7. Logic in the Foundations of Politics

1. Introduction

This paper is concerned not with the development of new areas of logic or theory of argument for use in politics, but with the more general question of how much scope there is for logic in politics at all.

Popularly, of course, it is often said that there is none, and that since people are fundamentally irrational logicians might as well give up from the start. But this is because the most familiar context of political argument is that of persuasion. It is true that how useful logic is for the purposes of persuasion depends to a large extent on whom it is you are trying to persuade, and non-rational means of persuasion may often be more effective than rational ones. But on the other hand you cannot embark on persuasion, rational or otherwise, until you have settled the logically prior question of what the purpose of the persuasion is; and it is here that political problems start. This paper is concerned with problems that arise not in the attempt to bring about particular political ends, but in the more fundamental attempt to decide what those ends should be.

It is obviously important that the purpose of political activity should be settled at least provisionally before that activity begins, and settled with a reasonably high degree of confidence; if you cannot be reasonably certain of the value of your political ends there is not much point in going in for politics in the first place. Such certainty, however, often seems inordinately difficult to achieve. It may be easy enough when politics is the simple pursuit of self interest, or based on impulses or impressions or simple ideologies, but for anyone of intellectual and moral conscientiousness the problems at this foundation level of politics may often seem intractable.

To reach conclusions about *what ought to be done*, if you are morally serious, you seem to need in the first place a satisfactory moral theory that will provide the criteria for determining which of any range of possible policies ought to be pursued: a theory that will specify, for instance, whether it is better to go for equality of outcome or equality of opportunity or no equality at all, whether happiness is more important than freedom, and whether and when individual rights should be allowed to override considerations of utility. In other words, it seems that you need answers to all the most difficult questions of moral philosophy. And even if you had them — as few people who think with any care about ethics are under any illusion that they have — reaching conclusions about political goals in actual societies involves confronting a vast range of empirical questions about how people and societies work;[1] which are also notoriously difficult to answer with any confidence. Questions, in other words, that lie within the domain of the social sciences, where everyone knows that there are few certainties. When all is taken together, the project of sorting out detailed political objectives that can be pursued with any confidence may seem so beset with imponderables as to make it impossible for anyone of intellectual and moral conscientiousness to embark on practical politics at all.

[1] How many empirical questions need to be answered depends on the nature of the moral theory: consequentialist principles obviously present far more difficulty than deontological ones. But no politically plausible theory can avoid empirical questions altogether.

This is why it is interesting, and of practical political importance, to look into the question of how much help may be provided by logic. Logical theory may present problems of its own to workers on the frontiers, but there are large areas of clear and established logic available for relatively uncomplicated and uncontroversial use. If these can be used to make substantial political progress that will be a considerable gain.

Logic cannot do anything entirely on its own, of course, but if even a few firm moral or empirical foundations can be found it may be possible to extend them significantly by logical means, in ways that are not immediately apparent. There are two related contexts in which this may happen. First, any individual enquirer may find it possible to decide that there are at least a few fundamental principles or truths that can be accepted with a high degree of confidence, and in such cases what follows logically from them will deserve an equally high degree of confidence. And second, much the same may apply in the case of controversies between individuals, where those individuals are rational and committed to rational argument. If there are any areas where agreement — moral or empirical — can be established, it may be possible to show that they can be extended by means of logic further than at first seems possible.

Presumably there will be limits to the scope of such procedures. Later, if not sooner, the self-evident and uncontroversial parts will come to an end, and the enquirers and arguers will be forced again to deal as best they can with the familiar moral and empirical undergrowth. Nevertheless, in such difficult terrain as this, any clearing of the paths by means of logic is to be welcomed. My suggestion is that its powers in practice may be considerable.

2. Discrimination

It will be best to approach the discussion of logic obliquely, by way of a particular political problem.[2] Consider then the issue of discrimination, where that is taken in the full-blooded sense of disadvantage that is actually unjust, and which is now the driving force of a good many demands for political change. And as a very straightforward illustration of the kind of problem involved, consider the situation of London Transport in 1968.[3]

At the time most London buses had both a driver and a conductor, but plans were going ahead to economize by converting to a system of driver-only buses. The idea was to avoid redundancies and union trouble by retraining the existing conductors as drivers. But trouble was waiting nevertheless, in another place: a good many of the conductors were women, and until then all the drivers had been men. And women, said the existing

[2] This paper arises out of work on discrimination, now in progress: its methodological aspect has been separated out for the purpose of this symposium. Part of the argument, in an earlier form, appeared in 'Discrimination,' *Proceedings of the Aristotelian Society, Supp. Vol. 59*, 1985. Because this paper is not primarily concerned with discrimination, and because the argument of this paper does not turn on the the details of the discrimination case, the arguments will not be fully developed and possible objections will not be met. This paper is concerned only with the principles of the methodology, not primarily with the correctness of particular instances of it.

