

# **PROVISIONAL POLITICS**

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# **PROVISIONAL POLITICS**

**kantian arguments  
in policy context**

**elisabeth ellis**

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**For Allison**

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Sigh no more, ladies, sigh no more,  
Men were deceivers ever,  
One foot in sea and one on shore,  
To one thing constant never:  
Then sigh not so, but let them go,  
And be you blithe and bonny,  
Converting all your sounds of woe  
Into Hey nonny, nonny.

—William Shakespeare, *Much Ado about Nothing* (2.3.61–76)

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Parts of an article published by the *Journal of Politics* as “Citizenship and Property Rights: A New Look at Social Contract Theory” (August 2006) appear, in different form, in portions of chapters 1, 3, and 4. My first attempt to use the idea of provisional right in connection with democratic theory was published as “Provisionalism in the Study of Politics,” in *Problems and Methods in the Study of Politics*, edited by Ian Shapiro, Rogers M. Smith, and Tarek E. Masoud, published by Cambridge University Press in 2004.

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As anyone who has read Ian Shapiro’s *Democratic Justice* will recognize, this book could not have been written without it. Puzzles from Shapiro’s work on democracy, as well as some of his remarks on the his-

tory and particularly the practice of political theory, provided the starting points for most of the chapters and for the book as a whole. The structure of the book as a series of mutually interacting theoretical and empirical discussions is a response to the challenge that Shapiro implicitly makes to political theorists with the epigraph at the start of *Democratic Justice*. If I am reading the lines (by the poet Zbigniew Herbert) in the proper spirit, we theorists are being asked to look out at the political world and then to see whether the evidence offered by the world corresponds to our expectations. This can be a difficult and painful process, as I know all too well. My original expectations for this book were disconfirmed by a summer of research into the history of contract theory, where I found very little precedent for Kantian provisionalism. By the final chapter of the final product, however, this back-and-forth process of characterizing the object of study through theory, looking out to see what can be learned through those categories, and revising the theory accordingly should have yielded a few generalizable insights about provisionality as well as some sobering suggestions about the limits of politics. Needless to say, neither Shapiro nor any other generous interlocutor listed or not listed in these acknowledgments is responsible for the errors in this book.

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## introduction to provisional theory

Why do we fail so often to explain ourselves as a polity? Why is there such an enormous gap between our professed principles and our practical action? It is not simply that our political principles are mere feel-good balm, meant to soften the reality of interest-based politics. If this were so, we would behave very differently. Nor does this problem reflect any genuine divide between realists and idealists, fighting for temporary advantage and muddling our policies as we go. The problem, I argue in this book, is that our language of competing conclusive political principles is inadequate to the immense complexity, uncertainty, and dynamism of the world of politics.

We speak the language of timeless principles and use it as best we can to make sense of our moral intuitions and political decisions. It is certainly better than the usual alternative: the language of *realpolitik* made famous by hard-nosed men from Cleon to Henry Kissinger. Neither extreme, however, provides an adequate picture of political life. Both idealists and realists are unrealistic. If we want to speak more accurately about political morality and about politics generally, we ought to learn to use provisional rather than conclusive reasoning.

As I write these lines, I can see the brushy scrub surrounding a lagoon outside the study window. Living there are a pair of birds, California gnatcatchers, that will soon be replaced by a condominium complex despite their status as members of an endangered species. The language of conclusive right has reduced debate around the bird and its habitat to a pair of absolute claims, one for property rights, the other for ecological values.

This discourse, as we shall see in chapter 5, has little to do with the real politics of species preservation. The very distance between our conclusive modes of public discourse and the dynamic moral-political reality of practice makes those operating under realistic conditions of principled uncertainty less willing to engage politically.

The norms of conclusive argument force us to choose between hypocritical moralism that exaggerates our certainty, on the one hand, and amoral disengagement that denies our interest in justice, on the other. Provisional theory, however, should allow us to speak of ourselves accurately, along multiple dimensions: as members of groups, as individuals, as predictable according to reductive statistics, and as exercising free choice. Many of the aporias to which political discourse leads us these days come from the application of an inappropriate language to the context at hand. Provisional theory can, for example, recognize the goal of increasing the scope of individual free choice without denying the powerful realities of group membership and social determination. Take the example from the contemporary United States of claims by white students to have suffered reverse discrimination. If the question is whether racial diversity in higher education serves a compelling state interest, then provisional theory directs us to consider the recipients of higher education as members of society, not as individual agents more or less deserving of rewards meted out by the state. Provisionalism can recognize the long-term ideal of a system of meritocratic placement in education without having to deny itself the social-scientific means to move toward that goal, means that would rightly fail to pass muster under a conclusive, fully individualized standard. Having to realize the principle of state recognition of individual merit before an appropriate context for such merit exists—a description, I would argue, of most present-day systems of admissions to higher education in the United States—not only deprives us of justice from a group-rights perspective but also deprives us of the possibility of approaching realization of the original, individualistic principle.

