JUSTICE AND AUTHORITY
RAWLS AND KANT ON THE RIGHT TO RULE

John Rawls' impressive and wide-ranging theory of justice presupposes the political and legal institutions of a constitutional democracy at its foundational level, and therefore it does nothing to justify the state's right to rule. Kant proceeded differently: He attempted, in an ingenious way, to justify political authority from the bottom-up. I argue that Kant's approach has much to say for it, given the irreducible moral pluralism that Rawls himself draws attention to.

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Political authority is a moral quality singling out the state among other agents, giving it the right to rule and its subjects a duty to obey. The right to rule entails that the state can legitimately impose laws and enforce them by coercive means, an entitlement which goes beyond any entitlement other agents may have to enforce persons' natural rights; the duty to obey entails that subjects are obligated to comply with the laws legitimately imposed on them by the state, a duty which goes beyond any duty they may have to respect others' natural rights.[1]

Given that all coercion and all departures from equality between moral agents stands in need of justification, I will assume for the purpose of this paper that a baseline skepticism about authority is warranted. Political theories that assign a significant role to the state must therefore be able to supply arguments that establish the state's right to rule. I will argue that John Rawls fails to supply such arguments in his political theory, both as it is developed in *A Theory of Justice* (1971) and in his later work. In both cases, he assumes rather than argues for the state's right to rule, and thus doesn't give us a principled reason to reject anarchy. I then argue that Immanuel Kant does give us such a reason, by showing that justice is impossible to realize without political authority, and I suggest that the Rawlsian can take onboard the Kantian conception of authority. Finally, I argue that the Kantian conception is robust against the challenge to authority recently posed by the prominent market anarchist Michael Huemer.

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Rawls on the Natural Duty of Justice

Rawls discusses political legitimacy and obligation both in the early and the later part of his career, and I will take up both discussions in order.[2] In *A Theory of Justice* (hereafter *TJ*), Rawls argues for principles of justice through the device of a hypothetical choice situation he calls the "original position," in which rational contractors choose principles for themselves under a "veil of ignorance," not knowing

[1] Natural rights are whatever rights individuals hold independently of the state.

[2] I skip his earliest paper on legal obligation in the 1960's, which were superseded by *TJ*, as well as the discussion in *Political Liberalism*, which was superseded by "The Idea of Public Reason Revisited".

who in particular they are; they only know the "general facts" of society and human nature, and their only motivation is to further their own prudential interests (without knowing which particular interests they have as individuals belonging to a certain class, gender, religion, vocation and so on). These epistemic restrictions are meant to ensure a fair, free and unbiased agreement (Rawls 1971:11-15 [§3], 18-21 [§4], 136-142 [§24]).

Having first determined the famous two principles of justice for *institutions* (specifically the "basic structure of society"),[3] Rawls goes on to consider what principles the contractors would choose for *individuals*, concerning (among other things) how they are to be bound to the institutions governed by the principles identified in the first part of the argument. The outcome of this choice is the "natural duty of justice," stating that "first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves" (Rawls 1971:334 [§51]). The basis of this choice is the thought that the natural duty of justice, as a part of the shared public conception of justice in society, would serve to secure and stabilize just institutions: By making general compliance more likely, it facilitates mutual reliance.

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While Rawls thus argues that our political obligation derives from a natural duty of justice, he does not say that we are only obliged to obey laws that are just. In *TJ*, his position seems to be that we have a duty to comply with unjust laws if they are enacted in accordance with a constitution that is just (or at least sufficiently just), and if the laws themselves are not *too* unjust. This is because there is no feasible democratic procedure that can guarantee that only just laws are enacted. Rawls does not offer much help in determining exactly where the limits of justice are, but one thing he does say is that civil disobedience is justified (as an exception to a general principle of obedience) when there are clear violations of equal liberty in a regime that is "nearly just" overall, so we may infer that political obligation holds at least up until that point (Rawls 1971:372 [§57]).