[3] Legislation has now driven most sex discrimination underground, so it is necessary to go back a few years to find such clear examples as this one. However, since my purpose here has to do with logic rather than with contemporary politics it will do perfectly well to consider an older example: it makes no difference to the principle. This illustration is derived from Sheila Rowbotham, *Woman's Consciousness, Man's World*, Pelican, 1973, p.95. It should be emphasized, however, that no attempt has been made to give an accurate account of what went on at the time; the illustration has been treated very freely, and must be understood simply as an illustration rather than as history. It will be clear that the story is of a familiar kind, whatever the truth about London Transport and its buses.

drivers, could not possibly drive buses; they were just not strong enough. Perhaps they might be able to manage the *little* buses, it was eventually conceded, but certainly not the big (double-decker) ones; and by means of the exertion of their male union muscle, the men succeeded for a while in having the exclusion of women from driving established as a policy.

Most people who are concerned with discrimination would say that this was a paradigm case of discrimination against women, and discrimination in the full sense of being unfair and unjustified. But if it is, what makes it so?

The first point, obviously, is that the policy treats the sexes differently (women are ruled out from the start while men are allowed to apply and compete), so that it *disadvantages* any woman who might want to drive buses. Bus driving may not be the summum bonum, but if women are kept out of it the range of options open to them is narrowed, and from their point of view that certainly looks like a bad thing.

Now, if a policy specifies that a *distinction* should be drawn between two groups, according to which one is treated less well than the other, there is certainly some sense in which the groups are *discriminated between*, and the group disadvantaged by the differentiation is *discriminated against*. To that extent, certainly, the drivers' policy was one of discrimination against women. But on the other hand differentiation and disadvantage are not generally regarded as enough on their own to make a policy count as discriminatory in the deeper sense of *doing an injustice* to the disadvantaged group, since many groups who are not normally thought of as unjustly treated are discriminated against in this sense. For instance, you would (presumably) be excluded by the rigours of London Transport's selection policies if you were epileptic, or had a weak heart, or were perpetually drunk, or were just inclined by temperament to treat anything on wheels as a racing vehicle; and not many people would count these groups as dis-

criminated against in the strong sense of being unfairly treated or arbitrarily disadvantaged.

However, the reason why these do not seem like cases of full discrimination is not far to seek. These groups are being excluded quite simply because they cannot do the job properly. Their exclusion is *justified* by the *principle* that buses must be well-driven. That principle, coupled with empirical evidence about what happens if you let people who may have epileptic fits (and all the rest) drive buses, supports the policy of excluding them.

Now there may perhaps be people who will deny that this is a justification, and say that it is wrong for people who have disabilities, or the kind of background that drives them to drink, to be deprived of the pleasure of driving buses. If so, what they are doing is *rejecting the principle* invoked to do the justifying, and claiming, as a substantial moral point, something on the lines of it being more important to compensate people for earlier deprivations of society or nature than to make sure that buses are properly driven.[4] Between people who do and do not accept the principle that buses must be well driven there is a substantial moral dispute, and that will result in their reaching different conclusions about who is unjustly treated.

For now, however, having noted that

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[4] It is actually much more likely that defenders of the interests of these excluded groups will say that they should be given some other job, or compensation, or special treatment, rather than that they should be allowed to drive buses. If so, however, they are moving to a different subject, because the question here is only of whether *the London Transport bus selectors, in their present circumstances*, are treating these people wrongly in leaving them out. The claim that they ought to be compensated or otherwise specially treated is a recommendation that a *different* agent — probably the government or the higher echelons of London Transport — ought to act differently, and does not in itself constitute a criticism of what the selectors are doing.

source of possible controversy, let us accept — as presumably most people do — that the principle of well-driven buses is the right one for selectors of bus drivers to follow, and therefore that the exclusion of people who cannot reliably control buses is justified and not a case of discrimination. Why, then, should we regard the bus drivers' policy as discriminating against women? They did, after all, offer by implication a justification of precisely this sort: buses must be well driven, women are too weak to handle buses, *and therefore* women must be excluded.

One reply is of course obvious. Even though the principle is a good one, it does not justify the policy because the claim about women's weakness is simply false. Many women are quite strong enough to drive buses, as has since appeared, and as the drivers could easily have found out if they had had the slightest interest in doing so.

But quite apart from that, a much deeper point, the argument is a *logical* disaster. Consider how the justification is supposed to work. The argument justifying the exclusion of the epileptic, the drunk and the like from driving worked by invoking a *principle* that was presented as providing a *morally compelling reason* for excluding these people. Now certainly if you adopt a principle that people who drive buses should be able to control them, and add to that the further propositions that control requires a certain degree of strength and that women have not got it, that does indeed imply that, in the case of any given woman, you will have a morally compelling reason not to appoint her. It also provides, *a fortiori*, a justification for there being no women bus drivers. *But these are not what the drivers needed to justify*. What they needed to justify was having *a general policy that ruled out women* — a new rule, as it were, in London Transport's manual of driver qualifications — and this is quite another matter. What we need to know, therefore, is whether the principle of well-driven

buses provides a morally compelling reason for actually instituting a woman-excluding policy.

