agree to this happening. But I also have reasons not to hold the meeting in my house: it is embarrassing to have my poor decorative taste, lack of cleanliness, lowly housing, etc. revealed to my colleagues.

But surely Q's consent is not given if it is uninformed. Hence P is obligated to provide Q with all the information relevant to the giving of consent. Once again the following is true:

- (3') If P intends to do  $\emptyset$  to Q and knows that his doing of  $\emptyset$  to Q is impermissible unless Q consents to his doing of  $\emptyset$  to Q, then he

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32 Q must at least give informed consent and if Q's 'reasons' bespeak Q's lack of rationality then she is thereby incapable of giving consent.

has a reason to obtain Q's consent to his doing of  $\emptyset$  to Q. Further, he has a reason to do that which is a means to the obtaining of that consent, namely give Q such information that Q can consent to his doing of  $\emptyset$  to Q.

However, in the first place, this reason does not amount to an obligation to supply Q with the relevant information. Again, in the case of the doctor, good medical practice dictates that she should tell her patient about the proposed medical procedures. I am not, similarly, obliged to tell you what having sex with me will involve even if I am confident I know. Second, giving someone information relevant to the performance of  $\emptyset$  is not giving that person a reason to (consent to) the doing of  $\emptyset$ . Consider that a full description of the nature of a medical operation is not, as such, the provision of a reason to have the operation. Reason-giving is essentially persuasive. There is an important difference between offering someone a description of an action or state of affairs and giving them reasons why they should accept the doing of that action or that state of affairs. Thus non-directive counselling should consist in the provision of all relevant information and not persuasive reason-giving.

Once all of this has been made clear it is evident that the essential nature of consent or agreement that is at the heart of the Lockean account cannot explain the demand of political reasonability. Someone can only be put out of the condition of equal freedom and made subject to the political power of another by her own consent. This change in an individual's moral standing is down to an exercise by that individual of her liberty. She is not owed reasons as to why she should consent by the others who would exercise power over her. The legitimacy of the transformation — from a naturally free person to a political subject — is effected by individual consent. It need not be accompanied by the public provision of reasons for the change. Thomas Nagel writes that '[the] task of discovering the conditions of [political] legitimacy is traditionally conceived as that of finding a way to justify a political system to everyone who is required to live under it.'<sup>33</sup> If Nagel understands the Lockean account to be part of the tradition, he is mistaken. On that account the legitimacy of a political system does not require a justification to all by the provision of reasons.

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33 Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press 1991), 33

## VII

I turn now to the Kantian idea that may be the source of the demand for political reasonability. Here the idea in question is less securely rooted in the writings of the eponymous philosopher. So let me say something first about Kant. Kant, like Locke, grounds politics on individual freedom. Indeed it is his respect for the agent as free, equal, and independent, seeking 'his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law'<sup>34</sup> that is a clear source of contemporary Rawlsian versions of liberalism.<sup>35</sup> Kant, like Locke, sees coercion as the opposite of freedom and thus as in need of justification. '[Every] restriction of freedom through the arbitrary will of another party is termed *coercion*'<sup>36</sup> and '[*freedom*] (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity.'<sup>37</sup>

However, Kant and Locke part terms in their approaches to the justifiability of the polity exercising coercive power over free individuals. In the first place, Kant does not follow Locke in thinking that by contracting into political society we abdicate or abrogate our natural liberty in order to obtain a greater and more secure freedom under the state. One 'cannot say: the human being in a state has sacrificed a *part* of his innate outer freedom for the sake of an end, but rather, he has relinquished entirely his wild, lawless freedom in order to find his freedom *as such* undiminished, in a dependence upon laws, that is in a rightful condition' (second emphasis added).<sup>38</sup> Freedom for Kant, who here joins the ancients in their understanding of liberty, is *only* possessed

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34 'On the Common Saying: "This May be True in Theory, but it does not Apply in Practice,"' in *Kant Political Writings*, H.B. Nisbet, trans., and Hans Reiss, ed., with an Introduction and Notes, 2<sup>nd</sup> Enlarged Edition (Cambridge: Cambridge University Press 1991), 74

35 Charles Taylor, 'Kant's Theory of Freedom' in his *Philosophy and the Human Sciences. Philosophical Papers II* (Cambridge: Cambridge University Press 1985), 337

