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INNATE RIGHT, INDETERMINACY, AND OFFICIAL DISCRETION: A PUZZLE FOR KANTIANS

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ABSTRACT. This paper poses a puzzle for contemporary Kantian political philosophy. Kantian political philosophers hold that the state's purpose is to secure the conditions for people's innate right to equal freedom, while at the same time claiming that innate right does not give a determinate set of conditions that the state is to bring about. Officials, then, have to make decisions in cases where the considerations of innate right provide no further guidance. I argue that, intuitively, in such cases there are (i) some further considerations that officials may appeal to and (ii) some further considerations that officials may not appeal to in order to decide among the options consistent with people's innate right and then raise difficulties for the ability of current Kantian accounts to explain how they can accept both (i) and (ii). I conclude by suggesting one potential path forward for Kantians to address this puzzle.

I. INTRODUCTION: A QUESTION FOR KANTIANS

Kantians justify the state's authority on the grounds that such authority is necessary to secure the conditions for people's innate right to equal freedom through establishing a system of rights—particularly 'acquired rights' to property and contract.[1] The state is able to do this because it can represent a 'public' perspective—a perspective that only takes people's innate right as its end. At

[1] Accounts of the Kantian position include Louis-Philippe Hodgson ('Kant on the Right to Freedom: A Defense'. *Ethics*. Vol. 120. No. 4. pp. 791–819. 2010; 'Kant on Property Rights and the State'. *Kantian Review*. Vol. 15. No. 1. pp. 57–87. 2010), Japa Pallikkathayil ('Deriving Morality from Politics: Rethinking the Formula of Humanity'. *Ethics*. Vol. 121. No. 1. pp. 116–147. 2010; 'Neither Perfectionism nor Political Liberalism'. *Philosophy & Public Affairs*. Vol. 44. No. 3. pp. 171–196. 2016), Arthur Ripstein (*Force and Freedom: Kant's Legal and Political Philosophy*. Harvard University Press. 2009), and Anna Stilz (*Liberal Loyalty: Freedom, Obligation, and the State*. Princeton University Press. 2009; 'Why Does the State Matter Morally?' in *Varieties of Sovereignty and Citizenship*. Eds. Sigal Ben-Porath and Roger Smith. University of Pennsylvania Press. pp. 244–264. 2012).

the same time, innate right does not give a determinate set of moral conditions that the state is to bring about. The state must make 'determinate something that is morally binding but by itself partially indeterminate'.[2] Those who occupy roles in exercising state power—legislators, administrators, judges, or what we might generally call 'officials'—must make decisions about how to secure the conditions for people's innate right when there are multiple permissible options.[3]

This discretion requires Kantians to have a theory regarding how officials may exercise their authority. While officials may appropriately use their discretion in carrying out their roles, '[a]ny such judgment, discretion, or consideration of facts has to be exercised within the terms of the mandate' so that an official may not act 'in ways unrelated to his or her mandate'.[4] These constraints allow officials to exercise authority without making those subject to their decisions an instrument of their private will. But what is it for an official to act in a way unrelated to their mandate in exercising their discretion? My concern here is in cases in which an official's mandate does not require a unique course of action and so the official cannot decide what to do on the basis of their mandate alone. In these cases, are there any further considerations—considerations not required by innate right and the official's mandate—that an official may use consistent with the state constituting a public perspective? Are there any further considerations which, if an official acted on them, would result in the state constituting a private perspective?

Intuitively, it seems that we should answer 'yes' to both questions. That is, (i) there are some further considerations officials *may* use and (ii) there are some further considerations officials *may not* use when exercising their discretion in enacting laws and policies. The kinds of considerations in question are those the officials use in *justifying* their decision. That is, officials may, for instance, use

[2] Ripstein, *Force and Freedom*, 224.

[3] For simplicity's sake, I will generally refer to people's 'innate right' as the primary concern of officials in their decision-making and treat securing innate right as the purpose of the state. This is slightly imprecise, as within Kantian political philosophy the concern of officials is establishing a system of rights, particularly acquired rights, which secures the conditions for people's innate right to equal freedom, but nothing in my argument turns on this simplification.

[4] Ripstein, *Force and Freedom*, 202. Also Stilz, 'Why Does the State Matter Morally?', 254.

considerations of efficiency, consistency, and fairness to select a policy, but not considerations about their own likelihood to profit or what will do the most harm to their political enemies. Considerations of the first sort are appropriate grounds for an official to exercise authority—roughly speaking, they could, on their own, justify a decision given no countervailing considerations. On the other hand, considerations of the second sort are inappropriate grounds for an official to exercise authority—even without countervailing considerations, these considerations are not the sort that can justify a decision.

This paper addresses the prospects of Kantians arriving at this intuitive position. After describing the Kantian project (Section [II]), I pose a *prima facie* puzzle for how Kantians can answer 'yes' to both questions (Section [III]). The puzzle is that the part of the Kantian project which explains why a Kantian might accept (i)—that there are *some* further considerations that officials may use—seems to undercut accepting (ii)—that there are *some* further considerations that officials may not use—and *vice versa*. If so, then the Kantian project fails to capture our intuitive thoughts about the considerations officials may use. To respond to the puzzle, Kantians may either reject the intuition—by rejecting either (i) or (ii)—or give an account that explains how they can accept both (i) and (ii). The remainder of the paper explores these options.

In Section [IV], I argue that the consequences of rejecting either (i) or (ii) are unacceptable. Given this, there needs to be some explanation for why Kantians can accept both (i) and (ii). In Section [V], I evaluate several explanations available to current Kantian political philosophy to address the puzzle and argue that they do not resolve the puzzle. This puzzle thus points to the need for further elaboration on the part of Kantians concerning what considerations officials may use. Section [VI] concludes by suggesting a potential path for Kantians to elaborate their theory to address the puzzle through developing their own version of public reason.[5]

[5] Note, my concern is with *Kantian* political philosophy, not *Kant's* political philosophy. This is not an exegesis of Kant, but rather an engagement with some recent work that accepts core insights from Kant's philosophy. For this reason as well, not *all* positions that might be called 'Kantian' are under consideration, rather only those that accept the claims presented here are addressed.

