

The Autonomy of the Political

by

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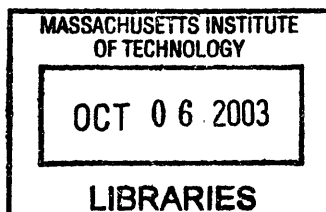
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ABSTRACT

This thesis examines and critically assesses five arguments for the autonomy of the political. The arguments I examine are those of Niccolò Machiavelli, Jean Bodin, Thomas Hobbes, Carl Schmitt, and John Rawls. After presenting what I believe to be the most plausible reconstructions of these arguments for the autonomy of the political, I conclude that none of these arguments succeed in their task. The arguments of Machiavelli, Hobbes, Bodin, and Schmitt each fail to establish an autonomous political account of justification or political legitimacy. Rawls' argument, on the other hand, succeeds in establishing a plausible and distinctively political standard of justification, but fails to establish that the political is autonomous. I conclude that there is an inescapable conflict between the thesis that the autonomy of the political and the idea that the state's actions could be acceptably justified or that the state could be legitimate.

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And as for the man of action—for him justice was on the one hand a paralyzing weakness, doubt itself, and on the other a trumpet-call to unscrupulous deeds.

-Thomas Mann

Introduction

The purpose of this thesis is to examine and critically assess the claim that the political domain is autonomous. The claim that the political domain is autonomous is the claim that, in one way or another, the activities within the political domain—the activities of the state, of state organs like the courts or the legislature, or of political parties and individual actors—must somehow be elevated above the inevitable, irremediable and potentially destabilizing conflict between groups, factions, sects, and individuals within society. Religious conflict, class conflict, and the conflicts between individual interests threaten to undermine political regimes and the political societies they govern. Religious purposes, moral concerns, and class interests are insufficient to determine how the state should act or what values it should be oriented towards. The assertion that the political domain is autonomous proposes that the political domain has its distinct purposes, concerns, or interests that set it apart from the divisive activities of sectarian social actors and the aims that motivate them. The autonomy of the political is a response to a concern that the political domain—the state, political actors, particular institutions—is in danger of becoming nothing more than the instrument of one or another class, religious, moral, or other group at work within society.

This thesis examines and critically assesses five putative arguments for the autonomy of the political. The arguments I examine are those of Niccolò Machiavelli, Jean Bodin, Thomas Hobbes, Carl Schmitt, and John Rawls. It is difficult to identify one particular thesis that each of the defenders of the autonomy of the political defends. That is, it is difficult to give a single all-encompassing interpretation to the claim that the political domain is autonomous. The authors

differ in what they identify as the political, in what they think the political is autonomous *of*, and also in what they believe this autonomy to consist in. There are, of course, interpretations of the thesis that are familiar to us. This is the position expressed in Machiavelli's *Prince* that the prince need not act virtuously in his single-minded pursuit of political stability and security. And it is the position expressed in Hobbes' *Leviathan*, that the sovereign's actions are in effect beyond normative evaluation. These references give us a rough if one-sided picture of the autonomy of the political: the independence of the sovereign, making his crucial *political* decisions outside the bounds of ordinary (and ordinarily divisive) moral or religious concerns. But this picture focuses only on the negative side of the thesis—the *unconstrained* character of the state or sovereign, his position *beyond* ordinary standards of evaluation. What we need is some understanding of the motivations behind the argument for the autonomy of the political, some understanding of that against which it is an argument.

I think the thesis that the political is autonomous is best understood as a response to an account of politics I will call *instrumentalism*. According to instrumentalism the state and its powers are to be used as means toward the realization of social ends: religious ends, moral ends, ethical ends, class ends, etc. Instrumentalism is a view that a group or sect or individual takes toward the state: the state is an instrument to be used for the realization of our social aims and ends. Whatever the particular group or agent espousing this view, the final aim is the realization of a particular state of affairs within society, rather than the realization of a specifically *political* state of affairs. From the perspective of instrumentalism—e.g., from the perspective of a religious fundamentalist movement—the state is merely one means among many for realizing certain states of affairs in society that are, by the accounting of the group in question, good or at least better than existing ones. The state is distinguished from other institutions, of course, by its greater power and organization and (perhaps) information. That is, the state is distinguished

from other institutions and agents in a *quantitative* way. But the state has no special purpose of its own, no distinctive ends or values that it is the state's peculiar task to realize or advance that would in any way conflict with the social aims it is being used to achieve. It would be wrong to say that from the perspective of instrumentalism the state exists to further this or that group's aims, values, or interests. But insofar as it *does* exist, the state is an incomparable means of achieving a group's aims or interests, and ought to be put to the task.

For the instrumentalist, the question of the justification of the state's actions or the legitimacy of the state has a straightforward resolution. The state's actions are justified to the extent that the state acts to realize the (religious, moral, class) interests that are dear to us, i.e., dear to this group or agent. The state is legitimate insofar as it does not require us to violate our (e.g.) religious principles, or insofar as it provides us with reasons for cooperating with the law that are founded in our (e.g.) religious beliefs. For instrumentalism these normative political questions are easily referred back to the overall set of values and interests the state is being used to pursue. In fact, the instrumentalist will likely be skeptical that political justification and legitimacy could be achieved in any other way.

The thesis that the political is autonomous is a rejection of instrumentalism on a number of levels. The objection raised by the defenders of the autonomy of the political to instrumentalism is not merely a theoretical objection to a flawed idea. The arguments for the autonomy of the political are in each case responses to a practical problem and danger posed by social groups' efforts to usurp political control for the sake of advancing their particular ends. The real-world efforts of class, religious, moral, ethical, and other social groups to claim control of the state for the sake of advancing their particular causes has to be seen as at least a contributing cause behind the formulations of the autonomy of the political examined in this thesis. The activities of sectarian and class groups—not to mention more subtle efforts to make moral or ethical notions

the basis of political decision-making—are, according to the theorists discussed in this thesis, a real danger to something of specifically *political* importance.

The danger posed by instrumentalism arises in part from the nature of social conflict. The defenders of the autonomy of the political are united (and are distinguished from many other schools of political theory) in their belief that certain social conflicts—religious, moral, class—are both *inevitable* and *irremediable*. Any political theorist would concede that the social world is marked by a pluralism of beliefs and interests that periodically boils over into open conflict and as such presents a political problem. What the defenders of the autonomy of the political are responding to, however, is more serious. Pluralism about beliefs and interests is not merely accidental, a historical feature of certain societies at certain points in their development; there are in society at least some conflicts or disagreements that are both inevitable and irremediable. This has two important consequences as far as the autonomy of the political is concerned. The first is that social conflict can be expected to be a continuing problem and that consequently there will be a continuing danger that social groups will attempt to take political power for the sake of advancing their social agenda. The second consequence is that the political ascendancy of one sect or faction is unlikely to put an end to social conflict without very serious repression and perhaps bloodshed. The inevitability and irremediable character of social conflict mean that instrumentalism is likely to continue to be a problem but not to be a solution.

The argument of the defenders of the autonomy of the political is that there are distinctive *political* concerns that it is the function of the state to pursue. These distinctive concerns provide us with an explanation of political legitimacy or justification—i.e., of what makes states legitimate or political action justified. And their pursuit by the state precludes the state's being used as a mere instrument for the achievement of social ends or values.

What are the concerns that move the defenders of the autonomy of the political? What are these specifically *political* concerns? To begin with, the stability and security of the political regime and the system of social cooperation as a whole are clearly at the forefront of these authors' concerns. Take Hobbes, for example. For Hobbes the purpose of the sovereign is to ensure stable and secure cooperation between citizens. Civil war—e.g., a war between religious groups for the prize of political control—is an obvious threat to political stability and security. But so are the efforts of religious parties (Presbyterians, Independents, etc.) to influence political decision-making and use the political apparatus to advance their social-religious goals. Stability and security are the clearest and most obvious values that can be classed as specifically political, i.e., specifically the concern of the state.

Stability and security are the values or concerns that motivate the arguments presented by Machiavelli, Bodin, Hobbes, and Schmitt. But stability and security of *what*? For Machiavelli and Bodin, it is the political regime itself. For Hobbes, it is the fact of social cooperation, the legally-regulated forum in which citizens are able to interact and exchange with one another peacefully, negotiating enforceable contracts with one another. For Schmitt it is the concrete network of norms and common values that constitutes a *society*. The security and continued existence of this “way of life” is the specifically *political* function of the state.

Each of these authors responds to the dangers posed by instrumentalism by invoking the specific ends or values of the political domain, e.g., stability and security. The state's pursuit of the political values requires, for reasons which differ from author to author, that the state or political domain in some way be autonomous of the moral, ethical, religious, or class considerations that motivate social groups. Political autonomy is a necessity forced on us by the nature of the peculiar political concerns, the nature of actual social conflicts, the danger that instrumentalist tendencies on the part of these groups would pose to the peculiar political

concerns. Instrumentalism is a threat, and the autonomy of the political is both an elaboration of and a response to that threat.

Stability and security are not the only peculiarly political concerns capable of distinguishing the political from the moral, religious, or class aims of social groups. Rawls argues for an account of *public reason* that is to guide democratic decision-making. On the Rawlsian argument, the political domain or political perspective can be distinguished by a concern with *democratic* decision-making, rather than decision-making determined by particular moral, religious, or class perspectives. Democratic decision-making, as interpreted on Rawls' public reason view, requires that decisions be made only on the basis of reasons that all parties can accept as reasons. The values and principles of particular social groups provide reasons for political decision-making only if they are reasons that all parties, including those of opposing social groups, can accept.¹ Public reason provides a shared basis for political decision-making that prevents any one social group from using political power to advance contentious moral, ethical, religious, or other ideological aims.

As with the other versions, Rawls' account of the autonomy of the political is a response to instrumentalism. It responds to instrumentalism not as a danger to stability and security but as an oppressive threat. Rawls treats instrumentalism as a *normative* threat. In this way Rawls' interpretation of the autonomy of the political is clearly an outgrowth of the liberal conception of tolerance. Religious tolerance in the political domain, on some interpretations at least, is a way to prevent the political apparatus from becoming the instrument of one religious group to oppress others. From the perspective of religious tolerance, instrumentalism is bad because it imposes a religiously oppressive government, and not simply because it poses a threat to political stability

¹ I am here ignoring, as I will ignore throughout, Rawls' distinction between reasonable and unreasonable pluralism. This is not to deny the importance of the distinction in Rawls' work. But I think it is not necessary to incorporate this idea into my discussion here.

and security. This distinguishes Rawls' argument in an important way. According to his view, there is something *normatively wrong* with instrumentalism: viz., it is *undemocratic*.

The autonomy of the political begins with the rejection of instrumentalism, even if this rejection comes in many different forms with many different consequences. The thesis that the political domain is autonomous starts from the thesis that the state and its power and apparatuses should not be treated as mere instruments for advancing the moral, ethical, religious, class, or other social aims of social groups. As Schmitt, commenting, on Hobbes, puts the point:

the appeal to justice and truth does not produce any kind of peace but instead leads to war, very wicked and vicious. Everyone claims, of course, that right and truth is on his side. But the assertion of being in the right does not lead to peace. Instead, it is designed to contravene the decisions of a well-functioning legal force that was created to end strife.²

But this is not the whole story. Each of the defenders of the autonomy of the political also defends an account of political institutions—Machiavelli a republican regime, Hobbes and Bodin absolutist regimes, Schmitt a regime focused on eliminating society's enemies, and Rawls a democratic regime based on public reason. They each argue that these regimes are necessitated in part by the dangers posed by instrumentalism and by the need to ensure that the political domain pursues its distinctive aims without being undermined by instrumentalist manipulation.

What is it that the defender of the autonomy of the political must establish? First, one must establish that there are instrumentalist dangers to the distinctive political concerns or aims. If we are not convinced that instrumentalism is a problem, we will not be convinced that the sort of regime defended by the various authors is necessary. If, for instance, political stability and security can be maintained through the efforts of religious parties using political power as a means to their ends, then specifically political concerns of stability and security cannot be used as arguments for the autonomy of the political.

² Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 45.

More importantly, however, the defender of the autonomy of the political must provide some *alternative* and specifically *political* account of what justifies or legitimates the actions of the state. We should not overlook the important fact that if we reject instrumentalism we reject the most obvious sources of political justification. If the state is the instrument of a religious group and political power and the law are used as means to achieve states of affairs more acceptable to the religion in question, then the religious values that motivate the state's actions provide an obvious justification for those actions (so long as we accept the values in question). If the state acts to suppress Catholics, and we all agree that the existence of Catholics in our community is dangerous and sinful, then the state's actions have at least a *prima facie* justification and legitimacy. Closer to home, if we agree with Robert Nozick that every human being has fundamental rights of self-ownership, then when the state is used as a means to protect these rights it is justified in doing so.³ Our acceptance of the moral, ethical, religious, or class aims that the state is used to realize provide the state with a *prima facie* legitimacy and its actions with a *prima facie* justification.⁴ If we reject instrumentalism, what compelling reasons does the state have to act on, and what principles could constrain the state's action to make it justified or legitimate?

Another way of putting the point would be this. We can see the danger of instrumentalism. The state is the instrument of a religious or class group, one that either destabilizes political society or oppresses its opponents (which potentially includes us). At the same time, the idea of a state that is not guided by any of the moral, religious, or class ideologies at work in society is equally frightening. In a society characterized by irremediable disagreement and conflict and within which there is therefore no hope of moral, religious, or class consensus, doesn't the

³ See Robert Nozick, *Anarchy, State and Utopia*.

⁴ The legitimacy and justification are only *prima facie* in that one might have other views, beliefs about tolerance for example, that would rule out these sorts of actions or this sort of orientation on the part of the state.

disconnection of politics from the particular social doctrines and movements mean placing the political domain outside the realm of the normative, outside the realm of justification and legitimacy? The mere rejection of instrumentalism appears to leave us with a completely unconstrained, unjustified, and illegitimate (or maybe non-legitimate) state, against which we have no moral, religious, or class recourse. I think it is reasonable to assert that unless the defender of the autonomy of the political can explain how the autonomous political regime would (or could) be justified in its actions and legitimate—that is, unless the defender of political autonomy can present an *alternative* and specifically *political* account of political justification or legitimacy—then the argument for the autonomy of the political has failed.

As I have already suggested, the five authors whose arguments I examine in this thesis reach the conclusion that political is autonomous through different routes, and indeed reach conclusions that are themselves very different. The autonomy of the political is a general idea under which many different particular theses fall. I have tried to draw these arguments together with reference to a common target—what I have called *instrumentalism*. Each argument can be seen as a response to the dangers posed by inevitable and irremediable social conflict, a response that seeks to prevent the political apparatus from becoming a mere instrument of some social group or faction. But that should not shield us from the important differences both in their arguments and their conclusions.

Machiavelli's account of the autonomy of the political, as I have reconstructed it, is complex and multifaceted. Machiavelli's primary concern is with political parties pursuing narrow class interests with the ultimate aim of taking sole control of the state. Machiavelli's contention is that political stability and security cannot be ensured in a regime in which one class party or one individual rules alone. The only viable regime is a republican one in which both class parties participate in governing with a share of political authority commensurate with their power in

society and rule alongside a prince who manages the political conflict between the two parties. In this regime the class parties pursue their narrow class interests without the mediation of any common normative rules or understandings. The prince, likewise, pursues his self-interest without being constrained by considerations of virtue. In this sense, the political is autonomous: the political actors act independently of ordinary moral and ethical considerations. But these are only secondary aspects of Machiavelli's interpretation of the autonomy of the political. The fundamental idea is that we could have an interest in the maintenance and survival of a political regime beyond simply having an interest in that regime as a *means* to our particular interests (be they the class interests of a party or the individual interests of a monarch). That is to say, there are *political* interests distinct from the self-interest of a particular group or individual. This is an important thesis in a society where, as Machiavelli argues, class parties are constantly vying with one another for political control. It is these political interests, Machiavelli contends, they can only be attended to by a republican regime. This is what makes the republican regime of value. It alone can ensure political stability and security, not as means to the satisfaction of one group or individual's private interests but as something valuable in themselves. The political is autonomous insofar as the political interests are distinct from class interests or individual interests. Machiavelli's view will be the subject of chapter I.

Jean Bodin and Thomas Hobbes each defend an interpretation of the autonomy of the political which I refer to as *absolutism*. Absolutism is the thesis that in every political society there must be a sovereign whose authority is absolute. Absolutism clearly provides a solution to the problem of social conflict described above. For Bodin, the threat of instability comes from the array of conflicting sources of power within society—powerful dukes, the Church, the Estates, and dissident religious groups—each of which may attempt to usurp political power or exercise its own military might for the sake of dominating its opponents. Each claims or will (if

necessary) claim the legal or moral or religious authority to do so. The thesis that the sovereign's authority is absolute is a response to these challenges. No one has authority over the sovereign, because the sovereign's authority is absolute. For Hobbes, the threat as stated in the *Leviathan* arises from the unbridled and insatiable acquisitiveness of human beings, "a perpetual and restless desire of power after power, that ceaseth only in death."⁵ In response to these potentially destabilizing threats, absolutism asserts the unconditioned and unconstrained authority of the sovereign. On the one hand, the sovereign's law provides a framework in which conflicts of interest and belief can be hashed out. On the other hand, the absolute nature of sovereign authority means that the apparatus of the state—law, military, police, courts, etc.—cannot be taken up as the sole instrument of one faction or party to be used against others. Absolutism is the subject of chapters II and III.

For Carl Schmitt as well, one motivating concern is that the state and its power will become a mere extension of the activities of a particular moral, religious, class, or other such group. Schmitt's thesis is that the distinctive political concern is a concern with identifying those agents who pose a threat to a society's "way of life." A way of life can be constituted by, e.g., religious norms that citizens generally obey. But those who threaten this way of life—the *concrete fact* of individuals generally abiding by the norms in question—will not necessarily be those who disobey the society's essential religious norms, nor will those who do violate the society's religious norms necessarily threaten the society's way of life, i.e., that society-wide state of affairs wherein the norms in question are generally obeyed. Conflict in which social groups, e.g., religious groups, vie for political control is dangerous not just because it threatens the existing order but also because it precipitates a new unworkable political regime. The religious state—the state in which one religious group rules and uses the instruments of political power to

⁵ Thomas Hobbes, *Leviathan* (henceforth *L*) xi.2.

persecute or convert non-believers—is untenable insofar as its narrow religious focus forces it to ignore important political concerns. An orientation toward the persecution of heretics and spreading of the gospel leads the state to ignore the distinctive *political* task of identifying and dealing with those who threaten the society’s way of life (who may not be heretics in need of gospel). For Schmitt, the answer to the danger posed by social conflict is to re-emphasize the distinctive political function and make clear that it is distinctive from the moral, ethical, religious, class, and other concerns that move the social actors in conflict. The political function of defending society’s way of life as a whole must be elevated above—or at least clearly distinguished from—the concerns at work within society itself. Schmitt’s interpretation of the autonomy of the political is discussed in chapter IV.

The last view I look at is that of John Rawls. Rawls’ point of departure is the unavoidable disagreement and conflict between citizens’ moral, ethical, and religious worldviews. As Rawls makes clear, this pluralism of “comprehensive doctrines” is not evidence of a defect in Western democracy but rather “the inevitable long-run result of the powers of human reason at work within the background of enduring free institutions.”⁶ The danger, from the Rawlsian perspective, is that citizens will each believe (and many citizens have tended to believe) that their particular worldviews provide reasons for the state to act, reasons the state must be made to act on. Thus the fact that abortion is murder (on my worldview) is a reason for the state to act to prevent abortions from taking place. Or the fact that homosexuality is a sin (on my religious conception) is a reason for the state to punish homosexuals or not to recognize gay marriage. Given the multiplicity of different and irreconcilable doctrines at work in society, relying on any one such doctrine means compelling some citizens to be regulated and coerced on the basis of considerations that they cannot—given their beliefs—recognize as reasons. In order to prevent

⁶ John Rawls, *Political Liberalism* (henceforth *PL*), p. 4.

the political domain from becoming an instrument for the oppression of one group by another, Rawls argues, political decision-making must be based on reasons that are acceptable to all. This *public* conception of reason is autonomous of the various moral, ethical, and religious doctrines at work in society in the sense that none of these doctrines determines what counts as a political reason. Rawls' public reason approach thus elevates political justification above the moral, ethical, and religious justifications that figure into the decision-making of individual citizens. Rawls' view is the subject of chapters V and VI.

These arguments and conclusions are obviously very different. But they point to a common concern with the instrumentalist view of politics, and to a common conclusion that the political domain provides distinctive values and interests that, potentially at least, provide us with an alternative account of political justification and legitimacy.

It is necessary to know that war is common and right is strife and that all things happen by strife and necessity.

-Heraclitus

I. The Autonomy of the Political Interests

The Machiavellian argument for the autonomy of the political runs as follows:

1. Only a republican regime can be expected to be stable and secure in the face of inevitable class antagonism.
2. The republican regime is autonomous of class conflict because neither class has sole possession of political power.
3. Therefore the political domain—the *real*, stable, secure political domain—is autonomous.

This is the argument I explain and criticize in this chapter. Inevitable class antagonism generates an open conflict between class parties vying for sole control of the apparatus of state: police, military, administration, and so on. This conflict destabilizes all but the republican regime. The republican regime is distinguished by the fact while both class parties participate in government, neither has exclusive control over the state. The rough balance between political parties, maintained and defended by the independent prince, allows for a lasting and stable political regime. The republican government is an example of the autonomy of the political, insofar as the republican state is the instrument of neither class party nor is it the instrument of any single agent (as a monarchy would be).

The sense in which this is an argument for the autonomy of the political is obscure. It becomes clear only when we see the problem Machiavelli is trying to resolve. As I said, Machiavelli's immediate concern is narrow class parties that are attempting to take political control and use political power for their own purposes. In the background is also a concern about an *individual* taking over the state and using political power for his private purposes, e.g.,

the sort of dictatorship that in the end undermined the Roman republic. The problem, from Machiavelli's perspective, is that this doesn't work. The regime that is the instrument of one party or one individual cannot be *stable* or *secure*.

The plausibility of Machiavelli's argument for the republic therefore depends in part on the thesis that we have an interest in the stability and security of a political regime independent of whether that regime furthers our class or individual interests. The idea is that there are *political interests* that are general—the stability and security of a political regime—and not simply extensions of our own self-interest (if we are sovereign) or class interest. To put the same point another way, the thesis that Machiavelli wants to reject is the thesis that the value of a regime—and hence our concern with that regimes stability and security—is a matter of whether or not it serves our interests. This latter thesis is simply a version of instrumentalism as I described it in my introduction. The state is good or legitimate or its actions justified only if those actions further my interests or the interests of my class or of my sect. There is no value in the existence of a political regime *in general* (or if there is it is negligible). From the perspective of a society in which competing class parties vie for total political control, Machiavelli's rejection of this instrumentalist view is significant. The argument for the thesis that the republican state is the only stable and secure state is intended to demonstrate, I believe, that the political interests *really are* distinct from the interests of either class or any individual. They are such that they cannot be satisfied by the mere pursuit of class prerogatives or the individual monarch's pursuit of self-interest.

This autonomy of the political interests is only one aspect of Machiavellian political autonomy, although it is the central and most fundamental element. Along with the autonomy of the republican government is: (a) the autonomy of the class parties from moral, ethical, and other such considerations, in their political pursuit of their class aims; and (b) the autonomy of the

prince from morality, ethics, and so on in his role as prince. The latter is clearly the most familiar face of Machiavelli's political autonomy, but its real significance is distorted when taken in isolation from the other aspects of republican political autonomy.

Machiavelli presents an account of the autonomy of the political that has three distinct yet related sides. Each springs from the inevitable and irremediable conflict between social classes, a conflict which can only be prevented from destroying political stability and security by a republican regime. The central piece of political autonomy is the republican elevation of the state above the fray of class conflict, preventing the state from becoming the mere extension of one party or another's collective class activities. Unlike absolutism, which removes the exercise of political power from the fray of social conflict altogether, the republic maintains stability and security by allowing each party to participate to the full extent of their social power in the workings of government. At the same time, it does so without allowing either party to make political power its personal instrument.

The centerpiece of Machiavelli's argument is his analysis of class antagonism and the politicized class conflict it generates. This account is to explain both the failure of traditional or "pure" political regimes (monarchy, aristocracy, and democracy) as well as the success and long-term stability of the republic. Furthermore, the demands imposed by the ongoing class conflict explain the autonomous orientations of the class parties and the prince within the republican government. It is no exaggeration, therefore, to say that Machiavelli's argument for the autonomy of the political stands or falls with his account of class antagonism and the ensuing politicized class conflict.

The purpose of this chapter is threefold. First, I want to reconstruct as best I can Machiavelli's argument (1)-(3), tying together in a single account the various aspects of political autonomy in the Machiavellian view. Second, I want to present an objection to Machiavelli's

argument for the conclusion that a republican government is the only government capable of protecting the political interests. Finally, I want to argue that Machiavelli has not given us sufficient reason for taking an interest in the satisfaction of the political interests, and in fact he appears to argue that no citizen is likely to be concerned with political stability and security *per se*.

The Cycle of Political Regimes

Machiavelli's contention, which will be discussed in greater detail below, is that political stability and security can only be satisfied by the confrontational interaction of the three political elements in a republican government, i.e., through the prince's efforts to pursue his interests in the context set by the narrowly class-interested actions of the class representatives.

Machiavelli's first task, therefore, is to show that the other possibilities—the traditional or “pure” regimes (monarchy, aristocracy, and democracy)—inevitably fail.

Machiavelli's story runs roughly as follows.⁷ Political communities form out of a need for collective self-defense. They generally form around single leader who possesses the characteristics necessary for securing the community members' protection. This is the prince, and he governs by means of a monarchy. Now the prince may have all the classical and Christian virtues but over time the absence of any opposing political force leads the prince or his descendants to abuse their power. In a monarchy, after all, there are no political forces to oppose the prince, so that whatever control or discipline there is in the exercise of political power must

⁷ *Discourses* I.2. (References to Machiavelli's *Discourses* will be given by book and chapter number.) Polybius gives what is, for my purposes, the same story. For Polybius' version of the story, see his *Rise of the Roman Empire* VI.3-9. For a comparison of the Polybian and Machiavellian versions of this story, see Harvey Mansfield, *Machiavelli's New Modes and Orders*, pp. 32-40. Whether or not the differences Mansfield points out between the Polybian and Machiavellian stories are interesting in themselves, I do not believe they bear directly on my discussion, drawing primarily as they do on aspects of Machiavelli's work that I do not discuss.

come from the prince's *self-control* or *self-discipline*. Self-discipline and self-control do not prove to be very reliable safeguards, and the excesses and abuses of the prince eventually induce the subjects to revolt. The subjects, identifying the flaw in their former government in the fact that political power was given to a single individual, agree to give political power to a small group instead: the most prestigious, venerated, and (generally speaking) wealthy members of society. So aristocracy, the rule of the upper class, is born out of the failure of monarchy.

Aristocracy, unfortunately, shows its own weaknesses soon enough. However virtuous and well-intentioned the founders of the aristocracy were, as time goes on they or their descendants begin to abuse the power they have been given, inciting the people (i.e., the lower class) to revolt.

Having learned that the rule of one and the rule of the few are equally dangerous and prone to abuse, the citizens agree to give political power to "the people," i.e., the lower class as a whole.

Thus democracy arises out of the ashes of aristocracy. And yet democracy is destined to suffer the same fate as its predecessors. As Machiavelli explains it, in its zeal to throw off the shackles imposed by the rule of the upper class, democracy throws off all shackles whatsoever.

Democracy thus descends into anarchy, and the cycle of political transitions begins once more.

The moral of the story of the cycle of regimes is that when one agent—an individual, the upper class as group, or the lower class as a group—rules on its own, political instability and dissolution follow. None of the available sorts of agents can be trusted to govern alone. This shows us something about the political interests. It shows us that the political interests cannot be attained by any one social agent (be it a class party or an individual). Thus the political interests really are distinct from the particular interests that motivate these ruling parties: efforts to satisfy the latter will not satisfy the former. The story of the cycles gets us partway to premise (1) of the Machiavellian argument. All of the traditional or *pure* forms of government fail, leaving the

door open to a better idea. The republican regime represents an alternative, a way out of the cycle of regimes, because it combines elements of all three *pure* regimes, as we shall see below.

But the story of the cycle of regimes is just a story, and a more detailed account is needed to explain both why monarchy, aristocracy, and democracy fail and why the republic represents a feasible alternative. What needs to be explained, for starters, is why in each case where a particular social agent is given sole political control that agent's regime fails. Each agent has interests it pursues. It seems plausible to say that political power is the single most effective means of achieving whatever other interests the agent in question has. Governing a political society has its dangers and pitfalls, obviously, and excessive abuse of one's political position will likely undermine that position and consequently one's hold on political power. But one would think that it would be possible, in many if not all cases, for the ruling agent (be it a class party or an individual) to employ political power in a way that advances that agent's other interests without at the same time undermining the agent's political position and power. So the question that stands out is: Why can't class parties or lone individuals (i.e., monarchs) rule rationally, i.e., in a way that advances their particular interests without undermining their exclusive hold on political power? We do not want to assume that all available rulers are simply incompetent. That would be uninteresting, for one, and it doesn't seem particularly plausible either. There are, of course, uncertainties and events outside the ruler's control that could potentially undermine the stability of any regime, e.g., natural disaster or foreign invasion. But it seems like a stretch to say that these chance factors will inevitably undermine the three regimes (monarchy, aristocracy, and democracy). If this is Machiavelli's only argument, then his argument is certainly less interesting than we might have supposed.

I think there is a better explanation at work in Machiavelli's writing, viz., class antagonism. The decline of each of the pure regimes (monarchy, aristocracy, and democracy) is explained not

by incompetence nor by chance events but by the inevitable and inevitably-conflicting dispositions of the two classes. The antagonism between these two dispositions is the core of class conflict, an antagonism that may generate a political conflict between rational class parties pursuing collective interests. If we want to explain why the rule of a single agent fails then we need something at work in society beyond the rational pursuit of self interest on the part of class parties or the monarch. Otherwise we are left to attribute the failure of the pure regimes to incompetence or bad luck.⁸ The Machiavellian account of class conflict, grounded in the inevitable antagonism between non-rational class dispositions, is to play this role.