Consider various possibilities. First consider the idea that the woman-excluding rule should be the *only* rule about exclusions from bus driving. (No one ever suggested that, but consider it anyway.) Now clearly a principle of well-driven buses cannot possibly justify the exclusion of women *but not the exclusion of men* who are too weak to drive. However weak women may be, the principle cannot possibly provide for drawing a distinction which keeps out women but allows in substandard men: it must demand the exclusion of *anyone* too weak to handle a bus. And of course the existing rules of London Transport, presumably, did just that. There were aptitude tests for bus drivers, which anyone too weak to drive would not pass. The drivers must therefore be regarded as demanding *the addition* of a woman-excluding rule to the existing rules about competent driving. Can this addition, then, be justified by the well-driven buses principle?

Again consider the possibilities. Suppose first that the drivers are right in their claim that all women are too weak to drive buses. Then all women will, as a matter of fact, find themselves excluded by the existing rules, so an additional rule specifically excluding women will achieve nothing at all in the way of eliminating substandard drivers. The principle of well-driven buses therefore provides no reason at all, let alone a morally compelling one, for adding it to the existing rules, and therefore does not justify its addition.[5]

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[5] A detailed discussion of the informal logic of justification is beyond the scope of this paper, but it is probably worth mentioning one point here. Perhaps it may seem that if women really are all too weak to drive buses the woman-excluding rule *does no harm*, and therefore has in one sense been justified. It is certainly true that one form of justification, which may be called negative, consists in showing that appar-

Conversely, if the proposed rule does succeed in excluding anyone whom the existing rules would let in, the people affected are precisely women who *are* competent to drive buses, in strength as in other respects, and a principle of well-driven buses cannot be thought by the widest stretch of imagination to justify a rule whose only effect is to exclude the competent. Whatever the truth about women, the drivers' justification fails; and simply on grounds of logic.

There may well be problems about specifying the precise form of this logic; justification is a complicated matter, and it certainly cannot be dealt with adequately here. All that is needed for now, however, is the claim that the argument fails on grounds not of content (falsity of empirical claims or mistakenness of moral claims) but of structure. The structure of the argument — quite irrespective of the acceptability of the well-driven buses principle, and whatever the truth about women and strength — is not of the kind required by a justification.

It is, furthermore, a logical point of a

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ent harm is not real, rather than that actual harm is justified. However, an argument of that kind would not work in this situation. Remember that the drivers *positively want* a *new* rule: they are (as it were) threatening to go on strike unless London Transport adopts this particular policy. That the 'no harm' justification does not work becomes apparent as soon as it is imagined as a justification offered to someone (say) not wanting to give up his free time to go on demonstrations, or to a London Transport executive not wanting to waste money on new manuals for selectors. To put it the other way round, there *is* some harm on the other side (printing new manuals and going on demonstrations), and that demands positive justification. A negative justification typically works in a context where there would be some trouble in removing an institution, but no harm in keeping it. It is also worth noting that even if the 'no harm' justification did work here, it would be a justification of a quite different form from the one the drivers actually offered: it does not depend on claims about the need for well-driven buses.

very simple kind, in that the argument is of a kind whose invalidity would be manifest in any context where no one had any predisposition to accept the conclusion. Imagine, for instance, someone arguing that we ought to have specific rules keeping chimpanzees out of universities, on the grounds that literacy should be a necessary condition of admission to universities and no chimpanzee could read. In such a context it would be obvious even to a chimpanzee that the principle invoked clearly demanded a rule excluding *anyone who was illiterate*, and therefore that chimpanzees, as a subclass of the illiterate, needed no special mention. Or, conversely, if they did need special mention, that would be precisely because literacy rules were not sufficient to exclude them, and any justification for keeping them out would call for a principle of a quite different sort. In such a case the absurdity of the argument would be obvious. The logic is no different in the bus drivers' case.

The argument the drivers produced to justify the *policy* of treating men and women differently in terms of the *principle* of well-driven buses therefore does not succeed. There is a technical breakdown in the case: a gap between principle and policy. For both logical and empirical reasons the policy cannot be justified in terms of the principle invoked to support it, and there is a consequent failure of justification. The argument fails to show that the exclusion of women from bus driving is anything other than a case of discrimination.

3. Failures of Justification

At this point in the argument there invariably arises a chorus of 'oh but....'s, from latter-day champions of the bus drivers who rush in to protest that they cannot be disposed of as quickly as that. All this misses the point, they claim; it is not what the bus drivers meant, or at least not what they should have meant

And they go on to explain why it is after all perfectly reasonable, or at least not obviously unreasonable, to suggest that women should be excluded from bus driving.