II. GROUNDS OF THE KANTIAN STATE

The organizing principle of the Kantian state is people's innate right to equal freedom. This right consists in the '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'.[6] That is, each person has the right to set their own purposes and pursue those purposes with their own means.[7] Thus, if I wish to pursue the life of a puppeteer, so long as I am only using what is mine—what I have a right to—no one else has a right to interfere with me. Central to this idea, then, is a distinction between what is mine—what counts as *my means*—and what is not—what counts as *someone else's means*. For another to use my means without my permission is to constitute using what I am in control of for *their own* purposes. It is to violate my independence from them.[8]

Innate right is thus the primary political value for Kantians, representing people's basic moral status as more than a means to be used by others. But there appears to be a tension between people's innate right and the state's authority. After all, the exercise of the state's authority allows officials to use people's means for various purposes without requiring their permission, such as through taxes. This appears to conflict with people's independence insofar as it allows some people, officials, to have control over the means of other people, the citizens. How, then, are we to understand the idea that people's innate right to equal freedom—their independence—is the organizing principle of the state?

The answer is that people's independence cannot be realized without the existence of certain kinds of authoritative institutions—those formed in the state.[9] This is because people's independence requires that there is a system that determines people's

[6] Immanuel Kant, *Metaphysics of Morals*, 6:237. All references to Kant are from *Practical Philosophy*. Ed. and Trans. Mary Gregor. Cambridge University Press. 1996. The citations use the Royal Prussian Academy of Sciences pagination in the volume.

[7] See Hodgson ('Kant on the Right to Freedom'), Pallikkathayil ('Deriving Morality from Politics'), Ripstein (*Force and Freedom*), and Ariel Zylberman ('The Public Form of Law: Kant on the Second-Personal Constitution of Freedom'. *Kantian Review*. Vol. 21. No. 1. pp. 101–126. 2016). Cf. Kantian accounts of 'freedom' as unimpeded movement, e.g. Kyla Ebels-Duggan, 'Moral Community: Escaping the State of Nature'. *Philosophers' Imprint*. Vol. 9. No. 8. 1–19. 2009; 'Review of *Force and Freedom: Kant's Legal and Political Philosophy*'. *Canadian Journal of Philosophy*. Vol. 41. No. 4. pp. 549–573. 2011.

[8] For discussion see Ripstein, *Force and Freedom*, 42–50.

[9] Pallikkathayail, 'Deriving Morality from Politics'; 'Neither Perfectionism nor Political Liberalism'; Ripstein, *Force and Freedom*, ch. 6; Stilz, 'Why Does the State Matter Morally?'

means—that there is some system of rights instituted. According to Kantians there is no determinate 'natural', i.e. pre-political, system of acquired rights, e.g. rights to property and contract, to determine people's means. Rather, there is a range of permissible systems of rights consistent with people's independence, with each system itself subject to indeterminacy in its application to specific cases.[10] The lack of a determinate system of rights thus presents a problem for people's independence in the pre-political condition. The state resolves the problem of indeterminacy of rights by instituting a single system of rights for those under its authority. That is, the state's exercise of authority and imposition of constraints on the citizens is justified by the fact that it is *through* the exercise of authority that people's independence is possible. The constraints are a means to secure people's innate right through instituting a system of rights and so the state's exercise of authority is *to treat the citizens as independent*, rather than any other purpose. The state's exercise of authority is thus consistent with the citizen's independence.

This is represented in the Kantian ideal of the original contract, which holds that 'the people, considered as a collective body, unite to rule themselves, considered severally' such that the laws function as objects of possible choice for the citizens to secure their innate right to equal freedom.[11] This ideal constrains the possible structure of the state insofar as we cannot imagine the citizens as creating 'any binding arrangement that presupposes that others may treat [them] as a mere means for pursuing their private purposes'.[12] This constrains the state to act only to institute a system of rights, rather than any private purposes of its own. For if it has any other purpose, then in imposing constraints on the citizens it would use their means for a purpose other than securing the conditions for innate right through instituting a system of rights, and so fail to treat them as indepen-

[10] For versions of this argument, see Pallikkathayil ('Deriving Morality from Politics'), Ripstein (*Force and Freedom*, ch. 6), Thomas Sinclair ('The Power of Public Positions: Official Roles in Kantian Legitimacy'. *Oxford Studies in Political Philosophy Vol. 4*. Eds. David Sobel, Peter Vallentyne, and Steven Wall. Oxford: Oxford University Press. pp. 28–52. 2018), and Stilz (*Liberal Loyalty,* ch. 2; 'Why the state matters morally'). Kantians also identify problems with adjudicating disputes between people and the unilateral enforcement of rights. While important, I do not focus on those issues here.

[11] Ripstein, *Force and Freedom*, 199. See also Kant, *Metaphysics of Morals*, 6:315–316; 'On the common saying', 8:289–297.

[12] Ripstein, *Force and Freedom*, 206.

dent. This limits not only the substantive policies the state may enact—the laws must be consistent with people's innate right—but also the political procedures of the state—the ways that the laws are made must be consistent with people's innate right as well.

Furthermore, it is *only* through the state's institutions that a system of rights can be imposed on others. People's innate right entails the 'independence from being bound by others to more than one can in turn bind them'.[13] Each person is, by nature, symmetric in their authoritative capacities—people have an innate right to *equal* freedom. No individual can have the authority to institute a system of rights over others, as this would require that they exclude the authority of those others to institute a system of rights over them. This would situate people as unequal with respect to one another—one person's judgment reigns over others creating an asymmetric system of authority.

Initially it seems like this problem is replicated with the state. After all, individuals occupy the offices within the state and exercise authority over others. What is distinctive is that these individuals do not gain this authority as a kind of natural claim, but rather through the public procedures of the state. This maintains the symmetric situation of people insofar as when an individual exercises the authority of the state, this is not based on *their own* claim to authority, but rather as a component part of *the state's* authority.[14] The individual officials are simply the means through which the state exercises its authority. While their judgments are privileged in terms of determining the system of rights, this is not due to the nature of the officials as individuals. The equality between individuals is maintained because no one is treated as having a unique claim to exercise authority, rather people gain the claim to authority due to their role within the state, a role that anyone might have.

This section highlights two features that work together in justifying the Kantian state's authority. The first is that securing people's innate right to equal freedom through instituting a system of rights

[13] Kant, *Metaphysics of Morals*, 6:237–238.

[14] Sinclair, 'The Power of Public Positions'.

functions as the sole legitimate purpose of the state. That is, state policies have to be justified with reference to this purpose. The second is that the state allows those individuals who occupy official roles to use their own judgment to exercise the state's authority without thereby undermining people's independence. Equality is maintained even though only some people's judgments are authoritative and decisive. The first feature explains why the state is able to act consistently with people's innate right; the second feature explains why *only* the state is able to do so. Together they establish the state as a morally necessary institution.