Class Antagonism

The core of class conflict as Machiavelli understands it is the antagonism between class *dispositions*. “[I]n every republic there are two different dispositions, that of the populace and that of the upper class”⁹ and “in the [upper class] there is a great desire to dominate and in the [lower class] merely the desire not to be dominated.”¹⁰ He makes the same point in the *Prince*: “These two different dispositions [that of the upper class and that of the people or lower class] are found in every city; and the people are everywhere anxious not to be dominated or oppressed by the nobles, and the nobles are out to dominate and oppress the people.”¹¹

I think that the basic idea Machiavelli wants to get across here is that whether or not there are parties or organizations explicitly oriented toward the advancement of the common interests of class members—whether or not there is open class *conflict*—there is in every society an inevitable *antagonism* between the upper class and the lower class. Machiavelli does not tell us

⁸ This is not to say that incompetence and in particular luck do not play a significant role in Machiavelli’s writings. But I think there is a stronger and more interesting argument in these writings as well, one that hinges on the antagonism between class dispositions.

⁹ *Discourses* I.4.

¹⁰ *Discourses* I.5.

¹¹ *Prince*, chapter IX.

that under such and such conditions these two dispositions arise, nor does he tell that the right social arrangements will dispel these dispositions or the tension between them. The fundamental class antagonism between the disposition to dominate and the disposition to resist is present whether or not there are collective organizations to represent the two sides and regardless of what sorts of agreements or compromises are reached between such organizations. Class antagonism is unavoidable and irremediable.

What does it mean to say that there are these two dispositions? What is the origin or nature of these dispositions? Machiavelli is not particularly clear on this subject, but we can sketch the outlines of an explanation. The upper class possesses power that stands in the way of the lower class members advancing their particular aims and interests. These aims and interests are, we can expect, of various sorts: greater wealth, the security of their wealth, recognition and expression of their social superiority, other forms of power (besides wealth). The members of the lower class obviously have material interests; they also have concerns about honor and pride that influence their willingness to be bossed around and also give them a reason to not want to be on the low end of the social hierarchy. In the pursuit of these aims they butt up against the power exercised by the upper class. The members of the upper class stand in the way of the lower class members' pursuit of their aims and ends because they exercise a power that allows them to control or influence the activities of the lower class members. At the same time, the members of the upper class have power over the lower class which they wish to exercise—whether for material purposes or out of pride or a concern with honor—by influencing or determining the actions of members of the lower class. There is thus an antagonism between the individual lower class member's pursuit of his particular interests and the power or domination that issues from the upper class members' superior position. Machiavelli describes this as an

antagonism between the upper class's disposition to dominate and the lower class's disposition to resist domination.

There are three essential points to take in regarding the content of these class dispositions. They are: (i) asymmetrical; (ii) intrinsically opposed; and (iii) deeply opposed. Let's start with (i). Machiavelli is clear that this underlying class antagonism is uneven. The upper class is interested in domination. The lower class is not interested in dominating *back*, nor is it interested in trading positions with the upper class, i.e., by becoming the dominator rather than the dominated. The lower class is disposed simply to *resist* the dominating efforts of the upper class. The upper class is the *aggressor* in this situation (although Machiavelli would never put the point in such blatantly normative terms); the lower class responds in the hope of being left alone.

The opposition is *intrinsic* because given their dispositions it is not as a consequence of *contingent* facts that they stand opposed to one another. It follows from the content of their dispositions that they are opposed to one another. Each side is disposed to deny the other what it wants. But it isn't that each class wants some of the same good *G*, and due to the contingent fact that *G* is in short supply the two sides come into conflict. It isn't that both groups want a particular piece of land, but given that there is only one piece of land they want and they both want it they come into conflict. Rather, the disposition of the one is to frustrate the other in its efforts to act as it is disposed to act. The upper class is disposed to dominate the lower, while the lower is disposed to resist this domination. No alteration of the contingent facts concerning the distribution of scarce goods will change that, so long as both sides have the dispositions they do. Their dispositions are therefore *intrinsically* opposed. Given that they have these dispositions, they will be opposed to one another.

Finally, I say that their opposition is *deep* because each side is disposed to deprive the other of something of *essential* importance. The upper class is disposed to dominate. If the

disposition of the lower class is to resist domination, it follows that the lower class's disposition will be *satisfied* only when the upper class ceases to dominate. In other words, the lower class will cease to act in its characteristic manner only when the inequality that separates the upper class from the lower has been eliminated. It would be misleading to say that the *aim* of the lower class is to put an end to the dominating efforts of the upper class, both because it is the lower class's disposition we are talking about (not any conscious collective aims) and because in the end the disposition of the lower class is simply to be left alone. The asymmetry of the class dispositions is again important. The upper class is disposed to *do* something; the lower class is simply disposed to prevent the upper class from doing it. But insofar as the disposition of the lower class has an endpoint or *telos*, we can say that it is that state of affairs in which the upper class ceases to exhibit its characteristic disposition. The same can be said of the upper class and its disposition toward the lower. If it is an essential feature of the lower class that it be disposed to resist domination and it is the disposition of the upper class to dispose the lower, then the upper class's *telos* is that state of affairs wherein the lower class ceases to exhibit its characteristic disposition. The conflict between the class dispositions is therefore deep in that each class is disposed to bring about that state of affairs in which the other class ceases to behave in its characteristic manner.

At this fundamental level, class antagonism is not a conflict between coordinated class actors—e.g., class parties—who rationally aim to satisfy certain interests common to group members. These dispositions arise out of the inequalities that are the basis for class distinctions, and not out of the organized efforts of class members to pursue their common interests collectively. As we will see, the inevitable presence of these dispositions is essential to explaining the inherent weakness of the traditional forms of government (monarchy, aristocracy, and democracy) and also the necessity of a “mixed” or republican regime.

Politics and Class Conflict

What we have now is the core of Machiavellian class conflict, a deep, intrinsic, and inevitable antagonism between asymmetrical dispositions. This is only part of the class conflict picture, however. Individual class members have common concerns that are frequently addressed through the organization of collective class parties. Collective organization allows the individual interests of class members to be pursued more effectively. Collective organization requires some means of interpreting common interests and formulating common strategies. The existence of interests common to class members is easy enough to see. Those with more possess a power to influence and determine the activities of those with less. They have interests they pursue through the use of this power, and the members of the upper class can be expected to have in common an interest in maintaining or developing those general social conditions (the fact of inequality, the protection of property laws, imbalances in access to education or political influence) that allow them to have this power. Similarly, the members of the lower class have interests and aims that are frustrated by the upper class's exercise of its power. The members of the lower class can be expected to have a common interest in securing general social conditions that, on the whole, reduce the power of the upper class or inhibit the ability of the upper class to exercise that power (which may amount to the same thing). This is all very vague, of course. But particular circumstances will dictate to a large extent the particular nature of the interests class members have in common and the strategies they formulate for collectively satisfying them. Particular circumstances will presumably also influence whether the existence of such common class interests is sufficient to motivate the organization of collective class parties. Suffice it to say, class differences can be expected to give rise to common interests between class

members, interests which could support the formulation of a common class programme to be carried out by a collective class party.

Political power is obviously going to be the prize of collective class action. Political power is generally going to be the most effective means of achieving whatever interests the class organization pursues. For the upper class, laws banning unions, regressive systems of taxation, control of the courts, control of a police force capable of protecting the property of the members of the upper class—all of these are means by which the upper class can advance its common class interests. Similarly, for the lower class laws protecting the rights of workers to organize and strike, progressive systems of taxation, and the power of the police and the courts to dispossess the upper class of its material advantage all help the lower class organizations advance the common interests of lower class members. It is these class organizations—collective class *actors* properly understood—that are going to play a role in political affairs, either as sole possessors of political power (as in aristocracy or democracy) or as co-rulers along with the prince (as in the republic).

Again, this sort of collective class action that arises out of deliberation on common interests and decision-making concerning strategies is distinct from the class dispositions that lie at the core of Machiavellian class conflict. But the two are obviously not wholly independent. On the one hand, the efforts of organized class parties are a product of class antagonism. The members of the lower class become aware of their common antagonism toward the upper class, i.e., of their common interest in resisting the upper class's dominating efforts. Furthermore, it is easy to see that the lower class members' efforts to resist—to do what they are disposed to do—will generally be more efficacious if pursued collectively than they are when pursued in an uncoordinated manner.

In addition, the success or failure of collective class efforts will have effects on the dispositions of both sides. If the upper class organizes and takes collective measures to advance the common interests of upper class members, this will generally speaking put the upper class in a better position to dominate the lower. Class actions that increase inequality, that solidify the material advantage upper class members possess, that formalize and publicize the honors associated with membership in the upper class, and that decrease the ability of the individual lower class member to resist (e.g., laws banning unions or other lower class organizations) all have the effect of increasing the power of the upper class over the lower and hence of increasing the upper class's domination of the lower class. Class organization and collective class efforts do not make for class dispositions (these exist either way); but the individual efforts that constitute the class dispositions are made more (or less) efficacious given the success (or failure) of collective class action. They will tend to produce a greater degree of domination or resistance depending on the efforts of class organizations, and hence tend to intensify class antagonisms.

We can thus distinguish two levels of class conflict, and it will be important to keep the two distinct. On the one hand there is the core conflict that arises insofar as individuals pursue their particular interests in the context of inequalities that make for a class society. At this level, the conflict is between *dispositions* and not class *interests* or *actors*. At this level we need not suppose that there are any collective agents pursuing a coordinated and common strategy for advancing class interests. Class dispositions arise as the sum totals of individual uncoordinated decisions by class members.

On the other hand, we have the collective organization of class members. Collective organization allows for: the interpretation of common interests, the coordination of individual actions, and the collective formulation of strategies for advancing common class interests. Consequently, collective organization allows class members to participate in politics *as a class*.

As such, we can say that the collective organization of class members into genuine class parties represents the politicization of the class: it is in virtue of this development that the classes emerge as political forces. Whether or not such class organizations will arise is, of course, an empirical question. Collective class parties develop (in part, at least) out of the core antagonism between class dispositions, and the fact of class organization is likely to have an effect on the capacity of upper class members to dominate and lower class members to resist. But the existence of class dispositions does not entail, in any empirical-nomological sense, the development of organized class parties. Nor do there need to be organized class parties in order for the core class dispositions to arise.

The Republic

The account of the basic features of Machiavellian class conflict puts us in a better position to substantiate Machiavelli's claim that monarchy, aristocracy, and democracy are doomed to fail as well as his claim that the republic represents a viable alternative to these regimes. In brief: monarchy provokes the members of the upper class to organize collectively as a way of asserting their material advantage, and once they have done so they have no need of the monarch and rule alone; aristocracy similarly provokes the members of the lower class to organize as a means of resisting the dominating efforts of the upper class, and once they have organized they have no interest in including the upper class in government; democracy, on the other hand, arises as a means of resisting the dominating efforts of the upper class and once the upper class is disenfranchised the need to resist politically abates, and democracy descends into anarchy.

We can think of each inevitable class disposition as a *latent* class actor, one that is activated by various changes in the distribution of political power in society. The concentration of power in the monarch without any institutional constraint activates the disposition of the upper class to

dominate, generating a class party that assumes power as an aristocracy. The concentration of political power in the hands of the upper class subsequently activates the dormant lower class disposition, generating in turn a lower class party that can exert itself on the political scene. In the case of monarchy and aristocracy, political stability and survival depends on the absence of collective organization on the part of one class or the other. Once the relevant class disposition develops into an organized class opposition, the regime in question is no longer tenable. In the case of democracy, it is the *content* of the ruling class's disposition that undermines the regime. The members of the lower class organize and take power for the sake of pursuing their common interests. The disposition of the lower class is not to dominate (e.g., the members of the upper class); their disposition is to *resist* domination. Once the immediate threat of domination has passed—viz., the politicization of the upper class and the establishment of aristocratic government—the disposition of the lower class does not motivate, or motivates to a significantly lesser extent, the possession of political power.

To sum up, the existence of class antagonism and the possibility of class party conflict make it impossible for any of the pure forms to last for long. Class parties cannot be altogether excluded, for the mere existence of a consolidated political power in society tempts at least one class (on the story above, the upper class) to take this power for its personal use. The lone rule of a single party, however, either antagonizes the other party to force its way into politics or (as when democracy descends into anarchy) ceases to be of value when the opposition that lone political rule was intended to combat is no longer a danger. If government excludes class parties, it will incite them to form and make themselves heard. If it includes only one, it will either antagonize the other cease to have any real function.

This leaves the republic. In the republican government, both class parties participate in a largely non-cooperative way. The class parties are accorded a political role—control over

lawmaking, control over the waging of war and making of peace, decisions about taxation—in accordance with the social power they possess. Their social power is determined, we can assume, by a number of factors: how important the individual members are to the smooth functioning of essential activities such as the economy and the military, how organized the party is, i.e., how able it is to act in a unified manner on the basis of collective decisions, and finally how desperate the class members are, i.e., how willing they are to make sacrifices (strikes, lockouts) to gain an advantage over their adversaries. In short, their social power is their ability to make important shared social functions work. The distribution of political prerogatives and responsibilities reflects the real distribution of power in society. Insofar as each party aims at gaining as large a share of political power as possible (given its real power), we can expect that this isomorphism between the distribution of political authority and the distribution of power in society to remain. The parties will, through their activities, make it so.

The function of the prince is to maintain this form of government in which both class parties participate without taking sole possession of political power. Whereas the class parties get their political authority from their social power, the prince must be empowered largely on the basis of his occupying the position of prince alone. The prince may, of course, possess the charisma, respect, and reputation that attracts power in a populist sort of society, but we can expect that the prince's standing is in large part the result of his *being prince*, and therefore it is in his self-interest to maintain the republic as well as possible.

The primary aims of the prince are therefore the stability and security of the republican regime, at least in the following sense. The class parties have settled on a republic in which each party shares political power with the other. But for each party this settlement is merely a temporary stopping-point. The upper class aims at domination and knows that its power over the lower class will be maximized only when it has sole control of the political apparatus.

Similarly, the lower class aims at resisting the dominating efforts of the upper class, but know that they will be safe only when all political power is out of the hands of the upper class. Thus the republic is a state of affairs that each can accept as a *modus vivendi*, but one which each side must be working to undermine. The primary function of the prince in this struggle is to ensure that neither side achieves ultimate victory, i.e., that neither side succeeds in forcing the other side out of government. As we shall see later on, this gives the prince a somewhat unusual perspective, the one described in detail in Machiavelli's *Prince*. But the point to make here is that the prince's political survival and his princely function depend on his ability to prevent either class party from setting itself up as sole ruler.

The prince, of course, may have further aspiration beyond the maintenance of the republic, and it would be misleading to ignore this point. The prince's power in the republic is limited by the efforts of the two class parties, and the prince may consequently aspire to rule alone. His princely power derives, as I said, from his being the prince, but he may well possess characteristics—a history of military glory, good looks, charisma, intelligence, and so on—that would allow him to garner sufficient popular support to break the power of the class parties (perhaps only temporarily of course) and rule by himself. So the prince may dream, at least. This does not impugn the account of the prince's republican role given above. Whatever his aspirations, the prince must work to keep the class parties from taking sole political control. That is his function and that, we can suppose, is what his self-interest dictates.

The position of the prince is by far the most interesting of the republican pieces, and this in part may have prompted Machiavelli to devote a whole book to it.¹² The problem that faces

¹² It is true that the discussion of the princely position in *The Prince* is presented as a discussion of the prince *in the principality*, rather than in the republic. I have made the perhaps bold assumption that the princely function in the republic is more or less the same as that in the principality, and hence that Machiavelli's advice to the prince of the republic would be more or

political society, according to Machiavelli, is that the conflict between upper class is inevitable and irremediable, and it continually threatens to undermine whatever political regime is in place. The republic is not a *solution* to this problem properly speaking. No one comes along and institutes a republic as a measure to deal with the difficulties of class conflict. Rather, the republic is a lucky break where the balance of social power and the inclinations of citizens and the organization of classes works out in just the right way that all three elements—prince, upper class, and lower class—end up taking part in government together. But if we can speak somewhat metaphorically, we can say that the republic is the “solution” whereby class conflict may continue without threatening political stability because both classes play a role in governing and neither can make the political apparatus its private instrument to be used against the other. This is the core of Machiavellian political autonomy, and the prince is its personification. Without the prince, the supposedly “political” conflict between class parties is nothing but a civil class war. It is the prince who takes on the role of ensuring that the political is autonomous. In true Machiavellian fashion, the prince does so not as a Leviathan sovereign removed from the citizen body or as an altruistic elder statesman keeping the peace, but as a player in the political battle for power, honor, and superiority.

If the basic premise of republican government is that each class will participate in government with political authority commensurate with that class’s real social power, then the republic presupposes a certain level of balance in the real social power of the two classes. This is presumably why Machiavelli says that a republic can exist only where the inequality between classes is not too great. “Let, then, a republic be constituted where there exists, or can be brought into being, notable equality: and a regime of the opposite type where there is notable

less the same as the advice he gives to the prince of the principality. Other interpretations are, of course, possible.

inequality.”¹³ If inequality is to more severe then, *mutatis mutandis*, the balance of power will be more decisively in favor of the upper class. As we move towards greater equality (or to be fair, lesser inequality) we get greater parity in society power. On the republican model, if social forces are not balanced then political forces cannot be balanced (and stable) either. One class will always be in a position to overwhelm the other and exclude them from politics. This is presumably what allowed Rome to escape from the cycle of political regimes. Sufficient parity between the power of the classes, along with the stabilizing influence of the prince (i.e., the Roman consuls), allowed the distribution of political authority to mirror the distribution of power in society.

Machiavelli believes that given the antagonism between class dispositions society will inevitably be a contest of class powers. Politics is always a reflection of that contest. The rough balance opposing political forces that obtains under republican conditions “frees up” the political representatives of the two classes from the responsibility of maintaining the political interests while at the same time pursuing their class interests. The political representatives of the classes are free to pursue an explicitly and unabashedly class programme. The survival of the republic does not depend on either class party acting to preserve the republic in the way that aristocracy and democracy depend on the ability of the upper class and lower class respectively to maintain their regimes. The republic survives in part because it allows each class party to pursue its class interests. The republic does not propose to resolve class antagonisms nor does it ignore one or the other (or both) dispositions.

Far from being a flaw, the unbridled political antagonism between political parties is, in Machiavelli’s eyes, the republic’s strength. He makes this clear in his defense of those

¹³ *Discourses* I.5.

republican political institutions that would have seemed to his contemporaries in most need of defense, viz., institutions like the Roman tribunes and the practice of bringing public indictments that empowered the lower class to take political action against the upper class. “[E]very city should provide ways and means whereby the ambitions of the populace may find an outlet, especially in a city that proposes to avail itself of the populace in important undertakings.”¹⁴ Furthermore, although Machiavelli believes that class conflict over the Agrarian Law¹⁵ eventually brought down the republic, he insists that the open and politicized class conflict that characterized the Roman republic was good overall. Disagreement over the Agrarian Law would have led to the downfall of the republic much sooner “had not the plebs, by means of this law [the Agrarian Law] and by other demands prompted by their appetites, always kept the ambition of the nobles in check.”¹⁶ Republican political institutions, in particular those that gave an official voice to the lower class, were necessary for preventing class antagonism from undermining the political order. If the Machiavellian account is right, class conflict is never resolved or extinguished or even pacified. But on the republican model, class conflict is put to work.

The Autonomy of the Republican Political

As I have said already, the fundamental aspect of Machiavelli’s interpretation of the autonomy of the political is the elevation of the state above the fray of class conflict that occurs insofar as the republican regime denies either class party sole control of the political apparatus. This is the Machiavellian “solution” to the problem of inevitable and irremediable social conflict that threatens to undermine every other political regime. Class antagonisms and class conflict

¹⁴ *Discourses* I.4.

¹⁵ This conflict had to do with the distribution of land that Rome had acquired in foreign conquests (and the income derived from that land). See Machiavelli, *Discourses* I.37.

¹⁶ *Discourses* I.37.

cannot be eliminated. They cannot be ignored, because one of the primary targets of each class party is sole possession of political power. The only solution is to include the class parties in government in a way that is (hopefully) stable and secure.

This fundamental aspect of Machiavellian political autonomy gives way to two other aspects: (a) the autonomy of the class parties from any normative obligations or common framework in their interactions; and (b) the familiar autonomy of the prince from moral and ethical constraints. These two further features of republican political autonomy reflect the way the agents within the republican regime (the prince and the two class parties) can be expected to act.

As I said in my account of the republic each class party consents to republican government only as a *modus vivendi*. The upper class continues to aim at taking political power for itself alone, to be used as an instrument for the oppression of the lower class. The lower class, for its part, aims at sole political control as well, as a means to preventing the upper class from continuing to dominate. Thus neither side is entirely satisfied with the arrangement, and each can only see it as a temporary stopping-point until circumstances allow one side or the other to increase its advantage. Whatever distribution of political authority is in place, the parties can be expected to try to undermine the arrangement when it is to their advantage to do so.

This rules out political cooperation on the basis of normative rules that the parties could be expected to abide by even when doing so is not in the parties immediate self-interest. The class parties are strictly *strategic* actors—they engage in what Habermas would call *strategic action*. In strategic action actors employ instrumental rationality to pursue their particular interests in the context set by surrounding circumstances. In the case of the political domain, the relevant circumstances are largely set by the opposing party—how much power they have, what their aims are, and so on. For the class party, the opposition is an obstacle to be overcome, worked around, or simply evaded. It is not an agent with whom one attempts to reach a common

normative understanding, an understanding which will in turn provide a normative framework for future actions and interactions. The class parties do not engage in what Habermas calls *communicative action*.¹⁷ The stakes are simply too high.

The strategic character of this conflict between class parties influences the whole of republican political life. The class parties find themselves, within the republican government, in something like a Hobbesian state of nature, mitigated only, if at all, by the limited power of the prince. The parties can make agreements only to the extent that each is confident that the other has a compelling interest in performing. And each has only the threat of its own power to compel the other to abide by any covenant. This gives us the *autonomy of the class parties*. In their activities they are bound by no general normative agreements and consequently by no shared conception of morality or justice. What they do agree on reflects the balance of power between them and not a common concern for fairness, justice, or right.

But the autonomy of the political that results from the nature of republican government comes out most clearly, and most memorably, in the perspective of the prince. The prince is the difference between stable republican government and civil war between classes. The prince's primary aim is to prevent the class parties from taking sole control of the state. He must do this, however, in the context of an ongoing strategic political war between the class parties. As we have seen, these parties are not content with the republican settlement and will always be oriented toward pushing the other party (and the prince) out of power. The prince can use what weapons he has, but he is limited. He cannot, for example, get the class parties to agree to normative rules—rules of justice, rules of fairness, etc.—and use these rules to control the actions of the parties. As we have seen, no such agreement is in the offing. Furthermore, from

¹⁷ On the distinction between strategic and communicative action, see Jürgen Habermas, *The Theory of Communicative Action, Volume One: Reason and the Rationalization of Society*, pp. 85ff.

the perspective of the prince, the efforts of the two class parties can only show up as threats. Regardless of the merits of the class party claims—perhaps the bosses really are trying to gouge the workers, or perhaps the workers’ demands are really unreasonable—the prince deals with the activities of the class parties as dangerous efforts to undermine the existing regime. His concern is with preventing either side from assuming political control, not with adjudicating between competing claims of justice (if only because once having adjudicated between them the prince would still be faced with two class parties intent on taking sole political control).

And this explains some of the most notorious features of the Machiavellian prince. “The fact is that a man who wants to act virtuously in every way necessarily comes to grief among so many who are not virtuous. Therefore if a prince wants to maintain his rule he must learn how not to be virtuous, and to make use of this or not according to need.”¹⁸ The viciousness of the prince’s milieu—that of class parties aiming at undermining the republican regime and unable to set rules of justice or right for themselves—compels him to forego the niceties of virtue and morality. Should he choose to abide by the virtues he will find himself out on the street, or worse. Machiavelli does not assume that the prince is a bad or vicious man. Nor does he assume that the political interests—the interests in the preservation and protection of the political order—are so overridingly important or noble that mere ethical concerns pale in comparison. It is that the prince, given the situation he finds himself in and, as it were, the company he keeps, has no hope of *any* success unless he “have no other subject of thought, nor acquire skill in anything, except war, its organization, and its discipline.”¹⁹ And this war which must occupy the

¹⁸ *Prince*, chapter XV.

¹⁹ *Prince*, chapter XIV.

prince's thoughts is both internal and external. "There are two things a prince must fear: internal subversion from his subjects; and external aggression by foreign powers."²⁰

The position of the prince brings together the first two aspects of the Machiavellian interpretation of the autonomy of the political. On the one hand, the prince's purpose is set by the republican "solution" interminable and unavoidable class conflict. He is to ensure that neither party is able to gain sole control of the state. On the other hand, the prince's method is determined in large part by the strategic character of the political conflict between class parties. He cannot draw them into republic-sustaining agreements, because they have no real interest in sustaining the republic. He cannot compel them to agree to normative rules that would at least curb the danger posed by class party activity, because neither party is willing to give up any potential advantage over the other and neither will be willing to respect an agreement once that agreement is no longer in the party's best interest. The *autonomy of the prince*, the most celebrated and denigrated aspect of Machiavellian political autonomy, is the fullest expression of this conception of political autonomy.

I should reiterate that while there are these three sides to Machiavelli's account of the autonomy of the political, there is really only one argument and one interpretation of political autonomy. In the end, everything comes down to the inevitable and irremediable antagonism between the two classes and the conflict between class parties this engenders. That this conflict poses a danger to each of the traditional or "pure" regimes is the problem that Machiavelli argues is solved—if only by luck—by the republic. The republican solution then generates these three aspects of the autonomy of the political: the autonomy of the republican state from the class

²⁰ *Prince*, chapter XIX. As is made clear repeatedly in Machiavelli's *History of Florence*, the two threats are closely connected. Over and over again Florentine history shows us how weaker parties call on foreign powers to support them against their domestic enemies.

parties, the autonomy of the class parties from normative rules and agreements, and the autonomy of the prince from moral and ethical constraints.

The Liberal-Contractarian Challenge

We now have Machiavelli's argument in detail. Monarchy, aristocracy, and democracy all fail as a result of their inability to incorporate the unavoidable and irremediable antagonism between class dispositions. The only stable and lasting alternative is the republic, a form of government where political control is placed beyond the reach of either of the competing class parties. And everything rests, as I said at the outset, on Machiavelli's account of inevitable class conflict.

The obvious question that arises at this juncture is something like: Aren't there any other possibilities? Aren't there any alternatives to monarchy, aristocracy, democracy, and the republic? In light of the course of modern political philosophy since Machiavelli, the particular form this query is likely to take would be: Isn't there some stable political form that everyone (or almost everyone) could agree to, that would not simply be the instrument of one faction to be used against its enemies? Couldn't there be a regime that citizens in general supported (not just the members of one class or the other) as the best arrangement and not just the best possible arrangement given the current distribution of power in society?

What I have in mind, broadly speaking, is the sort of regime contractarians from Hobbes to Rawls have advocated. Such a regime is stable because citizens in general support the regime as the right or best sort of regime. The Hobbesian or Lockean or Rawlsian regime does not simply represent a *modus vivendi* to be discarded when the balance of social power shifts. It is not merely an instrument to be employed for the sake of pursuing narrow class interests. It is founded not on the support of class parties but on the support of the individuals who make up

those parties. And the individual citizen's support for the regime is not overridden by narrow class interests. In the case of Rawls and Locke,²¹ citizens have normative reasons for supporting the regime. They are concerned not simply with advancing their own self-interest but with protecting certain general principles or moral rights. Consequently, the individual's support for the regime can withstand (to some extent) laws and policies that run against that individual's non-tuistic self-interest. To take one concrete example, in a liberal capitalist society of the European-American variety, individuals seem to support their liberal-democratic government because they think it is just or fair. They do so despite differences in their class backgrounds, and they do so despite antagonism between classes.

So it is at least conceivable that there could be a regime of this broad variety: one that is supported by a broad section of the population (not just one class) and which is supported on the basis of general normative concerns and not simply on the basis of individual self-interest or the common self-interest of class members. Of course, it could be that such a regime is not feasible. The question here is whether Machiavelli gives us some good reason for thinking that it isn't feasible, i.e., if the account of class conflict can be used to undermine the plausibility of this sort of regime in the way it undermined the plausibility of a stable and lasting monarchy, aristocracy, and democracy.

I think Machiavelli's best response to this sort of objection would be a variation of Carl Schmitt's critique of liberalism.²² In a contractarian society of the sort described above, class antagonism would not disappear. The conflict between classes would continue to be "decisive" (to use Schmitt's term) despite the fact that class conflict has not been incorporated into the

²¹ And others, but Rawls and Locke are the clearest and most familiar cases.

²² See Carl Schmitt, *The Crisis of Parliamentary Democracy*, in particular pp. 12-3, and *The Concept of the Political*, especially pp. 25-7. The Machiavellian variation would differ substantially from Schmitt's original argument, of course, because unlike Schmitt Machiavelli believes it is possible for both sides of this decisive conflict to participate in politics in a stable and lasting way. (This is the republic.)

working of the government. That is, citizens are forced to take sides in the conflict between classes because so much depends on its outcome. If politics does not involve this decisive class conflict in some way (that is, if class conflict isn't fought out either *by* politics (as in aristocracy and democracy) or *within* politics (as in the republic)), then politics ceases to be relevant.