For Rawls, then, the natural duty of justice grounds political obligation. It does not however (and is not supposed to) ground the government's right to rule. Instead, it *presupposes* that the relevant institutions have the right to enact and enforce the rules required by the principles of justice; the only question on the agenda is whether citizens have a general duty to obey. The alternative to the duty of justice that Rawls considers is a conditional obligation to support and comply with those (just) institutions that the individual voluntarily takes part in or accepts the benefits of. If such an obligation were chosen in the original position instead of the natural duty, the state would presumably still have the entitlement to coerce those who do not comply. It may perhaps be thought that the justice of an institution is sufficient for it to have authority to enforce compliance with its requirement, but that cannot be right: The Red Cross may both be just in itself and

[3]The first principle guarantees a set of equal basic liberties for all citizens, while the second requires that social and economic inequalities must be compatible with fair equality of opportunity and work to the benefit of the least-advantaged members of society. Some rather minor revisions aside, these principles remained constant from *A Theory of Justice* and throughout Rawls' career (Rawls 1971: 60 [§11], 302 [§46]; Rawls 1996: 5-6).

contribute importantly to justice, but if it were to take up coercive powers, it would not gain any right to coerce people just like that.[4] So an account of the authority even of just institutions is needed, but not given.

Rawls *might* have attempted to ground political authority in the natural duty of justice.[5] For such an attempt to be successful, he would have to show that a state possessing political authority not only *can* be just, but also is *necessary* to achieve justice. If we have a duty to realize justice, and if it can be shown that it is impossible for us to fulfil this duty without a state with special coercive entitlements, this could successfully justify political authority. In order for this not to be a trivial exercise, however, it is necessary that the conception of justice itself does not *presuppose* political authority; that is to say, a conception of justice cannot ground an argument against anarchy if it begs the question against it. To give a blatant example, if a conception of justice prescribes (as a fundamental requirement) that all should have the opportunity to hold government office, it will not be a substantial result to demonstrate that a government is required to realize this conception of justice; authority must then be argued for in some independent way, and cannot be grounded in the requirements of justice.

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Although less blatantly, it may seem that Rawls' conception of justice does exactly this: He says from the outset that the primary subject of that conception is "the basic structure of society," which in its definition includes "the political constitution," the "legal protection" of freedoms and "the political system," among other institutions; furthermore, the conception applies in the first instance to society conceived as a "closed system isolated from other societies" (Rawls 1971:7-8 [§2]). This strongly suggests that the society in question has already formed a state before questions of justice arise. In the argument for the principles of justice for the basic structure of a closed society, the political and legal institutions of that structure are assumed to exist already; there is therefore no point for Rawls to demonstrate that the realization of his conception of justice required these institutions.

Rawls does argue that a system of penal sanctions are needed to secure the stability of social cooperation (even in the ideal case of a well-ordered society where all have an effective sense of justice) because people may "lack full confidence in one another" and such a system "removes the grounds for thinking that others are not complying with the rules" (Rawls 1971:240 [§38]). He does not, however show (or argue) that it is required by justice as such; if an anarchist were to argue that there could be other sources of mutual confidence without the state, the Rawlsian counterargument would have to be at the level of empirical probability rather than principles of justice. Rawls' discussion of penal sanctions assumes that people's rights and liberties could still be in place (and still be valid) even absent these coercive powers, even though the expectation of their being complied with would be lowered. [6]

I conclude that *TJ* does not contain the materials required for a robust defense of political authority. I turn now to a discussion of his later work, and will argue that it is equally lacking on this score, and for some of the same reasons.

Rawls on Reciprocity and Legitimacy

Legitimacy, as a concept distinguished from sufficient justice, does not figure in *TJ*, but it is highly prominent in

[4]A. John Simmons develops a more fanciful counterexample, focusing on political obligation rather than legitimacy, in his *Moral Principles and Political Obligations* (1981, p. 147ff).

[5]Jonathan Quong attempts to make this move in his *Liberalism Without Perfection*, building on the Rawlsian natural duty of justice (Quong 2010, p. 126ff).

[6]Rawls relies here on H. L. A. Hart's argument in *The Concept of Law* that the concept of a rule is conceptually prior to the concept of a sanction, so a legal right can be valid even absent sanctions (reference and discussion in Ripstein, 2009, pp. 53-54).