III. ELABORATING THE PUZZLE

The state is thus able to enact a system of rights consistent with people's innate right because the sole end of the state and state officials is to act on behalf of the citizens to secure innate right. Officials are 'not entitled to use public office to pursue private purposes, nor to make the world better in ways unrelated to his or her mandate'.[15] Rather they are constrained to the public purpose of the state. To understand this we need to know what it means to act in a way 'unrelated' to one's mandate.

My specific concern is with the use of certain *considerations* that officials take into account when exercising their authority. For many decisions, Kantians hold that it is indeterminate what officials ought to do—there are multiple permissible options consistent with an official's mandate. In such cases it is intuitively plausible that (i) there are some further considerations that officials may use to select from among the permissible options—e.g. what is the most efficient way of allocating resources—and (ii) that there are some further considerations that officials may not use to select from among the permissible options—e.g. whether the official's family stands to benefit financially from a policy. Our question is whether Kantians can validate this intuitive position. Here I outline a *prima facie* difficulty in their ability to validate this position.

[15] Ripstein, *Force and Freedom*, 202.

Kantians might try to account for (i) using the second feature of the Kantian state outlined in Section [II]—that the state allows individual officials to use their own personal judgments when exercising state authority without thereby undermining their equality with others. According to this feature, when officials act on some 'further considerations' they are exercising their personal judgment. For Kantians, the state is specifically meant to allow officials to use their personal judgments consistent with the equality of others. As such, so long as they are selecting from otherwise permissible options—so long as the policies implemented secure the conditions for people's innate right to equal freedom—there is no threat that officials undermine the independence of the citizens. The problem is that this cannot explain (ii). For this explanation, it seems, holds for *any* further consideration that an official uses so long as the official picks out an otherwise permissible option. Let's call this first position, which can explain (i) but not (ii), the 'unrestricted position'—insofar as it rejects (ii), it holds that there are no restrictions on the further considerations that officials may use.

Alternatively, Kantians might try to account for (ii) using the first feature of the Kantian state outlined in Section [II]—that the state's sole legitimate purpose is to secure the conditions for people's innate right through instituting a system of rights. If the state's sole purpose is to secure people's innate right, then further considerations—considerations that do not need to be taken into account to secure innate right—should be excluded as they require that the state exercise its authority for a purpose *other than* securing people's innate right. The problem, though, is that this cannot explain (i), how it is that there are *any* further considerations that officials may take into account. For *all* further considerations concern something other than securing the conditions for people's innate right strictly speaking. Let's call this second position, which can explain (ii) but not (i), the 'restricted position'—insofar as it rejects (i), it holds that, where an official's mandate does not select a unique option, there are no further considerations that an official may use to decide what to do.

We thus get a puzzle: Both (i) and (ii) have intuitive support from central features of the Kantian project, but their conjunction does

not seem readily explicable within the Kantian framework. This points to a tension in the Kantian project between the fact that the state is supposed to exercise its powers solely to secure people's innate right and the fact that innate right is indeterminate. This puzzle, as presented here, is only *prima facie*: It does not demonstrate that Kantians face an insuperable difficulty, but rather that there is a lacuna in their thought that must be addressed.

One way Kantians could respond is by accepting either the restricted or unrestricted positions—and thus reject the need to give an account of what further considerations officials may use, either by including or excluding all further considerations. I argue, in Section [IV], that Kantians should reject both the restricted and unrestricted positions and so should try to give an account that explains both (i) and (ii).

Let's call the position that accepts both (i) and (ii)—that officials may use some, but not all possible further considerations—the 'intermediate position'. To get the intermediate position we need some criterion that explains *why* some considerations, but not others, get excluded that fits within the Kantian position. The criterion, that is, should not simply provide a listing of 'related' and 'unrelated' considerations, but an explanation of what it is for a consideration to be related to an official's mandate. The question for this paper is whether Kantians can provide such a criterion, and I argue in Section [V] that current Kantian accounts fail to do so, and so the puzzle remains.

IV. REJECTING THE RESTRICTED AND UNRESTRICTED POSITIONS

A. Rejecting the unrestricted position

The unrestricted position has some intuitive appeal within Kantian philosophy. After all, matters of *right* concern the external conduct of persons, not their virtue. Perhaps securing a rightful condition does not concern the *reasons* for which certain laws and policies are adopted, but only the substantive condition that results from their adoption. This position is suggested by Ripstein's comment that

'[t]he distinction between an official's acting within his or her mandate and outside it does not depend on the official's attitude: legal systems can operate effectively even if many of their officials do not care about the law or justice, but only about doing their job and collecting their pay' because '[t]he possibility of people living together in a rightful condition depends on external conduct, including external conduct within the three branches of government, rather than on any person's attitude towards that conduct'.[16]

These statements can be read to support the unrestricted position. For the considerations that officials use in justifying their exercise of authority do not constitute any kind of 'external conduct'—after all, the same conduct may be done despite there being different reasons. If whether a system of laws conforms to innate right is a matter of the external conduct, then *whatever* reasons an official uses, the resulting system conforms to innate right so long as the official selects from among permissible options. Officials are thus restricted from acting in certain ways, not from using certain considerations. Thus, by putting the issue of innate right in terms of external conduct, Kantians may allow that the reasons for an official's decision are irrelevant.

This is not the best way to understand the Kantian position or Ripstein's statements. After all, an official is 'prohibited from using his or her office for private purposes'.[17] To distinguish whether an office is being used for a *private* or *public* purpose, we cannot simply look at the external conduct of an official, but rather we must also look at the reasons for their conduct. Take the case of officials using considerations which deny that some individuals have an equal status to others. That is, it is possible for officials to use considerations that deny that all humans have an innate right to equal freedom while selecting policies consistent with securing people's innate right. For instance, it seems to be within the discretionary power of the state to provide public funding for private sectarian education. In the history of the United States, anti-Catholic animus has led legis-

[16] Riptein, *Force and Freedom*, 193–194. Sinclair's discussion tends in this direction at times, 'The Power of Public Positions': 44–45.

[17] Ripstein, *Force and Freedom*, 193.

latures to ban the provision of public funding for private sectarian education.[18] Part of the reason behind this animus was the denial that Catholics deserved equal freedom—they were treated as second-class citizens because of their religious views. If we adopt the unrestricted position, then we would think that, when officials act on considerations that *deny* that people have the innate right to equal freedom, it still counts as acting for a public purpose so long as they choose an otherwise permissible option.