“Substantive inequalities [e.g., between members of different classes] would in no way disappear from the world and the state; they would shift into another sphere, perhaps separated from the political and concentrated in the economic, leaving this area to take on a new, disproportionately decisive importance.”²³

We can put Schmitt's point this way. If the conflict between classes is what really matters, if it is a conflict the outcome of which will have a significant impact on everyone and one which everyone will have to take sides (be either a “friend” or an “enemy”), then the liberal-contractarian state cannot simply be neutral while remaining relevant. The liberal-contractarian state expects the citizen to support the state even when the state acts in ways that have a negative impact on that citizen's class interests. But this expectation is unlikely to be satisfied as the conflict between classes becomes more and more decisive. Citizens cannot plausibly be expected to support the state against the interests of their class when their class is engaged in an intense struggle with the opposing class the outcome of which will have significant implications for all members of the society. Under such conditions, the state has two options. Either it becomes partisan itself, and hence ceases to seek the support of the citizen body as a whole, instead looking to the support of one or the other class. Or it ceases to make decisions that have an impact on the ongoing class conflict. The former option is to give up on the sort of liberal-

²³ *Crisis of Parliamentary Democracy*, pp.12-3.

contractarian solution described above. The latter option is to become, as Schmitt says, “insubstantial.”²⁴

The problem for Machiavelli is that this sort of response presupposes that the members of the two classes inevitably organize into competing class parties focused narrowly on advancing the common interests of class members even to the extent of undermining the existing regime in the hopes of installing one in which the class in question rules alone. What makes class conflict decisive is not the existence of an antagonism between the disposition to dominate and the disposition to resist; the key element is the existence of collective class parties of a very particular sort. There are two assumptions Machiavelli needs here: (a) that when people organize in political groups for the sake of advancing common interests, they will always organize along class lines; and (b) when people organize politically along class lines, the class parties they form will narrowly and single-mindedly pursue the common interests of the class members.²⁵ If parties of this sort do not exist or do not play a prominent role, then the mere fact of class antagonism will not be sufficient to compel citizens to treat class conflict as a conflict in which they *must* take sides. But even if we accept Machiavelli’s claim that in every society there are two class dispositions that are intrinsically, deeply, and asymmetrically opposed, the two assumptions (a) and (b) do not follow. Furthermore, these two assumptions would appear to be flatly contradicted by the facts.

Domination is a relationship between individuals or groups of individuals, and even if we could say that for each pair of individuals or groups there is one element that dominates and one that resists, that would not license us in dividing up society into two distinct groups: those disposed to dominate and those disposed to resist that domination. The dialectic of domination

²⁴ *Crisis of Parliamentary Democracy*, p.12.

²⁵ Or to put the point another way, the assumption is that the interests that members of a class have in common are narrowly self-interested economic interests.

and resistance within society does not entail the existence of two class bodies. Many if not most members of society will find that they dominate some while being dominated by others. These citizens will in all likelihood have no clear class affiliation. The larger this ambiguous middle class is, the less its members can be expected to be motivated to take sides in class conflict. For these people, a purely class-based organization (pursuing either domination or resistance) may not represent the best political option. When push comes to shove, i.e., when parties organize around class interests and come into conflict with one another, it will not be clear which, if any, side these middling folk should choose. In this sort of society there in all likelihood is a tension between the disposition to dominate and the disposition to resist, just as Machiavelli says there must be. But this does not entail that citizens—all or even most of them—will have an interest in organizing in one of two class parties for the sake of advancing common class interests.

Even when class parties do arise, it would be unwarranted to assume that these parties will pursue nothing but the common or overlapping self-interest of the class's members. On the Machiavellian model of conflict between class parties, each organization pursues a narrow and single-minded programme of advancing the class members' common interests however possible, even to the point of overthrowing the existing political regime and replacing it with one where the class party in question rules alone. But individuals and the class organizations they form may not perceive their demands in this narrow manner, and as a result may not pursue them so single-mindedly. Individuals and class parties are unlikely to present or interpret their demands as simply *demands for more*: more goods, more power, more honor or prestige. If the actual world is any guide, they will likely have *normative* complaints about how they believe society should be organized, about what laws there ought to be, about what principles should govern the distribution of wealth, power, and authority, and so on. These normative complaints carry with

them, as Habermas would put it, a *claim to validity*.²⁶ They can be right or wrong. They are not merely expressions of self-interest or instruments in the exercise of power. However disposed class members are against one another, they can be expected to take an interest with *justifying* their claims and not just with pursuing them. When asked, the representative lower class member will likely say something like, “The members of the upper class have an unfair share of wealth that they use to exploit and oppress me and my fellows,” not (in Frankenstein-like monotone) “Must destroy upper class” or “Must secure better economic position.” From the perspective of class members and collective class actors, the confrontation with the opposing side will be at least in part appear as a *disagreement* between conflicting claims, not simply as a *confrontation* between conflicting forces.

We can interpret this phenomenon either as the insidious influence of bourgeois ideology or as the realization of reason in the social world, but that is beside the point. What matters is that the claims of individuals and the organizations they form are often if not generally presented in a way that indicates that the antagonism between organized classes hinges on *disagreement* that can, potentially, be discursively resolved, and is not necessarily a *confrontation* that can only (ultimately) end with one side winning and the other losing. The fact that claims are presented as normative claims opens up the possibility: (a) that individuals will organize around common normative beliefs and not simply around a shared self-interest; and (b) that individuals and their organizations will seek a resolution to the open conflict between class organizations that is normatively acceptable and not simply the best available arrangement for advancing the self-interest of this or that faction.

The fact that individuals can and often do present normative demands and organize themselves into collective organizations to pursue common normative beliefs opens up the

²⁶ See, e.g., Jürgen Habermas, “What is Universal Pragmatics?”, pp. 50-68, and *The Theory of Communicative Action, Volume One: Reason and the Rationalization of Society*, pp.15-22.

possibilities that political parties will organize along non-class lines. And in fact we can see this in political organizations that seek power on nationalist, religious, or moral grounds, including concerns about justice that are not simply the expression of narrow class interests. These concerns frequently cut across class lines and bring together under a single political banner members of different socio-economic classes. Again, we can call this ideology or we can call it the enlightenment of the public sphere, but whatever we call it it happens. And insofar as it does happen it undermines the Machiavellian assumption that class antagonism between the disposition to dominate and the disposition to resist will always issue in the development of class parties that narrowly and single-mindedly pursue the shared self-interest of class members.

Thus in response to Machiavelli's assumptions we have uncovered reasons for thinking: (a) that even in the context of antagonism between class dispositions individuals may not organize along party lines; and (b) if they do organize along party lines the conflict between class parties may have a discursive, normative solution. This leaves open the possibility that there could be a political settlement that all or almost all citizens support not (simply) as a means of advancing their self-interest (in common with the shared self-interest of their fellow class members) but as a normatively-acceptable solution that is *best* and not just best given the current distribution of power in society. None of this denies the existence of class antagonisms of the sort Machiavelli describes. What it denies is the inevitability of a class conflict between Machiavellian class parties.

Whose Political Interests?

I said at the outset of this chapter that Machiavelli's argument is an argument against the thesis that we have an interest in the survival of a political regime only if that regime furthers our class or individual interests. Machiavelli has argued that the political interests can only be

satisfied by a republican regime that is not the instrument of any class party nor the instrument of any individual ruler. The class regime is doomed to fail as is the monarchical regime. Thus the political interests cannot be served through the instrumentalism of a class party or an individual pursuing his private interests.

The real weakness in Machiavelli's argument is not in the assumptions he makes about class conflict and class political activity. The real weakness of this argument is in the supposition that citizens have some reason to care about the political interests *per se*, as distinct from the political interests of the regime that pursues the citizen's class or individual interests. There are two problems here. First, Machiavelli makes no effort to support the claim that the political interests in general are something valuable. Second, Machiavelli's account of class politics gives us every reason to think that citizens will only take an instrumentalist view of their own political regime. That is, citizens will only value their regime to the extent that it pursues their particular or their class interests. The fact that the republican regime effectively pursues its own stability and security and is unique among political regimes in being able to do so is normatively uninteresting.

In the introduction I argued that it is incumbent on any interpretation of the autonomy of the political to provide us with at least the makings of an autonomous account of political justification or legitimacy. It seems clear that legitimacy is not Machiavelli's primary concern, nor is he interested as a normative matter in how citizens would evaluate their state's actions. But Machiavelli is presenting a challenge to instrumentalism, a challenge that requires him to explain how the republican regime would be of value despite the fact that it is not the instrument of any particular class party. It clearly is not in virtue of its satisfaction of my class interests or your class interests. It could only be something of value in virtue of its (supposedly unique)

ability to satisfy the political interests. But these interests—the survival of this regime—is not sufficient.

“It is easy for force to acquire a title, but not for a title to acquire force.”

-Machiavelli

II. The Autonomy of the Sovereign: Stability

Jean Bodin and Thomas Hobbes defend an interpretation of the thesis that the political is autonomous that I will refer to as *absolutism*. Absolutism is the claim that in every political society there must be a sovereign whose authority is absolute, i.e., unlimited and undivided. The sovereign’s authority is undivided insofar as all the powers or “marks” (as Bodin calls them) of sovereignty—the authority to make laws, the authority to declare war, the authority to appoint magistrates, etc.— are in the hands of a single agent or body.²⁷ The authority of the sovereign is unlimited in that it cannot be taken away from the sovereign (i.e., it is not given to the sovereign as a conditional gift) nor is there a fixed time-limit to the sovereign’s possession of the position of sovereign (as there was in the case of the Roman dictators).²⁸ There can be no rule or agent or institution or procedure that constrains or restricts the sovereign’s actions. And by the *nulla obligatio*, the sovereign whose authority is absolute cannot constrain himself by law or procedure because that law or procedure is the product of his will, and “no obligation can exist that depends on the will of the person promising.”²⁹ The sovereign determines the law and institutions that govern his subjects, but he is not bound himself by these determinations.³⁰

²⁷ Hobbes, *L.xviii.16*; Bodin *On Sovereignty* (henceforth *OS*) bk. I, chap. 8: pp. 18ff; and bk. II, chap. 1: pp. 90ff. All references to Hobbes are to the *Leviathan* by chapter and paragraph number; all references to Bodin are to *On Sovereignty* by book number and chapter number and by page number in the Franklin edition.

²⁸ E.g., Hobbes *L.xviii.3*; Bodin *OS* bk. I, chap. 8: pp. 1 ff.

²⁹ *Nulla obligatio consistere potest, quae a voluntate promittentis statum capit*. See *OS* book II, chap. 8: p. 12.

³⁰ Hobbes, *L.xxvi.6*; Bodin, *OS* bk. I, chap. 8: p. 12.

The defenders of absolutism also assert that the sovereign's power must be *supreme*.³¹ This is a distinct point, although connected to the thesis of absolutism in a number of obvious ways. To begin with, the absolute authority to command one's subjects, pick magistrates, and declare war are of little political interest if one does not have the power to effectively implement these commands and decisions. Furthermore, as will become clear below as we examine the two arguments in greater detail, the thesis that in every political society there must be a sovereign (the second part of absolutism as set out above) requires not only that there be an individual or body whose *authority* is absolute but that that individual or body also have the power to exercise that authority effectively. Consequently, both Bodin and Hobbes defend the claim that there must in every political society be a sovereign whose power is supreme.

For the purposes of this chapter and the next it will be essential to distinguish between these two theses. On the one hand there is the thesis of *absolutism*, i.e., the thesis that states that in every political society there must be a sovereign whose authority is absolute. On the other hand there is what I will call the *absolutist account of power*, i.e., the thesis that the sovereign's power must be supreme in society. There is, in addition a third thesis in the vicinity which I would like to separate from the thesis that the sovereign's authority must be absolute and the thesis that the sovereign's power must be supreme. This is the thesis, often referred to as *decisionism*, that there is no independent basis for assessing or criticizing the sovereign's actions. Something like this thesis is supported by Hobbes, who says that "whatever he [the sovereign] doth, it can be no

³¹ Hobbes makes this clear in the social contract argument, to be discussed below. Bodin is less careful than Hobbes about distinguishing between the sovereign's authority and the sovereign's power (a point that will occupy much of chapter II of this thesis), but it is implied at several points. For instance, Bodin says at p. 3 that sovereignty "is not limited either in power, or in function, or in length of time," thus distinguishing between the sovereign's unlimited power and his unlimited authority (function and length of time). Bodin's assertion (pp. 58-9) that the prerogative of law-making is the essential mark of sovereignty coupled with his statement that law is "the command of the sovereign" implies that the sovereign's power must be supreme in the sense of being sufficient to back up his commands, however he should command his subjects.

injury to any of his subjects, nor ought he to by any them accused of injustice.”³² Hobbes would concede that in principle the sovereign can violate religious norms, this can raise no practical political problem insofar as “there is no covenant with God but by mediation of somebody that representeth God’s person, which none doth but God’s lieutenant, who hath the sovereignty under God.”³³ As the authorized interpreter of scripture and the authorized collective agent of the citizen body, the sovereign is more or less beyond critical assessment. So Hobbes could be argued to be a defender of decisionism. Bodin cannot, as will become clear, because Bodin thinks that the sovereign like any other human being is subject to the natural moral law. I want to distinguish this thesis from the other two because this thesis—*decisionism*—is not one I will be addressing or criticizing in this chapter or the next.

The focus of this chapter and the next is on absolutism as set out above, i.e., the thesis that in every political society there must be a sovereign whose authority is undivided and unlimited, and its relation to the absolutist account of power. Bodin and Hobbes present very different accounts of the *supreme power* of the sovereign, and the differences in these accounts make for important differences in their versions of absolutism. These two accounts of sovereign power correspond fairly closely to the “classical” and “modern” approaches to legal punishment distinguished by Michel Foucault in his study of the evolution of the prison system *Discipline and Punish*, with Bodin espousing something like the former approach and Hobbes something like the latter. These two conceptions of political power correspond to two very different pictures of political society and issue in two very different accounts of absolutism. My contention in the next two chapters is twofold: first, that absolutism is *clearly* implausible on the account of sovereign power employed by Bodin; and second, that even on the more subtle Hobbesian account of sovereign power absolutism fails.

³² L xviii.6.

³³ L xviii.3.

To make these two points I argue that both Bodin's and Hobbes' theories of absolutism fail with respect to two problems or tests. The first is the *problem of stability*. The second is the *problem of legitimacy*. The problem of stability is the subject of this chapter. The problem of legitimacy is the subject of chapter II. Each of these problems faces any political regime or theory, but they arise in particularly poignant ways for absolutism. Furthermore, they pose very different challenges for the two versions of absolutism and their conceptions of sovereign power.

Two Problems

I want to start by explaining in greater detail the two problems or tests for which I will hold the absolutist theories of Hobbes and Bodin responsible. The first is what I will call the *problem of stability*. The problem of stability is to demonstrate that subjects in a given political society—e.g., the absolutist political societies described by Hobbes and Bodin—would have enough motivation to cooperate with the absolute sovereign's regime to ensure stability. There are many factors that affect political stability: war, economic crisis, natural disaster, and so on. My focus, for the purposes of assessing absolutism with respect to the problem of stability, will be specifically with this question of subject's reasons for cooperating. Any absolutist account—and perhaps any political account—must give us reason for thinking that subjects will be motivated to cooperate with the sovereign's regime and his laws. The purpose of this investigation is obviously not to determine whether an absolutist regime of the Hobbesian or Bodinian variety really would be stable, or if it would succumb to civil war and dissolution. The purpose is simply to investigate the arguments these versions of absolutism could put forward to support their claim to stability, and the arguments we could adduce against it.

It is important to keep in mind that absolutism is both positive analysis and normative theory. It purports to explain how political authority and political society work *in reality*. So it makes

sense to investigate the problem of stability by asking whether or not political society as absolutism conceives would be as stable or unstable as political societies actually are (or aren't). Hobbes and Bodin are not proposing utopias. They are (in part, at least) proposing empirical analyses. If they have correctly accounted for the nature of sovereignty and political society then we should be able to assess their arguments against what we know about political societies. The test of stability is one test of the empirical accuracy of these absolutist theories. If political society as described by Hobbes and Bodin seems to be particularly unstable, then that is a reason to think that Hobbes and Bodin (and perhaps absolutism in general) have incorrectly analyzed political society.

The second problem, to be addressed in the next chapter, is what I am calling the *problem of legitimacy*. Normative political theorists, which includes both Bodin and Hobbes, aim to show that political authority as they describe it can be legitimate. They want to demonstrate the exercise of political power as they describe it will be something more than just the domination of some by others. The problem of legitimacy can be understood from a number of different perspectives for the sake of a number of different purposes. In keeping with the spirit of Bodin's and Hobbes' theories, I will understand this problem in a very particular way, viz., as the problem of establishing that legal subjects under the sort of regime in question would have some reason to obey and not resist the sovereign over and above the fear of punitive legal retribution or other similarly strategic rational considerations. That is, the problem is to demonstrate that the proposed form of political authority in question is capable of providing citizens with a moral (or, more generally, normative) reason to cooperate legally and politically.³⁴

³⁴ This conception of legitimacy is inspired by Jürgen Habermas' hypothesis that law must present both a positive and a normative motivation for compliance: while on the one hand lawbreaking begets legal punishment and this fact serves as a threatening deterrent to the would-be lawbreaker, on the other hand the legal requirement also presents itself as *valid* or *legitimate*,

Arguably both of these problems arise for any political theory. But they arise in a unique and especially pressing way for absolutism, or so I hope to show. Take the problem of legitimacy first. Absolutism is at an obvious initial disadvantage with respect to this problem. If the sovereign's decision-making is unconstrained by substantive or procedural norms, then we have that much less reason to expect that subjects will be motivated to obey the law and cooperate peacefully on the basis of their assessment of the laws' content. Or to put it another way, if lawmaking is constrained by moral norms we endorse (through institutional control, e.g., or through procedure) then the law is much more likely to conform to our moral beliefs and hence be more likely to provide us with moral reasons to conform. Absolutist law is, all things being equal, less likely to provide subjects with a moral reason to cooperate on the basis of its content than it would be were the lawmaking process constrained by norms which themselves imbued the laws with morally compelling content. So in this sense, absolutism is at a disadvantage in its attempt to resolve the problem of legitimacy.

But this is not the only way that the problem of legitimacy arises in a distinctive manner for absolutism. Absolutism identifies the agent who is sovereign with the office of sovereign itself. While it is in virtue of holding the office of sovereign that the person or body who is sovereign can issue commands that are thereby laws, the office of sovereign places no constraints or obligations on what the agent who is sovereign can do in his capacity as sovereign. The sovereign's commands do not have to satisfy any substantive requirements, e.g., that they not violate subjects' civil rights, nor need the origin of these commands satisfy procedural requirements, e.g., that they met with parliamentary or cabinet approval. What the sovereign *person* does, he does *as sovereign*, period. At the same time, if absolutism is to pass the test of legitimacy the sovereign's command—the law—must place an obligation on the subject, an

i.e., as something we have normative reason to follow aside from the punitive threat. See Habermas' *Between Facts and Norms*.

obligation to obey or at least not to resist. Thus absolutism is in the position of having to argue—if it wants to establish its legitimacy—that the sovereign generates obligations for a normative community of which he is not a member. This task is not easy, as we will see in chapter III.

Similarly, while any political theory must explain how its proposed model of political authority could be stable, this problem is more pressing in the case of absolutism. There are two reasons for this. First, as already discussed in connection with legitimacy, the subject of the absolutist regime cannot be expected to find in the content of the laws that govern him moral reasons to cooperate and obey the law. Second, the fact that the laws are constructed without any constraints makes it more likely, all things being equal, that the subjects of absolutism will have reasons *not* to cooperate. That is, the interests one has and the obligations one has to one's fellows (be they moral, religious, or economic) are more likely to give one a basis for complaint with the law and the obligations it imposes. In the absence of any constraints on lawmaking, the content of the laws and the content of the subject's interests and obligations are more likely to conflict. In order to provide a basis for stable social cooperation, absolutism has to find a way to secure subjects' obedience without subjects being *convinced* either way about the law, i.e., convinced that its content has moral merit or convinced that its content agrees with the subject's self-interest. For stability's sake, absolutism must aim at a sort of *agnostic obedience*.

Two Interpretations of Sovereign Power

The sovereign's supreme power does not entail his absolute authority. That is, the absolutist account of power does not entail absolutism proper. But for both Hobbes and Bodin absolutism presupposes that the sovereign's power is supreme. How this supreme power is accounted for—in what this supremacy exists and how it is that the sovereign's power is and remains supreme—

has important repercussions for both the argument for absolutism and the details of the absolutism that issues from this argument. In this section I want to distinguish between two interpretations of sovereign power exemplified, respectively, by the theories of Hobbes and Bodin. These two accounts represent very different approaches to understanding and explaining political authority and political society. Each goes with a different *picture of political society*, and each poses its own problems of stability (and legitimacy, as we shall see in the next chapter).

The most obvious difference between the arguments of Hobbes and Bodin is that Hobbes employs the social contract model whereas Bodin does not. The social contract is, among other things, an analysis of the sovereign's power. According to the social contract argument the sovereign's power is the power that is alienated to him by his citizens. In entering into the social contract each (soon to be) citizen agrees to alienate his natural rights to a sovereign who will act as a "common power"³⁵ over citizens' covenants with one another and thereby elevate them out of their pitiful condition in the state of nature.³⁶ The sovereign's role, that for which the citizens have empowered him, is as *guarantor*. In virtue of his inauguration through the social contract, the sovereign is in a position to guarantee that citizens will perform their covenants made. This tells us something about the Hobbesian account of sovereign power: viz., that it must be sufficient for the sovereign to guarantee citizens agreements. If the sovereign is not sufficiently powerful to guarantee citizens' covenants, citizens are robbed of their guiding motivation for establishing political authority in the first place. More importantly, the validity of the covenants between citizens depends on the presence of a common power; without a common power there can be no covenant and hence no cooperation.³⁷ The existence of a sovereign with sufficient power to act as guarantor over citizens' covenants (including the social contract) is not only the

³⁵ See, e.g., *L xiv.18-9*.

³⁶ *L xiv.4-5*.

³⁷ *L xiv.18*.

object of the social contract act of alienation, it is the precondition of cooperative political society.

According to the social contract interpretation of sovereign power, the sovereign is the one to whom the totality of the citizens' power has been alienated. The sovereign is sovereign because he is the one to whom the power of each individual has been alienated. The sovereign's power is the *total* power of the community, delivered via the social contract, because each citizen has consented "to lay down his right to all things" to the sovereign. His power is not one power set against other powers in the community. It is the power of every citizen, the power of the *community as a whole*. This allows the sovereign to play the role of *guarantor*, of "common power" over each and every covenant. The performance of one's covenants is compelled not by the strength of one strongman or tribal chieftain; it is compelled by the power of each and every citizen, focused in the artificial person of the sovereign.

But this is only half of the story. The sovereign is not only *empowered* through the social contract; the sovereign is also *authorized*.³⁸ The social contract authorizes the sovereign to act on behalf of his citizens and consequently obligates his citizens to obey his commands. The sovereign therefore wields sovereign power on the strength of the obligations citizens have (to one another) to obey the sovereign. But the social contract is valid only if there is a "common power" to guarantee its performance. That is, these obligations between citizens to obey the sovereign obtain only if the sovereign is capable of acting as a common power over the social contract (and, consequently, over citizens' other covenants). Thus we can say of the Hobbesian interpretation of sovereign power: there is no sovereign power unless there are obligations between citizens to obey the sovereign; and there are no obligations between citizens to obey the

³⁸ See, e.g., *L* xvi.1-4, xvii.13, and xviii.6.

sovereign unless the sovereign is capable of acting as a common power. The authority of the sovereign and his power to compel are two sides of the same coin.

The Hobbesian interpretation of sovereign power thus has four essential features:

- it is the power of the community, i.e., the power of each and every citizen
- it is *total* power, not simply one social power among many
- the sovereign is authorized by the citizens to use this power
- it is the power to enforce citizens' contracts

Bodin tells us that sovereign power is necessarily *perpetual* and *supreme*.³⁹ Sovereign power is perpetual insofar as the possessor is not obligated to give it back to some other agent. Sovereign power is not given to an agent for a specific period of time or for a particular purpose. Thus, Bodin tells us, the Roman dictators did not possess sovereign power because their power was given to them only for a specific period of time (a year, usually) or for some specific purpose (to allow them to defeat a particular enemy or fight a particular battle, for example). On the other hand, the power of the French monarch *is* perpetual, in that there is no agent who has, as it were, *lent* it to him or to whom he must return it. The French monarch is truly sovereign, while the Roman dictator is not.⁴⁰ The power of the sovereign is supreme insofar as no conditions are attached to its use. “[S]overeignty given to a prince subject to obligations and conditions is properly not sovereignty or absolute [i.e., supreme] power.”⁴¹ The sovereign must be in a position to exercise his power at his discretion, without having to fulfill obligations to Estates or the masses or any other force in society.

³⁹ In his translation of Bodin, Julian Franklin uses the word “absolute” where I am using “supreme”. I use the latter to keep clear the distinction between the absolutist sovereign’s supreme power on the one hand and his absolute authority on the other.

⁴⁰ *OS* book I, chap. 8: pp. 1-7.

⁴¹ *OS* book I, chap. 8: p. 8.

With this much Hobbes would no doubt agree. But this partial analysis does not really get to the heart of Bodin's interpretation of sovereign power, nor does it bring out the crucial differences between Bodin's view and Hobbes'. In particular, it fails to tell us what sovereign power is *for*, what *characteristic activity or ability* the sovereign power serves. This comes out more clearly in Bodin's discussion of the marks or prerogatives of sovereignty. Bodin argues that there are several (he lists thirteen, to be exact) "marks" or prerogatives that any sovereign must possess.⁴² These marks include the prerogative of declaring war and making peace, of appointing magistrates, of hearing a defendant's final appeal, and of granting pardons to the condemned. All of these prerogatives are subsumed under the sovereign prerogative "to give law to all in general and each in particular."⁴³ This is because, as Bodin explains, because the "power of making and repealing law includes all the other rights and prerogatives of sovereignty, so that strictly speaking we can say that there is only this one prerogative of sovereignty, inasmuch as all the other rights are comprehended in it."⁴⁴ We can now put together the pieces of Bodin's interpretation of sovereign power. The mark of sovereignty is the power to make laws. Law is simply "the command of the sovereign,"⁴⁵ so the mark of sovereignty is the power to command. Sovereign power, however, must be supreme. That is, it must not be conditional on the fulfillment of obligations or requirements. And sovereign power must be perpetual: it cannot be given or *lent* to the sovereign for some fixed period. Thus the sovereign must be in a position to command without there being any member of society on whom he is dependent—either to fulfill particular obligations or to give up power after a fixed period. Sovereign power, therefore, is *the power to command effectively without being effectively commanded*. The sovereign must

⁴² *OS* book I, chap. 10: pp. 56-88.

⁴³ *OS* book I, chap. 10: p. 56.

⁴⁴ *OS* book I, chap. 10: p. 58.

⁴⁵ *OS* book I, chap. 10: p. 51.

be at the top of a hierarchy of legal command, dependent on no one and constrained by no time-limit or obligations.

That sovereign power is the power to effectively command without being commanded comes out even more clearly in Bodin's argument for the thesis that there must be a sovereign with all the marks of sovereignty, i.e., that sovereignty is indivisible.⁴⁶ The central thesis of this argument is that if the marks or prerogatives of sovereignty are divided up amongst different distinct agents, one of these agents will always use his power and authority to usurp the prerogatives of the others. Divided sovereignty is inherently unstable, and undivided sovereignty represents an equilibrium point toward which the distribution of sovereign prerogatives naturally moves. What would it mean for sovereign prerogatives to be divided, i.e., what sort of situation does Bodin have in mind as being impossible? First, it would be a situation in which two or more *distinct* agents exercise some portion of sovereign authority: e.g. one has the authority to declare war while the other has the authority to levy taxes. The two agents are distinct in that they have no obligations to one another as regards their use of their political authority. Each agent possesses his piece of the political pie without being obligated or under the authority of any other. Bodin would not argue that sovereignty is divided when, e.g., the king's foreign minister has the right to declare war while his economic minister has the right to levy taxes, because *both* are still under the authority of the king. That is, both ministers can be commanded by the king but neither minister is in a position to compel the king to act in any particular way. Second, the sovereign prerogatives are divided only when the sovereign agents possess authority over the same *territory*. Bodin would have to concede that two agents could exercise sovereignty in *different* areas (e.g., the king of France and the queen of England). This would not be an

⁴⁶ Although Bodin clearly favors monarchy, his thesis is not that only monarchy can survive. The agent who possesses all the marks of sovereignty could be an individual (i.e., a monarch) or, e.g., a social class (as in aristocracy and democracy).

example of divided sovereignty, because these two sovereigns do have the authority to command the same subjects. (Of particular importance is the fact that they don't have the authority to command *one another*.) Thus what is impossible according to Bodin is a situation where distinct agents exercise distinct sovereign prerogatives over the same region.

His argument for this conclusion is simple.⁴⁷ If distinct social agents possess different sovereign prerogatives within the same territory—e.g. if landowners are given the right to levy taxes, the workers the right to make labor legislation, and the prince the right to make war and peace—then one agent will always make use of what he has to disenfranchise the other parties of their political prerogatives. Landowners will use their legal control of taxation as well as their wealth to take sole control of the lawmaking prerogative, or the prince will use his power to command the army to shut down the landowners. Or to take an example more pertinent to sixteenth-century politics, if a duke or prince has the independent authority to decide the official religion for some region within the monarch's domain, there is conflict between on the one hand the duke or prince's authority to decide this matter and on the other hand the monarch's authority to issue legal commands in every other. This situation can only be (and inevitably will be) resolved when one or the other party takes over undivided authority. The most obvious solution to someone like Bodin would be for the monarch to use his power to command the military to put the upstart underling in his proper place. However the situation is resolved, when authority is divided between distinct agents governing the same territory events will inevitably unfold in such a way that in the end the prerogatives of sovereignty will come to fall on a single agent. Equilibrium is restored when one sovereign agent takes possession of all the marks of sovereignty. The distribution of sovereign prerogatives amongst distinct social actors—that is, actors who are not obligated to one another and who are not organized hierarchically—is

⁴⁷ *OS* book II, chap. 1.

unstable. Undivided sovereignty is an equilibrium state towards which political authority naturally moves.