36 'On the Common Saying,' 73

37 *The Metaphysics of Morals*, Mary Gregor, trans. and ed., with an Introduction by Roger J. Sullivan (Cambridge: Cambridge University Press 1996), 6:237

38 *Ibid.*, 6:316

within the political order and subject to law.<sup>39</sup> For Kant the state is a necessary 'conceptual condition for the possibility of the this-worldly realization of freedom.'<sup>40</sup> The argument, in brief, is that freedom requires more than the momentary and merely physical control of external things. It needs the secure and rightful ownership of things. This in turn can only be secured by the legal protection of a right to private property, and thus, at a minimum, the existence of a basic state empowered with the enforcement of these rights.<sup>41</sup> Note, by contrast, that for Locke the right to private property is a natural right possessed and exercised in the state of nature.

A second difference between Kant and Locke is as follows. For Locke the reconciliation of coercion and freedom is effected through a voluntary act of consent. For Kant it is realised in an *a priori* idea of pure practical reason, namely that of *Recht* or law. A 'civil constitution is a relationship among *free* men who are subject to coercive law, while they retain their freedom within the general union with their fellows. Such is the requirement of pure reason, which legislates *a priori*, regardless of all empirical ends.'<sup>42</sup> What right or law secures is the maximal equal freedom of all. 'Right is therefore the sum total of those conditions within which the will of one person can be reconciled with the will of another in accordance with a universal law of freedom.'<sup>43</sup> Law as coercion is rightful according to the following argument.<sup>44</sup> If my free action or condition can coexist with the freedom of all others in accordance with a universal law, then any hindrance to that action or condition is a hindrance to freedom. Coercion (prevention) of that hindrance is 'a hindering of a hindrance to freedom' and thus is 'consistent with freedom in accordance with universal laws, that is, it is right.'

Rightful law is universally legislated. It is everyone putting himself under the law. The test of the 'rightfulness of every public law' is thus that a legislator could have framed his laws so that it 'could have been produced by the united will of a whole people.'<sup>45</sup> Again, '[to] test

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39 Taylor, 'Kant's Theory of Freedom,' 318 & 329

40 Daniel M. Weinstock, 'Natural Law and Public Reason in Kant's Political Philosophy,' *Canadian Journal of Philosophy* 26 (1996), 392

41 *The Metaphysics of Morals*, 'The Doctrine of Right,' Part I Private Right, Ch. 1

42 'On the Common Saying,' 73

43 *The Metaphysics of Morals*, 6:230

44 *Ibid.*, 'Introduction to the Doctrine of Right,' §C and §D

45 'On the Common Saying,' 79

whether any particular measure can be agreed upon as a law for a people, we need only ask whether a people could well impose such a law upon itself.<sup>46</sup> Like Locke, Kant distinguishes between ‘an original contract’ which ‘can come only from the general, united will of the people’<sup>47</sup> and majoritarian decision making. ‘An entire people cannot,’ notes Kant, ‘be expected to reach unanimity, but only to show a majority of votes.’ Hence ‘the actual principle of being content with majority decisions must be accepted unanimously and embodied in a contract.’<sup>48</sup>

However, while Locke sees the legitimacy of coercive state power as stemming from the voluntarily given consent of individuals, Kant is clear that the original contract is not actual. The agreement of individuals to the law is modally characterised. ‘[If] it is at least *possible* that a people could agree to [the law], it is our duty to consider the law as just, even if the people is at present in such a position or attitude of mind that it would probably refuse its consent if it were consulted’ (emphasis in original).<sup>49</sup> Again, ‘so long as it is not self-contradictory to say that an entire people *could* agree to such a law, however painful it might seem, then the law is in harmony with right’ (emphasis added).<sup>50</sup> It is important to be clear about the nature of the modality in question. It is not, as Daniel Weinstock argues, that any law is just if it is merely possible that citizens, whatever their current preferences, could agree to it. It is rather that the law must not be one that it is ‘self-contradictory’ for a people to agree to. It is self-contradictory to support a law that would subvert or vitiate the conditions underlying the capacity of the citizens freely and independently to will, that is, to consent to anything.<sup>51</sup>

Let us grant that this is the way to understand the role of consent in Kant’s legitimation of law. In whatever way it is constrained the consent in question is still hypothetical. What individuals actually agree to or disagree with is beside the point. Moreover, Kant is clear that rightful law as defined cannot be disputed. Rebellion or revolution is against the principles of right; it is contrary to law as a precept of reason. Resistance to any law subverts the original contract and the entire legal order. In