This is too implausible. It is perverse to suggest that an official acts on a public purpose when they act on considerations that deny people's innate right. It is unclear how officials in such cases count as exercising their authority 'on behalf' of others. If we understand the original contract—the basis of determining the legitimate exercise of authority by the state—as among people who recognize themselves as having the innate right to equal freedom, then we cannot suppose that they could consent to a process that adopts the perspective that they lack their innate right—that denies their humanity.[19] But in these cases the actions of officials are predicated on the fact that those citizens lack their innate right. This suggests that there must be *some* considerations that ought to be excluded—at least those considerations inconsistent with innate right.[20]

The problem persists even if we consider cases where officials use considerations that accept people's equality. Suppose that an official is empowered to hire a company to repair public roads, and their mandate provides them with criteria that both Company A and Company B satisfy. *Ex hypothesi*, selecting either company satisfies the public purpose. Thus, on the unrestricted view, so long as an official selects one of those companies, say Company A, they fulfill their mandate. This conflicts with the Kantian claim that officials

[18] This has come up in recent history with respect to Montana's constitutional prohibition on the public funding for religious schools. See *Espinoza v Montana Dept. of Revenue*, 591 U.S. __, 140 S.Ct. 2246 (2020).

[19] This bears some similarity to Ripstein's discussion of consenting to slavery, *Force and Freedom*, 133–144.

[20] A defender of the unrestricted position may try to avoid this consequence by prohibiting officials from using considerations that deny people's equal status. As argued in the next paragraph, the unrestricted position would still be problematic, as it allows officials to use the public office to pursue private goals. More to the point, once we acknowledge that officials may not use considerations that deny people's equal status, we need an explanation for *why* those considerations may not be used and why others may be used. But this is to require that the unrestricted position address the puzzle raised in Section [III] in a way that the unrestricted position is meant to *avoid*. That is, such a modification is better understood as attempting to create an 'intermediate' position rather than 'unrestricted' position.

may not use their office for personal enrichment as it allows the official to hire Company A because it will improve their personal stock portfolio or give their brother a job. Acting for those reasons constitutes the use of public office for a *private* purpose.[21] This cannot be captured on the unrestricted position insofar as the explanation for why it constitutes a private purpose is based on the considerations the official uses for selecting Company A. The judgment that the official's conduct constitutes using state power for a private purpose is responsive to the fact that certain considerations are inappropriate grounds for government action even if those considerations are consistent with the basic claims of people's rights.[22]

How do we reconcile this with the Kantian claim that whether an official acts within their mandate does not depend on their attitude? Ripstein's focus is on why officials do their job—whether it is just for pay or patriotic fervor. Perhaps it is best to read these comments as suggesting that the motives the official has for taking on their job—and more generally, the virtue of their character—do not matter for whether an official acts within their mandate.[23] This can explain the official's decisions in terms of a justification that makes no reference to the motives the official has for doing their job in the first place—at most these motives are simply a necessary condition for them to be willing to fill the office they hold. Only the considerations that the official uses in carrying out their job matter for determining whether the official is acting for a private or public purpose. The fact that the official's attitude towards their job or the general virtue of

[21] Ripstein, *Force and Freedom*, 193.

[22] It is open to the Kantians to argue that cases like bribery only need to be prohibited because of the pragmatic effects—that it makes officials less likely to act for the public good or that it undermines public confidence in the officials. It is unclear to me whether this is consistent with the reasons Kantians generally give against bribery, namely, that it is a defect in the form of lawgiving, not simply an imprudent policy. But this also misses the deeper issue: Acting on certain considerations, such as one's own profit, seems inconsistent with acting 'on behalf' of others.

[23] Of course, an official's private motivations could be *evidence* concerning the kinds of considerations that the official is using. If, for instance, we know that an official harbors racist views, then this is evidence that they may be using improper considerations. But this is an evidential relationship, not a constitutive one.

their character is irrelevant for determining whether their conduct is public or private does not mean that the considerations they use to execute their office are similarly irrelevant.[24]

B. Rejecting the restricted position

The appeal of the restricted position—the position that officials may use *no* further considerations beyond those required by their mandate—comes from the idea that once we reject the unrestricted position and admit that officials acting on some further considerations undermines the state's status as representing a public perspective, there is no general stopping point. All further considerations, after all, are considerations that are not directly about instituting a system of rights to secure the conditions for people's innate right to equal freedom. The use of such considerations constitutes an official exercising state authority for some other purpose and so seems to constitute using the state for a non-public purpose. We must then ask why officials should be permitted to use such further considerations.

Given the amount of indeterminacy and discretion given to officials, excluding the use of further considerations would result in many cases where officials lack sufficient grounds for selecting one option rather than another. For, *ex hypothesi*, considerations about innate right do not determine a unique option for what officials must do, and so any considerations that *do* narrow down the decision must be considerations that are not, strictly speaking, required by innate right. For if they were required, this would contradict the claim that innate right is indeterminate between the various options.[25] But decisions between multiple options could still be made through the use of various lottocratic procedures—such as picking an option out of a hat. Lottocratic procedures are not outside the realm

[24] This point holds even if we accept Kant's contention that the judgments and motives of officials are not subject to review by citizens. See, e.g., 'On the common saying', 8:299–300; 8:304. For even if citizens lack the right to review the judgments of an official, it still remains the case that *officials* need to be able to determine whether the considerations they are using are within their mandate. The argument here, that is, concerns *what considerations officials may use* and not *who has the authority to judge officials on the basis of the considerations they use*.

[25] Perhaps the Kantian project is 'inconclusive' rather than 'indeterminate'. For some discussion on the difference between 'inconclusive' and 'indeterminate' decisions, see Gerald Gaus, *Justificatory Liberalism*. Oxford University Press. 1996: ch. 11. Even so, this would not alter the fact that an official's decision would reflect some ordering of the values involved that is not required by innate right.

of possibility in terms of political proposals and they may be appropriate at certain points in time as a response to indeterminacy.[26] Our question is whether Kantians should *require* that states resolve indeterminacies through something like lottocratic procedures—as the restricted position requires such procedures to avoid paralysis.