It is important to get clear on what is supposed to be happening. We start with a situation in which the sovereign prerogatives are divvied up between distinct political actors, and we end up with one agent in control of the whole sovereign package. How does this happen? What is the mechanism? If you have your authority and I have mine, how is it that I can get yours? What would it mean for me to possess the authority that is rightfully (I think it's fair to say) yours? It can only mean that I have the *power* to issue and enforce the commands associated with your share of the sovereignty. The mechanism by which prerogatives change hands and come to rest with a single agent is the exercise of power. And this is just what Bodin tells us: if the sovereign prerogatives are distributed amongst distinct agents, "it must always come to arms" until one or another social agent comes to possess the sovereignty exclusively.⁴⁸ The mechanism by which political authority is consolidated is the exercise of power by the different parties to sovereignty.

We will move on to assess the validity of Bodin's argument in the next section. For now I want to continue the investigation of Bodin's interpretation of sovereign power. Let's start by noting what Bodin does *not* say. He does not say that though the powers of sovereignty might be usurped or divided up or rearranged, the facts about who is or is not sovereign are independent of all this and remain unchanged. He does not say that the move toward "equilibrium" is not in itself a change in who is sovereign (or partial sovereign) or in who possesses the authority to make which laws. He does not say, as we might be inclined to say, that the while balance of *power* is changed, this does not entail a change in the distribution of the marks and hence not a change in who is sovereign.

⁴⁸ OS book II, chap. 1: p. 104.

By arguing that it is *sovereignty* that is brought together by the series of usurpations that bring the political into equilibrium, Bodin clearly implies that in order to possess the prerogatives of sovereignty it is sufficient (and perhaps necessary) to usurp them from others. To usurp a prerogative of sovereignty from another would be to put oneself in a position to effectively command others (in the manner proper to the prerogative in question) without others being in a position to effectively command you (in that manner). To usurp all of the prerogatives of sovereignty would be to put oneself in a position to effectively command others in any respect without their being in a position to command you. Therefore, to be sovereign—to possess the marks of sovereignty—would be to collect sufficient power unto oneself to be able to effectively command without being commanded. The power to command effectively without being commanded is not only the power that the sovereign has, it is the power that in at least some cases *makes one sovereign*.

What conclusions can we draw from this discussion of Bodin's interpretation of sovereign power? The first, and perhaps most important in the comparison with Hobbes, is that while the sovereign's power must be supreme we have no reason to conclude that it must be or could be the *total* power of the community as it is on the Hobbesian interpretation. What is important is that the sovereign be the *most* powerful member of society, not that he be *all*-powerful. In order to be able to command all without being commanded, he must be more powerful than any other but he need not possess the power of every member of society. The total power of the community is, among other things, more than what is necessary to ensure that the sovereign is in a position to effectively command all his subjects.

From Bodin's account of the marks of sovereignty and his argument that sovereignty must be undivided we get also get a broader picture of the Bodinian sovereign and the Bodinian political society. The Bodinian sovereign is one locus of power in society among many. The sovereign

faces off against other social forces (the Church, for example, or dissident religious groups) in a contest to maintain his position as the supreme commander. The sovereign establishes himself as sovereign—as the possessor of the prerogatives of sovereignty—*because* he is powerful.

Bodin might accept the possibility of a political authority established through a social contract,⁴⁹ but this is not essential to sovereignty as it is in Hobbes' *Leviathan*. Thus for Bodin, unlike Hobbes, it is not the case that the sovereign necessarily comes to possess sovereign power in the same event that he comes to possess the prerogatives of sovereignty. Bodin's sovereign must *be* powerful in order to take on the position of sovereign. Hence for Bodin the sovereign's power is *pre-political*. The sovereign's capacity to effectively command his subjects *depends on* his being the pre-eminent social power and not, as in Hobbes, the other way around.

The Bodinian interpretation of sovereign power thus has four essential features:

- it is supreme in the sense of being *greatest* even it is not *total*
- it is the power of the sovereign person (rather than the power of the community)
- it is a pre-political property of the sovereign, not something that accrues to him in virtue of a political process (such as the social contract)
- it is the power to command effectively without being commanded and without the threat of being effectively commanded⁵⁰

We can get a better handle on these two conceptions by drawing out the differences between them. As I said, the power of Bodin's sovereign is the power of the sovereign *person*. The sovereign's power cannot be lent to him by another source. It must be his power to use

⁴⁹ As long as it could be established that the parties to the social contract were handing over power *irrevocably* and not, as in Locke, with certain strings attached. See John Locke, *Second Treatise on Government*, chap. XIX.

⁵⁰ Of course, any sovereign has to worry that his regime will be overthrown and he will be in the position of subject commanded by another. The point here is that the sovereign's power must be perpetual and therefore it cannot be as it were written into his possession of that power that he has to return it to someone else later on (someone who might use it against him).

unconditionally, otherwise his capacity to command would be compromised. The sovereign need not have a monopoly on power; his power need only be *pre-eminent*. The Bodinian sovereign's existence does not rule out other independent loci of power in society—sects, classes, or regional rulers such as dukes or bishops. It need only be the case that no one faction or individual is in a position to resist the sovereign. This is, for Bodin, the essence of sovereignty. In contrast, the power of the Hobbesian sovereign is the power of the community as a whole. The citizen body authorizes the sovereign to employ its collective power and it is only in virtue of this collective authorization/empowerment that the sovereign is sovereign. It is only in virtue of his possession of this total power that the Hobbesian sovereign is able to play the essential sovereign role of acting as guarantor over his citizens' covenants, and it is only in virtue of his contractarian authorization that citizens take on an obligation to obey his commands.⁵¹

Understood in these two different ways, political power has very different roles to play in stabilizing political society and motivating citizens/subjects to cooperate. We could say that on the Hobbesian and Bodinian interpretations political power works by very different *mechanisms*. The power of Bodin's sovereign—his ability to coerce and punish—provides citizens with an essentially undeniable motivation to comply with the sovereign's commands. This power emanates from the sovereign out to the courts (over which he maintains ultimate authority) and his magistrates (whose power just is the power of the sovereign, delegated but never alienated). Because the sovereign's power need not be the total power possessed by the Hobbesian sovereign, he faces off against the demands of other social agents (in Bodin's time this role was played by powerful dukes, the Church, and dissident religious sects) on the field of *power*. He

⁵¹ The archetypical Bodinian sovereign would be the warrior-king who holds political power through a combination of personal charisma, physical strength, and military genius. The archetypical Hobbesian sovereign would be a sort of Kafkaesque nameless and faceless spectre, holding power in virtue of everyone's resignation that they have all already alienated their powers to it.

wins because his power is greatest. Whereas in Hobbes the sovereign possesses *all* the power—everyone agrees to submit to his decisions and thereby empowers him to act on their collective authority—in Bodin’s case power is (or at least can be) distributed amongst various factions, sects, or individuals in society. For Bodin’s sovereign, then, the ratio of power between the sovereign and any particular agent—individual or complex—is going to be a factor in their relationship. This is quite unlike the situation in Hobbes, where the ratio is always the same—the sovereign has all the power while the subject has none.

According to Hobbes, the citizen is surrounded by political coordinated power because the sovereign’s power is the power of each citizen. Every agent has alienated his power to the sovereign; every citizen recognizes or ought to recognize the value political sovereignty to his own private interests; therefore every agent has reason to help ensure that political cooperation runs smoothly. Every citizen has both a self-interested reason to cooperate and see others cooperate (because the existence of political society rather than the state of nature is in each citizen’s interest) and a moral obligation to cooperate and see others do the same (because the social contract generates for each citizens a moral obligation to obey the sovereign and cooperate peacefully).⁵² Whereas in Bodin the impetus to obey the sovereign comes from the top-down (from sovereign to subject) in Hobbes it comes in horizontally (from every other citizen). Thus when the Bodinian subject resists, he finds himself in conflict with one individual—the sovereign. (Of course, in actual fact he will find himself in conflict with some agent of the

⁵² These are not the same. That is, the citizen’s interest in cooperation (his own and others’) is not the same thing as his (and others’) moral obligation to cooperate, even though the moral obligations are (according to Hobbes) the product of an agreement that also generates the state of affairs in which the citizen has an interest in cooperating and in seeing others cooperate. But it could be the case that it is rational for me to cooperate and it is in my interest to cooperate without its being the case that I have consented or would have consented to the state of affairs. If everyone else is already cooperating in a Hobbesian way, then I can have the rational interest without having thereby taking on the obligation. This point comes up again in the discussion of legitimacy in Chapter 2.

sovereign—police, judge, etc.—but this agent is only a representative of the sovereign.) In contrast, the Hobbesian subject who attempts to disobey the sovereign's commands or resist the sovereign's actions finds himself at odds with the whole of the community. The Bodinian dissident resists the sovereign; the Hobbesian dissident resists the society as whole.⁵³ This fits with what we've said already about the different interpretations of political power. Bodin's sovereign's power is limited and personal; all dissent is ultimately resistance to *him*. Hobbes's sovereign's power is the total power of the community; resistance to him is ultimately resistance to those whom he represents, viz., the members of the community as a whole. Thus we arrive at another distinction between the two conceptions of political power (or perhaps a new way of setting out the earlier distinctions): whereas for Hobbes political power is *pervasive*, for Bodin it is (by comparison) *local*.

We now have the full picture of supreme sovereign power before us. On the one hand, there is the power of the sovereign person who contends on the field of power with other agents, agents with powers of their own but of a lesser degree. On the other hand, there is the power of the sovereign that is the *total* power of the community, where the sovereign wields against each of his citizens the power of every other. Here sovereign and citizen do not square off on the field of *power*; indeed, they do not square off at all. (What would be the point?)

The Problem of Stability on the Two Interpretations of the Sovereign's Supreme Power

The problem of stability arises in two very different ways for these two interpretations of the sovereign's supreme power. The stability of the absolutist regime is maintained so long as the sovereign retains supreme power. For Bodin, this means that stability depends on the

⁵³ Foucault makes this point in discussing modern punishment: "The least crime attacks the whole of society; and the whole of society—including the criminal—is present in the least punishment." *Discipline and Punish*, p. 90.

sovereign's holding on to all of the marks of sovereignty. The Bodinian sovereign must be in a position to effectively command his subjects in any respect without their being able to effectively command him. The threat to the Bodinian sovereign is that there will be social agents—factions, religious sects, or powerful individuals—who are in some way able to effectively command him. If subjects attempt to usurp political authority by countering the power of the sovereign with their own power, this increases the overall instability of political society. If Bodin is right about political power and about political authority, political society faces as many threats to stability as there are loci of power in society.

How much of a threat is this? Comparison with the Hobbesian conception of sovereign power is instructive on this point. First, according to Hobbes all cooperation depends on the sovereign. Without the sovereign acting as a “common power” covenants cannot be made: the presence of the sovereign is necessary to guarantee performance by all sides, and without this guarantee there is no covenant. This rules out agreements between citizens to resist the sovereign: on the one hand, the sovereign obviously cannot be counted on to preside over such an agreement; on the other hand no one else could play this role without becoming party to the agreement itself (because enforcing an agreement to resist the sovereign is the same thing as resisting the sovereign), thus generating the need for a new common power.

This is an important feature of the Hobbesian universe. Consider, for instance, an intuitive, non-Hobbesian understanding of moral obligations. I have an obligation to pay you back the money I promised I would because in promising I took on a moral obligation to do so. Whatever fancy story you want to tell about this interchange, intuitively at least my having this obligation to you does not hinge on the presence of any supreme agent who can ensure that I keep my part of the bargain. Obligations stemming from common participation in cultural practices or from religion would, intuitively at least, be of the same sort, viz., obligations that do not presuppose

the existence of a common power in the background who is prepared to make the obligations and agreements hold. In his rejection of this intuitive notion, Hobbes purports to have demonstrated the impossibility of horizontal organization without the sovereign. Without the sovereign we have nothing to hold us together. It follows that we have nothing to hold us together *against the sovereign*.

This is not the case on the story Bodin tells. For one thing, Bodin is quite explicit that there is a natural moral law that imposes substantive requirements on every human being (including the sovereign) and which is entirely independent of the facts about who is sovereign or whether there is a sovereign at all.⁵⁴ This is, potentially at least, a source of instability for Bodin. Bodin's subjects have moral reasons to act, and moral reasons to act *together*, whether or not there is a common power to ensure that every agent is discharging his obligations. Common moral or religious principles give Bodin's subjects a basis for coordinated resistance to the sovereign without the need for a "common power". I have an obligation to protect you when you are wronged by another; you and I are each committed to a conception of justice that we will work to see implemented. These sorts of common principles and obligations are often the basis for coordinated political resistance. Although Bodin himself condemns any efforts to resist the sovereign, these norms clearly provide the foundation for subjects to do just that.⁵⁵ When Bodin's sovereign does face resistance (and while Bodin says this is impermissible he by no means says that it is impossible), he is therefore more likely to face off against the various *combined* and *collective* forces of social groups, factions, sects, and so on. Resistance will not just be the resistance of the isolated whiner. It will be the resistance of the organized group or faction. The sovereign as Bodin understands him faces a form of resistance that Hobbes, for one, does not (or so Hobbes would see it).

⁵⁴ See, e.g., *OS* book I, chap. 8: p. 10.

⁵⁵ See, e.g., *OS* book I, chap. 8: p. 19.

We could put the point this way: in *failing* to reject the intuitive understanding of these horizontal normative obligations, Bodin leaves open the distinct possibility that his sovereign will face the coordinated dissent of social agents in a way that Hobbes' sovereign is not. According to Hobbes, the sovereign faces the citizen who resists or disobeys one-on-one. There are no horizontal moral connections that could form the basis for collective resistance (or disobedience), nor is any collective agreement possible without the sovereign's help. The citizen's choice is to obey or disobey. The sovereign therefore faces at most the resistance of one isolated individual. Because in Hobbes non-compliance is a one-on-one matter between individual subject and sovereign while in Bodin it is (potentially at least, and actually in the case of Bodin's France) a contest between organized collective forces, the problem of stability is different on the two theories. Specifically, the problem is more poignant on the Bodinian interpretation of sovereign power than it is on the Hobbesian. On Bodin's account the ability of the sovereign to convince his subjects to comply with the law and cooperate with one another peacefully is only as strong as his ability to prevent rivals—factions, classes, sects—from resisting his power. Given the possibility of coordinated resistance organized around legitimate moral or religious complaints, the likelihood of resistance is increased.

The second point to make about stability is just the flipside of the first. In Hobbes' contractarian social world failure to comply with the sovereign's command is also a failure to live up to the obligations one has to one's fellows: all non-compliance is non-cooperative. Any violation of the law is a failure to meet the obligations one undertook in the social contract, and indicates an unwillingness to cooperate in a reliable, trustworthy manner with one's fellows. This feature of the Hobbesian universe provides the citizen with a reason to comply with the sovereign's commands (or, as it were, a reason not to not comply). Distinguishing between medieval and Enlightenment-era models of punishment (a distinction that corresponds to my

distinction between Bodin's and Hobbes' interpretations of political power), Foucault makes essentially the same point. In the medieval case, where political power is the personal power of the sovereign, "by breaking the law, the offender has touched the very person of the prince; and it is the prince—or at least those to whom he has delegated his force—who seizes upon the body of the condemned man."⁵⁶ Disobedience is very personal matter between dissident subject and sovereign. In breaking the law the subject has offered a personal affront to the sovereign's supremacy. In contrast, on the social contract (e.g., Hobbesian) model that animated later notions of punishment, "the offence opposes an individual to the entire social body."⁵⁷ Because on the contract model legal non-compliance is at the same time social or moral non-cooperation, violation of the laws laid down by the sovereign constitutes an affront (and even a threat) to the community as a whole. Disobedience here is a matter between subject and *every other subject*. As far as the reasons subjects have for complying with the sovereign's commands go this is a weakness in Bodin's account. The sovereign Bodin describes is not the product of a collective agreement, and failure to comply with his commands is not a breach of any horizontal agreement or obligations between subjects.⁵⁸ Political relationships are, as it were, entirely vertical. They extend from the sovereign down to the subject and back up again. Horizontal relations between subjects need not have a political character: they need not carry with them any obligations to obey the commands of the sovereign.

Bodin's interpretation of political power thus gives rise to two issues regarding stability that do not arise for Hobbes. On the one hand, if subjects are bound to one another by moral norms and obligations that are independent of the sovereign's existence and actions, these norms

⁵⁶ Foucault, p. 49.

⁵⁷ Foucault, p. 90.

⁵⁸ At least not from the perspective of Bodin's political theory. Religion and morality may play a role in motivating subject to comply with the law, but this role for religion (or morality or other cultural forms) in the functioning of the social system is not part of Bodin's argument for absolutism.

provide subjects with a foundation for collective organization in resistance to the sovereign. On the other hand, on Bodin's view resistance to the sovereign is an affront to the sovereign but not (necessarily) an affront to the community. A refusal to comply with the commands of the sovereign does not constitute an act of non-cooperation and thus does not have the horizontal ramifications it does on Hobbes' view. At least as far as this issue is concerned—the issue of horizontal moral norms and obligations and their role in stabilizing political authority—Bodin is at a disadvantage. The sovereign as Bodin accounts for him is more likely to face coordinated resistance organized around common moral and religious concerns and his subjects have less reason to refrain from resisting the sovereign.

All of this falls out of the distinction between Bodin's and Hobbes' accounts of the sovereign's supreme power. The sovereign who rules in virtue of his personal power and who rules only insofar as his power is supreme faces a unique set of challenges. The social world is occupied by powerful individuals and groups who know that by decreasing the relative superiority of the sovereign with respect to power they can hope to wield some portion of the prerogatives of sovereignty. Subjects have common interests and they can pool their resources together in order to bring down the sovereign or cut into his absolute authority. These points give way to a further problem: the absolutist nature of political authority only makes things worse. Consider first the point made above that on the model Bodin sketches non-compliance is not necessarily non-cooperative and in resisting the sovereign the subject does not necessarily offer a moral (or other normative) affront to other citizens. Because a absolutist lawmaking authority is unconstrained by moral and other norms, we have little reason to expect *a priori* that the norms and obligations that do bind subjects to one another will find expression in and thereby reinforce legal requirements. Any coincidence between the contents of legal and non-legal obligations will be coincidental. The absence of non-legal norms (moral, religious, etc.) to

support legal requirements (in the way that Hobbesian moral obligations do) is therefore exacerbated by the autonomy of political decision-making from non-legal normative sources. *Absolutism makes it less likely that ordinary norms will reinforce legal ones.* Now take the other point I made above, that the existence of a network of moral norms and obligations independent of the sovereign increases subjects' opportunities to engage in collective resistance or disobedience. The possibility of these independent horizontal obligations generating collective pockets of resistance also increases as a result of absolutism. Because these independent norms and obligations are not brought to bear on the sovereign's decision-making—he may choose to abide by them in particular cases but he cannot be made to do so—the actions of the sovereign are more likely to conflict with these moral norms and obligations and thus more likely to spark resistance organized in terms of independent norms, values, obligations, and common interests. *Absolutism makes ordinary norms more likely to coordinate resistance.*

Bodin and Political Competition

So we can see that: (a) the problem of stability arises in different ways for the two interpretations of sovereign power; and (b) that if the sovereign's power is as Bodin describes it then the problem of stability arises in a more poignant way. Five sources of instability for the Bodinian sovereign have been indicated.

- Subjects have independent power, individually and collectively, and the power varies from agent to agent.
- Subjects have private interests that will conceivably conflict with the aims and interests of the sovereign.

- Subjects have collective common interests—e.g., the interests of workers or the interests of oil companies—that will conceivably conflict with the aims and interests of the sovereign.
- Subjects recognize moral norms that apply to (*inter alia*) the sovereign or the sovereign's actions, and thus provide citizens with a moral basis for criticizing or acting against the sovereign.
- Subjects have and recognize that they have moral obligations and group attachments to one another, and these obligations and attachments give them reason to support one another, e.g., against the sovereign.

The distinctive problem of stability for Bodin is also apparent in the weakness of Bodin's argument for the indivisibility of sovereignty. That argument, to recap, is that any distribution of the marks of sovereignty amongst distinct actors will inevitably move toward an equilibrium point at which all the marks are in the hands of a single sovereign agent. Whatever else we might want to say about this argument, it is dubious as an empirical matter.⁵⁹ After all, regardless of whether or not we would conclude from an agent's having taken on the power to command without being commanded that that agent was sovereign, is it really plausible to assume that any genuine division of sovereign powers would result in a power struggle with one agent winning sole possession of the sovereignty? That is to say, is it really plausible that the only equilibrium point is that at which the marks of sovereignty rest with a single agent?

Machiavelli, for one, would have denied it. In his *Discourses* Machiavelli defends a "mixed" political organization (based on his account of the Roman republic) in which sovereignty is divided up between an aristocracy (represented by the Senate) and the people (represented by the tribunes), perhaps presided over by a prince or monarch who shares in some independent portion

⁵⁹ And, of course, Bodin's thesis that the marks of sovereignty will always be consolidated in the hands of a single agent is an empirical claim.

of the sovereignty.⁶⁰ Whether or not this is an accurate account of Roman political arrangements during the republic (and Bodin argues that it is not⁶¹), this sort of division of power seems at least possible. Two or more classes, living together and dependent upon one another, are forced to divide up the prerogatives of sovereignty in order to bring all parties—classes, sects, cultural groups, whatever—in order to make peaceful political cooperation possible. To update the example a bit, we can imagine a society in which one class—we can call them *the bourgeoisie*—possesses capital and the means of production while another class—we can call them *the proletariat*—supply the labor that is employed in the businesses and factories owned by the bourgeoisie. Now it could certainly come about that: (a) the bourgeoisie depend on the proletariat to supply the labor without which they cannot expect to make a profit, etc.; while (b) the proletariat depend on the bourgeoisie for employment and wages without which they cannot expect to live. Each class exercises a certain power over the other—each possess something that the other class desires and needs. Neither class (we assume for the sake of argument) is capable of disposing of the other class; they are mutually dependent. Neither class is able to “overcome” the other and rule as the sole sovereign. And of course neither class is in a position where it feels it has to give up its share in ruling.

As a counter-example to Bodin’s indivisibility assertion, two things are important about this case: first, that the agents upon whom the sovereign prerogatives fall cannot (or would not) simply *separate* and form two distinct political societies (if they did it would not be a case of divided authority, it would just be two societies); second, that the distribution of power is such that neither side (or none of the sides, if there are more than two) is in a position to usurp the other side’s (or sides’) portion of political authority. The power the bourgeoisie and proletariat exercise over one another is not itself political power, just as the private armies of the rebellious

⁶⁰ For more on Machiavelli’s republicanism, see chapter I of this thesis.

⁶¹ *OS* book II, chap. 1: pp. 91-8.

dukes in Bodin's France were not in and of themselves political power. It is *pre-political* power that derives from their economic positions relative to one another. But it can be used to determine political arrangements, just as the Afghan "warlord" can use his pre-political military power to secure a politically important cabinet position. What Bodin argues is impossible or necessarily unstable—a genuine division of the marks of sovereignty—might be tenable in this situation. If neither class is in a position to do away with the other or to completely disenfranchise it politically, then neither class has an interest in overstepping the boundaries imposed by the divisions of sovereign powers.

So Bodin's empirical claim—that any division of sovereign prerogatives will eventually move toward an equilibrium in which sovereign authority is undivided—is weak. This is true over and above any more theoretical or analytical weakness in Bodin's assumption that in attaining supreme power one will have successfully usurped absolute authority. The weakness of the argument derives from the fact that there can and often will be social actors—classes, sects, powerful individuals—who have sufficient power of their own to hold on to (or usurp) certain pieces of the sovereignty. Bodin's indivisibility argument comes down to wishful thinking that there always will be (or will arise) some agent sufficiently powerful to command without being commanded and hence to take for himself and himself alone all the marks of sovereignty. And it is the failure of this wishful thinking that demonstrates the inherent instability of sovereign power as understood by Bodin. Even should an agent emerge sufficiently powerful to command without being commanded, to hold the marks of sovereignty for himself without having to dole a few prerogatives out to pesky warlords or the Church, that agent will constantly have to contend with the resistance of individuals, social classes, religious sects, and others who believe themselves capable of employing some (or all) of the marks of sovereignty. What Bodin describes is not the permanent consolidation of political authority in a single agent, but a free-

for-all power struggle in which every agent with any modicum of power will be looking to take a piece of the political pie. It isn't as though powerful non-sovereign agents can be expected to attempt to usurp marks of sovereignty *only* when those marks are divided up amongst different agents.

The weakness of Bodin's indivisibility argument makes clear the precarious situation of the Bodinian sovereign. Political society contains various loci of power: classes, the Church, dissident religious groups, military factions, and powerful individuals. Each of these has a reason to aim at usurping some or all of the marks of sovereignty, because each can see that possessing one of the marks of sovereignty is simply a matter of amassing the power to issue (and enforce) the relevant commands. Furthermore, once it is clear that the genuine division of the sovereign prerogatives is a real possibility (contrary to what Bodin says), powerful agents have all the more reason to press their claims. Knowing that the sovereign marks can be divided up amongst distinct agents, potentially rebellious groups or factions can rest assured that in order to get some piece of the sovereignty they need not be able to overcome each and every other individual or group.

The problem of stability is thus bad for Bodin, apparently worse than it is for Hobbes. Bodin's sovereign has no way to compel his subjects not to resist except through the display and exercise of his own power. How compelling would this be? Obviously it depends on how great the sovereign's power is. But however it is, those within society who possess some power have to realize that taking over the marks of sovereignty is simply a matter of pulling together—perhaps through alliances with other factions or individuals—enough power to command without being commanded. The possibility of divided sovereignty, which Bodin inadequately dismisses, would only goad already rebellious social agents. The case of Bodin suggests that something

more than the superior personal power of the sovereign is necessary to maintain political stability.

Hobbes and the Fool

Society on Bodin's model is an arena of competition and conflict between social agents with differing yet comparable powers. Hobbes' social contract is designed to eliminate this physical, violent aspect of social conflict. The powers of subjects are alienated to the sovereign, so that legitimate violence is prerogative of the political authority alone. It is certainly conceivable that this was part of Hobbes' intention in articulating his contractarian defense of absolutism, viz., to show how physical power could and had to be removed from the arena of social conflict and competition and in particular from the disagreements and confrontations between religious groups. Conflict between social classes and between religious sects had issued in a bloody civil war that was still raging as Hobbes wrote his *Leviathan*. The social contract defense of absolutism achieves this goal in two ways. On the one hand, *absolutism* elevates political reason above the fray of sectarian and class conflict. The autonomy of the political means that state power in the Hobbesian case cannot be used as the instrument of particular social interests.⁶² On the other hand, the *social contract* puts all physical power in the hands of a sovereign who is above the social fray. The social contract makes the state what Weber claims it is by definition, the institution with a monopoly on the exercise of legitimate physical force.⁶³

Hobbes' social contract has the effect of politicizing all social violence. Resistance to the sovereign is resistance to one's fellows, because the obligation one takes on as a party to the social contract is an obligation to one's fellow citizens, not the sovereign. This provides the

⁶² At least not directly. Obviously it is still possible and likely that state power will in fact further some religious, moral, or class interests while hampering others.

⁶³ *Economy and Society* I, p. 54.

Hobbesian citizen with a reason for cooperating with one another and complying with the laws that is not (necessarily) available to Bodin's subject. In resisting the Hobbesian sovereign I cannot count on the complicity or support of my fellows, for the simple reason that in threatening the power of the sovereign I threaten them as well. On top of the lack of support my efforts at rebellion are likely to find, resistance to the sovereign is additionally likely to harm my standing with my compatriots. On the terms of the social contract, legal non-compliance is social (in particular economic) non-cooperation. In failing to perform my end of the social contract I damage my reputation with other citizens and therefore undermine their trust in me and diminish their willingness to have business dealings with me in the future. The relations of dependency that arise from the social contract thus serve to remove violence from factional, religious, and moral disagreement in two ways: by making the power of the sovereign the total power of the community and by making the citizen's standing with his fellows in part a matter of his willingness to abide by the law. The social contract provides the citizen with reasons for compliance that are not available on Bodin's understanding of sovereignty.

According to Hobbes' contractual interpretation of the sovereign's power the sovereign is empowered only insofar as the power of each citizen is alienated to him. He has no, or at least we need not assume he has, any pre-political store of power. What he has he has in virtue of the fact that the power of the citizens' has been alienated to him. The threat to political stability in Hobbes, then, comes from the possibility that citizens will fail to alienate their power to him.⁶⁴ How could they do this? By refusing to comply with the sovereign's commands and by refusing to cooperate peacefully with others. The sovereign's power depends on the willingness of citizens' to comply with his commands and on his ability to secure peaceful cooperation between

⁶⁴ To be more exact, I should say that the threat is that citizens' power will fail to be alienated to the sovereign. As I argue in the next chapter, citizens can find that their powers and abilities have been alienated to the sovereign without their having *done* anything to alienate them.

citizens. If citizens refuse to comply he is that much *less* able to fulfill his role as “common power” over citizens’ contracts. The less able he is to fulfill this role and the less willing others are to cooperate peacefully and obey the sovereign’s commands, the less reason each citizen has to fulfill these civic duties. Political stability on this story depends entirely on the motivation citizens have to cooperate with one another and to obey the sovereign. Any reason citizens have for not complying with the laws or not cooperating with one another is a threat.

This is the significance of Hobbes’ third law of nature, which states that justice—the performance of one’s covenants—is always rational.⁶⁵ It is always in the rational self-interest of the citizen, Hobbes tells us, to comply with the sovereign’s laws (and thereby abide by the social contract) and to fulfill the obligations stemming from the particular covenants he has entered into with other citizens. Hobbes is able (or so he believes) to rank justice amongst the laws of nature for two reasons. First, the sovereign has at his disposal the power of every citizen. As I noted earlier, this puts the would-be criminal at odds not just with the sovereign but with every other citizen as well. He is literally surrounded by forces licensed to guarantee his compliance and cooperation. Second, each citizen’s livelihood depends on cooperation with other citizens. This is part of what makes the social contract attractive. It creates a situation in which economic interdependence is possible. If a citizen reneges on one of his covenants (including the initial social contract) other citizens have that much less reason to trust him and therefore that much less reason to enter into future covenants with him. Both of these factors—the pervasiveness and totality of sovereign power and the economic dangers associated with non-cooperation—give the citizen compelling reason to abide by his covenants. Thus justice is a law of nature.