There is of course nothing wrong with anyone's trying to do this, since the fact that one line of argument fails to provide a justification for some policy does not in the least suggest that others must fare as badly. The principle of well-driven buses does not support the drivers' policy, but others might; and the bus drivers' new defenders are in fact offering *different* justifications for the original policy.[6] If a successful justification can be produced, even after a hundred failed attempts, the policy will nevertheless have been justified. I shall consider the possibility of such success shortly.

For now, however, since the purpose of this paper is to consider the place of logic in political arguments rather than the defensibility of particular political conclusions, it is necessary to force a pause in a place where it would never occur in politics, between the failure of the first attempt to justify some strongly-held political principle (here the exclusion of women from bus driving) and the onrush of later attempts. Consider the situation at that point.

The subject at issue is justification, and the first point to make concerns the kind of context in which justification occurs. Justification is not demanded or offered for all proposed policies or actions; most of time we attempt no justification at all of the things we do, and no one asks us to try. Justification is asked for only in contexts where the challenger thinks that there is some kind of objection to them, and it is offered only in contexts where it is accepted that there is a case to answer: where actual or proposed policies or actions are recognized as, wholly or in part, intrinsically bad or undesirable. Sometimes, of course, a person challenged may disagree that there is a case to answer, and simply assert that no justification is needed.[7] But when a justification is demanded *and offered in reply*, whoever offers the justification is conceding by implication that the policy in question is prima facie wrong, and therefore in need of justification.[8]

In the bus drivers' case, why is it that the bus drivers and their critics both, by implication, regard the policy of excluding women as needing justification? The details here are tricky in various ways, but roughly (and nothing more is needed for the purposes of this argument) the idea seems to be that equal interests are, objectively speaking, of equal importance, so that if you are going to *treat* people in such a way that the interests of some are

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[6] The only thing wrong is the implication (contained in the 'oh but') that these new arguments are objections to the argument just put forward — which claimed to refute the drivers' argument. To put forward a *new* defence of a particular conclusion is no criticism of a claimed refutation of the *old* defence, and the idea that a criticism is being made comes from a blurring of the distinction between argument and conclusion. In politics the main use of argument is to defend particular conclusions, and attacks on arguments are frequently mistaken for attacks on conclusions. The offer of a new argument is mistakenly seen as some kind of refutation of the original attack on the bus drivers because the latter is mistaken for an attack on their *policy*, rather than their argument.

[7] There is a difference between claims that justification is not needed and negative justifications (note 5). So, for instance, suppose someone is sticking needles into a child, and someone else reacts in horror. The response might be 'What's wrong with that?' (no justification needed — suffering doesn't matter), or 'It doesn't hurt' (negative justification — apparent harm not real), or 'I'm immunizing her against smallpox' (positive justification — principle overriding the presumption of not causing pain).
[8] Unless the justification is being offered *ad hominem*; the defender of some position may think no justification is needed, but may still offer one which the challenger should agree answers any objection.

apparently better served than those of others, you need to produce some kind of justification of what you are doing.[9] And it does indeed seem that to put some people's interests ahead of others' *without* justification would be counted by everyone as discrimination in the strong sense of disadvantaging them unfairly. The interests of one group should not be put *arbitrarily* ahead of those of another; if one is to be treated better than the other, reasons need to be given.

This skates over the top of a hundred important questions about discrimination, but they cannot be dealt with here. All that is relevant here is the general principle that when something is bad in itself, the *default* is that whatever it is should not be done, or allowed to happen. If something that is bad in itself is to be defended, a *justification* is called for, which shows either that the apparent badness is an illusion (negative justification), or that what is inherently bad is, after all, allowable because it is permitted or demanded by some higher principle than that of avoiding it (positive justification). Until such a justification is forthcoming, the policy must be presumed impermissible.[10] At this stage in the argument, therefore, the bus drivers, having failed to produce a principle that succeeds in justifying their policy, are back with the default of discrimination; and there they remain until they can find another argument to rescue them.

The first point to be made, then, in this enforced pause in the tide of political argument, is that in any context where enquirers or disputants can accept that justification is needed, an action or policy *must be presumed not justified* until proved otherwise. In arguments involving justification there may often be a clear default, and therefore a clear direction of burden of proof.[11] This is potentially of great value in moral argument.

The second important point arising from the discussion of the bus drivers' argument concerns *the different ways in which justifications can fail.* What has been said so far indicates a distinction that is crucial for the clarification of this argument, and of general importance in political contexts.

The kind of justification attempted by the bus drivers —quite typical in form— consists in invoking a principle according to which it is right, or at least permissible, to adopt the policy at issue. Buses are to be well-driven (principle) *and therefore* you must reject everyone who cannot drive them adequately (policy), no matter how much they need a job, or like driving, or are to be pitied for disadvantages in their background. But there are two distinct ways in which an attempted justification may fail. First, it may fail because there is something wrong with the principle invoked. That raises problems, of course, about whether and when principles can be said to be wrong, but for the purposes of this discussion it need only be said that anyone who does not accept the principle invoked will regard the justification as having failed. That is one type of failure, and perhaps the most obvious. But second, a justification will fail *irrespective* of the merits of the principle invoked if there is a breakdown between principle and policy: if the principle —

[9] Various different kinds of justification are offered in contexts where one group is treated better than another. For instance, that the interests alleged to be equal are not really so at all, or that (as in the case of the bus drivers) some other matter is more important than attending to people's interests, or that (as with family and friends) it is best that everyone should give preferential treatment to people closely connected with them.