[7]Restrictions of space prevent me from defining all the technical terms Rawls introduces. I trust that they have enough intuitive sense to furnish understanding, and hope that nothing very important turns on their precise specification.

Political Liberalism and subsequent articles, where Rawls argues specifically that we are morally bound to support a legitimate constitution and to comply with legitimate laws. In this later discussion, Rawls does not work with the concept of justice at all. What could be the motivation for this conceptual shift? I believe the reason is twofold.

First, in *TJ* Rawls' aim was to work out, precisely, a theory of justice that could be an alternative to utilitarianism, and the questions of legitimacy and obligation were subordinate to this aim. In his later work, Rawls' aim was, more narrowly, to "work out a political conception for a (liberal) constitutional democratic regime" (Rawls 1996b:xxxix);[7] it explicitly presupposes the particular social form and political tradition of a modern democracy. This is underscored by Rawls' claim that a political conception must rely on "ideas seen as implicit in the public political culture of a democratic society" (Rawls 1996b:13). Within this framework, it is natural that political obligation arises from a conception of democratic citizenship, tied to the legitimacy of the democratic procedure, rather than from a natural duty of justice.

Second, and relatedly, Rawls in his later work was concerned with the philosophical implications of a particular feature that he thought was characteristic of modern democracy, namely, its deep pluralism. In *TJ*, Rawls had assumed the possibility of a "well-ordered society" in which all citizens share and are motivated to act on the same conception of justice (Rawls 1971:5). By the time he wrote the article "The Idea of Public Reason Revisited" in 1996, he thought that even in a well-ordered society reasonable disagreement would go deeper, and that the best that could be hoped for was an overlapping consensus among reasonable citizens on a family of liberal, political conceptions of justice, and not on any one conception in particular (Rawls 1996a:450ff). Given this pluralism even at the level of basic principles of justice, it is unhelpful to describe the grounds and limits of political obligation in terms of "near" or "sufficient" justice, as each conception of justice might have its own view about where the relevant threshold should be set. For reasons pertaining to the need of stability and mutual assurance, then, citizen's political obligation ought to be determined by a common standard (that of legitimacy) rather than by any one conception of justice.

Rawls' principle of legitimacy is based on a deeper moral idea expressed in his "criterion of reciprocity," which requires that when someone proposes terms of social cooperation, they must think it "at least reasonable for others to accept them, as free and equal citizens" (Rawls 1996a:446). Reciprocity is meant to mark out the political relation in a constitutional democracy as one of civic friendship (cf. Rawls 1996b:xlix). Conceptions of political justice cannot fulfil the criterion of reciprocity if at least some citizens cannot reasonably accept its requirements. Conceptions that fail this test, Rawls argues, cannot be part of the public reason of a democratic society, which is to be regarded as a fair system of cooperation among free and equal citizens; and laws and policies (at least on matters of fundamental importance) that are not supported by public reason cannot be legitimate and thus do not oblige citizens.

Reciprocity is meant to mark out the political relation in a constitutional democracy as one of civic friendship. Conceptions of political justice cannot fulfil the criterion of reciprocity if at least some citizens cannot reasonably accept its requirements.

Here is Rawls' full statement of what the criterion of reciprocity implies for legitimacy and political obligation:

> …when, on a constitutional essential or matter of basic justice, all appropriate government officials act from and follow public reason, and when all reasonable citizens think of themselves ideally as if they were legislators following public reason, the legal enactment expressing the opinion of the majority is legitimate law. It may not be thought the most

[6] Engelsk versjon: "[Intuitionism] considers the falling apart of moments of life into qualitatively different parts, to be reunited only while remaining separated by time, as the fundamental phenomenon of the human intellect, passing by abstracting from its emotional content into the fundamental phenomenon of mathematical thinking, the intuition of the bare two-oneness. … This intuition of two-oneness … creates not only the numbers one and two, but also all finite ordinal numbers."

[7] Restrictions of space prevent me from defining all the technical terms Rawls introduces. I trust that they have enough intuitive sense to furnish understanding, and hope that nothing very important turns on their precise specification.