The fool’s challenge confronts this line of reasoning directly and in so doing brings out the serious stability problem for Hobbes’ account. The fool “hath said in his heart: ‘there is no such

⁶⁵ L xv. 1.

thing as justice.”⁶⁶ The fool is not simply a rebel nor an anarchist. He does not deny that cooperation under the sovereign is better than life in the state of nature, or even that it is rational for the agent in the state of nature to alienate his right of nature to the sovereign on the condition that everyone else do the same. Neither is the fool irrational, nor need we assume that he is operating on some sort of “alternative” rationality. The fool sees things just as we do (or at least as Hobbes says we do). The fool’s contention is quite simple. Within political society, there will be times where it will be in one’s rational self-interest to violate one’s covenants (including, presumably, the social contract one has entered into to obey the sovereign). If, as Hobbes contends, justice is always rational (the third law of nature) and justice is the performance of covenants, then justice must not really *be* anything, because it is not always rational to perform one’s covenants. *Justice* is a confused and contradictory concept, and therefore does not pick out anything in the world. Hence the fool’s conclusion: “there is no such thing as justice.”

If it is rational to violate one’s covenants this can only be because the expected benefits of doing so outweigh the dangers associated with it. The rationally self-interested citizen cannot deny that if caught the punitive power of the sovereign which surrounds the citizen and the ramifications for his future covenants with his fellows are very bad things, things he ought to avoid if he values his own interests. Nor can the citizen deny Hobbes’ point that if a citizen violates his covenant and is *not* caught it will only be through “the errors of other men, which he [the criminal] could not foresee nor reckon upon.”⁶⁷ It is true that he may not be caught, but he cannot count on not getting caught, and the rationality of the action depends not on what *does* happen but on what the agent could reasonably *expect* to happen. The possibility pointed out by the fool is a threat to political stability only if it is a possibility open to a rational citizen who has considered the likely ramifications of his actions.

⁶⁶ L xv. 4-7.

⁶⁷ L xv. 5.

That said, it seems obvious that the fool must be right. There will be situations in which the rational course of action is to violate one's covenants. The considerations Hobbes adduces in favor of the third law of nature are undeniably relevant considerations, but they are not the whole story. There are dangers to any proposed course of action, and there are possible benefits. Given these dangers, if the benefits and the prospects for success are high enough it will be rational to act. This is true of rational action in general, not just covenant-violations. We weigh our prospects for success along with the expected benefits against the chances that we will fail and the ramifications of failure. We don't simply note the bad consequences of failure and conclude that the action is irrational (or, at least, this is not the rational way to go about things).

Nonetheless, if the ramifications of failing in one's covenant-violating attempts are serious enough, this will at least tell us something about how great the expected benefits would have to be in order for covenant-breaking to be rational. And this, in turn, will give us some idea how serious a threat to stability the fool has uncovered. The worse the ramifications of failing to conceal one's covenant-breaking, the less of a danger this sort of petty criminality poses.

Hobbes has two arguments available to him for why it rational to be just. One is that the punitive power of the sovereign is total and pervasive, and the would-be felon therefore faces the possibility of punitive response if his attempt is uncovered. This is a serious threat, one the citizen would have to consider. At the same time, given that the sovereign wields total power with absolute authority, this is a danger even if the citizen *doesn't* violate his covenants. The sovereign *can* do whatever he wants, after all, both in the sense of *having the power* and in the sense of *being permitted to*. The sovereign may have more reason to punish the covenant-violator than he would anyone else, but it's hard to say. Hobbes tells us nothing about the

sovereign's motivations,⁶⁸ nor can anything be gleaned from the contractarian account of power. This does not dismiss Hobbes' point, but it does qualify its seriousness somewhat.

The second consideration Hobbes can adduce against injustice is the danger that the culprit will be cut out of future transactions with his fellows. The network of economic interdependencies that arises out of the social contract makes this threat particularly serious. The citizen relies on being able to reach agreements with his fellows. Without it, he is in a sense *worse off* than he was in the state of nature. On the one hand, he would not have the benefits of political society (or one of the chief benefits, anyway). On the other hand, he would not be free to pillage and appropriate in the way he was in the state of nature. Economic isolation within political society is fate to be avoided at almost any cost, and should certainly caution the citizen against criminal activity.

Granting this, however, how likely is it that being uncovered as a covenant-violator will result in one's being treated as an economic leper? Not terribly, it seems. Think of it this way: If we thought that economic transactions were in general based on trust and other forms of good-feeling, the fact that a citizen was a known covenant-violator would be a factor in deciding whether we should covenant with him insofar as the fact that his is a transgressor gives others a reason not to trust him. But do we think covenants in the Hobbesian society are founded on trust? We do not trust agents in the state of nature and this is one reason not to make covenants with them. (If we think we can trick or bully them, we might *pretend* to make a covenant, but that's another story.) The social contract alters this situation by establishing a context in which contracts can be guaranteed by the sovereign. The existence of the sovereign alleviates the need to make our covenants based on trust. Far from making the sphere of economic interactions a sphere organized by individual's moral or behavioral evaluations of one another, the introduction

⁶⁸ Except insofar as we can assume that he, like everyone else, is rational and self-interested.

of the sovereign significantly reduces our need to rely on such tools. Of course, it may well be that it is easier to conduct business with trustworthy people, if only because it means you don't have to continually call on the sovereign to enforce your agreements. But it isn't as though the fact that one is known to be untrustworthy means one will be economically isolated. One may not even be much worse off. Again, this does not dismiss Hobbes' point, but it should affect how serious a consideration it should be for the rational citizen.

So the case for the fool seems pretty strong. The Hobbesian considerations are worth noting, but they fall far short of ruling out situations in which it would be rational for the citizen to violate his covenants. These considerations are only a part of the rational choice equation. The citizen has to consider not only the *disutility* of getting caught but also the expected *utility* of successful violation and the *probability* that he will be caught. One obvious problem Hobbes faces here is that citizens have only their instrumental reason and their non-tuistic self-interest to appeal to for reasons to cooperate with one another and comply with the sovereign. Hobbes does not appeal to the (what we would commonly call) moral reasons for citizens to cooperate: e.g., the legitimacy of the state, the goodness of the state's aims, or the fairness of its actions. He can appeal to the moral obligations citizens take on in virtue of entering into valid covenants, but on Hobbes' account these obligations are binding only insofar as there is some agent (in this case, the sovereign) who can and will force individuals to fulfill their obligations. Political cooperation has to be (in general) in the rational self-interest of (more or less) each agent in order for Hobbesian political society to be stable. This is a pretty high standard.

The problem posed by the fool is serious. As noted above, the sovereign's power depends on the continued cooperation of his citizens. If citizens fail to cooperate, or if it is generally believed that citizens lack sufficient motivation to cooperate, then the sovereign's power is seriously threatened. Unlike the Bodinian sovereign, he cannot fall back on his pre-political

store of power (his might, his charisma, his private army). When citizens stop cooperating, that's the end of the story.

Now of course if Hobbes is right about the state of nature then citizens should fear a return to it. Thus it might be responded that if sufficient covenant-breaking (or sufficient threat of sufficient covenant-breaking) threatens to bring about political dissolution, this provides each and every citizen with a reason to be just. My argument, so the objection would go, demonstrates its own failure by demonstrating that it really isn't rational to violate one's covenants. But this misses the point. Each citizen can honestly say, "My disobedience is unlikely to bring about political collapse." This must be the case, or the instability of Hobbesian absolutism is much more severe than I have been suggesting. And each citizen can continue saying this right up to the point when it is no longer rational to cooperate. That is, each citizen can continue saying this up to the point where enough people are not cooperating that political collapse is really imminent.

David Gauthier has suggested another response Hobbes might give to the fool. Gauthier argues that the social contract initiates a change in agents' rationality and not just a change in the circumstances under which citizens exercise their rationality.⁶⁹ (Hobbes and the fool would both agree that the change in circumstances affects what courses of action are rational—that is it the point of the social contract.) Gauthier's claim is stronger, viz., that the social contract changes what it is for an action to be rational. In the state of nature, what Gauthier calls *natural rationality* applies. According to natural rationality, agents should concern themselves with their own non-tuistic interests and with their own self-preservation. Once in political society, however, what Gauthier calls *conventional rationality* replaces natural rationality. Conventional rationality implores the agent to accord supreme value to the preservation of peace rather than

⁶⁹ David Gauthier, "Thomas Hobbes: Moral Theorist."

self-interest or self-preservation. This transformation is, Gauthier tells us, the product of the social contract.

If one lays down some portion of that right [of nature], then one also renounces the rationality that was the basis of the right laid down. If one lays down some portion of one's right to do whatever seems conducive to one's preservation and one's well-being, so that one may find peace, then one renounces preservation as the standard of reason, in favor of peace. (TH 557)

The preservation of peace—not as a means to an end but as a constraint on all my deliberation on means to ends—is a very different fundamental interest than self-preservation. For instance, peace is threatened when citizens do not obey their covenants. Social stability depends on the cooperation of citizens, both with each other and with the sovereign. Obeying one's covenants therefore becomes a guiding constraint on my rational self-interest. In society, with political cooperation running along smoothly under the auspices of the sovereign, it is (conventionally) irrational for me to violate my covenants even when the benefit that would come from doing so outweighs the cost of getting caught. Hobbes and the fool are both wrong to assume that the standard by which we should judge whether or not an action is rational is natural rationality, viz., whether or not it is in the rational self-interest of the individual agent. (Hobbes and the fool disagree about the facts—whether or not by this standard covenant violation is ever rational—but they agree on what makes an action rational.) Given that rationality in political society is conventional rationality, it is not rational to violate one's covenants. The fool is dismissed and the stability problem is resolved.

There are two points to make here in response to Gauthier's suggestion. The first is that replacing self-preservation or self-interest with the preservation of peace as supreme rational aim does not net us the conclusion that covenant-violation is always rational. At best, it would support a sort of *ceteris paribus* rule imploring every rational agent to in general aim to preserve the peace. Consider the role of self-preservation in rational thought. I have a fundamental

interest in my own self-preservation, but this does not mean I never do anything that poses a danger to my life. For instance, despite my strong and sincere interest in self-preservation I continue to drive a car, an activity that can clearly be life-threatening. That self-preservation is what I value above all else (supposing I do) entails not that I never do anything that might jeopardize my life but rather that I accord to the preservation of my life a very high value such that I take into consideration the danger posed by courses of action I am contemplating. If we replace self-preservation with the preservation of peace we get the conclusion that one ought not do things that threaten the peace (like violating one's covenants) unless the expected benefits of the action outweigh the dangers, *not* the conclusion Gauthier and Hobbes want, viz., that it is never rational to violate one's covenants. It could be conventionally rational to violate one's covenants, just as it could be naturally rational to engage in potentially life-threatening activities (such as driving or eating). All things being equal, one ought not engage in peace-threatening activities.

But this is all the fool ever wanted. Again, the fool does not want to undermine political society. He wants (or we can assume he wants) to avoid taking any action that would lead to the disintegration of society. He may be a fool but he isn't stupid. He understands that political society under the sovereign is preferable to a life that is "solitary, poor, nasty, brutish, and short." He therefore has good reason to take into consideration the ramifications his proposed covenant-violation will have for the integrity and stability of political society. If the above is an accurate interpretation of Gauthier's notion of *conventional rationality*, then we can assume the fool is conventionally rational. Fortunately for the fool, although Hobbesian political society is potentially destabilized when people refuse to obey their covenants, the danger that any particular violation will lead to or even contribute to the disintegration of the political order is slim. Not zero, but very small. It is a consideration the fool cannot afford to ignore, but at the

same time it is not a consideration that will rule out in every case the rationality of covenant-violation. On this (I think plausible) interpretation of Gauthier's proposal, the fool does not turn out to be wrong in asserting that covenant-violation is sometimes rational. (That is, he does not turn out to be wrong assuming that Hobbes' response falls short of the mark.)

The second point to be made about Gauthier's proposal is that even a more robust interpretation of Gauthier's claim does not resolve Hobbes' stability problem. The thesis that as a result of the social contract it is never conventionally rational to violate one's covenants could be interpreted in two more robust ways: psychologically and morally. The psychological version would claim that upon entering the Leviathan society citizens are fundamentally altered psychologically. They no longer desire to break their covenants, or to maximize their advantage, or they simply possess a newfound desire to abide by their covenants and this desire overrides what every covenant-breaking desires they might have. Breaking covenants is not rational because it conflicts with one's desires or interests.

The psychological thesis is simply hard to substantiate. The dramatic psychological shift from the state of nature to the Leviathan society cannot be established on the basis of the social contract alone. Certainly a political ideology of mutual concern or obedience might, over time, bring about a psychological transformation on the part of citizens, as might some sort of nationalist mythology or quasi-religious sovereign worship. But all of these things are well outside the social contract, which Gauthier claims is responsible for the move from natural to conventional ideology.

The moral version of Gauthier's thesis would be that as a result of the social contract it is now the case, whether citizens recognize it or not and whether citizens care or not, that it is immoral to violate one's covenants. The social contract initiates a change not only in the political facts but in the moral facts as well. The problem with this version of Gauthier's thesis

is that it leaves us with a gap between what citizens *ought* to do and what citizens *will* do. It is just this gap that Hobbes' social contract argument bridges (as that argument is often interpreted, at least). The moral version of Gauthier's thesis provides us with no way of explaining how citizens can be expected to act. This does not refute Gauthier's claim, but it does mean that Gauthier's account gives us no way of answering the problem of stability that arises for Hobbes out of the story of the fool. The stability problem arises because citizens will have reason to act in politically destabilizing ways, which is quite independent of whether or not such actions are moral.

The Hobbesian interpretation of sovereign power makes it particularly important to ensure that citizens have good reasons for cooperating and to deny them good reasons for not cooperating, more important than it is, e.g., for Bodin. There is simply more at stake. In Bodin, the reasons subjects have for not cooperating are met with the power of the sovereign, a power that (we can suppose) adheres to the sovereign pre-politically. That is, that he has it not, to some extent at least, a political matter. In contrast, the power that faces the would-be Hobbesian dissident is the power of the community. The Hobbesian sovereign is empowered only to the extent that citizens are willing to alienate their rights to him and cooperate peacefully. And presumably whether they are willing to alienate their rights to him and cooperate peacefully depends to some extent on whether they have good reasons to do so (and lack good reasons not to). The fact that there is power to counter the resistance of citizens therefore depends to a greater degree on Hobbes' view than on Bodin's view on the actual level of social and political cooperation, a factor that itself depends on the availability of reasons to cooperate and the unavailability of reasons not to. The danger that comes with citizens having genuinely moral reasons to act—and hence genuinely moral reasons to not cooperate—comes from two

directions: on the one hand the availability of such reasons gives citizens a basis for criticizing the sovereign's actions and for refusing to cooperate; on the other hand, the availability of such reasons threatens the power base with which the sovereign must respond to these dissidents. The contractarian defense of absolutism therefore makes the need to restrict practical reason to rational self-interest is therefore in some sense twice as great in Hobbes as it is in Bodin.

This is what makes the fool's challenge a challenge to the stability of Hobbesian political society and not just the challenge of a smart-mouthed would-be delinquent. All that separates Hobbesian political society from the state of nature is the willingness of citizens to continue peacefully cooperating and dutifully obeying the sovereign. This cooperation and obedience is predicated in turn on a belief that others will be doing the same. Because the power of the sovereign consists entirely in what his citizens alienate to him, and not on some independent, pre-political power base, anything that undermines either citizens' reasons for cooperating or citizens' beliefs that others are willing to cooperate is a threat to political stability. Earlier I noted that in Hobbes (but not Bodin) disobedience is non-cooperative: a failure to obey the law is also a violation of the obligations one has to one's fellows. I made this point to demonstrate that Hobbesian citizens have an additional reason to obey the law: if they don't, they are also failing to cooperate with their fellows and risk not only moral approbation but economic isolation as well. But the point goes both ways. The failure to cooperate with one's fellows, e.g., a failure to respect one's covenants, is a form of disobedience. It signals a threat to the power of the sovereign insofar as it undermines other citizens' belief that the sovereign is capable of fulfilling his essential role of "common power" over our covenants.

The Power of the Sovereign

Absolutism argues that the sovereign must exercise supreme power in society. This power must be sufficient, among other things, to maintain the stability of political society. In one way or another (and the ways are clearly different on the two interpretations of sovereign power) the sovereign's supreme power must ensure that subjects—or a sufficient number of them—continue to cooperate peacefully in the legal-political order the sovereign has established. The power of the sovereign must provide subjects with reasons to obey the laws or, at least, provide them with reasons not to resist.

What comes out in the examination of these two versions of absolutism is that power is unlikely to be enough. Or, at least, that sovereign power as understood by Bodin and as understood by Hobbes is unlikely to be enough. Whether power emanates from the person of the sovereign as in Bodin or from the community as a whole as in Hobbes, the existence of a supreme sovereign power is not enough to explain political stability. It is reasonable to expect that subjects will need better, or more compelling, reasons to cooperate.

Consider the Hobbesian stability problem. The response Hobbes has for the fool relies entirely on the citizen's self-interest: rational self-interest is to explain why it is irrational for the fool to violate his covenants. The citizen has an interest in avoiding punishment and the citizen has an interest in continuing economic transactions with his fellows. Insofar as he is rational he recognizes the danger that comes with violation of one's covenants and thus has reason to comply and cooperate peacefully. His self-interest leads him, with the help of rational calculation, to the conclusion the justice *is* a law of nature.

Absent from the reasons Hobbes adduces are anything we might want to call *moral* or more generally *normative* reasons for being just.⁷⁰ Absent also are what we might expect to be behind

⁷⁰ Of course, there are what *Hobbes* would call moral reasons. But for Hobbes having a moral reason to ϕ presupposes that there is some external agent capable of compelling one to ϕ . In the cases we are interested in here, there is no such threat of external compulsion. A moral reason,

ordinary real-world legal compliance and cooperation: patriotic ideology, a national mythology, or quasi-religious reverence for the sovereign and his institutions—in short, all those factors that really do play a role in compelling actual human beings to cooperate peacefully in political society. On the argument Hobbes gives, it isn't that the citizen *ought* to perform his part of the covenants he's entered into, or at least not that he *ought* to in any sense that does not presuppose a compelling non-tuistic interest in doing so. Hobbes' point is that from the perspective of the citizen's non-tuistic interests, it is rational to do so. Hobbes of course argues that moral obligations just are the obligations that arise from the covenants one enters into. But Hobbes does not appeal to the morally obligatory character of justice as a reason over and above the reasons of self-interest already adduced. If there is a moral or ethical or patriotic quality that would adhere to the performance of one's covenants even if such performance were no longer in one's interest, then Hobbes does not make use of this in his response to the fool. (If he did, and he could substantiate the claim, then that might be the end of the argument.)

The fact that Hobbes sticks to reasons of rational self-interest is telling. This fact could, of course, be treated as a straightforward consequence of Hobbes' psychological theory, as outlined in Chapter VI of the *Leviathan*.⁷¹ Humans are motivated to act by their conception of their own good, which is nothing more than what the agent desires. Rational action aims to obtain this good. This is as true of the citizen in the Leviathan state as it is of the agent in the state of nature. Neither individual has anything to go on but his wholly subjective conception of the good and his instrumental reason. Hobbes' response to the fool is therefore limited by his theory of psychology: reasons of non-tuistic self-interest are the only reasons that actually motivate

as I am using it here (in a way that is, I think, common), is one that would be available to the agent in just those situations the fool identifies, viz., where it is not in one's rational self-interest to abide by one's covenants.

⁷¹ See, e.g., *L* vi. 7 and 53.

humans to act, and thus are the only reasons that could be adduced to convince the citizen to hold to his covenants.

But we can also explain Hobbes' response to the fool from the other direction: *absolutism limits the sorts of reasons Hobbes can adduce in response to the fool's challenge*. This comes out of the arguments already presented. The laws and policies of a absolutist sovereign cannot be expected on the basis of their content to provide the subject with reasons to comply. The absolutist sovereign's laws need not be just or fair or equitable insofar as these are qualities that supervene on the *content* of the laws.⁷² Nor need they measure up against subjects' nationalist sentiments or patriotic principles. They may, but there are no constraints on the sovereign's decision-making that would compel the sovereign to make them so. As a result, the citizen cannot be expected to respond to the laws on their normative merits, i.e., by evaluating them with regard to their justice or fairness and complying for reasons of justice or fairness or whatever. Normative evaluation of the law cannot be expected to be a part of the law-abiding motivation of the citizen when the mechanism by which the law is created is in no way bound by norms.

Furthermore, it should be obvious that normative evaluation—normative in any non-Hobbesian, non-absolutist sense—would constitute a threat to social stability. Hobbes does not want judgments of this sort to figure into citizens' motivation to cooperate, because they are unlikely to make a positive contribution. Absolutist political authority does not stand up well to moral, religious, or other normative critique—or at least we have no reason to expect that it will. Finally, the isolation that is achieved by the social contract will be to some extent mitigated. Earlier it was noted that stability in the Leviathan state is assured in part by the fact that any resistance to the sovereign is resistance to each and every member of society. This more or less

⁷² Hobbes or the Hobbesian can, of course, always reinterpret normative political expressions like “just” or “fair” or “equitable” in decisionist terms, e.g., where a just law is one that issues from the sovereign. But I think it's obvious that this wouldn't advance the Hobbesian argument any.

ensures that I will be alone in my resistance, which gives me one more reason to toe the line and comply with the law. But if citizens have independent normative beliefs and hence (potentially) independent normative reasons for criticizing the sovereign then the citizen who resists may find that he is not alone. By refusing to comply I will still be violating my solemn agreement to submit to the will of the sovereign, but I may do it for what others recognize to be good reasons. Non-compliance supported by good reasons that other citizens could in principle accept is going to be, if nothing else, *less* of a bad idea than non-compliance that could only be interpreted by others as non-cooperative and a moral affront.

The defense of absolutism forces Hobbes to rely only on these strategic non-tuistic reasons in explaining why it is that citizens should and would comply with the sovereign's laws and abide by their particular contracts. On the one hand, absolutist law does not provide the citizen with more substantial reasons for cooperating. On the other hand, absolutist law does not measure up well against normative criticism. It is easy to assume that Hobbes' "pessimistic" or "cynical" psychology is the explanation or motivation both for his response to the fool and for his radical, absolutist conclusions. But we can see things the other way around: absolutism does not allow for any more substantial response to the fool nor, by extension, for any less pessimistic or cynical psychology.⁷³

Absolutism cannot reliably provide many reasons for cooperating and hence cannot provide much guarantee of its own stability. Consequently, in answering the problem of stability the defender of absolutism has little to appeal to beyond the supreme power of the sovereign as a reason to cooperate. This proves to be a feeble foundation for stability. We see this in Bodin as well. The sovereign's position as sovereign rests on his capacity to effectively command without

⁷³ I'm not sure the two explanations are in competition, but my goal is not to deconstruct Hobbes or uncover his secret motivations. The point is that whatever Hobbes' own reasoning (from the psychological account to the political account or vice versa), given the commitment to contractarian absolutism one has no choice but to defend this narrow account of practical reason.

being commanded. Other loci of power in society—classes, powerful leaders, religious groups and organizations—are moved to resist the sovereign’s command or to usurp the marks of sovereignty in part because they can see that all that matters is power. Usurping the sovereign prerogatives involves nothing more than putting oneself in a position to effectively command. This gives any individual or group with some measure of social power a motive for resisting or even overthrowing the sovereign. What these would-be revolutionaries need is some better reason to cooperate politically and obey the sovereign. But absolutism does not provide such reasons, because such reasons can only be provided by putting conditions or obligations (however vague and unstated) on the sovereign’s authority.

Looking at these two interpretations of sovereign power as parts of theories of absolutism, we can see that absolutism rests in part on a myth: the myth that with sufficient power a large number of people can be compelled to be cooperative and peaceful and support a stable political order. It isn’t that this couldn’t happen, of course, but what becomes clear after looking at Hobbes and Bodin is that it relies on generally unrealistic assumptions about what motivates people, about the conditions under which people will organize together for the sake of common concerns or interests, and about the nature of the complaints individuals and groups bring against their rulers. Looking at the problems that arise for Bodin and Hobbes with respect to stability, we see that political stability is likely to require some more elaborate system of motivations to get citizens to obey the law and not resist the sovereign in a reliable and stable way. And yet this more elaborate system of motivations is likely to place conditions or obligations on the exercise of political power that conflict with absolutism. For this reason Hobbes and Bodin are forced to account for stability without (what we would ordinarily think of as) moral or ethical obligations or any such more compelling reasons.

“Sovereignty and kingship are never decided by academic debate. They are seized by force.”

-Kemal Atatürk

III. The Autonomy of the Sovereign: Legitimacy

The Problem of Legitimacy

Political subjects have various reasons to fulfill their legal-political requirements, not the least of which is the punitive capacity of the state. Breaking the law or forcibly resisting the sovereign is likely to be met with some sort of official punishment. Beyond this, however, legal subjects may also have compelling *normative* reasons for cooperating politically. The problem of legitimacy is to explain what makes the legal requirements of a political order *morally binding* as distinct from the fact that the overwhelming power of the sovereign makes them compelling by the threat of coercive force. The legitimacy of the regime, as I shall understand it, consists in the availability of reasons of this sort to the subjects of the regime in question. Intuitively, legitimacy distinguishes the regime that possesses it from what we might call “pure political domination.” The problem of legitimacy requires the theorist to explain what these normative reasons would be within a given model of political society.

As I understand it, then, the problem of legitimacy has to do with the normative reasons legal subjects would have for cooperating with the political requirements of a particular regime. My interest is in whether or not subjects would have *good* reasons for cooperating, reasons that *we* can recognize as valid normative reasons. This is not a sociological inquiry, and I am not interested in the false beliefs or superstitions or ideologies that might lead an agent to believe that he has a normative obligation to obey the law. That is not to say that an investigation into these matters would not be valuable, nor that these false beliefs or superstitions or ideologies are less important to the functioning of actual political societies. But the problem of legitimacy I

will pursue in this chapter, a problem central to the literature and discussion in political philosophy, is a problem about legal subjects' *valid* reasons for cooperating politically. Therefore my inquiry will be focused not on the question *Would the subjects of a given political regime of the sort be likely to form the belief that they ought, normatively speaking, to comply?* but on the question *Would the subjects of that regime have good reason to think they ought, normatively speaking, to cooperate?* We presuppose nothing about the priority of empirical research over philosophical normative inquiry or about the distinction between reason and culture (including superstition, ideology, and so on) by investigating the ability of a political account to respond to this problem. We presuppose only that there is this question of legitimacy out there, a question not about the psychology or actual motives of legal subjects but about the valid reasons subjects could have given the political circumstances they find themselves in.

The problem of legitimacy arises out of two closely related concerns. The first is whether the subjects of a given regime have available to them valid normative reasons to fulfill their legal-political obligations. Are there normative reasons available in favor of cooperating politically? Could legal subjects have valid reasons, e.g., to obey the laws or to refrain from interfering in the sovereign's actions? The onus here is on the theory to demonstrate that there are reasons of this sort. The second concern is whether or not these subjects have or are likely to have independent normative reasons *not* to cooperate politically. The question here is whether there are norms that bind subjects without the backing of legal sanctions, and whether the resulting obligations are strong enough to motivate citizens *not* to cooperate. Moral, ethical, and religious norms appear at least to be examples of norms that generate independent and horizontal obligations that can (reasonably) compel the subject not to cooperate. They are independent in the sense that they do not presuppose any legal-political punishment if violated, and they are horizontal in the sense that they obligate individuals to one another directly, i.e., without the help of any obligation to

the state.⁷⁴ Moral, ethical, religious, and other such norms provide subjects (potentially, at least) with reasons to disobey or resist that are recognizable as such to other subjects. First, they are the basis for complaints about the sovereign's actions. Murder is wrong. The sovereign murdered these people. Thus we have some basis for critically evaluating the sovereign's actions (whether or not we ultimately excuse the apparent indiscretion). Second, they are the basis for *reasonable* complaints. Complaining that the sovereign has appropriated my land or imprisoned my family is not like complaining that I don't like asparagus. When I make a complaint of the first sort, others are likely to recognize my complaint as valid or reasonable. Third, horizontal obligations between you and I can make an injustice to you *my* problem. Obligations between us may oblige me to come to your aid when the sovereign has done you wrong. This gives us an idea of the threat horizontal obligations pose. They are potentially the basis of complaints that are *reasonable*. Additionally, they provide subjects with reasons to act together in resistance to the sovereign. As such they can be the basis for horizontally coordinated collective action.

This second concern about the possibility of a network of independent horizontal norms binding legal subjects to one another makes the question of the availability of normative reasons to cooperate more pressing. If there are normative reasons *not* to cooperate then the stability and continued existence of political society depends all the more clearly on the presence of normative reasons *to* cooperate. Indeed, we can say that the legitimacy *issue*—whether or not there are normative reasons to cooperate politically—becomes a *problem* only in the context of a concrete concern about independent and potentially disruptive horizontal normative obligations. It is only

⁷⁴ When you are being mugged and I can do something about it, I arguably have an obligation to you to do something about. It isn't (just) that the state has an obligation to help you, and I also (as a matter of fact) have an obligation to the state to do things for it in certain cases, and the combination of these to facts results in my being obligated to help you. Rather, if I don't do anything to help you (and I am in a position to do something) I've violated an obligation to *you*. I've let *you* down. This is what I have in mind when I talk about a *horizontal* obligation.

when dissident groups organized around moral or religious or other such normative claims present themselves as threats to the political order that legitimacy shows up as something that the political theory or the regime *must* deal with. This is why I say that the legitimacy problem is comprised of two issues: first, whether there are normative reasons for legal subjects to comply; and second, whether subjects can be expected to have compelling normative reasons not to comply. There is certainly a normative *question* about legitimacy regardless of there is any concern about normatively-motivated non-cooperation. But the question of legitimacy points to a *problem* that political theorists must address (and have felt compelled to address in the past) only when the possibility of a network of independent horizontal norms rears its potentially seditious head.