Immanuel Kant frequently used asymptotic imagery to describe the human political condition in which we may hope to approach ideals but never to achieve them conclusively. He summarized this same provisional insight with the maxim that one should always seek to promote the conditions of justice; as he put it in *The Metaphysics of Morals*, “Always leave open the possibility . . . of entering a rightful condition.”<sup>1</sup> Now, Kantian

political ethicists have rightly been criticized for using abstraction to create an empty subject of political agency. Michael Sandel has famously argued that the Kantian liberal self abstracts from the very ties that make us human, for example.<sup>2</sup> ‘Kantian’ has practically become a term of abuse among political theorists interested in understanding the world as it really is lived: multifariously, with deep moral and even epistemological pluralism. Kant’s ethics may not in fact be as empty and rigoristic as these critics assume, but this is irrelevant to my argument. In his specifically political works, Kant describes a world in which moral argument is ubiquitous, but inconclusive, concretely effective, but only indirectly. Kantian political theory does rest on abstraction, but not on abstraction from the historical and cultural specificity of the moral subject, as we find in the ethical theory. Instead, given the context dependence of political argument as such, Kantian provisional theory abstracts from the particular contents of any given moral principle to the general fact of moral principles and their political importance. *What matters for politics is not the conclusiveness of any particular ethical system, even Kant’s own, but the abstract ubiquity of moral argument in political life.*

Though his political works contain no major philosophical volumes on the order of any of the *Critiques*, and though Kant considered his political work unfinished, still he managed to provide a few important hints about how to understand political life.<sup>3</sup> First, Kant developed the concept of provisional right in the context of social contract theory, after experimenting with it in his earlier work on international right. Second, Kant argued for the concrete historical effects of argument in public, pioneering the concept of the public sphere and providing an initial template for the dynamics of discourse in the public sphere that is still of considerable interest. Third, Kant attempted to theorize provisionally about major political institutions, such as property and citizenship, rather than applying conclusive principles without attention to context. Fourth, throughout his work, Kant experimented with a variety of modes for the application of reason to political decision-making in practice (he explicitly contrasted this effort with the “castles in the air” approach of designing rational political systems in the abstract). Fifth, Kant developed a dynamic account of public reason and political life that, though hampered with an indefensible teleology, still remains more empirically interesting than ahistorical accounts.

This is not a book about Kant, but I do refer to him throughout it for insights and arguments about provisionality in politics. I argue that the right kind of Kantian abstraction can allow us to make context-sensitive, provisionally legitimate arguments about hypothetically granted principles, and that these kinds of arguments are far more defensible generally than our usual competing conclusive principles. This tack may frustrate anyone looking for general defenses of particular policies. Provisional theory cannot provide policy prescriptions that transcend historical context; thus this book will disappoint readers looking for the next clever philosophical argument to bolster their preexisting political commitments. However, and to a degree which began to surprise me several years ago and which amazes me still, provisional theory can reach substantive conclusions about a number of political questions at a degree or two of abstraction higher than on-the-ground policy. Moreover, provisional theory can defend robust hypothetical statements about the compatibility of particular principles and institutions. Provisional theory allows us to speak accurately about the relationship between political morality and political practice. Finally, and even more surprisingly, provisional theory can lead us to a few broad institutional generalizations about the conditions enabling different political goals. In the chapters that follow, I illustrate several of these rare, substantive conclusions from provisional theory (which is not, believe it or not, an oxymoron).

What, then, does it mean to theorize provisionally? As I have said, for Kant, provisional right means roughly, “always leave open the possibility of entering into a rightful condition.” In *Toward Perpetual Peace*, for example, Kant discusses the various crimes that states sometimes commit, using this provisional standard to distinguish among temporarily permissible and absolutely forbidden crimes.<sup>4</sup> Damaging international trust through the use of spies, assassins, or false promises undermines the possibility that a country may enter into peaceful relations with others later; thus these sorts of practices must be fought implacably. On the other hand, there are practices in clear violation of any reasonable (that is, for Kant, any enlightened protoliberal) view of right that may still be tolerated, such as treating the state as personal patrimony. It is clearly wrong, argues Kant, to treat the entity justified by its protection of the welfare of its members—the state, that is—as if it were personal property. But even though the practice is wrong, its continuation for a time may not under-

mine, and may even promote, the possibility of more general right (more peace) in the future. For example, a ruler who has been given her domain as a present would be wrong to refer to her illustrious family, to divine right, or to any other traditional justification for her reign. Treating the state as personal property cannot be justified, for Kant. However, if the ruler is working to promote the rule of law and the conditions of progress toward more rightful circumstances, her reign might well be provisionally justifiable. As we shall see in chapter 3, Kant uses similar arguments with regard to the institution of private property. Throughout his writings, he argues against violent revolution on the provisional grounds that quick transitions are generally counterproductive, and also that revolution undermines the condition for progress toward more republican (more accountable) government. Thus toleration of a conclusively unjust domestic situation may be provisionally legitimate, according to Kant.