Given the domain of indeterminacy, requiring lottocratic procedures seems to treat people's interests in implausible ways. For Kantians, the purpose of the state is to secure a 'rightful condition', which is not contingent on the 'happiness of its citizens or the gross national product'.[27] That is, whether a condition is rightful does not depend on whether that condition increases the citizen's well-being or achieves other valuable ends in comparison to available alternatives. There is thus a wide range of policy options that enact a rightful condition which provide varying levels of well-being to the citizens. Lottocratic procedures that select from among the range of options would thus give equal chances to those options independent of their effects on well-being or other valuable ends outside some minimal threshold necessary for the condition to be consistent with innate right.

This seems implausible as a requirement. That is, it seems like people's well-being and other valuable ends, while certainly not *everything*, are at least relevant for officials to take into account when choosing options. The restricted position, by excluding *all* further considerations and relying on lottocratic procedures to make decisions, would require officials to treat such considerations as if they meant nothing. This is particularly troubling because there is no general mechanism for people to respond to the existence of sub-

[26] Lottocracy here is proposed as a way to pick between *options* rather than *officials*. It thus differs from Alexander Guerrero's suggestion to deal with the failings of representative democratic institutions by selecting legislators by lottery, 'Against Elections: The Lottocratic Alternative'. *Philosophy and Public Affairs*. Vol. 42. No. 2. pp. 135–178. 2014. Rather, the proposal is similar to what some propose as a solution to indeterminacy in public reason; see Andrew Williams, 'The Alleged Incompleteness of Public Reason'. *Res Publica*. No. 6. pp. 199–211. 2000, and Micah Schwartzman, 'The Completeness of Public Reason'. *Politics, Philosophy, and Economics*. Vol. 3. No. 2. pp. 191–220. 2004.

[27] Ripstein, *Force and Freedom*, 196. See also Hodgson, 'Kant on the Right to Freedom', 794–795; Kant: 'what is under discussion here is not the happiness that a subject may expect from the institution or administration of a commonwealth but above all merely the right that is to be secured for each by means of it' ('On the common saying', 8:298; also *Metaphysics of Morals*, 6:318). While Kantians generally hold that there are some *minimal* material conditions necessary for innate right, these do not require that the state ensure a high level of well-being, but rather avoid putting people in a condition of dependency. See Kantian responses to poverty such as Ripstein, *Force and Freedom*, ch. 9, and Ernest Weinrib, *Corrective Justice*. Oxford University Press. 2012: ch. 8.

optimal laws from a lottocratic procedure—there is no reasoning with a chance procedure. And so people are implausibly disconnected from the political processes of the state without the recourse to influence the state's decisions.[28] The well-being of the citizens and other valuable ends should be able to count for *something* in political decision-making, even if they are not the primary concern.[29]

This does not show that a lottocratic system is *inconsistent* with the Kantian position—that Kantians *cannot* adopt a lottocratic system. I do think it shows that it is implausible to suggest that a lottocratic system is *required*—that citizens can be required to adopt a system where their material, and other, interests have no influence on the decisions made.[30] But if a lottocratic system is not required, then the restricted position cannot be true. We should thus think that the Kantian position is thus plausible *only if* it can provide some kind of standard that distinguishes between what further considerations are 'public' as opposed to 'private'.

V. REJECTING CURRENT KANTIAN SOLUTIONS

A. *Public grounds of justification?*

Section [IV] argues that Kantians should endorse the intermediate position. Given the puzzle outlined in Section [III], this requires that

[28] Kantians generally hold that there is some requirement of allowing political participation among the citizens. For a discussion in the context of Kant's views, see Christoph Hanisch, 'Kant on Democracy'. *Kant-Studien*. Vol. 107. No. 1. pp. 64–88. 2016. For a more contemporary application, see Christian Rostbøll, 'Kant, Freedom as Independence, and Democracy'. *The Journal of Politics*. Vol. 78. No. 3. pp. 792–805. 2016. See also Ripstein, *Force and Freedom*, 202–204 and Stilz, 'Why Does the State Matter Morally?' 255–256.

[29] What of Kant's argument that the state cannot rightfully aim at the happiness of citizens because it would be objectionably paternalistic ('On the common saying', 8:290–291)? It is important to note that Kant's argument is *not* that the state cannot try to promote happiness or well-being—he holds that the supreme power may make 'laws that are directed chiefly to the happiness' of citizens ('On the common saying', 8:298–299)—but rather that the state cannot be 'established' on the principle of promoting happiness. That is, it cannot take happiness as its purpose in such a way that trumps securing the conditions for innate right. This is consistent with the state taking the well-being of citizens into account when securing the conditions for people's innate right.

[30] Does the fact that we care about what decision gets made show that the decision is actually not indeterminate? This does not follow. For it might be true that, *from the perspective of people's innate right*, the matter is indeterminate, but this is consistent with holding that some options are preferred to others for other reasons. Kantians do not assume that innate right is the whole of morality, just that it is the basis of political morality. See Thomas Pogge ('Is Kant's *Rechtslehre* Comprehensive?' *The Southern Journal of Philosophy*. Vol. 36. pp. 161–187. 1997.), Allen Wood ('The Final Form of Kant's Practical Philosophy'. in *Kant's Metaphysics of Morals: Interpretative Essays*. Ed. Mark Timmons. Oxford University Press. pp. 1–22. 2002), and Hodgson ('The Kantian Right to Freedom', 802–804). Moreover, the point is not that *it is wrong for the state to choose a sub-optimal option*, but that it is too much to require people to put up with it without having some direct way of influencing the choice.

Kantians provide some criterion that determines when an official acting on further considerations constitutes a public exercise of authority. One way that Kantians might provide a criterion is by holding that officials must act on considerations that are sufficiently 'public'. This position is proposed by Ripstein. He holds that '[t]he only thing [consideration] that is ruled out is organizing the state around private purposes' and the test for this is that 'it be possible to give public grounds of justification for such activities, that is, to relate them to the maintenance of a rightful condition'.[31]

In itself this statement is consistent with endorsing the unrestricted position. The unrestricted position holds that officials select from among the permissible options, and so officials can always give the fact that their decision is within the range of permissible options as the public grounds of justification for their decision.[32] Given our rejection of the unrestricted position in Section [IV.A], Ripstein should mean something stronger than the fact that officials can show that the activities in question—the laws and policies implemented—are related to the maintenance of a rightful condition. Perhaps the idea is that some *considerations* are public such that they constitute a distinctly public form of justification.