That we have reason to be concerned about independent moral or religious norms of this sort thus presupposes a lot about the social world. It assumes, first and foremost, that there are moral and religious norms operating in society capable of organizing subjects' actions and binding subjects to one another in a way that could be threateningly relevant to the political order. Whether or not this assumption is correct is a historical, contingent matter. It is neither *a priori* nor a necessary truth that individuals will recognize themselves as obligated to one another in ways that could undermine their reasons for cooperating politically. Two examples of historical contexts in which the possibility of a network of horizontal and independent normative obligations was a "live option" would be the contexts in which Bodin and Hobbes set down their absolutist political theories. Tensions between the adherents of different moral and religious doctrines, and between these adherents and the state, had reached dangerous levels in Bodin's sixteenth-century France and Hobbes' seventeenth-century England. The rise of politically-independent religious communities (Protestants in general, but also the particular Protestant communities that sprang up in England in the mid-seventeenth-century) meant that (some)

subjects came to be bound by systems of religious norms that: (a) burdened them with obligations to one another that were independent of and often in defiance of their legal-political obligations; and (b) provided them with norms on the basis of which the sovereign's actions could be critically assessed and in some cases resisted. At the same time, the rise of an economically-organized bourgeoisie established a group of agents whose actions were guided in part by certain recognized common interests that: (i) gave bourgeois citizens a reason to support one another, even when doing so brought them into conflict with the sovereign; and (ii) were sometimes at variance with the interests and commands of the sovereign. These developments had had (to put it mildly) very real and very shocking consequences for Bodin's France and Hobbes' England. Bodin wrote his *Six Books of the Commonwealth* in the middle of a decades-long civil war and only four years after the St. Bartholomew's Day massacre in which sectarian conflict had led to the slaughter of tens of thousands of French subjects. Similarly, Hobbes wrote his *Leviathan* while the bloody English Civil War was still raging, a conflict inspired in part by religious disagreement between Protestants and Catholics and between the various Protestant sects. By providing subjects with obligations to one another capable of overriding whatever reasons these subjects had for cooperating politically, the independent religious and moral norms that developed during these periods had (with the help of many other no less important developments) created a situation in which the question of legitimacy—the subject's moral reason to comply and cooperate—became a problem.

Absolutism and Legitimacy

Absolutism holds that in every political society there must be a sovereign whose authority is absolute. The authority of the absolute sovereign rests on his supreme power. The first point I have called *absolutism*; the latter point the *absolutist account of power*. Absolutism is an

interpretation of the thesis that the political is autonomous. According to absolutism, the autonomy of the political is the autonomy of the sovereign, and this autonomy has two aspects: (i) the *normative* autonomy of a sovereign with the authority to make law as he pleases, resistance to whom cannot be normatively justified; and (ii) the *factual* autonomy of the sovereign whose power is too great for any subject to resist. These two aspects of absolutism correspond to absolutism proper and the absolutist account of politics respectively.

Absolutism faces a peculiarly difficult task in attempting to address the problem of legitimacy. On the one hand, subjects cannot be expected to have normative reason to comply with the law on the basis of their assessment of its content.⁷⁵ If absolutist lawmaking is normatively unconstrained, there is no reason to expect that the content of that law will provide subjects normative reasons to comply. On the other hand, whatever independent normative beliefs the subject has are likely at one time or another to conflict with the requirements of political cooperation in a absolutist regime. Given that there are no normative constraints on lawmaking, if citizens are bound by independent horizontal obligations these obligations are likely to require them to act in ways the absolutist law forbids, or to refrain from acting in ways the absolutist laws require. These points are obviously very general, and from this purely philosophical standpoint we clearly cannot conclude that absolutist law will always run into problems of legitimacy. But in the absence of any normative constraints on lawmaking, we would need some other story to explain how the absolutist can make available to his subjects normative reasons for cooperating.

In responding to the problem of legitimacy, absolutism appears to run up against the following moral asymmetry. On the one hand, if the problem of legitimacy is to be resolved it

⁷⁵ For instance, if the law requires that I not kill people, it seems plausible to say that I have a moral reason to comply with this law over and above the reason for compliance I have in virtue of the fact that the law is backed by the threat of punishment.

must be the case that the subject has a normative obligation to cooperate with the sovereign's legal-political requirements. On the other hand, the sovereign has no obligation to constrain his actions in any way.⁷⁶ Absolutist legitimacy would therefore appear to require that subjects be obligated to the sovereign to cooperate without the sovereign being reciprocally obligated to his subjects. It is critical to absolutism that the sovereign be free of any such obligations in his decision-making, but it is equally critical to the problem of legitimacy that the subjects' obligation to cooperate be explained. Hence the apparent asymmetry.

In what follows I will examine and criticize two absolutist strategies for addressing the problem of legitimacy. These two strategies correspond to the two absolutist interpretations of political power I examined in the last chapter. On the one hand there is the Bodinian interpretation, which views sovereign power as the power to effectively command all other social agents without being effectively commanded by them. On the other hand there is the Hobbesian interpretation, which holds that the power of the sovereign is the power bestowed on the sovereign through the social contract in which each subject voluntarily alienates his natural right to all things. The two strategies provide two very different responses to the possibility of a network of independent horizontal normative obligations, differences that correspond to the differences between the accounts of political power. A critical examination of the two strategies, however, leads to the same conclusion, viz., that absolutism is unable to defend the thesis that the subject of absolutism has a normative reason to cooperate.

The Bodinian Strategy

⁷⁶ That is, he cannot be compelled to confine or constrain his lawmaking in any way. On Bodin's view, e.g., the sovereign does have obligations to act in certain ways, but he cannot be compelled to do so.

In this section I want to look at two things: (a) how the problem of legitimacy arises for a theory of absolutism that relies on the Bodinian interpretation of sovereign power; and (b) how Bodin responds to this problem.

The Bodinian sovereign is the one whose power is supreme, i.e., the one who is able to effectively command the other members of society without being effectively commanded by them. The danger the Bodinian sovereign faces, as we saw in the last chapter, is that some other or others within will emerge who can deny the sovereign his prerogative of supreme command. Bodin's sovereign surveys the social landscape with an eye toward the distribution of social power. The sovereign possesses *supreme* power in society, but he does not possess all the power. And the distribution of social power is something that can change.

Networks of horizontal obligations play a role—or more than one role—in this distribution of social power. For one thing, they provide subjects with reason to be dissatisfied with the sovereign. Moral or religious dissatisfaction may not affect an agent's power *per se*, but it may affect the agent's willingness to employ what power he has or to look for more. More importantly, these horizontal obligations provide agents with a basis for cooperation and coordinated action against the sovereign. Again, the sovereign's power is supreme but not total (as it is in Hobbes). Changes in the way power is distributed pose a real *threat* to the Bodinian sovereign's position. Normative obligations help the Bodinian sovereign's position only insofar as they reinforce his power to command, i.e., only insofar as they obligate his subjects to him. Any system of obligations with the potential to orient his subjects *against* him can only be a threat to his position.

What is the threat, exactly? If the sovereign's power consists in his capacity to command his subjects, then the threat to the sovereign lies in the possibility that subjects will *resist* his command. By *resistance* I mean something very specific: any effort to forcibly control or

constrain the sovereign. When subjects resist, they reject the sovereign's efforts to command them and go so far as to forcibly make demands on him. If subjects resist successfully, the sovereign ceases to be (their) sovereign, for he ceases to be the one who can command them without being commanded. For this reason the Bodinian sovereign's concern is not so much with subjects' disobedience in general but with resistance in particular. Subjects can refuse to obey the law (within certain limits) without threatening the sovereign's capacity to make them abide by his commands. The subject who refuses to obey a law does not propose to *usurp* the sovereign's position; he proposes to *deny* it (in a particular case). Thus from the Bodinian perspective, the legitimacy problem arises not so much as a problem about providing subjects with normative reasons to *obey the law* as a problem about providing subjects with normative reasons *not to resist*. Again, the issue of legitimacy issue can arise in any case and can arise as an issue about reasons to obey just as much as it can as an issue about reasons not to resist. But as a *problem* it arises for the Bodinian account of political power as a problem about what normative reasons subjects have for and against resisting the sovereign.⁷⁷

This gives us the basic Bodinian perspective, i.e., the absolutist perspective wherein the supremacy of the sovereign is interpreted as his capacity to effectively command without being commanded. First, the possibility of independent horizontal obligations raises a problem of legitimacy insofar as these obligations can be the basis for *resistance* to the sovereign. Second, from the Bodinian perspective this possibility of independent and horizontally binding norms is therefore a *threat* that must be countered.

The Bodinian strategy for responding to the problem of legitimacy starts from these two conclusions: that independent horizontal obligations are a *threat to be countered* and that in particular they pose a *threat of resistance*. How can the Bodinian account respond? What has to

⁷⁷ As we will see below, this stands in sharp contrast to the way in which the legitimacy problem arises for the Hobbesian account of political power.

be shown is that independent horizontal obligations, whatever they require, do not require or justify the subject in resisting. This requires giving a normative response to a normative concern about the justifiability of resistance. It is obviously not enough to point to the overwhelming power of the sovereign, to the fact that he is capable, if he so desires, of squashing the resisting subject like a bug. This may be true, but it is hardly a response to subjects' normative reasons for resistance. It is also clear the Bodinian account is in no position to argue that there are no valid normative reasons in favor of resisting. On the one hand, morality and religion do appear (intuitively, at least) to provide subjects with (perhaps defeasible) normative reasons for resisting the sovereign (either when the sovereign violates some important norm or when morality or religion obligate us to come to the aid of someone treated unfairly by the sovereign). On the other hand, the simplicity of the Bodinian account of political power leaves it ill-equipped to defend any such grand decisionist thesis about the nature of norms and politics. Unlike, e.g., the contractarian theory presented by Hobbes, the Bodinian account is not an account of the genesis and fundamental nature of political society as a whole. It is not in a position to explain moral or normative relationships in general. (This is not to say that the contractarian theory is in such a position, but we can see why this sort of theory could entertain such lofty aspirations.) The Bodinian account doesn't explain society from the ground up and therefore has to take things as it finds them. And as things are, it seems plausible to suppose that subjects could have valid (yet defeasible) reasons for resisting the sovereign.

What is needed, then, is a more powerful, more compelling obligation *not to resist* to counter the force of any independently arising normative reasons to do so. The normative concern needs a normative response, and an overriding obligation not to resist the sovereign regardless of what normative reasons there are for doing so is just such a response. Consequently, the Bodinian strategy for responding to the problem of legitimacy must be to assert that whatever independent

obligations subjects have that motivate them to resist the sovereign, these same subjects have a more compelling obligation not to resist the sovereign. In this way, the Bodinian strategy need not denigrate or dismiss subjects' independent horizontal obligations, it need only put a cap on their efficacy: whatever their force, they cannot overcome the subject's overriding obligation not to resist.

It is easy to see that this sort of response is just a normative version of the Bodinian account of political power. The account of political power concedes that there are many powerful social agents in society. It does not claim that all social power rests with the sovereign (as the Hobbesian account does). The sovereign is special because his power is the greatest, i.e., because it is sufficient to overpower any other social agent. Analogously, the response to the threat posed by independent horizontal obligations does not deny the existence of such obligations nor does it call into question their significance. Rather, it asserts that there is more compelling obligation not to resist the sovereign, and that this obligation is capable of "overpowering" any other normative reasons and obligations a subject might have. The obligation to obey, like the sovereign himself, always wins.

Bodin's account of legitimacy proceeds in the manner I have just described. Bodin concedes that all human beings are bound by the natural moral law, a collection of substantive normative obligations (the content of which Bodin does not tell us much about). These norms apply to everyone, subject and sovereign alike.⁷⁸ They are norms that can be acted upon. That is, it is in general permissible (even laudable) to punish another human being for violating the natural law or to force someone to obey it. Finally, the natural moral law is natural. It applies to human beings in virtue of their being human beings, and not in virtue of their being subject to a particular ruler or in virtue of certain positive laws being in place. The obligations that stem

⁷⁸ See, e.g., *OS* book I, chap. 8: p. 10 and pp. 31-2.

from the natural morality are therefore independent and horizontal—independent because they depend on no positive legal backing, horizontal because they depend on no obligation to the sovereign.

Despite the existence of this normative network, resistance to the sovereign is impermissible. Subjects may not attempt to constrain or command the sovereign in his decision-making, “even if he has committed all the misdeeds, impieties, and cruelties that one could mention.”⁷⁹ That is, regardless of how the sovereign has violated the natural moral norms, and regardless of the obligations subjects may have to stop him (i.e., obligations to fellow subjects who have been wronged by the sovereign), resistance is impermissible. The force of the prohibition on resistance overpowers these considerations. It isn’t just that there is a strong presumption against resisting the sovereign—one that might be defeated if the sovereign’s transgressions were severe enough—it’s that the prohibition against resisting the sovereign is *overriding*. The natural moral law applies to the sovereign just as much as it does anyone else. The difference is that while it is permissible to forcibly compel a subject to comply with the natural moral law (or to punish him when he fails to do so), it is never permissible to do so in the case of the sovereign. The obligations of natural morality bind the sovereign only at the level of conscience.⁸⁰

The object of Bodin’s prohibition is *resistance* to the sovereign, not disobedience in general. While Bodin condemns any attempts to restrain or control the sovereign regardless of what he does, he tells us that disobeying the sovereign’s commands is permissible when what the sovereign requires itself violates the natural law. “It is certainly permissible not to obey him [the

⁷⁹ *OS* book II, chap. 5: p. 115.

⁸⁰ This is not entirely accurate, as the prohibition on resistance applies only to the subject with respect to his own sovereign. According to Bodin while it is impermissible for a subject to resist his sovereign, it is permissible and in many cases “a most beautiful and magnificent thing” when a foreigner puts a tyrannical sovereign in his place (114). The prohibition on resistance does not prevent the foreigner from taking action against someone else’s sovereign.

sovereign] in anything that is against the law of God or nature.”⁸¹ Thus when the sovereign demands that I worship false gods that I unjustly dispossess another subject of his property, I may permissibly refuse to do so. (Of course, the moral permissibility of this sort of civil disobedience doesn’t make it any more legal, and the nobleness of my position is unlikely to mitigate the punishment that comes with breaking the law.) But by Bodin’s reasoning when the sovereign himself worships false gods or when the sovereign himself unjustly dispossesses another subject of his property, I can do nothing to stop him. Attempting to stop the sovereign would constitute resistance.

On the Bodinian strategy the obligations imposed by the network of independent horizontal norms are countered by a *superobligation*, an overriding obligation that requires the subject never to resist his sovereign. Without devaluing or otherwise undermining the validity of the horizontal obligations falling on legal subjects, the superobligation puts a “cap” on their relative weight. Just as the power of the subject finds a superior power in the sovereign, the weight of the horizontal and independent obligation finds an obligation of superior weight in the obligation not to resist. Bodin thus asserts unequivocally the moral asymmetry I mentioned earlier: the sovereign possesses a special moral status such that we are obligated not to resist him in his actions but he is not similarly obligated to us to abide by any particular norms or rules.⁸²

Problems With the Bodinian Strategy

The problem for the Bodinian sovereign is to defend the thesis that subjects have this superobligation. Bodin himself is of no help here, as he does little more than point to the fact

⁸¹ OS book II, chap. 5: p. 120.

⁸² On the Bodinian strategy, both legitimacy concerns I mentioned earlier (see pp. 102-4) are addressed at the same time. On the one hand the concern is to demonstrate that subjects will have normative reasons to cooperate; on the other that they not have more compelling normative reasons not to cooperate. The superobligation not to resist entails both that the subject has reason to resist and that this reason overrides any normative reason not to resist.

that the sovereign occupies the supreme system in the legal-political hierarchy, and therefore no one is in a position to (actively) condemn him.

[I]t is not the part of any subject individually, or all of them in general, to make an attempt on the honor or the life of the monarch,⁸³ either by way of force or by way of law, even if he has committed all the misdeeds, impieties, and cruelties that one could mention. As to the way of law, the subject has no right of jurisdiction over his prince, on whom all power and authority to command depends; he not only can revoke all the power of his magistrates, but in his presence, all the power and jurisdiction of all magistrates, guilds and corporations, Estates and communities, cease, as we have said and will say again even more elaborately in the proper place. And if it is not permissible for a subject to pass judgment on his prince, or a vassal on his lord, or a servant on his master—in short if it is not permissible to proceed against one's king by way of law—how could it be licit to do so by way of force?⁸⁴

Bodin adduces two considerations in support of his claim that subjects have an overriding obligation not to resist. The first the legal-political position of the sovereign: the sovereign is at the top of the hierarchy of command, and therefore no one is in a position to tell him what to do. The second point is that given the impropriety of resisting the sovereign by legal means, resistance by extra-legal means (e.g., force) on extra-legal grounds (e.g., natural moral grounds) must be impermissible as well. These two points are supposed to bridge the gap between the fact that this individual has sovereign power—i.e., the fact that he is sufficiently powerful to command without being commanded—and the conclusion that the sovereign occupies a morally privileged position such that resistance to him is always wrong.

The problem with this argument is that the Bodinian account of political power gives us no reason to draw the conclusion that the sovereign has the moral status to justify the asymmetry between his (lack of) obligations and his subjects' obligations. The sovereign possesses political power insofar as his power is great enough to overcome the power of any other social agent—his

⁸³ That is, the monarch insofar as he is absolute sovereign.

⁸⁴ *OS* book II, chapter 5: p. 115.

power is the power to command without being commanded. That an agent has power of this magnitude is important, particularly to his subjects. It encroaches on their activities and shapes their lives in obvious ways. But this fact has no obvious moral implications. This is relevant to both of the considerations Bodin adduces.

First, the claim that there is no legal justification may be true, but it loses its normative force once we reflect on the basis of the sovereign's legal position. The argument for the thesis that there is no legal justification from resisting the sovereign is the *nulla obligatio* argument, according to which the sovereign cannot be bound by the laws because the laws are the product of his will and no one can bind himself by his own will.⁸⁵ The sovereign is the one with the power to command without being commanded, and so we can see that in at least one sense the *nulla obligatio* conclusion is correct. If the sovereign is the only one enforcing the law, then the law applies to the sovereign only insofar as he applies it to himself. But this conclusion obviously has no moral force. It simply reiterates the point that the sovereign's power is supreme and that it is the power that backs up the law. It may give us a reason to think that we are insufficiently powerful to resist the sovereign, but not to think that it would be impermissible to do so.

But if the first point—that it is legally impermissible to resist the sovereign—lacks force then the second—that it is impermissible to resist the sovereign on *extra-legal* grounds—lacks force as well. It is this latter point that must be established by Bodin's argument. It must be established that whatever legitimate moral complaints we might have against the sovereign (and Bodin clearly admits we could have such legitimate complaints) these can never be sufficient grounds for resisting the sovereign. Rather than demonstrate this, Bodin only appeals to the supreme power the sovereign has over his subjects.

⁸⁵ See p. 55 above.

The failure of Bodin's argument for legitimacy is not surprising. Going back to the issue of moral asymmetry that faces absolutism,⁸⁶ we can say that in some deep sense the Bodinian strategy is incompatible with *any* plausible explanation of the sovereign's special moral status. This is because: (1) the explanation of the sovereign's special moral status—the status that justifies subjects' superobligation not to resist to the sovereign—makes sense only if the sovereign has reciprocal obligations to his subjects; but (2) obligations on the sovereign—obligations upon which the subjects' superobligation depend—provide subjects with potential reasons to resist (reasons that are presumably recognized by other citizens as reasons to resist). The reciprocal obligations that would explain the sovereign's special moral status represent, given the Bodinian account of political power, another threat to the sovereign.

We can see this in the following way. Reciprocal obligations, e.g., restrictions on the use of political power or obligations on the sovereign to discharge certain important tasks, would draw the sovereign into a sort of "moral community" with his subjects wherein each has a moral role to play and members can have reasonable normative expectations of one another. A network of obligations encompassing sovereign and subjects could (if fulfilled) have the effect of making the political order a *moral* or *normative* order. This network would imbue the political relationships of authority and common citizenship with a moral element that could, potentially at least, transform the legal and political obligations of the community's members into moral obligations as well. The special moral status of the sovereign is reflected in (and constituted by) his distinctive normative-political obligations. The subject's obligation not to resist the sovereign is grounded in the special responsibilities and obligations that fall on the sovereign (in virtue of being the sovereign). Under these circumstances, the problem of legitimacy could (conceivably)

⁸⁶ See p. 112 above.

be answered in the way the Bodinian strategy suggests, viz., by pointing to an obligation subjects have to their sovereign not to resist.

Unfortunately, any enforceable normative limitations or obligations attached to the office of sovereign provide a potential justification for resistance. By drawing the sovereign into the web of subjects' obligations, we have in effect made the obligation not to resist defeasible, dependent on the sovereign's fulfilling his end of the normative bargain. This was the central assertion of the early sixteenth-century Protestant resistance theorists.⁸⁷ After the Protestant princes of Germany refused the Holy Roman Emperor Charles V's demand that they reinstitute the Catholic religion in their domains (domains still nominally under the authority of the Emperor), Charles V threatened to invade and institute Catholicism by force. The German princes were left in a difficult position. On the one hand Charles was their sovereign; on the other hand they saw the determination of official religion in their domains as their prerogative, and they believed that Charles V was overstepping his legitimate authority in threatening to forcibly overrule them. The intellectual challenge was to find a justification for resistance that did not undermine altogether the moral authority of the sovereign. Out of this conflict arose two theories of resistance, referred to respectively as the "constitutional" theory and the "private law" theory. The common theme of the two theories is that the subjects' obligation to the sovereign is defeasible. According to the constitutional theory, normative limitations and obligations attach to positions within the legal-political hierarchy, including the position of sovereign. (Arguably, this is the essence of constitutionalism.) According to the private law theory, obligations and restrictions fall on every member of society (including the sovereign) as a matter of private law.⁸⁸

⁸⁷ It seems reasonable to assume that Bodin was familiar with these writers, directly or indirectly.

⁸⁸ The constitutional theory was initially put forward by Philip of Hesse in 1529. The private law theory was initially developed by Gregory Brück, chancellor to John of Saxony, in 1530. Both underwent development and elaboration over the succeeding decades, but the basic ideas that concern us here were laid out by these two authors. All of my information on these theories and

If the sovereign oversteps his limitations or defaults on his obligations in certain glaringly obvious ways, subjects⁸⁹ are free (morally and religiously speaking) to resist.

The resistance theorists are in a much better position to argue that subjects have an obligation to the sovereign not to resist, but they attain this position only at the cost of making the obligation defeasible. It holds only so long as the sovereign fulfills his end of the bargain. Clearly the resistance theorists' strategy gets the Bodinian no closer to countering the normative threat. If the obligation not to resist is conditional on the sovereign's satisfying certain normative requirements, then the obligation to resist is not the superobligation that trumps subjects' other (potentially seditious) normative obligations. The qualified obligation not to resist does not trump, obviously, the norms that qualify it. In addition, the qualified obligation only makes the threat posed by independent horizontal obligations official by formally making the duty not to resist conditional on the sovereign's satisfying various normative requirements. The threat posed by independent normative obligations between subjects—the threat that subjects will be able to command the sovereign—is not answered but instead *institutionalized*. On the Bodinian strategy the superobligation is intended to overcome the reasons for resistance subjects might derive from their independent horizontal obligations. The qualified obligation not to resist clearly fails to achieve this. Furthermore, the qualified prohibition is incompatible with absolutism in general, insofar as it imposes enforceable constraints on the sovereign. If subjects

the events that surrounded them is taken from volume II of Quentin Skinner's *Foundations of Modern Political Thought*.

⁸⁹ This requires some qualification. According to the constitutional theory, the right to resist is tied to certain positions in the constitutional hierarchy. So when the sovereign violates certain official obligations, members of the government have a right to resist. The moral community, as it were, extends only to participants in government (magistrates, judges, etc.). The private law theory is more democratic (or populist), extending the right to resist to all those who enjoy the relevant legal rights in the community. Interestingly, it was the more radical (because more democratic) private law theory that was adopted by Luther and his followers, and later on with more the more radical Calvinists such as Knox, Ponet, and Goodman. See Skinner, volume II, chapter 7.

are free to resist when the sovereign's actions violate certain norms, the sovereign can be effectively constrained by those norms. The qualified prohibition on resistance gives subjects a free hand to forcibly impose certain norms on the sovereign. It follows, in clear contradiction of the absolutist theory of political morality, that subjects are at times justified in imposing normative constraints on the sovereign's actions.

There is little left for the Bodinian strategy. The Bodinian cannot counter the seditious threat of these independent horizontal obligations with a more compelling obligation to the sovereign without demonstrating that the sovereign is morally worthy of such an obligation. The Bodinian account is ill-equipped to make this demonstration for two reasons. On the one hand, what we know about the sovereign from the Bodinian account of political power does not give us any reason to ascribe to him the special moral status that would support the superobligation not to resist. There just isn't anything normatively significant about being sovereign on the Bodinian account. On the other hand, the sovereign could only have the necessary moral status if we make the obligation not to resist conditional on the sovereign's satisfying certain normative requirements (as the resistance theorists argued). But qualifying the obligation not to resist in this manner clearly does not serve the Bodinian strategy. To begin with, it is no longer an obligation that outweighs all others. Furthermore, rather than *counter* the threat posed by independent horizontal obligations it simply makes this threat *official*.

The Hobbesian Strategy

If the Bodinian strategy is to treat the possibility of independent horizontal obligations as a *threat* to be *countered*, the Hobbesian strategy is to treat it as a *tool* to be *employed*. Citizens in a political society are connected by a network of moral obligations. These obligations are horizontal—they obtain between each and every member of the political society (every citizen,

that is). Furthermore, these obligations are independent of the sovereign insofar as they do not depend on (obtain in virtue of) any obligation to the sovereign. That is, citizen A is obligated to citizen B, but not in virtue of the fact that either has any obligation to the sovereign. The Hobbesian strategy concedes all of this: the members of political society are bound to one another through a network of independent and horizontal moral obligations. The supposed danger which makes for the whole problem of legitimacy in the first place is one that the Hobbesian is perfectly happy to accept.

The trick, of course, is in the content of citizens' obligations. The Hobbesian strategy is to argue that every citizen has an obligation to every other citizen to obey the sovereign, an obligation that is independent of the sovereign because citizens have no obligations to their sovereign. While this strategy recognizes the existence of independent and horizontal obligations between citizens, it asserts that far from posing a threat to the sovereign's authority these obligations (when properly understood) underwrite the sovereign's legitimacy. These independent and horizontal obligations do not conflict or undermine the citizen's normative reasons for cooperating; they are the basis for those normative reasons.⁹⁰ Through the social contract every legal obligation becomes a moral obligation. If I violate the law, I violate the solemn moral bond I have with my fellows.

⁹⁰ Hobbes' strategy is actually slightly more subtle, but I'm leaving out certain details for the sake of clarity. Hobbes does not rule out the possibility (in principle) that religious obligation could conflict with the legal requirements imposed by the sovereign. However, Hobbes dismisses this possibility on a number of grounds. To begin with, disobedience cannot be justified on the grounds of a new covenant with God because only the sovereign is in a position to covenant with God (*L xviii.3*). Second, there is nothing in God's word contrary to reason (*L xxxii.2*). Finally, all that is required for salvation is "to believe that Jesus is the Christ" (*L xl.iii.18*) and there is nothing the sovereign can compel the citizen to do that conflicts with this requirement—"belief and unbelief never follow men's commands" (*L xlii.11*). It is in principle possible that religious requirement and legal requirement could conflict, but at least for Christians this is not a practical problem.

The Hobbesian strategy obviates the problem of moral asymmetry altogether. The Hobbesian claim is that the citizen's obligation to obey is an obligation to every other citizen. No mention is made of any obligation to the sovereign, nor is any such subject-to-sovereign obligation needed to explain the citizen's normative reasons for obeying. Legitimacy is an entirely horizontal matter: the Hobbesian response to the problem of legitimacy depends entirely on the moral bonds that arise between citizens. Whereas Bodin is put in the difficult position of having to explain the special moral status of the absolutist sovereign, the Hobbesian relies only on the power of moral peer pressure. The compelling force of citizen-to-citizen moral bonds, not the moral superiority of the absolute sovereign, is the key to legitimacy. The Bodinian strategy sputtered out when faced with demonstrating that the political order is a moral order without burdening the sovereign with normative constraints and obligations. The Hobbesian strategy provides a solution to just this problem—the political order is a moral order because of the obligations every citizen has to every other to obey the sovereign; the sovereign is nonetheless unburdened and his absolutist authority unhindered because this network of obligations does not include him.

The Hobbesian strategy differs from the Bodinian in another important way, viz., in that it aims to show that the legal subject has an obligation to obey the sovereign *in general*, and not simply an obligation not to resist the sovereign. This feature of the Hobbesian strategy can be explained by the Hobbesian account of political power. On the Hobbesian account of political power, the sovereign is sovereign in virtue of his citizens' continuing alienation of their natural rights to him. The power of the sovereign just is the power he obtains from this continuing alienation, that is, from the continuing willingness of citizens to obey the sovereign's commands and cooperate peacefully with one another in political society. The sovereign has no power except his ability to command others, an ability he possesses only in virtue of the role he can

play as covenant-guarantor. He is powerful because he can command, but he can command only because he is powerful. When his subjects disobey, the only punitive threat he can counter with derives from his ability to convince others that they ought still to obey his commands. But he will be convincing in this regard only to the extent that citizens believe he is capable of fulfilling his sovereign role, i.e., only to the extent that other citizens will be (or would be) willing to obey his commands. The absence of any sort of pre-political power base for the sovereign, a store of strength or military might or charismatic compulsion that the sovereign can tap into regardless of what citizens think of him, puts the Hobbesian sovereign in a delicate position. As soon as citizens begin to disobey, the sovereign's ability to play the sovereign role is called into question and as a result his political power and position are threatened. This is true of all disobedience, whether it be outright resistance or the sort of civil disobedience Bodin is willing to tolerate. While the threat to Bodinian sovereignty is resistance—the attempt to command the sovereign—the threat to Hobbesian sovereignty is disobedience in general. Thus the Hobbesian response to the problem of legitimacy must be to demonstrate the subject's obligation to *obey*, not just the subject's obligation *not to resist*.