[10] The same arguments apply, *mutatis mutandis*, to things that are intrinsically good. The default is that they should be done, and justification is needed for not doing them.

[11] Not always, because sometimes alternative courses of action may also have inherent drawbacks. How many cases there are where the default is clear is an open question, and one that is not dealt with here. My concern is only with cases that *are* of this kind.

whatever it is — simply does not support the policy in question.

It is helpful to mark this by a distinction in the concept of justification. A policy may be said to be *formally* justified by a principle when that principle, whatever it is, does actually support the policy in question, in the sense that anyone accepting the principle would be obliged (or, in the case of some principles, permitted) to adopt the policy. But for full, or *substantial*, justification it is necessary that there should be both formal justification *and* a principle that is correct or acceptable (whatever that means). 'Justification' is a success word, implying (in moral contexts) that whatever has been justified is morally necessary or at least acceptable, but this success is a function of two lower levels of success: correctness of principle, and correct formal justification. Both are necessary for substantial justification, which therefore fails with the failure of either.

This is important because of an asymmetry it produces in arguments about justification. It means that it is much easier to show that some policy has *not* been justified,[12] and therefore, given the default, that it should not be pursued, than that it has been and should be. This asymmetry occurs for two reasons.

The first is, quite simply, that it is easier to demonstrate one thing than two. To show that a policy is justified it is necessary to show *both* that the justifying principle is acceptable *and* that the policy in question follows from it. To show that it has not been justified, in contrast, it is enough to show that the attempted justification fails on only one of these two counts.

The second reason is directly relevant to the purpose of this paper. Since a justification fails with a failure of either of its two components, it follows that in any cases where it is possible to show a failure of formal justification there is no need even to enter into consideration of the merits of the substantial moral principle invoked. The purpose of this paper was to consider the extent to which it might be possible to reach substantial conclusions about political policies without becoming entangled in complex arguments about moral principles and difficult empirical questions, and depending instead on logic. This argument demonstrates the possibility of achieving the first of these aims: that in contexts where it is clear that a policy under consideration needs justification, it may be possible to show that no justification offered has been even formally successful, and therefore to reach a provisional conclusion that it should not be pursued, without entering into difficult controversies about the merits of rival moral principles.

The second aim — to show that such conclusions may be reached by means of *logic* — may seem more difficult to achieve. Logic may have been able to dispose of the bus drivers' first attempt at justification, but how often can this be done? Most arguments about whether some principle supports a controversial policy — about whether the policy is formally justified — turn out in practice to be about the truth of its factual premisses.[13] And, it may be said, there is a limit to how much comfort lies in the

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[12] This is not the same, of course as a claim that it *is unjustified*, in the stronger sense of having been shown to be wrong. A definite proof that something is unjustified needs as strong an argument as a proof of justification. The claim that something *has not been justified* is only a claim that the default should be kept *until* a justification is forthcoming.

[13] The distinction between 'formal' and 'substantial' is obviously rather like the distinction between 'valid' and 'sound', to the extent that if an argument is invalid or a justification formally incorrect, it has failed irrespective of the truth of the premisses or the acceptability of the justifying principles. But it is important that as presented here the formal part of the justification includes all parts of the bridge between principles and policy, and therefore includes empirical claims as well as logical form.

prospect of avoiding substantial moral problems by means of establishing formal failures of justification, if in order to do this you need to establish the truth of highly controversial factual claims which may be every bit as intractable as the moral ones.

In fact, however, the situation is not as black as it may seem. In the first place, although most real-life disputes about the success of formal justification do centre on disagreements about empirical claims, a great many of these could be settled long before that point if people were more attuned to looking at the logical structure of the arguments concerned. When critics attack arguments like the bus drivers' they almost invariably go directly for the factual premises ('It's not true that women are weak'), when quite often they could make the whole issue irrelevant by looking more carefully at the logic.

And second, once the logic of the justification is properly understood it will often become clear that a minimal empirical premiss — one that may be accepted without difficulty — is enough to do the job of showing that formal justification has failed. The point once again concerns the idea of default, and the direction of onus of proof. If a policy is of a kind that needs justification, it will often[14] be the case that arguments in its defence are of a kind to require *positive* proof that the empirical claims on which it depends are true. And if that is so it means that opponents of the policy will not need to prove positively that the claims are false; in order to make their own point, and demonstrate a failure of formal justification, it will be enough to show that there is room for doubt. That is itself a factual claim, but of a kind that will often be much easier to settle than the more difficult issue of whether the claim is or is not true. That is what was meant by the claim, at the outset of this paper, that

[14] Perhaps always, but this is a complicated matter and the more modest claim is the only one I want to make for now.

logic might be able to do a great deal in conjunction with *minimal* empirical claims.