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46 ‘What is Enlightenment?’ in *Kant Political Writings*, 57

47 ‘On the Common Saying,’ 77

48 *Ibid.*, 79

49 *Ibid.*

50 *Ibid.*, 80-1

51 Daniel M. Weinstock, ‘Natural Law and Public Reason in Kant’s Political Philosophy,’ 402-3

consequence, 'the people has a duty to put up with even what is held to be an unbearable abuse of supreme authority.'<sup>52</sup> Indeed, Kant insists that the existing authority 'ought to be obeyed, whatever its origin' and that this principle of reason is captured by thinking of the law as if it were literally holy, legislated by the 'highest, flawless lawgiver' God.<sup>53</sup> As Charles Taylor notes, hard as this may be to swallow from the pen of an apostle of freedom and reason, it is thoroughly consistent with Kant's central thought that the law enjoys its inviolability not 'at the expense of freedom, but rather as constitutive of it.'<sup>54</sup>

## VIII

All of this helps us little with providing a warrant for the demand of political reasonability. Asking for reasons for political actions is strictly superfluous for Kant. What renders any law or proposal right is that it could be legislated by all, and it could be universally willed only if willed in accordance with the principle of right: 'Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.'<sup>55</sup> The thought is that a political action is justified if and only if it is legislated in accord with the principle of right. It is not justified by the provision and acceptance of reasons.

Let me spell this out further. The Kantian idea is that a law is right if everyone could agree to it. As I have already argued in discussion of the Lockean idea, the requirement to give reasons is not entailed by a requirement to obtain consent. In the case of the Kantian idea the further complication is that the consent is given hypothetically. But there are well-known reasons for resisting the idea that consent *is* given hypothetically. Modal characterisations of consent of the form 'P would agree to  $\emptyset$  under C' (where C specifies the conditions, both personal and circumstantial, under which consent is given) do not specify a form of consent that has all the transformative powers of actual consent. What Ronald Dworkin says of hypothetical contracts applies also to hypothetical

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52 *The Metaphysics of Morals*, 6:320

53 *Ibid.* 6:319

54 'Kant's Theory of Freedom,' 330

55 *The Metaphysics of Morals*, 6:230

consent: 'A hypothetical contract is not simply a pale form of an actual contract; it is no contract at all.'<sup>56</sup> Moreover, hypothetical consent does not provide a justification for what would be consented to. Rather it is the case that what can independently be shown to be justified would be agreed to under certain conditions. It is not that  $\emptyset$  is right because P would agree to  $\emptyset$  under C. It is that P would agree to  $\emptyset$  under C because  $\emptyset$  is right. What does the justificatory work is not the agreement that hypothetically could be obtained but the reasons that would motivate this agreement.

Rawls speaks in terms of what citizens 'may reasonably be expected to endorse.'<sup>57</sup> The use of such language suggests either that reasons are given that we expect *will* be accepted or that reasons are given that we know *could* be accepted. As Onora O'Neill notes, political reasonableness for Rawls can mean either the provision of reasons that 'will be accepted by others' or that 'could be followed or adopted by others, whether or not they in fact accept them.' She terms these, respectively, the motivational and modal versions of political reasonability. But, as she suggests, the difference between these two versions in Rawls is minimised by his confidence that those principles of justice that 'citizens who share their political identity *can* agree to are likely to be ones on which they *will* agree.'<sup>58</sup>

Yet actual and hypothetical agreement differ hugely. If there is actual agreement by some group of individuals to some set of principles then it is the fact of their agreement to the principles that serves as a legitimation of these principles. If it is only true that there would be agreement to some set of principles, then it is not the 'fact' of hypothetical agreement that legitimises the principles. Rather, what supplies the principles with a warrant is the reasons that would motivate the individuals in the imagined circumstances to give their agreement. Since Kant, and many who now follow him, employ modal language in their description of agreement, it is best if we restrict ourselves to talk of reasons. Consent — actual or hypothetical — simply drops out of the picture. What is at stake is whether somebody — as citizen or a state agent — could give reasons for their political actions.