The burden on the Hobbesian strategy is to explain what makes it the case that citizens are obligated to one another in this conveniently patriotic manner. The claim is that every citizen has an obligation to every other citizen to obey the law regardless of its content. What could explain this network of obligations, i.e., on what basis could one assert that citizens are bound to one another by obligations of this sort? It couldn't be the fact (if it is a fact) that the sovereign does right by me, i.e., he follows policies I agree with or makes decisions that benefit me personally. This might support the claim that the subject has an obligation *to the sovereign*, but not to every other citizen. But if the citizen's obligation is to the sovereign and it is based on the sovereign's doing right by the citizen, the Hobbesian strategy is undercut in just the same that the

Bodinian strategy was by the resistance theorists' strategy. The citizen's obligation to obey is conditional on the sovereign doing right in the citizens' eyes, and the obligation to obey regardless on the content of the sovereign's command is out the window. We get the same conclusion if we suppose the obligation to obey is justified on the basis of the fact that the sovereign does the "right thing" (morally or ethically or religiously speaking). Leaving aside the implausibility of this outcome given the sovereign's absolute authority, we can see that this could only support an obligation from subject to sovereign (not subject to subject), an obligation that would be conditional on the sovereign's continuing to do (more or less regularly) the "right thing".

This is just the general absolutist problem of legitimacy we have seen already. Absolutism cannot explain the subject's obligation to cooperate in terms of the expected content of absolutist law, it can only appeal to the fact that the sovereign's actions (including positive law) are the actions of the sovereign. The fact that this agent is sovereign must be the explanation of the subject's normative reason for cooperating politically. But from the perspective of absolutist political theory, what do we know about the sovereign that would justify the citizen's obligation to obey? We don't know that he will be kind, or generous, or just, or even consistent. All we know is that he will possess supreme power in society, either in the Bodinian or Hobbesian form. Thus in order to explain the subject's obligation to cooperate the absolutist must appeal to the fact that the sovereign possesses the power that he does. The Bodinian strategy falters at this point because the account of political power lacks any moral component. The Hobbesian interpretation on the political power, on the other hand, is a moral account of political power. The sovereign's power is what has been *given* to him by his citizens. The sovereign is sovereign because he is the one to whom citizens have collectively and voluntarily agreed to empower and authorize. On Hobbes' social contract story, the act by which the sovereign is empowered and

authorized is a collective agreement between all those who will be citizens. The participants to the social contract thus bind themselves to one another, engendering a network of horizontal obligations between them. The object of their collective agreement is to establish a sovereign with the total power of the community and the authority to employ that power. The normative product of this agreement, therefore, is an obligation falling on each participant (each soon-to-be citizen) to obey the sovereign's command.

Problems With the Hobbesian Strategy

According to the Hobbesian strategy, that citizens have the requisite horizontal obligations to obey depends on two things: first, that political power can be understood as the product of citizens *alienating* something to the sovereign; second, that this collective act of alienation can be understood as *voluntary* (even if only hypothetically so, in the sense that those who are now citizens would have done so under the appropriate circumstances). Both of these points are of crucial importance to Hobbesian legitimacy. Without them, the political power of the sovereign is simply a *fact* to which citizens must accustom themselves. And in itself the fact that the sovereign has power has no moral significance, no more than it does in Bodin's theory. Citizens may submit to this overwhelming power (and would probably be wise to do so), but this submission cannot entail the sorts of horizontal obligations to obey the Hobbesian strategy hopes to use to resolve the problem of legitimacy. In order for the Hobbesian strategy to work, the Hobbesian must make good on the claim that the political power of the sovereign can be understood as the product of an act that is *voluntary* and genuinely an act of *alienation*.

Hobbes' social contract argument fails on both grounds. We can start with Hobbes' notion of voluntariness. There are two sides to every alienation, and the supposed collective alienation that is the social contract is somewhat slippery as a result. On the one hand, there is the *act* of

alienation. When I give my bicycle to you voluntarily I give it up. *I do it*. On the other hand, there is the *fact* of alienation. You took my bicycle and now I can no longer use it. Hence it is alienated (from me). The fact of alienation doesn't entail the act, although the act of alienation entails the fact. It is the *act* of alienation, by each contracting party, that Hobbes calls on to demonstrate the morally binding quality of every citizen's obligation to obey the sovereign. The act is what is voluntary—the fact is just a fact. The moral obligation of the citizen to obey does not derive from the simple *fact* that the citizen no longer has his rights. I can be denied the right to various things in the world and to act in different ways by all sorts of devices; some of these ways are legitimate, some not.⁹¹ On Hobbes' story, it is precisely because political authority is the product of an *act* of alienation (and does not simply represent the *fact* that agents rights have been alienated) that Hobbesian political authority can claim to be legitimate.

Hobbes' assertion that political authority is or can be legitimate therefore depends in large part on the force of his assertion that political power can be understood as the product of a *voluntary* collective act. Unfortunately, the notion of voluntariness at work in Hobbes' social contract argument is very weak. We can see this, to begin with, in Hobbes general account of deliberate or voluntary action. "In deliberation, the last appetite or aversion immediately adhering to the action, or to the omission itself, is what we call the WILL, the act (not the faculty) of willing."⁹² Deliberation consists in running through one's various "desires, aversions, hopes, and fears"⁹³ with respect to a course of action or range of possible actions, until we put

⁹¹ Or at least this is the assumption from which Hobbes' attempt to justify absolutist political authority begins. Some, e.g., anarchists, might deny that there are any morally permissible ways to deny a person access to things in the world or to prevent a person from committing particular actions. I am not denying the anarchists' point, I am accepting the assumption that *if there are* legitimate ways of denying a person's rights or liberties, then there is something to their being legitimate over and above the fact that the person is unable to exercise the right or liberty in question. See chapter II above.

⁹² L vi.53.

⁹³ L vi.49.

“an end to the liberty we had of doing or omitting.”⁹⁴ (Hence *de-liberation*: putting an end to our liberty.) The last appetite or aversion, the one that actually moves us to act or not act, is the willing, i.e., that which makes the action or omission willful or voluntary. The last appetite may be a desire for money or security or kitchen appliances, or it may be a desire to avoid punishment or coercion. What makes the act voluntary is not the content of the appetite that produces it, but that it was produced by one’s appetite (or aversion, or fear, or hope). This is a pretty low standard, especially considering the crucial role voluntariness plays in Hobbes’ political theory. The implication is that the quality of the choices available to the agent in making a decision do not bear on the question of whether or not the chosen action is voluntary, i.e., whether or not it proceeds from the will. While English-speakers may at times use the word “voluntary” and its near relatives in Hobbes’ way, it is unclear what moral significance *voluntariness* has when so understood.

The normative weakness of this notion of voluntariness makes itself felt in Hobbes’ social contract argument. The potential answers to the question *What if not the social contract?* are not very appealing. The parties to the social contract have two choices: on the one hand, life in the Leviathan state under the thumb of an absolute sovereign with the total power of the community at his disposal; on the other hand, a life in the state of nature that is, famously, “solitary, poor, nasty, brutish, and short.”⁹⁵ In other words, we are free to abstain from Hobbesian political society so long as we don’t mind a life in which we are under constant threat from our fellows, where we can expect no security in our possessions, where we can hope to execute no long-term plans, and where to top it off we can expect an early death. We need not dispute Hobbes’ assertion that political society under the Leviathan sovereign is the better choice. But even if Hobbes has accurately described our options in the state of nature and even if he is correct in

⁹⁴ *L* vi.50.

⁹⁵ *L* xiii.9.

asserting that it is rational for the inhabitants of the state of nature to submit to the sovereign, the lack of alternatives should make us question the moral significance of Hobbes' contractarian conclusion. If I put a gun to your head and demand your bicycle, you will likely give it to me. Between the two options available to you—*life without bicycle* and *death*—the former is clearly preferable. And perhaps under certain circumstances it might be perfectly in keeping with English-language practice to say that your handing over the bicycle was voluntary. Nonetheless, it would be strange for me (or anyone else) to claim that as a result of this transaction I come to have a moral right to your bicycle, or that in surrendering it to me you took on a moral obligation not to interfere with my using it. Similarly, the voluntariness of the agent's entrance into the social contract—even on the assumption that Hobbes' description of the alternatives is accurate and his reckoning of the rational course of action in this situation is correct—is hardly a compelling argument for the conclusion that Hobbesian political authority is legitimate over and above the fact that the sovereign's power is physically compelling. The lack of real alternatives may not, if we follow Hobbes' interpretation of the term, undermine the *voluntariness* of the contracting party's act of alienation, but it should undermine (for us, anyway) Hobbes' claim that citizens have, in virtue of their participation in the social contract, a moral obligation to one another to abide by the laws of the sovereign. Insofar as the Hobbesian response to the problem of legitimacy depends on the voluntariness of citizens' submission to the sovereign, this response is undermined by the lack of any morally meaningful voluntariness on the part of the parties to the social contract.⁹⁶

⁹⁶ This is the real Hobbesian irony. We see here that Hobbes' conception of voluntariness is too weak to support the normative conclusion that citizens are obligated to one another to obey. On the other hand, we saw in the last chapter that the sense in which citizens act freely and voluntarily within political society is too strong to allow for a satisfactory answer to the problem of stability. If citizens choose freely and rationally from amongst their options, the power of the Hobbesian sovereign is critically undermined.

Hobbes' social contract response to the problem of legitimacy is weakened at the same time by the absence of any discernible *alienation* on the part of the contracting parties. In the social contract each party is said to alienate his "right to all things" to the sovereign.⁹⁷ But what is a right in the state of nature, where there is neither property nor moral obligations? A *right of nature*, Hobbes tells us, is the liberty of an individual to act in the way he deems best to preserve himself.⁹⁸ The liberty to act in a particular way is simply the "absence of external impediments" to the agent's so acting.⁹⁹ Whether or not I have a right to ϕ (in Hobbes' sense of *right*) would therefore appear to depend on the material state of the world around me, on what impediments there are to my Φ -ing. It depends in particular on the relationship between my power to self-interestedly assert myself and the various powers and other external obstacles arrayed against me. If you believe I stole your bicycle from you but you have no means of getting it back, you might complain to me *That's my bicycle* or even go so far as to say *I have a right to that bicycle and you don't*. Keeping in mind Hobbes' account, however, I can respond *It can't be your bicycle, because I've got it and there's nothing you can do about it*. You do not have the liberty to take or make use of it, so you cannot have a right to it. My claim rests on the facts about the current distribution of power in the world. The relationship between my power over the bicycle and your power over the bicycle is such that I can use it and you can't. Your claim rests on relations between abstract objects in some ethereal moral universe with which I am not

⁹⁷ L xiv.5, xvii.13.

⁹⁸ L xiv.1.

⁹⁹ L xiv.2. There are, of course, other interpretations of Hobbes' notion of *liberty*, such that a person A could only cease to have his liberty to X by giving it up, whether or not there are any "external impediments" to his X-ing. If this interpretation is accepted, then the argument I present here does not go through. I do not want to engage in exegetical debates here. It is sufficient for my purposes to make clear that the interpretation I give is a plausible one—as Hobbes clearly does say at L xiv.2 and other places that liberty is the "absence of external impediments"—and that conclusions that I argue follow from this interpretation do in fact follow.

acquainted. The Hobbesian point would be, in effect, that you don't have a right to the bicycle, you just wish you did.¹⁰⁰ This point is not just terminological, as we shall see.

It is in this sense of *right* that Hobbes claims that in the state of nature "every man has a right to everything, even to one another's body."¹⁰¹ In the state of nature everyone is equal in power. "[W]hen all is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he."¹⁰² Individuals are equal in the sense that every agent can overpower or outsmart every other, if not by sheer strength then "by secret machination, or by confederacy with others that are in the same danger."¹⁰³ As a result, no one has an exclusive hold on anything. Whatever I am using and enjoying you can take from me, and likewise whatever others are using and enjoying I can appropriate for myself. No one can be said to *own* anything, if by ownership we mean something like *the power to exclude others from using*. In the state of nature there is "no propriety, no dominion, no *mine* and *thine* distinct, but only that to be every man's that he can get, and for so long as he can keep it."¹⁰⁴ So while it is true that every other is a potential obstacle to my use of particular object, no individual is an insuperable impediment to my using it. Thus I, like every other agent, have a right to everything.

It is this right to everything that I lay down in the social contract. Hobbes' second law of nature requires

¹⁰⁰ Just to reiterate, this is an elaboration of Hobbes' description of the state of nature, not Hobbes' description of life within political society.

¹⁰¹ L xiv.4.

¹⁰² L xiii.1.

¹⁰³ L xiii.1.

¹⁰⁴ L xiii.13.

that a man be willing, when others are so too, as far-forth as for peace and defence of himself he shall think it necessary, to lay down this *right to all things* and be contented with so much liberty against other men, as he would allow other men against himself.¹⁰⁵

Given Hobbes' story about rights, the alienation of my right to everything occurs if and only if some power stands in the way of my appropriating whatever I deem conducive to my good. There must be some impediment to my making use of whatever I wish in order for it to be the case that I no longer have my right of nature. We can see that once the social contract is concluded and the Leviathan sovereign established, my right to all things is gone. The sovereign is the impediment that deprives me of my liberty to make use of everything, including my fellows. This is the force of the social contract.

But if this is the situation, then this right to all things is clearly not the agent's right to alienate. Given what Hobbes says about rights, whether or not I have a right to everything has little or nothing to do with me. It has to do with the obstacles placed in the way of my making use of everything. The relevant obstacles can be placed in my way with or without my agreeing to letting my right go. My consent is not necessary for me to be denied my natural right to use everyone else's stuff, nor does my consenting to let this right go make it the case that there are obstacles to my exercising it. My Hobbesian right to everything is not a moral right in any intuitively recognizable sense: no one has an obligation to let me have my way with the world on account of my possessing it, and there are no responsibilities I absolve others of by declaring that I renounce it. There is nothing I can do on my own to make it the case that I no longer possess this right, but others can act to bring it about that I no longer have it. We can make sense of how I might be *deprived* of this right, but we cannot make sense of how I would *give it up*.

The whole idea of a contractual alienation, however, makes sense only if citizens can be said (however abstractly) to have *given something up*. If they haven't given anything up, then the

¹⁰⁵ L xiv.5, my emphasis.

society that confronts them with all its constraints (and opportunities) cannot be said to be their *creation*. If they don't alienate anything, they don't *enter into* political society so much as they *find themselves in it*. It is not that I alienated my natural rights and thereby entered into political society, it's that my natural rights (such as they were) were alienated from me and I found myself here. Hobbesian political society is already made, and all that is left for citizens is to cope with this fact more or less rationally. And if political society is not the product (even hypothetically) of a collective act of alienation, then citizens' continuing cooperation—their willingness to cope with the social landscape they find themselves in—does not evidence voluntary endorsement of political order either. It at best exhibits submission and acceptance in the face of the particular exigencies and possibilities one faces. Citizens in the Hobbesian society are faced with certain impediments in the form of the coercive force of the state and the suspicious dispositions of their fellows as well as opportunities to benefit by covenanting with their compatriots. It is in virtue of these facts that the citizen's right to all things is alienated, not in virtue of the citizen's act.

Without the alienation story, the social-political system as a whole confronts the citizen as a given which can perhaps be manipulated in minor ways but in general must simply be *dealt with*. In dealing with society as they find it in a rational way citizens no more signal their voluntary agreement than they signal their voluntary agreement to the natural world by their rational dealings with it. Indeed, unless Hobbes can demonstrate that political authority comes to be by an act of *giving something up* the whole framework of impediments and opportunities is continuous with the natural world with regard to the question of our voluntary acquiescence.

It is no accident that the residents of Hobbes' state of nature are so incapable of the sort of collective action necessary to underwrite the legitimacy of the Leviathan regime. The lack of anything to alienate and the absence of those conditions that could make their actions voluntary (in any morally meaningful sense) reflect a more general problem with absolutism. Simply put,

the absolutist authority of the sovereign is undermined to the extent that subjects gave anything up to establish the sovereign's rule, or to the extent that the sovereign's power is a product of a meaningfully voluntary choice on the part of his citizens. If in the state of nature we citizens had property which we alienated to the sovereign upon entering into political society, this would provide a benchmark against which the actions of the sovereign will be measured. The sovereign will be *our* sovereign, empowered by what *we* have given him (the right to make use of that which was previously our property). But as a consequence what we get out of political society will be measured against that which we gave up to achieve it. Of course this doesn't mean the sovereign will be obligated to give us property in return, but it does mean giving us something that will make the alienation of our original property worthwhile (e.g., the protection of basic liberties, or the guarantee that certain opportunities will be available to us that otherwise would not have been). The fact that we alienated our property in order to empower the sovereign provides us with a standard (albeit somewhat vague and intuitive) by which to independently assess the sovereign and a clear moral justification for resisting the sovereign's actions or disobeying his commands.¹⁰⁶

Comparison with Locke's social contract argument bears this out. Agents in the Lockean state of nature possess property, moral rights in their property and person, and by right of the natural law they possess the power to judge and punish violations of their rights and the rights of others.¹⁰⁷ When these agents enter into the social contract, they alienate their moral powers (to judge and punish rights-violations) to the state on the condition that the state employ these powers (and only these) for the purpose of protecting their natural rights (and only for this

¹⁰⁶ The same point might be made as follows: If agents in the state of nature had property which they had to alienate to the sovereign in order to establish political society they might be less willing (than they are in Hobbes' story) to submit to a sovereign with absolutist authority.

¹⁰⁷ *Second Treatise on Government*, §§4-13.

purpose).¹⁰⁸ This runs counter to the absolutist claim that the citizen is obligated to obey the sovereign and not resist regardless of what the sovereign does. The sovereign has been established for a purpose, and on the Lockean contract argument it is reasonable to argue (much as the resistance theorists argued) that what obligation the citizen has to cooperate politically is conditional on the sovereign's fulfilling his end of the bargain.¹⁰⁹

Finally, to the extent that political society is the product of meaningfully voluntary choice the thesis that the citizen is obligated to cooperate regardless of what the sovereign does is undercut. This is true for the same reasons as above. Entry into political society is voluntary in a morally meaningful way only if some viable alternative was available. (That is, to the extent that there were real alternatives, we can draw some morally significant conclusion about the fact that agents chose this one.) If the problem with alienation is that it burdens the sovereign with having to provide better than citizens had in the state of nature, the problem with voluntariness is that it burdens the state with having to provide better than citizens could otherwise have had. The better the range of alternatives, the harder this becomes. But the narrower the range of alternatives, the less morally significant the decision to choose this particular option.

The Hobbesian strategy therefore fails because it is incompatible with absolutism. The Hobbesian strategy seeks to ground the citizen's horizontal obligation to obey in the fact that the sovereign's political power is the product a voluntary act of alienation on the part of the subject. But political power can only be interpreted as the product of a voluntary act of alienation to the extent that those who have voluntarily alienated (the citizens) are in a position to assess the sovereign's actions and make their obligation to cooperate conditional to a positive assessment.

¹⁰⁸ *Second Treatise on Government*, §§95-9 and 123-4.

¹⁰⁹ As Locke emphasizes, this is not an empty threat. If the sovereign egregiously violates his prerogatives as set out in the social contract, the people (civil society) can withdraw their support. Thus the moral constraint that falls on the sovereign as a matter of right is imposed by civil society as a matter of fact. *Second Treatise on Government* §§221-6.

This clearly undermines the absolutist response to the problem of legitimacy, as this response aims to demonstrate that the obligation to cooperate is not dependent on the sovereign's fulfilling particular obligations or satisfying given norms.

The Demands of Absolutism

The absolutist variant problem of legitimacy arises from the fact that the absolutist sovereign is unconstrained by any norms, and his actions cannot therefore be expected to provide subjects with normative reasons to obey on the basis of their content. Absolutism is left looking to other sources of legitimacy, but absolutism makes these hard to come by. Without normative constraints on sovereign decision-making, the absolutist political theorist is left to explain the subjects obligation to obey in terms of the simple fact that the sovereign's actions (the laws, etc.) are the actions of the sovereign. That the sovereign is sovereign is why the sovereign must be obeyed.

What about the sovereign could explain this obligation? What absolutism tells us about the sovereign is its account of political power. Absolutism is distinctive as a theory of the autonomy of the political insofar as it identifies the political with the actions and decision-making of a single agent—the sovereign. The autonomy of the political is the autonomy of the sovereign. The political is autonomous from morality, ethics, religion, and other normative domains insofar as the sovereign is with respect to his power autonomous from other sources of power in political society. Absolutism therefore rests in large part on its account of the sovereign's supreme political power. In the last chapter I examined out two absolutist accounts of the sovereign's power, the Bodinian and the Hobbesian. These accounts of political power differ in important ways, and offer very different solutions to the problem of legitimacy discussed in this chapter.

The conclusion, however, is that the absolutist theories of political power cannot explain this obligation. What we would need, if we were to be able to answer the problem of legitimacy, is an account of the sovereign's power such that the sovereign's possession of that power—supreme power in society—would be a morally significant fact capable of explaining the obligation to cooperate. This comes out clearly in the examination of the Bodinian strategy, where the lack of any moral story about the sovereign's power leaves absolutism unable to overcome the moral asymmetry of subjects supposedly obligated to obey despite the absence of any corresponding obligations falling on the sovereign. The Hobbesian strategy is an attempt to overcome this asymmetry. The Hobbesian account of political power is a moral explanation of the sovereign's power that aims to explain the citizen's obligation to obey horizontally and thus without embroiling the sovereign in any potentially asymmetrical moral relationships. This strategy fails, however, when the moral explanation of political power comes into conflict with the demands of absolutism: that which would account for the moral significance of political power would at the same time undercut the absolutist assertion that the subjects obligation to cooperate is not conditional on the sovereign's actions measuring up to some normative standard.

I stated earlier that the absolutist problem of legitimacy could be understood to be that of dispelling an apparent asymmetry between the subjects obligation to the sovereign and the sovereign's lack of obligation to his subjects. The Bodinian strategy never moves beyond this moral asymmetry: it cannot substantiate the special moral status of the sovereign that would explain subjects' superobligation not to resist. The Hobbesian strategy is to argue that citizens' obligation to obey is not dependent on there being any obligations between citizen and sovereign and therefore that no moral asymmetry arises. The failure of the Hobbesian strategy, however, suggests that the heart of the problem is this moral asymmetry. Absolutism is simply unable either to overcome the difficulty of explaining the unreciprocated obligations between absolutist

sovereign and subject or to demonstrate that this asymmetry is not necessarily a feature of any absolutist response to the problem of legitimacy.

“Between Kratos and Ethos, between behavior prompted by the power-impulse and behavior prompted by moral responsibility, there exists at the summit of the State a bridge, namely *raison d'état*.”

-Friedrich Meinecke

IV. The Autonomy of the Enemy

Carl Schmitt's argument for the autonomy of the political is simple yet compelling. It relies on three premises:

- (1) The function of the political entity (e.g., the state) is to identify and neutralize society's *enemies*.
- (2) The enemy of a society is an agent who threatens that society's existence.
- (3) It is neither necessary nor sufficient for being the enemy that an agent violate the norms, values, rules, or laws that constitute the society or that the agent be a hindrance to the collective pursuits that constitute the society.

From these three premises Schmitt gets the conclusion that the political is autonomous. Moral, ethical, religious, economic, legal, aesthetic, and other such considerations cannot determine who is or is not the enemy, and therefore these considerations cannot determine what the political entity or state ought to do. The conclusion of this argument is purely negative: this class of considerations is not sufficient for determining what the state ought to do.¹¹⁰

¹¹⁰ Schmitt's work is notoriously complicated and difficult to interpret. There are other arguments which Schmitt sometimes appears to be making for the autonomy of the political. For instance, Schmitt sometimes appears to be arguing that the political must rely on means other than persuasion, as its aim is not to persuade the enemy but to eliminate him as a threat. The political is autonomous because it necessarily relies on means other than the persuasive means provided by morality, religion, and so on. Even if this does yield the conclusion that the in some sense the political is autonomous, the sense in which it is autonomous is not all that interesting. Another argument that Schmitt may have wanted to put forward says that the political must at least be willing to employ war and killing as means to eliminating the enemy, but war and killing cannot be justified on moral, religious, ethical, legal, or economic grounds. This latter premise would be very hard to defend, even if it seems like a plausible thesis. I have chosen to focus on the argument I present here because it is, in my mind, the clearest and most compelling.

It is tempting, however, to draw another, more positive, conclusion from Schmitt's argument. While moral, religious, and other such reasons may not be sufficient to justify political action (because they are neither necessary nor sufficient for identifying the enemy), there is another class of special political or "existential" reasons that are capable of justifying the identification of the enemy and political action against him. They are "existential" reasons because according to premise (2) they must refer to threats to society's existence. According to this line of reasoning, there is such a thing as political justifications—political actions can be justified or unjustified—but only on the basis of these distinctively political existential reasons and not on the basis of considerations arising from morality, ethics, religion, law, economics, aesthetics, or some other cultural sphere. If the function of the political is to protect society's existence, then this proposal is that political action is justified insofar as it advances this purpose.¹¹¹ This autonomous yet positive account of political justification is what Friedrich Meinecke and others refer to as *raison d'état* or reason of state. The political agent walks a fine line between behavior guided by universal ethical and moral principles (Ethos) and action guided by a lust for power and domination (Kratos).¹¹² The theorist of *raison d'état* seeks to elaborate this special class of reasons that justify political action (when it is justified). In Schmitt's case, demonstrating that there is a positive account of political justification would mean explaining how and why reasons regarding the survival of society provide the political entity with justification for its distinctively political actions.

¹¹¹ It is consistent with this point, as I understand it, to say that political action is not justified if it violates certain, e.g., moral side constraints. For instance, one such side constraint might be *Do not use torture*. So political action is justified insofar as it protects society from its enemies, provided that it does not violate any of these side constraints. On this picture, the fact that a political action does not violate any moral side constraints could not itself justify that political action. The question is whether there are special political or existential reasons that serve this purpose.

¹¹² Friedrich Meinecke, *Machiavellism: The Doctrine of Raison d'État and its Place in Modern History*.

If there is no special class of existential reasons, then (1)-(3) leaves us with a sort of political irrationalism. The state must act to protect our society's existence, but there is no basis for either justifying or condemning the state's actions.¹¹³ The political is beyond the scope of justification, normativity, and so on. On this view, the political is autonomous from other forms of justification (morality, ethics, etc.) because political decision-making has no justification. The thesis that there is a positive account of political justification based on existential reasons rejects this sort of political nihilism. On this view, the political is autonomous because the reasons that count in the justification of political action are distinct from those that count in moral, ethical, and other "sub-political" forms of justification.

I begin this chapter by examining an argument to support Schmitt's theses (1)-(3) above and his conclusion that moral, ethical, religious, legal, and economic considerations cannot justify political action. This argument is not explicitly given anywhere in Schmitt's work (as far as I know) but it fits with many of things he says and supports his conclusions. Schmitt's arguments are, in general, very sparse and unclear. Anyone who hopes to get something out of Schmitt's work is forced to fill in the blanks rather liberally. This is what I have done in the first section of this chapter. Having argued for Schmitt's negative conclusion—that moral, ethical, and other such considerations are neither necessary nor sufficient for discharging the critical political function of identifying the enemy—I move on to consider arguments for the positive conclusion that existential reasons can provide a justification for political action. Drawing on two variations of the account of society that is employed in Schmitt's argument for (1)-(3), I conclude that the attempt to justify political action on the basis of existential reasons ultimately fails.

Schmitt's argument for the autonomy of the political depends on an argument concerning what is necessary for the existence and survival of a society. Schmitt's argument is not an

¹¹³ Aside from, again, whatever moral or other side constraints we might impose on political action.

analysis of the concept *political*. It is a demonstration of the thesis that this entity whose function it is to identify and eliminate society's enemies is necessary for the existence of society. Whatever we say about Schmitt's argument, his conclusions cannot be dismissed on the grounds that they conflict with our ordinary intuitions about *the political* or *the state*. Schmitt's account is not an attempt to cash out or refine our intuitions about these concepts. Schmitt's argument is guided primarily by a concern that the modern state (and his own Weimar republic in particular) has ceased to recognize its distinctive political function, and in so doing has opened itself up to be manipulated and ultimately overturned by the various pressure groups, movements, and political parties at work in society.

Like Hobbes and Bodin, Schmitt is concerned with the dangers posed by inevitable and irremediable social conflict. In the Weimar republic, conflict between communists, socialists, and the Nazis appeared to pose the greatest dangers. Schmitt's solution was twofold: (i) to argue that the state must identify those groups and movements that were *enemies*, i.e., those that threatened to use Weimar parliamentary politics to undermine and ultimately overthrow the Weimar government; and (ii) to argue that the enemies of the state (the Weimar state in particular) could not be determined on the basis of the moral, ethical, or economic considerations that propelled these parties and drew followers to them. The state must recognize its political function, and must recognize that it is distinct.¹¹⁴

I dwell on the historical context to make clear what Schmitt sees himself as describing and doing. Schmitt is making an argument about what societies need in order to exist. His conclusions are not intended to follow from any pre-theoretical or *a priori* understanding of the

¹¹⁴ Schmitt's critique of (e.g., Weimar) liberalism is clearest in his *The Crisis of Parliamentary Democracy*, pp.11-13 and chapter 2. He further addresses the problems with modern state neutrality in *The Leviathan in the State Theory of Thomas Hobbes*, chapter IV. The historical-political context of Schmitt's work is set out very clearly by George Schwab in his introduction to *The Concept of the Political* and his introduction to *The Leviathan in the State Theory of Thomas Hobbes*.

concept of the political but as a specific and necessary social function. Indeed, a guiding concern in Schmitt's work is that people fundamentally misunderstand the role of the political entity. If the existence of society depends on there being an entity whose function is simply the preservation of society by any means and whose actions in this regard cannot be determined by moral, ethical, religious, aesthetic, common interest, or other such considerations, then we have good reason for concluding that the political is autonomous from these other domains. It's true that not every question we have about the relationship between what we intuitively call politics and these other domains—morality, religion, ethics, and so on—will have been answered. But Schmitt's conclusion, if true, is deep and important in its own right.