> reasonable, or the most appropriate, by each, but it is politically (morally) binding on him or her as a citizen and is to be accepted as such. ... Hence the idea of political legitimacy based on the criterion of reciprocity says: our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions – were we to state them as government officials – are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons. (Rawls 1996a:446-447)

This view of legitimacy does not have any bite unless the criterion of reciprocity can be shown to disqualify some conceptions of justice as illegitimate. Rawls' view on this matter, so far as I understand it, is that only conceptions of justice that guarantee all citizens basic rights and freedoms as well as an adequate provision of resources can successfully meet the criterion; there are no conceptions that both satisfy the criterion of reciprocity and justify that some citizens should not have these basic goods (Rawls 1996:446, 450).[8] Thus, if a society's constitution as well as its most important laws and institutions conform to these requirements, its citizens are obliged to obey. In this way, then, the criterion of reciprocity serves to delimit the range of reasonable disagreement about justice and thereby to ground a standard of legitimacy without relying on any specific conception of justice.

Does this standard of legitimacy support the judgment that (at least some) actual states, as we know them, are legitimate and that (at least some) real-world citizens therefore have political obligations? A problem for the view as stated is that it seems to make legitimacy contingent on the actual mental states of political agents (government officials, legislators, citizens); namely, how they are motivated (they must "act from" public reason), how they think of themselves and what they "sincerely believe" and "reasonably think." How can we possibly know, in any actual case, whether these requirements are met?

Even if we *could* know other people's thoughts and motivations – or even if we, more realistically, were to replace Rawls' intentional descriptions with behavioral descriptions – we would most likely find that the stated requirements *do not hold* in our present societies. As we all know, motives ranging from opportunism and cynicism to self-deception and confusion are all part of the daily life of politics. If Rawls' account of legitimacy only holds under ideal conditions where such motives are not prevalent, it might in fact seem to entail anarchism for real-world states in our present non-ideal conditions, so that we must conclude that we as citizens are not presently under political obligation.

In light of these objections, a revised version of Rawls' idea of legitimacy might simply state that laws and policies are legitimate if they are justified by some reasonable political conception of justice (consistent with the criterion of reciprocity), and we are obliged to obey legitimate laws and policies. This brings us much closer to his early position in *TJ*, and the same problems recur (although for slightly different reasons): Rawls does not give a principled criterion to decide against anarchy and thus does not justify authority. Consider that anarchist conceptions of justice must either be included or excluded in the "reasonable disagreement" about justice in Rawls' scheme. If they are included, Rawls needs an independent argument to support political authority, since the reasonable conceptions of justice are divided on the issue. If they are excluded, we need an independent reason for this exclusion; if the reason is simply that anarchism is inconsistent with authority, again, we need another argument to support authority. Rawls does not give us such an argument.

Might the reason for excluding anarchist conceptions of justice from the reasonable disagreement simply be that they fail to meet the criterion of reciprocity? An anarchist may claim to the contrary that the terms of cooperation she offers are peaceful and non-oppressive, and thus perfectly fair and reasonably acceptable to others, in conformity with reciprocity, and that she therefore should be counted as reasonable. She may also argue that a decent anarchy would provide people with the basic rights, liberties, opportunities and resources they could reasonably want through voluntary transactions and associations, under no less optimistic assumptions than those that motivate Rawlsian ideal theory.[9] What could one answer on Rawls' behalf? He does not, either in *TJ* or later, offer a principled argument to the effect that a state government is *required* to secure the basic goods, and so his account of liberal

[8]In addition, the criterion of reciprocity requires that fundamental laws and policies must be justified by reference to political values only, and not values drawn from comprehensive religious or philosophical worldviews that cannot be part of society's public reason.

[9]Ideal theory assumes the existence of a "well-ordered society" under reasonably favourable natural and social conditions, where "Everyone is presumed to act justly and to do his part in upholding just institutions" (Rawls 1971:9).