What all this shows, if the arguments are right, is that it may often be possible to reach definite — if provisional — conclusions about whether it is morally justifiable to pursue particular policies, without entering into questions about the substantive moral principles invoked to justify them. Logic alone, or logic in conjunction with minimal empirical claims to the effect that something has not been adequately proved, may be enough to show that an attempt at justification has failed, and that those policies should not be pursued.

4. Practical Use

Even if all this is true in principle, however, there still remains the question of how often it is going to be possible to put it to any practical use. This is to some extent an empirical question, and one that cannot be embarked on here. What can be done, however, is to consider and dispose of two potentially serious obstacles to making progress in the foundations of politics by the means just described. Both of these are implied in what has already been discussed.

The first potential problem concerns the matter of default. The kind of argument described obviously cannot get off the ground unless there is a firm, if minimal, moral foundation: certainty (for an individual enquirer) or agreement (for disputants) about at least some policies that must be regarded as prima facie wrong, and not to be pursued without justification. How many such foundations are there? Given the variability of moral beliefs and the inherent difficulties of moral argument (avoiding which was the whole point of setting up this enquiry into the political value of logic in the first place), it might seem as though there were likely to be very few.

The second problem concerns the fact

that in order to make the foregoing points about failures of formal justification it was necessary to force an artificial pause in a place where it rarely occurs in political argument: the point at which one attempt at justification has been shown inadequate, and the policy being defended reverts to the state of being unjustified until shown otherwise. In practical politics, when the aim is to defend some policy that is strongly desired, attempts to find replacements for failed justifications usually follow so quickly that the provisionally unjustified state of the policy passes unnoticed. If the bus drivers and their allies keep at it, will they not inevitably stumble sooner or latere on a principle that will give them the formal justification they need?

Even if they did, of course, it would not mean that their policy had been *substantially* justified; for that it would be necessary for the justifying principle to be acceptable. But it would mean that the debate had come back to a point where the issue turned on substantial moral principles, with all their attendant problems. If it is true that anyone sufficiently determined can in the long run produce a formally correct justification for just about anything, it will mean that the short cut apparently offered by logic, and which is the subject of this paper, will not exist. The search for political principles will after all be as difficult as it seemed at first.

There is reason to think, however, that both these potential difficulties are in fact less severe than they may seem.

First, the question of firm moral foundations. It is certainly true that there is deep uncertainty and disagreement about moral principles: it was this that prompted the enquiry into the scope for logic in moral argument in the first place. There is, however, a distinction from this point of view between between fully-fledged moral principles which actually specify what agents ought, all things considered, to *do*, and what might be called *minimal* moral principles which specify

only that some things should be regarded as good or bad in themselves. Such minimal principles fall short of the fully fledged sort in not specifying what should be done; all they show, by implication, is that there is a *prima facie* case for pursuing or not pursuing some policy. This means they are morally more primitive than fully fledged principles, but precisely for this reason it is often much easier to reach certainty or agreement about them.

Probably the most obvious case of something that is almost universally accepted as bad in itself is suffering; virtually everyone seems to accept the minimal principle that policies or actions that cause suffering are prima facie bad, and call for justification if they are to be pursued. But there are others as well, and one reason for concentrating on discrimination as an illustration in this paper was the fact that it indicates a different, rather less obvious, area of widespread certainty and agreement. People do disagree seriously and passionately about policies and principles concerning disadvantage, but not, it seems, about the basic idea that equal interests are of intrinsically equal importance, and that if some policy differentiates between two groups to the disadvantage of one there is a presumption against it, and anyone who recommends it needs to justify it.

This is not something that is often stated, but it is quite remarkable how universal the agreement about it seems in practice to be. The bus drivers could just have asserted from the outset that their woman-excluding policy needed no justification because women's interests simply did not matter as much as men's, but it apparently did not occur to them, and it has not occurred since to their political successors. They have all been intent on producing a justification for excluding women that depends on a principle *other* than simply preferring men's interests to women's. This becomes particularly striking as the attempts at justification become more and more contorted: people who are determined to

justify policies that keep women in their traditional place do not give up easily, but they never seem willing to revert to the simple claim that there is nothing to justify.

Although it might seem that certainty or agreement about fundamental moral issues at the foundations of politics would be hard to come by, therefore, the evidence of this case, at least, is that there is in practice a good deal of it. There is a great deal of disagreement about fully fledged principles, but about minimal principles — about which actions should be presumed unjustified unless shown otherwise — there is frequently much less controversy. And in any cases where such minimal principles can be accepted, there is scope for political progress along the lines I have been indicating.