Kant did not have the last word on provisional right. But already some of the advantages of a broadly Kantian view of provisional right for political argument are apparent. With some hypothetical goal in view, the provisional theorist may calculate sets of arguments that can promote the goal without having to make untenable philosophical commitments on the way. Imagine that one makes an empirical study of the development of the concept of human rights, for example. One might discover that the concept of human dignity has far more actual purchase in the world, even today, than the concept of human rights. One might further discover that the idea of a right has a culturally and historically particular history, perhaps one that has exclusive consequences that are less emancipatory than one might originally have thought. A little more philosophy, and one could begin to interpret the language of rights as part of a hegemonic scheme, as a dominant discourse, or even as a set of deliberate lies. All this research would move our conception of human rights closer to the empirical bone: these historical stories are too good at explaining outcomes to be dismissed. But what should a theorist conclude from this hard-won wisdom about the particularity of the concept of a human right?<sup>5</sup>

So long as rights-based argument remains only provisionally authoritative in some contexts, this new knowledge of the shaky origins of rights-based arguments should not lead us to reject them on the basis of their inconclusiveness. In some contexts, use of rights talk serves worthy purposes, purposes whose utility cannot be undermined by the particular

genealogy of rights-based argument itself. Consider the following example. The Inuits of the International Circumpolar Conference have filed a complaint against the United States with the Inter-American Commission on Human Rights, arguing that the results of global warming driven by U.S. carbon emissions violate their human rights.<sup>6</sup> As the ice pack on which their way of life depends melts, the lawsuit contends, Arctic natives suffer injuries to their livelihoods and even to their cultural identities. They seek redress for these losses from the largest group of those responsible for causing climate change: the citizens of the United States. Now, when representatives of this Inuit group argue that their human rights have been violated by global carbon emitters, they are not victims of false consciousness or dupes of a slave morality; they are savvy political agents operating flexibly in a dynamic moral-political environment. Provisional theory asks not whether Inuit Circumpolar Conference representative Sheila Watt-Cloutier can defend the idea of human rights as such but whether her engagement in human rights discourse multiplies rather than constrains political possibilities.

Provisional theory takes two basic conditions of politics as given: agency and plurality. The values of agency and plurality are conditions of principled political action as such, rather than particular conditions reified to absolute precepts. In other words, though it is certainly possible to imagine a world without agency and plurality, it is very hard to imagine moral argument in politics without them. As Hannah Arendt once wrote, “The trouble with modern theories of behaviorism is not that they are wrong but that they could become true.”<sup>7</sup> For Kant, and for provisional theory generally, a realistic view of politics must take moral argument and its concrete effects into account.<sup>8</sup>

### **SOME KANTIAN BACKGROUND**

Kant’s politics should not be derived from his ethics.<sup>9</sup> Anyone reading Kant’s political essays even casually will notice that they are filled with fascinating arguments and hypotheses about the practice of politics, even though most of the secondary literature on Kant limits itself to formalistic abstractions illustrated by ill-chosen examples from ethical treatises like the *Groundwork of the Metaphysics of Morals*.<sup>10</sup> In his political essays, Kant gives us arguments about live political questions: how to trick the monarch into making himself obsolete; why permanent rule-giving of

any kind is illegitimate; why freedom of expression matters; why gradualism is to be preferred to revolution; why the intelligentsia should get special rights; how regime change occurs; what institutions promote international peace; how one should treat foreigners; and so forth. True, Kant takes the conclusions of his ethical work for granted in his political theorizing; he treats corollaries of the categorical imperative as conclusive principles of political right. However, in his political theory his concern is not simply to lay out another ideal system of politics, however well or ill grounded, but to understand the relationships among pragmatic politics, public applications of moral judgment to political practice, and the processes of political change.<sup>11</sup> Kant does construct an ideal republican political system, but his main theoretical innovation lies elsewhere, in his account of provisional right. Provisional right, as I explain below, emphatically does not mean a temporary free pass for wrongdoing in the name of pragmatic political ends. Instead, it is something much subtler and more interesting: provisional right is a response to the inevitable uncertainties that arise from the hybrid, half-ideal, half-empirical world of politics. It would be a misunderstanding to confuse provisionality with relativism. Research in the history of political thought and observation of contemporary political behavior reveal the near-ubiquity of conclusivist moral argument in political life. As Kant famously puts it, "True politics can . . . not take a step without having already paid homage to morals" (8:380; 347). Moral arguments with conclusive ambitions compete for temporary advantage in the public sphere, constraining what it is possible to defend in any given context. Thus Kant can analyze, even celebrate, the moral element in political life without retreating to the usual castle in the air built by conclusive theory in spite of reality.

It is one thing, however, to posit that morality matters for politics and quite another to argue that a particular set of moral principles is conclusively authoritative.<sup>12</sup> Political theorists who place Kant's ethics at the center of his politics make a mistake: they take the *content* of Kant's moral system to be critical, when what matters for politics is the *fact* of human morality itself. Since human beings are capable of agency, any politics that ignores the role of judgments about the right made by political agents will be inaccurate: political ideals have concrete political effects. Kant argues that a single moral law governs all human agents, but even so, as a clear-eyed interpreter of the political world, he knows that the sources of polit-