However, the question at the heart of this article presses again. Why is the giving of reasons — whether actual or possible — *required*? Grant

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56 Ronald Dworkin, 'The Original Position,' in Norman Daniels, ed., *Reading Rawls, Critical Studies on Rawls's A Theory of Justice* (Oxford: Blackwell 1975), 18

57 John Rawls, *Political Liberalism* (New York: Columbia University Press 1993), 217

58 Onora O'Neill, 'Political Liberalism and Public Reason: A Critical Notice of John Rawls, *Political Liberalism*,' *The Philosophical Review* 106 3 (1997), 416 & 422

that the requirement is satisfied if a citizen could (if reasonable or in principle) give a reason for her political actions. Why is the citizen subject to the requirement? Why *must* she give reasons to others for her political actions? I said earlier that what makes something political and, as such, in need of justification is that it is or involves an exercise of coercive power. An answer to the question that follows from Kant's *moral* theory is that any political action, being an exercise of coercive power, is the treatment of the other — the object of that action — as a means to the ends of the author of the action. Although I do not find this idea perspicuously spelled out and defended, I shall give exemplary statements of what I take is believed to be at stake.

Thomas Nagel asks himself why there is a requirement of impartiality in the exercise of coercion by political institutions. He responds that 'this element of coercion imposes an especially stringent requirement of objectivity in justification.' He adds in a footnote that this requirement 'would be implied, on one reading, by the second formulation of Kant's categorical imperative — that one should treat humanity never merely as a means, but always also as an end. If you force someone to serve an end that he cannot share, you are treating him as a mere means.'<sup>59</sup>

Something similar can be found in Jeffrey Reiman. He defines subjugation as 'any case in which the judgment of one person prevails over the contrary judgment of another simply because it can.' A successful justification — providing the other with a reason she can accept — 'must refute the suspicion of subjugation.' Only in this way can right be distinguished from might, and can it be shown that a judgement prevails not because of superior force, but because reasons have been given for the judgement.<sup>60</sup> Consider yet again Rawls, who believes that there is a 'natural duty of mutual respect which asks [individuals] to treat one another civilly and to be willing to explain the grounds of their actions, especially when the claims of others are overruled' (emphasis added).<sup>61</sup>

I take the underlying thought to be this. P acts politically in respect of Q whenever P proposes that power shall be used to coerce Q into doing or not doing something even though Q judges that she (and others)

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59 Thomas Nagel, 'Moral Conflict and Political Legitimacy,' *Philosophy & Public Affairs* 16 (1987), 217 and n.8

60 Jeffrey Reiman, *Justice and Modern Political Philosophy* (New Haven, CT: Harvard University Press 1990), 2

61 John Rawls, *A Theory of Justice* (Oxford: Blackwell 1971), 179. Compare the weaker requirement that one be 'prepared to give reasons for our actions whenever the interests of others are materially affected' and to present the 'other with considerations that enable him to accept the constraints on his conduct' (ibid., 337-8).

should not be coerced into doing or not doing that thing. However, if P can give Q reasons that Q can accept for being coerced into doing or not doing that thing then the proposed 'coercion' does not amount to P's use of Q merely as a means to P's ends in violation of the categorical imperative.

Let me express this more formally:

- (i) P judges that  $\emptyset$  (for instance, the law should proscribe some class of actions: 'Don't do X')
- (ii) Q judges that not-  $\emptyset$
- (iii) P's political action (voting for  $\emptyset$ ) is in effect a proposal that P's judgment (that  $\emptyset$ ) should *supplant* or *overrule* Q's judgment (that not-  $\emptyset$ )
- (iv) To refute the suspicion of subjugation/to discharge the duty of civility P must give Q reasons for his political action (voting for  $\emptyset$ )

My response to this argument is as follows. First, P needs only to give Q reasons for his political action (voting for  $\emptyset$ ). This is not an obligation to give Q reasons to accept  $\emptyset$ . P might give Q reasons such that Q can or does accept that P is voting for  $\emptyset$  because P does sincerely and conscientiously believe that  $\emptyset$ . Yet it does not and need not follow that Q, having been given these reasons, accepts that  $\emptyset$ . Q can now see that P does judge that  $\emptyset$ . Moreover, Q can recognise why P judges that  $\emptyset$  and accept that P does so conscientiously and sincerely. Yet Q need not share P's judgment. Q understands why P thinks there should be a law proscribing all instances of X *and* accepts that P thinks this for what he, P, believes are good reasons. But Q does not believe these are good reasons and continues to judge that there should not be a law proscribing all instances of X.