This suggests that the first of the potential obstacles to progress mentioned at the beginning of this section may not be insuperable. The same may also be true of the second. It is quite true that when one justification fails on formal grounds, others can be sought; and there is also no reason why the process should not go on indefinitely until it succeeds. Nevertheless, it often turns out in practice that it can be brought to an end. Devising formally correct justifications is nothing like as easy as it sounds, and it is surprising how many arguments do fail on formal grounds once they are subjected to sufficiently critical scrutiny.

For instance, as anyone well versed in the kind of argument that goes on in this thorny terrain will know, the justification that springs up as soon as the **Bus Drivers' Original** is demolished is some version of the Efficiency Argument. 'Maybe not *all* women are too weak to drive buses', this argument goes, 'but *most* are, and if we waste our time looking at the non-starters we will just be using taxpayers' money to no avail and our bus service will be inefficiently run.... and it would be better to lose a few good drivers than to slow down the whole system in trying to find them'. Or, in other words,

since there is a strong correlation between sex and strength, and since sex is much easier to spot than strength, we had better go by sex instead.

There is no reason at all why an argument of this general form should not be formally correct. Principles of efficiency can indeed form the basis of logically and empirically impeccable justifications of many policies, including ones which would be generally regarded as discriminatory, and in cases where this was done anyone who still wanted to object to the policy in question would have to resort to challenging the principle of efficiency itself. But the fact that arguments of this general sort *can* work formally should not be allowed to carry the implication that most of them do. No version of the efficiency argument that has yet come my way has succeeded in providing even a formal justification for the bus drivers' policy.

To start with, people who argue on these line always seem to rely on keeping the justifying principle comfortably vague. To say that efficiency is *important* is not enough: it is necessary to specify *how* important, by making clear at least roughly what degree of skill in bus driving should be sacrificed to achieve how much speeding up of the selection process.[15] Until the principle is clearly specified it is quite impossible to say whether the policy in question is justified by it, so it remains by default unjustified. Second, even if the principle were specified, positive evidence

[15] The quickest *selection* process of all would be to draw lots, or take people off the street at random, or something of the sort. No one would think of recommending that, because we do not want so much selection efficiency that we end up with people who cannot drive buses at all. But on the other hand *any* streamlining of the selection process that risks losing good drivers means that buses are likely to be less well-driven. The two have to be balanced against each other, and people may have very different views about what weight should be given to each consideration. It is certainly not *obvious*.

would be needed to show not only that most women were so manifestly incapable of bus driving that it would be a total waste of time to test them individually, but also that — in spite of its being obvious to everyone else — women would nevertheless be unaware of their deficiency on such a grand scale as to clog up the system by applying in droves.[16] Clearly there is not a shred of evidence for either of those propositions. And finally, for the principle to justify the woman-excluding policy it would have to be the case that the efficiency required could not be achieved *without* excluding women who were capable of driving, and this is obviously not so. Strength is the easiest of all qualities to test for. The weaklings (male and female) could easily be weeded out by the simple stipulation that candidates had to come for interview carrying a sack of coke. Or, at the very worst, you could specify that women had to take bus driving tests elsewhere before they risked wasting the valuable time of the London Transport selectors.[17]

So although in principle is it possible to go in search of new justifications as soon as earlier attempts are found to fail, formal success is not always as easy to achieve as it may seem from a distance. And this difficulty is compounded by another: the fact that there are in practice considerable constraints on the range of principles that can be invoked to do the justifying.

In the first place, people will appeal only to principles they think sound

morally acceptable. After all, the whole point of finding a justification is to excuse something which is *prima facie* morally bad, and there is not much point in offering a formally correct justification for some policy if it depends on a principle you are not willing to be seen to espouse. The bus drivers might, in theory, have tried to justify their woman-excluding rule by saying that Britain ought to be planning to rule the world, and that women must forgo the delights of bus driving in order to devote their whole attention to breeding soldiers. Such an argument might work formally (it would depend on the details of the spelling out), but London bus drivers in 1968 would hardly have thought it worth trying.

And secondly, in most politically significant contexts the constraints are even tighter than this, because when people attempt to justify such policies as excluding women from bus driving what they are doing is trying to clear *themselves* of the charge of discrimination. Since this is so they cannot just invoke *any* justifying principle, even among the range of morally plausible ones, to do the formal justifying required. If people want to show that *they* are not discriminating they need to show the policy they are recommending follows from principles that *they* accept and are willing to act on.[18] So even if the bus drivers had tried offering a militaristic justification of their policy it would not have helped them to avoid the charge of discrimination, since the principle invoked would quite obviously not have been one they made use of in any other context. And anyone who still thinks there is no problem about finding a

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[16] This is an illustration of the need for positive empirical evidence referred to in the penultimate pargraph of Section 3.
[17] It is of course *not* being claimed that these arguments, or the ones in succeeding paragraphs, show that successful formal justification of the bus drivers' position is impossible. They do not even rule out the possibility that some form of efficiency argument might work. They are merely meant to illustrate the point that when you start to look for formal flaws in justifications there are more than might at first be thought.