[10]By the way, see Huemer's arguments against Rawls' "hypothetical contract theory" that anarchism cannot simply be written off as motivated by more biased, unreasonable or irrational arguments than other political views (Huemer 2013: ch. 3).

conceptions of justice do not help to justify political authority (and thereby refute the anarchist) by itself. If we were to revise his account to say that a reasonable conception of justice must prescribe not only the provision but also the legal protection of the basic goods by government, we would again beg the question against anarchy, absent an independent argument to motivate this requirement.[10]

Kant on the Rightful Condition

In her critique of *Political Liberalism*, Onora O'Neill argues that the critical force of Rawls' account is blunted by his assumptions of specific institutions and conceptions: Political boundaries and identities, she argues, are "a central domain of thinking about justice rather than its fixed parameters," but these matters are taken off (or moved far down) the political agenda by Rawls' conception of public reason (O'Neill 1997:420). Her topic is not anarchism, but my discussion of that topic affirms her verdict. She suggests that a more orthodoxly Kantian approach to political philosophy, which does without Rawls' assumptions, might "serve to query or to justify rather than to take for granted the institutions that constitute political identities" and "allow for the possibility and the importance of justifying the wider political order" in which identities and institutions are constituted and contested (O'Neill 1997:427).

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I will now try to show, very briefly, how Kant goes about to justify the political order and its coercive institutions in his defense of republican government in "The Doctrine of Right," which was published as the first part of *The Metaphysics of Morals* in 1797. This is where we find Kant's final and systematic treatment of legal and political philosophy. Instead of assuming institutions and treating these as the primary subject of justice, as Rawls does, Kant starts out from a fundamental principle for just or rightful interaction between individuals, namely, the "Universal Principle of Right": "Any action is right which by itself or by its maxim allows the freedom of choice of each to coexist with everyone's freedom in accordance with a universal law" (Kant 1996a, AK 6:230, translation altered). The practical implication of this is that coercion is only rightful if it is consistent with freedom in accordance with universal law, by virtue of "hindering a hindrance to freedom" (AK 6:231). Consequently, each person has an innate right to external freedom, understood here as "independence from being constrained by another's choice" (AK 6:237), compatible with everyone else's equal right.

At this level of basic principles, nothing is presupposed about institutions. Kant then goes on to argue from these basic principles to political authority in two steps.[11] In the first step, he argues that the right to freedom requires institutions of private right (property, contract, family) for its realization; in the second, he argues that these institutions of private right in turn require institutions of public right (the state, specifically republican government) in order to be fully legitimate.

The reasoning behind the first step is that as embodied persons in potential interaction with others, we cannot meaningfully pursue any ends unless we can have determinate and enforceable claims (in Kant's terminology, "conclusive" claims) to external things through property rights, to others' performance of actions through contract rights, and to status relations to other persons through family rights. Without such conclusive claims, our external freedom will be subject to the will of others.

The reasoning behind the second step is that our claims to these things can legitimately be made determinate and enforceable only by an impartial agent who can settle disputes uniformly and enforce settlements consistently and universally, and whose verdict cannot be contested. If any agent without these features were to determine and enforce rights, freedom would not be equal. An agent possessing these features can only be a sovereign public authority – in other words, a state. Therefore, as Helga Varden puts it, justice is impossible in the state of nature, and can only be realized under a legitimate republican government that establishes the rule of law (Varden 2008; see also Ripstein

[11]The structure of Kant's argument is similar to that of other social contract theorists, such as Hobbes and Locke, who also attempt to justify public authority by relying on assumptions about the rights of individuals and the problems of securing them in a "state of nature". Kant's argument is characteristic in that he aims to show that the state is morally (and not only prudentially or strategically) necessary.

[12]Assuming Kant's fundamental principles to be sound, which is of course a big assumption, but I cannot go into that matter here. In this essay, my concern is with the strategy of argument rather than the content of principles.

2009:ch. 6-7).

Thus Kant, unlike Rawls, gives us a principled reason to reject anarchy and support authority founded on basic requirements of justice.[12] I want to add that while Kant's approach to political philosophy is very different from Rawls', I see no reason why a Kantian account of authority cannot be amended to a Rawlsian theory of justice, if each part is suitably adapted to the other.[13] I offer some brief remarks on this in the final section.