To get a sense of what this distinct form of justification might be, we can look to Ripstein's discussion of the provision of public roads. There he discusses various considerations appropriate for the state to use such as efficiency, consistency, and fairness.[33] In each case, Ripstein discusses how the failure to take these considerations into account can cause officials to violate people's innate right—thus, efficiency is important so as to not overtax citizens, which constitutes taking what is theirs without furthering a public purpose.[34] This suggests that those considerations which constitute a 'public form of justification' are those that determine whether some law or policy is consistent with people's innate right. If so, then Ripstein's account would be subject to the problems of Section [IV.B], for we

[31] Ripstein, *Force and Freedom*, 223.

[32] Officials may also give considerations based on innate right to prefer one option over another, especially if, e.g., the options are incommensurable in some way. It would remain the case, though, that the officials cannot give *conclusive* public grounds of justification for their decision, and so their preference for one option over another would still reflect some judgment that is not required by innate right. This simply follows from the fact that innate right is indeterminate over various options.

[33] Ripstein, *Force and Freedom*, 254–256.

[34] Ripstein, *Force and Freedom*, 254; 258–259.

should anticipate that insofar as people's innate right does not pick out a unique set of options, considerations that are necessary for being consistent with innate right would also not pick out a unique set of options.

But Ripstein discusses some additional considerations that officials may take into account, such as 'judgments about what people will find more pleasant or convenient, or what will make citizens find particular rules sensible or fair'.[35] The failure to take these kinds of considerations into account is not inconsistent with innate right—after all, whether the requirements of people's innate rights are satisfied is independent of any particular private purposes they have such as their own convenience. This suggests that Ripstein's public justification allows more than the restricted position, but it does not explain *why* officials can use these kinds of considerations or how to evaluate what considerations may be used. After all, both the official's own personal gain and the general public's 'convenience' are equally irrelevant from the perspective of people's innate right. Why, then, is the official's use of the former but not the latter equal to using the state for a private purpose? Ripstein's answer is unclear to me—he provides intuitive judgments, but no method for tying the intuitions to one another to develop a general account of what considerations are appropriate for officials to use.

The problem that emerges is that even if we accept these intuitive judgments, it is unclear how these judgments should extend to other considerations. Perhaps we can form intuitive judgments that considerations like fairness or convenience should be included, and considerations like racial superiority should be excluded, but what about considerations about the public's salvation? Their cultural, aesthetic, or moral improvement? What about considerations about what kinds of activities or jobs are degrading? It is not obvious to me whether the religious or perfectionist considerations in these cases will count as using the state for a private purpose—at least, it is not as obvious as with considerations of fairness or considerations of racial superiority. The issue is that without some explanation behind our intuitive judgments, there is no way to resolve disagreements about our intuitions in these difficult cases. Some criterion is needed to guide our judgments as different kinds of considerations arise.

[35] Ripstein, *Force and Freedom*, 256.

This does not show that no criterion could be supplied, but rather that it is necessary to move beyond intuitive judgments to provide a criterion for when officials count as acting for a public or private purpose. This demand for a criterion is not a demand for a theory that 'provides a template for every detail of social life, or mandates *a priori* a unique resolution'.[36] Rather, it is a demand for a theory that gives us a means to evaluate what considerations are appropriate. This leaves open the possibility that officials will need to exercise their own judgment in deciding cases. The central concern is that the public purpose alone does not give a description of how to relate further considerations to the public purpose which we can apply to considerations as they arise.

B. Public procedures?

So far the discussion of what considerations officials may use has treated the state primarily in terms of the officials who compose it. Perhaps this is a mistake. After all, the Kantian state is thought of as a system of institutions designed to resolve indeterminacies concerning people's rights. We might think, with Pallikkathayil, that '[w]here there is enduring indeterminacy regarding our rights, we must choose ways of specifying those rights' and then we look 'to the results of these procedures to settle the remaining political questions'.[37] The idea is that once we set up procedures, officials simply need to carry out the results of the procedures and so we avoid questions of what considerations officials may act on.

Appealing to procedures does not avoid our puzzle. The procedures of a state are not automatic. They take the actions of various officials—legislators, judges, administrators, and even voters—as inputs into the procedure to generate the results—laws and policies. These officials act on the basis of various considerations, and so the inputs to the procedure are partially determined by what considerations officials may act on. We may thus ask whether the procedures we use to settle political questions impose constraints on what considerations officials may use when acting as inputs into the procedure.

[36] Ripstein, *Force and Freedom*, 255.

[37] Pallikkathayil, 'Neither Perfectionism nor Political Liberalism', 182–183.

Given the argument in Section [IV.A], the procedures of the state must *exclude* some further considerations from the range that officials may use. It is not enough to simply have procedures that pick out permissible laws or policies, as that would allow officials to implement policies on the basis of private gain or on the denial of other people's rights. We thus cannot just look to the results of a state's procedures to resolve questions of rights without some constraints on what considerations officials may use. Further, given the argument in Section [IV.B], it is also permissible for these procedures to *include* some further considerations in the range that officials may use. It follows that, in determining the permissible procedures for the state, we must determine what further considerations may be included or excluded—we cannot simply allow officials to act on just any consideration and we cannot require that officials not act on any further considerations.

This is just to say that we must first address our puzzle *as part of setting up the procedures of the state*—to determine whether the procedures are compatible with the state representing a public perspective, it is necessary to know what considerations these procedures may allow officials to use. Once we have these procedures in place we can appeal to the results of the procedures to resolve indeterminacies in the implementation of rights within the state. But insofar as the procedures require the exercise of discretionary judgment by officials on the basis of certain considerations, we must resolve the puzzle of what considerations officials may use when exercising their discretionary judgment.

C. Adjudicating disputes?

Another suggestion to determine what considerations officials may use is based on their role in adjudicating disputes between persons. Innate right requires officials to be sensitive to how they impact various people with their laws. The Kantian state thus has the 'aim to adjudicate between people's projects' and so what considerations officials may use will 'turn on the ways in which people's projects actually conflict'—for instance, whether to have noise ordinances restricting when people can play loud music depends on whether anyone is bothered by loud noises.[38] There is a 'presumption in favor

[38] Pallikkathayil, 'Neither Perfectionism nor Political Liberalism', 183, fn.19; 183.

of an equal division of [the state's] burdens' on the citizens that may provide a standard for determining what considerations are 'public' or 'private'.[39]

The idea is that officials look to the general public's interests and projects and adjudicate between them to produce an equitable distribution of burdens on the citizens. What distinguishes when an official's use of considerations is *private* from when it is *public*, then, is whether the official is taking into account the interests of citizens in the society in accordance with the appropriate distributive scheme. In a sense, this solution reduces indeterminacy by providing some criterion for officials to follow. Once we have an account of the different projects of the citizens, the interests in play, and the range of policies that could otherwise be implemented, officials would simply have to examine how these factors add up with respect to some principle of distribution. We thus get a clear accounting of what considerations are appropriate for officials to use, and why those constitute a public perspective.