[18] There is also a stronger version of this final point: a particularly striking case of *failing to have a principle that allows you to* differentiate between the two groups is actually *having a principle that forbids you to*. Quite a lot of differentiating treatment that need not in principle be discriminatory will nevertheless in this way come out as discriminatory for some particular individual or society.

formally adequate version of the efficiency argument might be interested to subject it to this test, and try to entertain with a straight face the idea that London bus drivers in 1968 might have held indignant union meetings and threatened to go on strike about minimal shortcomings in the efficiency of London Transport's selection procedures.

So even though it is possible in principle for people who are trying to defend some questionable policy to flail around indefinitely in search of a principle that will justify it, success is often more elusive than it may at first appear. When first attempts at justification fail on formal grounds it usually means that the reason for commitment to the policy in question has nothing to do with the justification being offered; and in such circumstances formally correct justifications, depending on principles that people are willing to defend and actually use in other contexts, are quite extraordinarily difficult to find. Failures of formal justification turn out to abound, once you start looking for them.

In practice, then, it does turn out that many controversial policies never pass the hurdle of formal justification, in spite of the most determined efforts of their defenders. Logic, with a very little help from simple moral values and modest empirical claims, can show that they ought not to be pursued. My own view — though it will not be defended here — is that it is by these means possible to identify as strongly discriminatory a good deal of the traditional treatment of women, racial minorities, children and animals, as well as several aspects of class.

5. Conclusion

In summary the position defended in this paper is this.

It is extremely difficult to reach firm political conclusions about practical politics. In order to decide what ought to be done, and by whom, it seems necessary to find answers to all the fundamental questions of moral philosophy and the social sciences, most of which are inordinately difficult if not actually intractable. Individual enquirers may find themselves unable to reach satisfactory answers to any of them; disputants may see no possibility of reaching agreement about them.

For this reason it is interesting and important to explore the scope there may be in politics for the use of even relatively simple sorts of logic. Logic is in many parts of its domain much more manageable than the moral and empirical problems of politics, and presents conclusions that can be accepted with much more confidence. If there are any basic moral and empirical propositions about which an individual enquirer feels confident, it may be possible for logic to extend the range of that confidence. If disputants can agree about any such propositions, it may be possible for them to extend the area of their agreement by means of logic.

The principle suggested here is extremely simple, and concerns direction of onus of proof. If some policy can be recognized as having aspects that are bad in themselves it must be recognized as standing in need of justification. Attempted justifications may take the form of showing that what seems to be bad is not actually so (negative justification) or, more commonly, of invoking a principle to override the *prima facie* need to avoid the bad in question. Whether the principle invoked is actually acceptable may well be a matter of doubt (for an individual enquirer) or controversy (between disputants), but quite irrespective of any question about the merits of particular principles there is the separate question of whether any particular principle does actually, in its own terms, support the policy in question: whether the policy is formally justified by the principle. Formal justification may fail simply on grounds of logic, or on grounds of logic coupled with minimal empirical propositions (typically to the effect that

something is not known with the degree of certainty demanded by the logic of the justification). This is important because a necessary condition of substantial justification is formal justification. As long as formal justification is not achieved, whatever policies stand in need of justification remain unjustified; and the fact that formal justification has not been achieved may be clear to an individual enquirer, or agreed about by disputants, even when they disagree seriously about higher level moral principles. It may therefore be clear, at least provisionally, that there are some courses of action that should not be pursued.

How useful this general methodological principle actually is in practice depends on various empirical matters, and two potential obstacles to progress are discussed in the paper. How often is it certain (to an individual) or agreed (by disputants) that something is prima facie wrong and in need of justification? And how often is it possible in practice to reach the provisional conclusion that something has not been justified, and should therefore not be done, given that the failure of one attempted justification never precludes the offering of others?

My suggestion is that neither difficulty is as formidable as it looks. There is in fact a great deal of certainty and agreement about what is intrinsically bad and therefore needs justification. It is also the case that, once the distinction between formal and substantial justification is recognized, enormous numbers of politically significant arguments turn out to fail at the formal stage, and in ways that can be demonstrated by means of logic, or by logic in conjunction with minimal and uncontroversial empirical premises. This is often overlooked, partly because people are extraordinarily tolerant of any argument that seems to support policies to which they are are already strongly committed, but also because most people are far more used to making moral or empirical challenges to arguments than to looking at logical structure. This is unfortunate, because it is usually much more difficult to reach firm or agreed conclusions about these matters than about simple informal logic. Moral and empirical questions should be resorted to only when the scope for logical challenge of the kind described has been exhausted.

How much can be achieved by these procedures remains to be seen. What is certain is that where they can be applied — where it is possible to accept that some recommended policy is intrinsically bad and to show that no one has produced even a formally coherent justification of it — they are extremely powerful. That alone justifies watching for opportunities to make use of them. It is my suggestion, and belief, that they will in fact turn out to be as plentiful as blackberries.