

## Justification, Legitimacy, and Social Embeddedness: Locke and Rawls on Society and the State

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“The fundamental question of political philosophy,” wrote Robert Nozick memorably, “is whether there should be any state at all.”<sup>1</sup> A. John Simmons concurs. For him, the task of “justifying the state” must take the following form: we should assume anarchism as a theoretical baseline and demonstrate that there can be at least one state type that is neither immoral nor inadvisable.<sup>2</sup> Justification is a separate task, however, from showing that any particular state is legitimate for a particular individual, which means that the former has the right to rule over the latter. In “Justification and Legitimacy” Simmons contends that Locke’s political philosophy provides the model for the conceptual distinction between state justification and state legitimacy which has been lost in what he terms the Kantian turn of contemporary political philosophy. Modern followers of Kant, John Rawls chief among them, work with a conception of justification that is “doubly relativized” in comparison with the Lockean notion.<sup>3</sup> Instead of providing anarchists with objective reasons for having states, Kantian justification is

offered to those who already agree that *some* kind of state must be justified, and it is justification relative to the moral positions of those who will make up the society in question.<sup>4</sup>

This double relativism is regrettable because it

obscures the difference between two central ways in which we should (and do) morally evaluate states, and it generates confusions about other serious practical issues, such as those surrounding our moral obligations to comply with law.<sup>5</sup>

In particular, Simmons charges that a follower of Kant “in effect tries to make it seem” that state justification is sufficient for state legitimacy.<sup>6</sup> For followers of Kant like Rawls, justification is achieved by a hypothetical social contract, and, according to Simmons, Rawls’s view entails that citizens are obligated to obey the laws of their just states because of a hypothetical

justified. Think of a theory of obligation as giving an account of why and under what circumstances citizens are required to obey justified rules or arrangements.<sup>12</sup>

Thus for Stark, establishing state legitimacy is synonymous with justifying having states, but both are distinct from demonstrating that any citizens are obligated to particular states. Once we sort out the terms, however, Stark and Simmons are in accord in insisting that the question of the justification of a state should be kept separate from issues concerning the right of a state to coerce individuals under its aegis. Where they disagree is on whether or not Rawls recognizes this fact. Simmons argues that Lockean justification is necessary but not sufficient to establish a state's right to rule over individuals, but that for Rawls justification is intended to be sufficient for obligation. Stark, however, insists that justification provided by Rawls is not intended to be sufficient to establish political obligation:

Hypothetical consent is designed to show that political principles are justified . . . Hypothetical consent does not show that one is obligated to follow such principles, or that the state is licensed to enforce such principles.<sup>13</sup>

The following facts favor Simmons's interpretation of Rawls over Stark's.

Rawls has a duty-based theory of political obligation. Citizens in general have a duty to obey the laws of their just or nearly-just society.<sup>14</sup> In addition, the person is seen . . . as a free and equal citizen, the political person of a modern democracy with the political rights and duties of citizenship, and standing in a political relation with other citizens.<sup>15</sup>

All individuals are to be conceived of as citizens, where the "the fundamental political relation" of citizenship has two "special features": citizens are situated within the basic structure of a society without having a choice in the matter, and citizenship is a relation of free and equal beings who exercise ultimate political power as a collective body.<sup>16</sup> As well, what is called, the criterion of reciprocity is used to answer the question of how citizens so related can be bound to honor the structure of their constitutional regime and to abide by the statutes and laws enacted under it in the following fashion: "our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions."<sup>17</sup> This specifies the conditions in which a citizen may be said to be under a duty to obey her state and in effect means that justification is both necessary and sufficient for obligation. Citizens can be bound to abide by the laws enacted within their state when the laws are justified by the right reasons but not otherwise.<sup>18</sup>

agreement made by their hypothetical representatives. However, it is a widely held principle that an individual cannot be obligated by the consent of others unless prior consent on her part has granted those others the right to consent for her. But such prior consent would amount to an actual rather than a hypothetical contract. In a recent paper Cynthia Stark calls just this criticism of hypothetical consent theories the "standard indictment" and takes pains to show that it is misguided.<sup>7</sup> She focuses on Rawls and Nagel and contends that for them justification is merely necessary for legitimacy, which would place them in agreement with Simmons, who writes that "the justification of a type of state is necessary for consent to a token of that type to be binding," where consent, on his view, establishes legitimacy.<sup>8</sup>

### 1. Stark versus Simmons on Rawls

Matters are complicated by the terminological variance between Stark and Simmons. First, her usage of "justification" is decidedly closer to that imputed by Simmons to the followers of Kant than Locke's. Stark asserts that justification must be directed to everyone in society. Assuming that Stark means everyone in the particular society in question, this is already a relativized notion of justification when contrasted with Locke's demand that the state be justified to all moral agents everywhere. Furthermore, justification "cannot be grounded in any particular moral perspective."<sup>9</sup> Both conditions follow from Rawls's view that the fact of reasonable pluralism necessitates that political philosophy not presuppose the truth of any particular ethical view to the exclusion of alternatives.<sup>10</sup> Justification is not universal because there is no universal consensus on normative principles required for justification. Furthermore, justification cannot appeal to one particular intra-societal comprehensive doctrine, because within a society many people will reasonably possess comprehensive doctrines incompatible with it. That means that a shared fund of principles must be found that is the basis of an overlapping consensus for all reasonable comprehensive doctrines. The shared fund, for Rawls, the public political culture, will likely be unique to the society, again relativizing justification to the societal level. The justification offered by Rawls is, as Simmons put it, "offered to those who already agree that some kind of state must be justified, and it is justification relative to the moral positions of those who will make up the society in question."<sup>11</sup>

Simmons regards legitimacy as the logical correlate of political obligation, such that a state is legitimate with respect to a particular citizen if that citizen is obligated to it. However, for Stark we should

[t]hink of a theory of legitimacy as giving a justification of political principles or arrangements. A legitimate principle or institution is one that is