The reasons one might give for  $\emptyset$  (supporting a law 'don't do X') need not be (though they often are) reasons why everyone should not do X. Consider, for example, a case of principled bargaining. If Smith votes for the law L1 then Jones will support him in voting for the law L2. Neither law will be enacted unless it has the support of both. Even though Smith is indifferent to, or mildly hostile to, the content of L1 he is strongly supportive of L2. For his part Jones is indifferent to the content of L2 but strongly supportive of L1. Each man can give the other man a good reason for voting for the law he strongly endorses but the other does not.

Second, and perhaps most crucially, P's political action does not amount to the violation of the imperative that P should not use Q solely as a means to P's ends. The cases in which general conformity to a law

serves someone's ends are non-standard. Of course, there may be such cases. Consider — by way of an example — a non-driving seat-belt manufacturer who votes for a law making it compulsory for all newly manufactured cars to have seat-belts. He intends the compulsion of others into the wearing of seat-belts to serve his commercial ends. However, it is not an essential feature of any proposal (that 'All [not] do X') that its enactment serves the interests of everyone who supports the proposal and is at the expense of everyone who opposes the proposal. Of course, insofar as any law promotes the end of public order every citizen will have an interest served by any law. However, discounting this general background interest in the function of law it is exceptional for a law to use someone as a means to the ends of those who support it. Indeed, it is not in the nature of law as such to compel the compliant to be means only for those who favour it. This is not least because law is general in form and thus binding on all, proposers and opposers included. A law compels those who support it as much as those who oppose it.

Again, P's judgment supplants Q's judgment only if P is part of the majority (or whatever is determined by the appropriate decision procedure). As such P cannot propose to supplant Q's judgment. At most P can propose that which, if it turns out to be also supported by a majority, will supplant Q's judgment. However, this is still to misunderstand what P and Q judge. For P's judgment is complex. It is in fact a judgment that  $\emptyset$  and a judgment that whatever proposal is determined as lawful by the agreed decision procedure should be enacted. Q shares P's judgment that whatever proposal is determined as lawful by the agreed decision procedure should be enacted but, unlike P, also judges that not- $\emptyset$ . Both P and Q endorse complex conjunctive judgments. Crucially, the conjunct they share takes priority over the other respective conjuncts in respect of which they differ. Both P and Q, insofar as they accept a political decision procedure, judge that a single agreed outcome should be enacted according to the terms of that procedure — whatever each would wish in advance of the procedure to see enacted. Thus whatever the outcome — whether  $\emptyset$  is or is not enacted — there is a straightforward sense in which P's (most important) judgment does not supplant Q's most important judgment (or vice versa).

For all of these reasons it is false that P's proposal to make a law to which Q would be subject amounts to P's use of Q merely as a means to P's ends. It follows that P does not owe Q a reason she can accept for his, P's, proposal to make a law. Or at least P does not owe her a reason if he is not to violate the categorical imperative. The Kantian idea, like the Lockean idea, fails to provide a ground for the demand of political reasonability.

## IX

This negative conclusion is obviously important. Liberalism, in its contemporary avatar, is centrally committed to what cannot be justified, namely political reasonability. Nevertheless, the following brief concluding remarks are worth making. First, political reasonability may nevertheless be a civic or political virtue. Citizens may not be *required* to give reasons for their political actions. That does not mean that their polity is not better if they do. Second, there may be special circumstances in which there is a requirement of citizens to give reasons for their political actions. Consider, by way of a central example, a case in which a law is particularly burdensome for those who are required, against their best judgment, to comply with its terms. Those who judge the law a good one and who recognise these burdens are, it seems to me, under an obligation to show those with whom they disagree why these burdens are appropriately imposed. This is an obligation appropriately described as one of political civility. Third, to repeat what was said at the outset, there may well be a requirement of political reasonability. All that has been shown is that no warrant for it can be found in the influential theories of Locke and Kant. Fourth, throughout this essay the distinction between agreement to the constitution of the state and agreement to the actions of the state once constituted has been stressed. The liberal, following Locke and Kant, is right to insist that it is the basic fact of our being subject to the collective coercive power of the community to which we belong that is in need of justification. This is what the *original* contract addresses: the very existence of the state as a source of coercive power. But, of course, the original contract constitutes us as citizens, as inhabiting and negotiating a public or political space. Once within that space the original contract does not provide a warrant for the demand that we give one another reasons for all of our political actions.<sup>62</sup>

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