Unfortunately, this solution is not available within the Kantian framework. The solution relies on Kantians having some particular distributive scheme and a particular mechanism for weighing between different projects or interests. Neither feature is present within the Kantian framework. To begin with, Kantians do not require that the state adopt any particular distributive standard—e.g. an egalitarian, prioritarian, or sufficientarian standard—to adjudicate competing claims. For then we would have to 'see legal rules as trying to match something that is completely determinate without any reference to legal institutions'—the particular distributive scheme of the burdens of the state—while the 'Kantian sees legal rules as making determinate something that is morally binding but by itself partially indeterminate'.[40] What is an 'equitable distribution' within a Kantian

[39] Ripstein, *Force and Freedom*, 258. See also Stilz, 'Why Does the State Matter Morally?' 255.

[40] Ripstein, *Force and Freedom*, 224.

scheme, then, is itself indeterminate.[41] Officials have to decide on a particular distributive scheme, and so the puzzle reappears: What considerations are appropriate for officials to use in picking out an 'equitable distribution' to strive for?

Even if there is a particular distributive scheme that Kantians may adopt, we still need to be able to weigh the various projects of citizens against one another. A person's project of personal salvation has to be compared against another person's project of birdwatching. Within the Kantian framework there does not seem to be any particular answer to what the common currency is in weighing a project of salvation against a project of birdwatching. For there may be no common perspective between the birdwatcher and the theist to compare their projects as they may fail to share a common description of what they are doing in each case. Are they comparable as passion projects each person desires to act on? Or does some special concern attach to the project of salvation? The Kantian ideal of independence does not seem to give any reason to validate one person's understanding of their activity with the other's—they seem free to set and pursue their own purposes whether we understand both as comparable passion projects or attach some special significance to the project of salvation. It is thus unclear whether people's innate right specifies how projects should be weighed against one another insofar as there is no required neutral perspective between them that we can adopt.

Thus, the problem with using the notion of an 'equitable distribution' as a criterion for distinguishing when an official's use of considerations is 'private' as opposed to 'public' is that *what counts* as an equitable distribution is indeterminate for Kantians. Relying on distributive criteria thus requires that officials appeal to further considerations to determine the appropriate distributive scheme. Given the nature of the puzzle, this is inadequate as we still lack criteria for determining what further considerations may be used to determine the appropriate distributive scheme. As in Section [V.B], it

[41] See Michael Nance and Jeppe von Platz, 'From Justice to Fairness: Does Kant's Doctrine of Right Imply a Theory of Distributive Justice?' in *Kant on Freedom and Spontaneity*. Ed. Kate Moran. Cambridge: Cambridge University Press. pp. 250–268. 2018. This is compatible with acknowledging that the Kantian conception of the person as free and equal may entail some minimal distributive constraints, e.g. that certain forms of poverty threaten a person's moral status (see fn.27). Such distributive constraints point to conditions that the Kantian state is to avoid, leaving open a wide range of distributive schemes that successfully avoid these conditions.

is necessary to first resolve the puzzle so that we can use the further considerations to pick out a distributive scheme, which may then guide official decisions.

D. Public reason?

One final possibility is for Kantians to develop what is meant by 'public grounds of justification' for their theory. One intuitive way for developing what Kantians mean by the 'public grounds of justification' would be to appeal to a theory of 'public reasons', in particular political liberalism's theory of public reason.[42] Political liberalism, after all, distinguishes between reasons that are 'public' from those that are 'private', and so seeks to make the right kind of distinction that Kantians need to resolve the puzzle posed here. Perhaps Kantians could develop some kind of 'Kantian public reason' as a way of addressing the puzzle based on the resources provided by political liberalism.[43]

What might this 'Kantian public reason' look like? Let's start with a basic theory of public reason. For this purpose I will use (a simplified version of) Rawls's theory.[44] Rawls starts with two central normative assumptions: a conception of society as a system of fair cooperation between free and equal persons for mutual benefit and a conception of citizens within the society as being free and equal and possessing a sense of justice and the power to form and pursue a conception of the good. From these two conceptions Rawls generates a conception of 'reasonable' citizens and 'reasonable' doctrines based on those who can accept these conceptions of society and citizens. Public reasons, then, are the reasons acceptable to all reasonable persons where a reason counts as 'acceptable' if a reasonable citizen could accept it while still holding their reasonable doc-

[42] The primary account of political liberalism is from John Rawls, *Political Liberalism*. Expanded Edition. New York: Columbia University Press. 2005. Other accounts include Andrew Lister (*Public Reason and Political Community*. London: Bloomsbury. 2013), Jonathan Quong (*Liberalism without Perfection*. Oxford: Oxford University Press. 2011), and Paul Weithman (*Why Political Liberalism? On John Rawls's Political Turn*. Oxford: Oxford University Press. 2010).

[43] While Kantians generally do not adopt a 'public reason' requirement (see, e.g., Pallikkathayil, 'Neither Perfectionism nor Political Liberalism'), some Kantians identify significant similarities between the Kantian position and political liberalism; see Rainer Forst, 'Political Liberalism: A Kantian View'. *Ethics*. Vol. 128. No. 1. pp. 123–144. 2017, and Hodgson, 'Kant on the Right to Freedom: A Defense', 802–804.

[44] Rawls, *Political Liberalism*, Lecture VI and 'The Idea of Public Reason Revisited' in *Political Liberalism*. Expanded Edition. New York: Columbia University Press. pp. 440–490. 2000.

trine—what we may call the 'Reciprocity Constraint'.[45] The general structure for public reason theories thus relies on (i) a normative conception of society and (ii) a normative conception of citizens that together generate the concept of a reasonable citizen. Public reason theories then derive what reasons count as public based on (iii) a conception of what reasons count as acceptable to reasonable citizens, which for political liberals is given by the Reciprocity Constraint.

To get a Kantian theory of public reason we need each element. The first two elements—the conception of citizens and society—can be found in the discussion of the Kantian justification of the state in Section [II]. That is, Kantian political philosophy begins with the assumption that citizens are mutually independent persons—people with the innate right to equal freedom and the relevant capacities needed to exercise that right. Political society is then justified as a kind of association that is necessary to secure the conditions for people's innate right to equal freedom—as defined through the Kantian conception of the original contract. Following the structure of public reason from before, we can thus understand 'reasonable' citizens in terms of those who accept the basic Kantian premise and hold doctrines consistent with that premise.