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Huemer's Challenge

Finally, I will suggest how the Kantian, justice-based conception of authority can stand up to the challenge posed by Michael Huemer in his recent defense of market anarchism. I cannot take up all his arguments here, but I will offer some remarks on what he describes as his "general strategy" of argument against authority. Having rejected traditional and hypothetical social contract theories as well as democratic, fairness-based and consequentialist theories, Huemer concedes that these familiar accounts of authority do not exhaust the possibilities, and so his argument is not complete. He then describes his general strategy, which he suggests can be employed against other accounts of authority as well:

> A theory of authority will cite some feature of the state as the source of its authority. My strategy begins by imagining a private agent who possesses that feature. … We then realize that intuitively we would not ascribe to that agent anything like a comprehensive, content-independent, supreme entitlement to coerce obedience from other people. And so we conclude that the proposed feature fails as a ground of political authority. (Huemer 2013:179)

Huemer concedes that this strategy has an Achilles heel: "Of course, this will not be possible if the feature in question entails statehood" (Huemer 2013:179). This, I believe, is exactly the case with the Kantian account of authority I sketched. The features of the state that ground its authority on that account – the features of being an essentially impartial and supremely powerful agent who can enact and uphold a uniform, public set of rules – *are* precisely the features that make it a state. As Louis-Philippe Hodgson puts it (focusing on property as the most important part of private right), "enforcing our property rights in a fully justified manner simply amounts to putting in place a state; there is no conceptual distance between the two ideas" (Hodgson 2010a).[14] On this score, then, the Kantian account is robust against Huemer's strategy.[15]

Now, one may object that the features that are supposed to ground the state's authority on Kant's account, with its focus on the specification and enforcement of private rights, in fact only ground a very limited form of authority. Huemer argues that justifications of authority that refer to specific, content-dependent values or benefits secured by the state (such as the prevention and resolution of conflicts over rights) at best establish some form of minarchy, a minimal state with strictly limited authority, and not the comprehensive and content-independent authority associated with modern states (Huemer 2013:100). This raises the question: If, on the Kantian account, the state is needed to conclude and enforce private rights, why may it do anything more?

To this, I reply that on Kant's view the state's legitimacy is in fact limited to what is necessary to establish, maintain and ensure the stability and well-being of a civil condition in which all may enjoy external freedom: Paternalism, moralism and perfectionism are ruled out as grounds of policies. Still, this goes beyond simply enforcing private rights. In the first place, the state must determine exactly what those rights are. For example, on the Kantian view, the state is not needed merely to protect individuals against theft, as per the consequentialist argument Huemer con-

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[13]Relatedly, Helga Varden has argued that Rawls is lacking an account of private right in order to complete his theory and to defend his emphasis on the basic structure against criticisms by G. A. Cohen, who is an egalitarian (Marxist) anarchist (Varden 2010). She shows that Rawls runs into problems because his conception of justice begins at the level of public right.

[14]In a similar argument, Arthur Ripstein says that on Kant's view "the power to resolve disputes in accordance with law must be fully public if it is to be exercised at all. The same is true of the power to enforce binding resolutions of disputes, and the more general ability to make laws in accordance with an omnilateral will" (Ripstein 2009:232).

[15]Huemer will, of course, object to Kant's argument that justice is impossible in the state of nature. He argues for a stateless society in the second part of his book, which I am not in a position to assess here. Again, my present concern is principally the validity of the argument and not its soundness.

siders, but to define exactly what theft is in the first place; the state's authority stems in part from its role in making determinate what actions constitute theft. The same goes for breach of contract and other crimes. Kant's argument from external freedom only shows that there must be some scheme of property, contract and status rights, not exactly how that scheme should be designed (Hodgson 2010a:62). The very idea that rights are not conclusive in the state of nature suggests a leeway of legitimacy in the system of rights the state puts in place; it does not have to be (for example) a system of free-market capitalism.

Furthermore, precisely because the state is a public authority entrusted with the role of acting on everyone's behalf, and because it is necessary for a civil condition, it may legitimately do things that no other agents may do by coercive means. For instance, measures aimed to improve the welfare of citizens can be legitimate as means of "securing a rightful condition," by making the people more willing and able to support and defend the state (Kant 1996b, AK 8:298).[16] Also, the state is entitled to establish what Arthur Ripstein calls the public preconditions for equal private freedom: public roads, markets and other infrastructure that enable all citizens equally to engage in voluntary transactions (Ripstein 2009:248-252). Moreover, the premise that the state must enact and enforce rights consistently with everyone's right to freedom as independence, suggests that it should ensure that the system of rights it enacts does not create new dependency relations. This may ground the legitimacy of welfare provisions that aim to secure the independence of all citizens such as public education, health care and support for the poor (Guyer 2000 suggests such a reading). The same reasoning may perhaps be extended to cover even public support for the arts, the press, libraries and other institutions of civil society to maintain wide access to knowledge, debate and cultural expressions.

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These are only examples, and although some of them go beyond Kant's text, they are not inimical to its spirit.[17] On the basis of these examples, we can bring Rawls into the picture again and say that there is room for *reasonable disagreement* about exactly what is required to secure and maintain a civil condition. Different conceptions of justice may all be reasonable provided that they do not appeal to "comprehensive" values and ideals beyond reasonable interpretations of the "political" values implicit in the idea of the civil condition, and different sets of laws may be legitimate if they are justified by these conceptions. In this way we can make room for reasonable disagreement about justice consistently with political authority and without begging the question against anarchy. The view is then robust against Huemer's criticisms and successfully accounts for authority.

Conclusion

Burton Dreben emphasized in a famous lecture that "Rawls always begins *in mediis rebus,*" that is, in the middle of things (Dreben 2002:322). As we have seen, this is true (in different ways) of Rawls' account of political legitimacy and obligation both in his early and his late work. Whatever might be the benefits of this approach, it also has the following cost: you cannot justify the things you start in the middle of. In order to justify things, you must have some vantage point that is prior to them, from which the justification can proceed.

Dreben himself was frank about this – more so than many supporters of Rawls have been – and he saw it as a benefit rather than a cost. This is clear from his reply to a questioner who asked how he would justify liberal constitutional democracy over Dostoevsky's benevolent totalitarianism: "What Rawls is saying is that there is in a constitutional liberal democracy a tradition of thought which it is our job to explore and see whether it can be made coherent and consistent. That is hard enough to do.

[16]Even if a "*paternalistic government*" that has the welfare or happiness of the people as its *goal* is, for Kant, "the greatest despotism thinkable", as a reviewer from the editorial board correctly reminds me.

[17]The point is not, then, that Kant approved or would have approved of all these measures. For a good review of Kant's remarks about welfare provisions and the various interpretations of his views, see Baiasu (2014).

We are not arguing for such a society. We take for granted that today only a fool would not want to live in such a society" (Dreben 2002:328). Similarly, he would also of course reject anarchism and the baseline skepticism about political authority that was my starting point in this article.

Still, the features that constitute political authority are surely something that calls out for a justification or at least an explanation from within a political philosophy. Even if we do not agree with Robert Nozick that the question of "whether there is to be a state at all" is "The fundamental question of political philosophy" that should take precedence to all other questions, we may at least agree that it is *an* important question (Nozick 1974:4). This is not least so for a theory that takes the fact of deep pluralism as its starting point and tries to find a basis for civic friendship in spite of this pluralism. It is a fact of our diverse democratic societies that they contain anarchists, some of them even intelligent philosophers like Michael Huemer (and G. A. Cohen, cf. note xii), and they surely deserve an answer. Even if they are in fact foolish, unreasonable or irrational (as Dreben and perhaps Rawls would have it), there must at least be reasons for why that is so. Shouting names instead of giving reasons is surely not a sign of civic friendship or of good philosophy.

To put the point more generally, it is a characteristic of our political culture that there are people who question and object to parts of that culture. Treating the ideas and concepts of the political culture as fixed starting points is disrespectful of those people as well as a strategy that risks self-defeat. A more Kantian political liberalism, as I have suggested, will try to justify institutions to all those who are subject to them by reference to a more basic principle of justice, while still respecting reasonable pluralism about moral, religious and philosophical doctrines. The potential benefits of this approach is worthy of further attention and exploration.

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