The appeal to political liberalism then comes in to supply the third element—an account of what considerations count as acceptable—with the Reciprocity Constraint. As before, the Reciprocity Constraint holds that a consideration counts as 'public' if all reasonable citizens can affirm the reason while still holding their reasonable doctrine. This requires that any reasonable citizen could non-mistakenly accept the considerations proposed as 'true' without undermining their beliefs in their own reasonable doctrines. Typical examples of considerations that fail to meet this standard for political liberals include people's moral, religious, and philosophical considerations. The Catholic cannot accept the atheist's claim that God does not exist in a way consistent with their reasonable Catholicism, and so the claim that God does not exist cannot count as a public reason. Does the Reciprocity Constraint work for Kantians to gen-

[45] Rawls, 'The Idea of Public Reason Revisited', 446. See also Jonathan Quong, 'On the Idea of Public Reason'. in *A Companion to Rawls*. Eds. Mandle, Jon and Reidy, David. John Wiley & Sons. pp. 265–280. 2014. Hodgson takes the Kantian idea that 'any principle regulating the use of force depends for its justification on whether it is one that all rational agents must accept' to imply something similar to the Reciprocity Constraint ('Kant on the Right to Freedom: A Defense', 802).

erate the intermediate position, given their conception of a reasonable citizen?

Given the Kantian conception of the citizen and society, reasonable citizens are only guaranteed to accept people's status as mutually independent beings with the innate right to equal freedom and that society is meant to secure the conditions for people's innate right. Outside of considerations required by innate right, all further considerations are accidental to people's innate right, and so there are no assumptions about what further commitments reasonable citizens have.[46] And so citizens may reasonably dissent from whatever further considerations might be introduced. That is, if reasons are only 'public' if *all* reasonable people can accept them, then the only reasons that turn out to be public for Kantians are those required by people's innate right to equal freedom—i.e. the restricted position. Adopting the Reciprocity Constraint would thus push Kantians into some form of the restricted position because only considerations required by innate right cannot be subject to reasonable dissent, and so the move to a public reason account replicates the problems from Section [IV.B].

The differentiating factor between political liberalism and Kantian political philosophy is the conception of citizens and society that each endorses. Political liberals have a 'thicker' conception of citizens and society that is drawn from the political culture of liberal democracies.[47] Kantians have a 'thinner' conception that relies on the single central normative concern of people's innate right to equal freedom. There is thus less antecedent agreement that allows considerations to pass the Reciprocity Constraint for Kantian political philosophy, which pushes Kantians back into the problems of the restricted position.

VI. CONCLUDING REMARKS

The puzzle raised here points to the need for further elaboration on the part of Kantians for how they might attempt to reconcile the

[46] Recall from Section [II] that the idea of people's independence is that people are to set and pursue their own purposes. This does not assume any particular *content* for these purposes, but rather concerns the relationship between persons and who is subject to whom. See, e.g., Hodgson ('Kant on the Right to Freedom: A Defense'), Ripstein (*Force and Freedom*, 14–17; ch. 2), and Pallikkathayil ('Neither Perfectionism nor Political Liberalism').

[47] Rawls, *Political Liberalism*, Lecture I.

indeterminacy that is central to the normative foundations of the state and the need to limit official discretion concerning the considerations they may act on. The difficulties raised in Section [V] do not show that Kantians *cannot* resolve the puzzle, just that more work needs to be done. In this concluding section I want to point to one line of thought for how Kantians might address the puzzle going forward.

When discussing the viability of a public reason approach to solve this puzzle, three elements were required: a conception of citizens, a conception of society, and some constraint on what reasons count as acceptable. My argument in Section [V.D] was that given the thinness of the Kantian conception of citizens and society, the acceptability constraint used by political liberals results in insufficient consensus on acceptable considerations to avoid the problems with the restricted position. A simple solution thus presents itself: Kantians may change one (or more) of the three elements of the account given in Section [V.D] to allow them to avoid the problematic indeterminacy of the restricted position while also not collapsing into the unrestricted position.

In terms of what element to change, I think the most fruitful path is to change the constraint on what reasons are acceptable. Both the conception of citizens and conception of society are foundational to the Kantian project and so changes in either of them would require Kantians to reassess their more fundamental commitments. For Kantians begin with the thought of people as mutually independent beings and this mutual independence is the sole justification for the coercive authority of the state. Kantians would have to alter their understanding of what innate right requires to provide either for some thicker conception of persons—more than just free and equal—or for a thicker conception of society—as an association designed to secure more than just the conditions for equal freedom. But Kantians do not need to be committed to the same acceptability constraint that political liberals are committed to—they can develop their own constraint from within the contours of their own political philosophy. Such a constraint would give Kantians a criterion to address the question of what considerations officials may adopt consistent with the state representing a public purpose, thereby addressing the puzzle raised here.

It is beyond the scope of my argument here to explore the viability of this strategy, but I think there are two advantages for

Kantians in developing a public reason account. The first advantage is that by developing an acceptability constraint to address the puzzle, a relatively clear target is provided for what the solution is supposed to look like. That is, we know what acceptability constraints look like from the public reason literature, and so the problem becomes more tractable as the shape of the solution is presented in advance. A second advantage is that the public reason literature is a relatively mature literature that addresses the kinds of concerns raised in the puzzle—public reason theorists are already concerned with questions about the appropriate constraints are on considerations that officials may appeal to. Their work can provide Kantians some preexisting structure that they might appeal to in addressing the puzzle, and can provide answers to potential problems that Kantians may face with their own solutions.

This route of addressing the puzzle would tie the prospects of the Kantian project in political philosophy to the debate about public reason more than is commonly assumed. Currently, Kantians tend to treat their position as an alternative to public reason theories that does not rely on issues of what is acceptable to reasonable citizens. If addressing the puzzle requires Kantians to adopt an acceptability constraint, then both Kantians and public reason theorists would rely on a common core concerning what considerations officials may take into account on the basis of whether those considerations are 'acceptable' to citizens under a certain guise. The plausibility of the Kantian project, then, may depend on the plausibility of such acceptability constraints and their ability to propose a plausible constraint that works within the confines of their own theory.[48]DeclarationNo funding was received to assist in the preparation of this manuscript.

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