Political Ascent

Societies survive changes in their members. Members die or emigrate, while new members are born or immigrate from outside. Thus we can conclude that if there are such things as societies they are not identical to the collection of individuals who are their members at a given time. The society has its own identity that distinguishes it from this collection of individual members. What is it that survives these changes in membership? A plausible, if vague, first start would be to say that there is a way of life that these individuals partake in that survives, more or less intact, over time. When we think, pre-theoretically, about what a society is, we think of common norms, shared religious beliefs, customs and practices, laws and institutions, and common interests that mediate the interactions of these individual members and constitute, arguably, the individuals' common life. Abstracting away from certain real-world complexities, this seems like a reasonable if vague account of what we mean when we talk about a society.

Supposing that this is what a society is—a concrete system of behavior that conforms to norms, laws, rules, practices, and so on and in which these norms, rules, laws, and practices play

a role in determining that behavior—then what ensures that a society will survive over time? That is, if a society's identity consists in the fact that there are these commonly-recognized and generally-obeyed norms or religious doctrine or laws and institutions, what must be done to ensure that these facts continue to obtain? What would be involved in taking on an active interest in the society's preservation? Clearly it would depend in part on what the particular society's identity was.

Suppose we have a society whose identity consists in the fact that its members generally recognize and obey certain moral norms. Preserving the society therefore means ensuring that its members continue in general to recognize and obey these moral norms. If preserving the society is my job, my concern is not so much with whether this or that individual does the right thing as it is with the *global* fact of whether or not there is general recognition and obedience. Consequently, what I find threatening is not a particular individual's unwillingness to abide by the common moral code or an individual's inability to find sufficient reasons for acting rightly. In general, these will not pose a threat to the society's existence. Societies are not so fragile as to require total compliance to their essential norms and rules. If they were, we would encounter precious few of them. So if I am in the position of preserving society what I find threatening are individuals, groups, or other factors that threaten to undermine the *global* fact of general recognition and obedience. (Of course, if for some reason one individual's disobedience does pose such a threat, then that individual's behavior becomes the object of my concern.) The threat I'm concerned with will be a special case: not the immoral or amoral rule-breaker, but someone whose actions tend toward the dissolution of society.

Consider some examples. External enemies are easiest to conceptualize. Arguably, during the Cold War the USSR was an enemy of the US (and vice-versa, but let's stick to one side of the story). What made the USSR a threat? Clearly, it was not that the Soviet people or the

members of the Politburo or Khrushchev himself were especially immoral or repeat criminals or in some other way violators of the American way of life (although atheism might have been a concern). The USSR posed a threat to the US irrespective of any its constituents sins or crimes. They were a threat (if indeed they were a threat) because they proposed to take measures that would undermine essential aspects of the American way of life. Politicians might appeal to the immorality of the average Soviet worker or the godlessness of Khrushchev and the Politburo, but this could not have been what made them enemies.

Consider the communists once more, only this time consider the communists on the inside. In a liberal and democratic society certain freedoms are usually respected—freedom of speech, freedom of the press, freedom to run for political office—and these freedoms are no doubt what many members of such societies would cite as fundamental or essential to their way of life. Now the communists would like to make use of these freedoms for their own purposes. They make speeches, they hold meetings, they publish papers and pass out pamphlets, and they run for political office. These communists, we can suppose, are law-abiding citizens. They may even share many of the basic moral and ethical views of their fellow citizens, and whether or not they share these beliefs we can suppose that in their daily lives they do not violate the basic moral and ethical norms their fellow citizens hold dear. So these communists are not law-breakers or norm-violators. But the avowed aim of their meetings, speeches, publications, and organized political activity is to bring the proletarian revolution and overthrow the bourgeois-capitalist government. The communists are the enemy, even if they're really nice and only cross at the crosswalks.

In carrying out my responsibilities, some means will clearly not be sufficient for my task. Within the society, individual members will (we can expect) address the disobedience of their fellows (as well as their own potential disobedience) by using the technique of moral persuasion. They will attempt to persuade the would-be deviant not to act wrongly by pointing their common

norms, by demonstrating the conflict between the would-be deviant's intended action and these norms, and thereby present the would-be deviant with reasons for acting rightly. And this is no doubt as it should be. But if I am the society's protector, these means will not be sufficient for my ends. To begin with, as we have already seen the enemy need not have violated any moral norms. So moral persuasion would clearly have no place in these cases. In other cases, persuasion (be it moral or religious or economic) will simply be ineffective. If my task is to deal with the enemy, then in principle I must be prepared to move beyond these "civil" means of persuasion. When the Huns come knocking, there may be nothing to do but fight. Thus if I take on the role of protecting this society I must be willing to employ means other than persuasion, including (in the extreme case) war and killing.

What is true of a society whose identity consists in the fact that its members generally obey certain moral norms will be true, *mutatis mutandis*, of a society whose identity consists in obedience to religious norms or to positive law, or whose identity rests in the fact that its members cooperate economically in way that they believe to be mutually beneficial. And, of course, it will also be true of a more realistic society in which all of these features play some role in the society's distinctive essence. In each case, three distinguishing features set the activity of protecting the society apart.

1. The concern is with a global fact about the individuals in question, not with facts about particular individuals
2. The relevant threat is a threat to this global fact, and not a threat regarding a particular individual member's behavior
3. The means employed cannot be restricted to the persuasive means the relevant norms, doctrines, laws, or common interests supply the society's members with.

The activity picked out by these three features differs importantly from the activity we might expect the society member himself to engage in with respect to the norms, values, customs, institutions, and economic arrangements that constitute his society's existence. Again, we can use the case of a society whose identity consists in the fact that its members generally recognize and obey a common set of moral norms as an example. The member can employ these norms and the reasons for action they generate in conditioning his own behavior and influencing, through persuasion, the behavior of others around him. In so doing the individual member of society concerns himself with individual cases—his own case and the cases of those around him. The focus of his attention is on cases where an individual (perhaps himself) is deviating from the common moral norms or contemplating doing so. The means the member employs to prevent the individual in question from deviating is moral persuasion—he points to the relevant common norms and to the conflict between these and the individual's action or proposed action, and thereby presents the would-be deviant with reasons for acting appropriately. In every sense, therefore, the individual member differs from the agent whose explicit aim is the preservation of the society as a whole. The focus of his attention is on cases where an individual (perhaps himself) is deviating from the common moral norms or contemplating doing so. The means the member employs to prevent the individual in question from deviating is moral persuasion¹¹⁵—he points to the relevant common norms and to the conflict between these and the individual's action or proposed action, and thereby presents the would-be deviant with reasons for acting

¹¹⁵ Again, we are considering the simple (perhaps implausibly simple) case of a society whose identity consists in its members moral obedience alone, and are for that reason focusing on the individual's instruments of *moral* persuasion. In the real world, moral persuasion is not usually the only tool we have. If I tell you that you should not kill your neighbor because killing is immoral and you are unmoved, I can produce other reasons for not carrying out your proposed action, e.g., that murder is illegal and you will likely be punished. If that is insufficient, I might point out that while in prison you will not get your usual income and therefore killing your neighbor will likely have detrimental financial consequences for you. In the real world, where all of these factors are in play, one has many forms of persuasion to rely on. This does not, so far as I can see, undercut or diminish the point I'm making above.

appropriately. In every aspect, therefore, the individual member differs from the agent whose explicit aim is the preservation of the society as a whole.

1. The concern is with the cases of particular individuals, including the agent himself.
2. The relevant “threat” is that an individual member of the society will deviate from the common norms.
3. The means employed in this task is moral persuasion, persuasion that makes use of the common norms and the reasons for action they generate.

Again, the same can be said, *mutatis mutandis*, for cases where the society’s identity is constituted by shared religious doctrine, by common legal institutions, or by a system of economic cooperation.

The point is not that society’s members are generally concerned with X or characteristically X while the state is generally concerned with Y or characteristically Y. This sort of talk never gets us beyond ordinary intuitions about politics. The point here is simply to distinguish between two sorts of activities and two consequent orientations or attitudes. One we can call the “everyday” activity; the other is what Schmitt singles out as distinctively *political* activity. What we get from this is the following conclusion: there are two distinct sorts of activity: (i) the employment of the norms, values, religious doctrine, economic interests, laws, and legal institutions that make up the society’s identity (and consequent concern with those who violate these norms or conflict with these interests); and (ii) the explicit and active protection of the society itself (and the consequent concern with the enemy).

The members of a society make use of the norms, doctrines, and common interests in their everyday lives. These norms, doctrines, common interests, and institutions condition their behavior, and these norms and doctrines provide them with reasons for action as well as a basis for criticizing, applauding, and motivating themselves and others. But the fact that individuals

behave in these ways and employ these reasons does not entail they take an interest in seeing that this concrete normative existence—*that* these norms and doctrines are obeyed, *that* they condition the behavior of these people, *that* they generate reasons that these individuals employ on themselves and on others—preserved and protected. Similarly, individuals may have interests in common and benefit in common when those interests are satisfied without thereby taking an interest in seeing that the “common interest” is advanced. Finally, and most obviously, that individuals obey the laws and employ the laws and the legal system (e.g., in the protection of their persons and property) does not entail that individuals take an interest in protecting the system of courts, police, laws, and their general obedience. In each case, the move from the employment of these norms, doctrines, interests, or institutions in one’s life to an explicit concern with the maintenance of a society requires a “political ascent” which is by no means necessary. This gives us a second conclusion: an interest in the employment of society-constituting norms, values, and so on does not entail an interest in the protection of that society.

We have reached two important conclusions. The first is that we can distinguish between two activities related to the norms, values, customs, institutions, and common interests that appear to be essential to a society. One sort of activity, undertaken by the individual society member, involves making use of these cultural items as a way of influencing his own behavior and the behavior of others around him. The second sort of activity is involves protecting the society’s existence against whatever threats may arise. As we have seen, there are threats to a society’s existence that cannot be met through the everyday employment of these cultural items alone: aggressive outsiders, rebellious members of society. Thus the continued existence of the society depends crucially on there being some agent—individual or collective—who takes an active and explicit interest in protecting the society. The second conclusion we have reached is that the fact that individuals participate in the first sort of activity does not imply that they have

an interest in the second. This entails that for any “way of life” individuals engage in it is an open question whether there is or will be an agent or body or institution who takes an active interest in protecting society’s existence.

Schmitt identifies the essence or function of the political as the protection of a society’s existence. The political agent is the agent who takes an active and explicit interest in the preservation of its subjects’ way of life. The essence of the political is not to do good in the world, to establish justice amongst the governed, to bring the will of God to the temporal plane, or to create a thriving business community in which entrepreneurs can make loads of money. Of course the political entity may need to do one or all of these things as a means to protecting its society’s existence. But the essential role of the political entities insofar as they are political entities is not to do any of these things. It is simply to protect the society’s existence. The quintessential political acts are war and killing, because recourse to war and killing and the abandonment of persuasion and reason-giving as means sets the political entity apart. The political entity is concerned with the preservation of society, and the preservation of society cannot be secured in all cases by means of persuasion and reason-giving alone.

The conclusion Schmitt is after is made a little clearer if we keep in mind his overall political objectives. On the one hand, like Bodin and Hobbes Schmitt is concerned that groups within society will usurp political power and use it as a weapon for advancing their religious or class or other ends at the expense of the rest of society’s members. But on the other hand he is concerned about the danger of extreme state neutrality. Think back to the example about the internal danger of the communists. The communists break no laws or other rules, but they genuinely intend to take political power for themselves and use it to advance their class agenda. The liberal-democratic state is neutral insofar as it allows groups—whatever their agendas—to organize, publish, recruit, and protest freely. Schmitt’s argument would be that the state cannot

afford not to take action against such parties when they begin to pose a real threat. The state cannot be content to wait for them to break the laws or commit some moral outrage. Playing the political role means *taking a stand* about who society's enemies are.

The discussion thus far yields three important conclusions. First, there is a distinction between on the one hand the everyday conformity to and employment of moral norms, ethical conceptions, religious doctrine, law, economic interests, and other cultural items, and on the other hand the political activity of identifying and dealing with society's enemies. *Schmitt's distinction* is the fundamental thesis on which the rest his argument is built. Second, there is a gap between the considerations that are relevant in determining who has violated our common moral norms, religious doctrine, and so on, and on the other hand identifying our society's enemy. *Schmitt's political gap* is that which Schmitt's version of the autonomy of the political rests, whether in the end we accept the positive conclusion that there is an independent account of political justification or if we rest content with the negative conclusion that moral, ethical, and other such considerations are not sufficient to justify political action. Finally, there is the conclusion that the existence of a society depends on the emergence of some agent or body or institution willing and able to identify and neutralize society's enemies. If, as we concluded earlier, a society is concrete system of (more or less self-consciously) norm-governed behavior, then its protection requires something beyond the everyday employment of and conformity to the norms that constitute the society in question. As we saw, what is required is an agent or body or institution explicitly engaged in the protection of that concrete "way of life" against those who threaten it, i.e., its enemies. I will refer to this conclusion as *Schmitt's central thesis*, because it is this account of political society and its fundamental needs that drives his argument.

We are now in a position to defend the three premises of Schmitt's argument that I presented at the beginning of this chapter. We get premise (1) by identifying the function of identifying

society's enemies (see *Schmitt's distinction above*) as the function of the political entity (e.g., the state):

- (1) The function of the political entity (e.g., the state) is to identify and neutralize society's *enemies*.

From our discussion of the nature of society as a concrete system of (more or less self-consciously) norm-guided action, we get the idea of an enemy who threatens not to violate the society's basic norms or rules but to make it the case that that concrete system no longer obtains.

- (2) The enemy of a society is an agent who threatens that society's existence.

Finally, from the conclusion that that there is a gap between the considerations that determine that X is immoral or impious and the considerations that determine that X is an *enemy* (see *Schmitt's political gap above*), we get the conclusion:

- (3) It is neither necessary nor sufficient for being the enemy that an agent violate the norms, values, rules, or laws that constitute the society or that the agent be a hindrance to the collective pursuits that constitute the society.

This is Schmitt's basic argument, and it yields the conclusion that the political is autonomous in the *negative* sense I discussed above: *these* considerations arising from morality, ethics, religion, economic self-interest, law, and so on are not sufficient to justify political action. Whether we are now equipped to draw the positive conclusion that there is an independent political standard of justification is the subject of the next sections.

Political Autonomy and Political Justification

Schmitt's initial argument ((1)-(3)) issues in a negative version of the thesis that the political is autonomous. It tells us that a certain class of considerations—viz., all considerations that do not concern what is necessary for the existence of society—are not sufficient justify political

actions. The negative conclusion leaves it open whether or not there *are* considerations that could justify political action. We are left with two possibilities. Either there is an autonomous, alternative account of political justification that grounds political justification in existential reasons (à la reason of state views), or we have no account of political justification at all.

As I noted earlier, it is unclear (to me at least) which of these views Schmitt wants to endorse. At at least one point, however, Schmitt seems to come down in favor of the reason of state view that asserts that political actions can be justified on the basis of existential reasons:

There exists no rational purpose, no norm no matter how true, no program no matter how exemplary, no social ideal no matter how beautiful, no legitimacy nor legality which could justify men in killing one another for this reason. If physical destruction of human life is not motivated by an existential threat to one's own way of life, then it cannot be justified. Just as little can war be justified by ethical and juristic means. If there really are enemies in the existential sense as meant here, then it is justified, but only politically, to repel and fight them physically.¹¹⁶

Schmitt runs through a number of different theses on the subject of political justification in this passage. The first sentence gives us the negative thesis: no moral or ethical or religious or legal considerations could justify the quintessential political acts of war and killing.¹¹⁷ Schmitt then tells us that nothing that is not an *existential* reason—a reason concerning what is necessary for a society's continued existence—could justify these political actions. Finally, Schmitt tells that if there are existential reasons, then these would justify the political entity in engaging in those quintessential political actions, war and killing. By this he must mean that if there really are agents who threaten a society's existence, then the political entity of the society is justified in acting to eliminate them.

¹¹⁶ *The Concept of the Political*, p. 49.

¹¹⁷ This is one place where Schmitt suggests that the autonomy of the political can be justified on the grounds that: (a) the political entity must at least be willing to engage in war and killing; and (b) war and killing cannot be justified on moral, ethical, religious, legal, or economic grounds. Again, this is not the line of argument I examine in this chapter. See fn. 110 above.

One thing this passage makes clear is this: if there is a positive account of political justification that issues from Schmitt's argument and his Schmitt's thesis that the emergence of a political entity is a necessary condition for society's continued existence and his conclusion that the political is autonomous, then that account of justification will employ *existential* reasons, i.e., reasons that refer to threats to society's existence. Thus a positive account of political justification along these lines will require the truth of the following two theses:

- (4) A society's political entity is justified in eliminating its enemies.
- (5) Societies do have enemies who pose existential threats to the society's existence.

Schmitt does not supply us with enough material to determine whether such an autonomous account of political justification could be constructed. But he does supply us with the basic picture of what such an account would look like. In the remainder of this chapter I want to flesh out and criticize two ways of defending such an autonomous account, based on two interpretations of Schmitt's thesis that the existence of society depends on the emergence of a political entity capable of identifying and neutralizing that society's enemies.

Society and the Political: Two Interpretations

A positive account of political justification along the lines set out by Schmitt's argument will be an account of justification that depends on existential reasons, reasons that refer to a threat to the continued existence of a society. Such an account, it seems, will have to start by explaining the need of a society to defend itself against its enemies. As discussed above, Schmitt's contention is that the continued existence of a society depends on the emergence of a political entity whose function it is to defend that society against its enemies. I want to begin by distinguishing two interpretations of that claim.

The first interpretation I will refer to as the *practical* interpretation. We live together. We have certain moral, ethical, and religious beliefs that determine our own actions and which supply us with reasons we employ in our attempts to persuade those around us to comply with these norms, rules, and practices. We have economic interests, and we have ways of interacting (bargaining, rules of exchange and gift-giving) through which we advance these interests in cooperation with others. We also, we can suppose, have common laws that govern our individual actions and many of our interactions and cooperative endeavors with others. The concrete phenomenon wherein these norms, rules, laws, and practices are generally obeyed and wherein they generally provide each of us with reasons to comply is what we have been calling a *society*. To the extent that it is important to us that this concrete phenomenon continue (and we could have various reasons for thinking that it is important), we have an interest in seeing that the necessary steps are taken to maintain and protect it.

The *political ascent* of some agent or body or institution to the political role is on this interpretation a *practical necessity* if the way of life that we value is to be protected against possible enemies. On this interpretation, society is a *pre-political object*, something we value prior to (or independent of) the establishment of a political authority. Society, on this interpretation, is analogous to property on Locke's political theory. According to Locke, we have property in the state of nature. We enter into political society in large part out of a concern with protecting our property, property which would clearly be insecure without such a political authority.¹¹⁸

The second interpretation of Schmitt's thesis that the continued existence of society depends on the emergence of a political entity I will refer to as the *ontological* interpretation. On this interpretation, society does not precede the emergence of a political entity. Rather, the

¹¹⁸ *Second Treatise on Government*, chapter V and §§90 and 123-4.

emergence of a political entity that identifies a society's enemies (and at least displays a willingness to neutralize them) generates, in so doing, a society. The society's essential way of life is simply whatever is threatened by the enemy the political entity has identified. On this interpretation there is no society—or at least need be no society—without a political entity that determines the enemy.¹¹⁹ Here society is analogous to property on the Hobbesian political theory. According to Hobbes, there is no property in the state of nature. Property emerges only after the establishment of a sovereign capable of providing security for citizens' covenants and property claims.¹²⁰ Similarly, on the *ontological* interpretation of Schmitt's thesis society—a concrete "way of life"—is something that emerges only after (or as a consequence of) the emergence of a political entity who identifies the enemy.

The rationale behind the emergence of the political entity on the practical interpretation is relatively straightforward: we imagine a community wherein norms and practices are shared, and whose members are concerned to protect the familiar features of their common life. But what is the rationale for the emergence of a political entity on the ontological interpretation? If this is the origin of a common way of life, then what reason would people have for wanting it.

I can think of at least one story that would make this plausible. Suppose we live in a society of many religious and moral and ethical views, in which economic interests of both individual actors and group actors (e.g., classes) conflict, and so on. That is, we live in a standard modern pluralist society, a society that at times appears to be not so much a single political society as the mereological sum of a variety of very different and very distinct (sub)cultures. And yet we face certain challenges all together (challenges of security, challenges regarding pollution and the depletion of natural resources), etc. Furthermore, we stand to benefit from legally simple

¹¹⁹ I assume that Schmitt could have accepted both interpretations without contradiction. That is, his thesis could be that the existence of society and the identification of the enemy go together, whichever comes first in practice.

¹²⁰ *Leviathan* xxix.10.

cooperation (economic cooperation in particular) and from a common basic legal code. What we lack is some sort of common way of life, preferably one that does not impinge too seriously on the particular moralities, religions, economic interests, and cultural features that set us apart from one another. The need is not so much for a shared substantive morality or ethical outlook, or even a common religion or language. All we need is something that provides us with a sense of unity, a sense of social solidarity, a sense of *being in this together*: in short, a “common purpose” to help us to support the common institutions and endeavors that we can all agree will be of common benefit.

A common political entity can provide this by providing us with a common enemy. A political entity determines (on whatever basis) our common enemy and in so doing provides us with a common way of life. What is that way of life? It is whatever the politically-determined enemy threatens. Clearly, the way of life that issues from the mere identification of an enemy will be somewhat vague and open to interpretation. But this vagueness and openness is exactly what we need, given our own pluralism. A more specific and concrete way of life would inevitably threaten some subcultures within our political domain while favoring others. The political identification of the enemy gives us something shared and provides us with the common purpose necessary to carry out our cooperative projects.

This makes the ontological interpretation more plausible. It isn't that we have a common way of life in need of protection (as on the practical interpretation). It's that we need a common way of life to provide us with the social solidarity necessary for working together on common projects, building common institutions, and find cooperative solutions to common problems. From this perspective, the selection of an enemy and the character of the consequent way of life is not so important. What is important is that it is *ours*.

There may be other ways of making providing a political rationale on the ontological interpretation, of course, but this one has the virtue of being not wholly unfamiliar. What is important, from my perspective, is that it supports the ontological interpretation, according to which society does not *precede* the emergence of a political entity but is rather a consequence of a political entity emerging and identifying its enemy. I have contrasted this interpretation of Schmitt's thesis with the practical interpretation, according to which the emergence of a political entity is explained by the need or desire to protect a *pre-political* way of life.

Indeterminacy, Pluralism, and Oppression

In this section I examine the case for an autonomous account of political justification on the practical interpretation of Schmitt's thesis, whereby the society that is to be protected politically is something prior to the emergence of the political entity itself, and the political entity emerges for the sake of protecting this society or way of life. In the next section I will examine the case for an autonomous account of political justification on the ontological interpretation.

On the practical interpretation the function of the political entity is to protect our way of life—something we have already—against its enemies. The justification of political action on this interpretation, therefore, would seem to require that we have a way of life that is more or less clear (and hence provides a standard for assessment) and that the agents, groups, or countries against which political action is taken are truly threats to this way of action. Two problems arise in this regard.

The first is simple indeterminacy. Among any collection of individuals living in close proximity there are likely to be many norms, rules, or practices that are shared by some or all members. The question that we face if we want to make the preservation of our way of life the basis for political justification is: Which of these norms, rules, and practices are *essential*? Or, to

put the point the opposite way: Which aspects of the concrete system of norm-governed behavior could be changed or excised without threatening our “way of life”? We can see this as just a problem about essences: Objects have many properties; the essential ones don’t come with name tags. Not every aspect of individuals’ common lives can be essential to their society. Society would be a perilously unstable object if every aspect of individuals’ common lives and interactions were essential to it, probably too unstable to be significantly benefited by the protection of a political entity. Thus we are left with the unenviable task of separating the essential from the accidental. It is important to recognize that this question requires an answer if our way of life is to provide genuine justification for political action. Otherwise the appeal to social identity is just political rhetoric.

More serious difficulties arise when we bring in realistic assumptions about pluralism. In a society where members are divided on matters of religion and morality and wherein inequality undermines to a greater or lesser extent the notion that all society’s members share common economic interests—that is to say, in any society we are likely to be talking about—the question of what our common way of life is will be very difficult to answer. If society’s members are split along religious lines, there may be no single set of religious norms and beliefs that tie all or even most of these individuals together. If they are divided on fundamental moral and ethical issues, there may be no common set of norms nor shared conception of the good life to play the role of a collective “way of life”. Similarly, antagonism between the interests of social classes at least potentially has the effect of undercutting unifying conceptions of the “common interest”.¹²¹ Pluralism and class antagonism can, when the differences run deep enough, undercut the idea that amongst a group of individuals subject to a common political order there is a society at all, any coherent and unified group with its own essence or identity. These deep social divisions on

¹²¹ This is one of the central points Machiavelli makes. See chapter IV below.

issues of morality, religion, and economic interests make it clear that we cannot deduce from the fact of individuals living together in a common domain a common and substantive *society* or “way of life.”

These points raise problems about the *emptiness* of any positive account of political justification. They suggest that there may not be a sufficiently clear way of life that is ours to support any justifiable identification of enemies, let alone action against supposed enemies. There is, however, a deeper problem facing the practical interpretation, one that arises even if we agree that we have a common and reasonably clear way of life. We have been supposing that on the practical interpretation the way of life that the political entity is some important part of the concrete system of norm-guided behavior among this collection of individual people. The assumption has been that the individuals in question would, were problems of indeterminacy and pluralism worked out, endorse measures to protect this way of life. This assumption is crucial to the argument for political *justification*. Actions to defend this way of life would be justified, so we have been assuming, because the individuals whose way of life it is are in favor of its being maintained. This is an assumption we make all the time when we endorse efforts to allow people self-determination or measures to protect their culture. The fact that the culture is important to these people is what justifies their efforts to ensure that it is not threatened.

But is the assumption we are making plausible? The assumption, again, is that those individuals whose way of life it is have an interest in seeing that way of life maintained. One reason for thinking that it is not always the case is that people often obey norms and participate in social practices only because other people do. Language norms are the most obvious example of this—I use the word “elephant” in the way the other people do because other people do it. The point can be generalized with little difficulty to other sorts of norms and rules: moral norms,

religious norms, even legal and institutional rules. Conformity does not always entail endorsement.

Another reason for rejecting this assumption is that people are often genuinely opposed to particular norms—to it being the case that these norms are generally obeyed and are used as reasons for people to conform—but have no choice but to conform to them. I am thinking, in particular, of the concerns Susan Moller Okin has raised about multiculturalism.¹²² One of Okin's central points is that we cannot assume from the fact that cultural norms assign an inferior and subservient place to women that the women who abide by these norms find them acceptable. Norms governing clitoridectomy and polygamy are the most notorious, but the list of norms and informal rules that govern the place of women and girls in the family and in the wider society is, for most cultures, quite extensive. Thus we see again, in a more striking way, that it would be wrong to conclude from the fact that individuals conform to a system of norms, rules, and practices, that they endorse that system and would support measures (political measures) to protect it.¹²³

Moreover, it isn't always clear whether the members of a group support the culture in which they live. As Okin argues, we have to ask who is being allowed to speak for the group, and what pressures are being exerted (overtly or covertly) on individual members. If the culture is oppressive to many of its members, then it will be difficult (which is not to say impossible) to get information on whether individuals endorse their way of life and it will be difficult to get reliable feedback on which aspects of their way of life are of particular value to them.

¹²² Susan Moller Okin, "Is Multiculturalism Bad for Women?"

¹²³ It is worth noting, as a further response to the idea that political action could be justified on the basis of a concern for maintaining our way of life, Mill's argument against the political reinforcement of culture in *On Liberty*. What Mill clearly draws attention to is the suspect notion that the political preservation of a culture or way of life is in the interest of those for whom it will be preserved. But I think this argument would carry little weight with someone like Schmitt.

None of this undermines completely the possibility of an autonomous political justification built on the defense of a cultural way of life, as this is understood on the practical interpretation. But it shows how difficult it would be to argue that political action is justified on such grounds. Indeterminacy and pluralism make it questionable whether there is, pre-politically, such a thing as our *society*, one relatively clear object the defense of which would justify the identification of enemies and action against them. We might think to resolve these questions by asking the people in question themselves: What aspects of your common life do you value? The value of this sort of questioning is rendered suspect by concerns about oppression, as noted above. Furthermore, rather than clarifying a common cultural consciousness may open up a cultural critique (in particular on the part of those members of society who are oppressed or who are kept subservient by existing norms and practices), the conclusion of which may be that we would rather make our common cultural life something to be determined in common rather than an object to be reified and preserved by political means. Again, none of this rules out the possibility of an autonomous political justification based on the protection of a pre-political way of life. But there are clearly serious obstacles.

The Choice of an Enemy

The ontological interpretation of Schmitt's thesis that the existence and survival of society depends on the emergence of a political entity who will identify and deal with society's enemies states that the way of life that the political entity protects is a *consequence* of the political entity's identification of the enemy: our common way of life is X because X is what is threatened by the enemy the political entity has selected. I have detailed the weaknesses of the autonomous account of political justification that is built on the *practical* interpretation of Schmitt's thesis,

and now it remains to assess the autonomous account of political justification built on the *ontological interpretation*.

Readers should not be misled by the story I gave to provide a rationale for the institution of a political entity who determines a people's way of life. According to this story, the emergence of a political entity who identifies an enemy provides us with a common way of life (by default, that which the political entity threatens) provides us with the common purpose and social solidarity necessary to overcome our pluralism and work together for common benefit. This may provide a *rationale* for establishing a common political entity, but it can never itself provide *justification* for political action. Political action is not just against *some* enemy (which is what we care about); it is against some *particular* agent, group, or country. We may be able to justify in the abstract the need for some enemy to provide us with a common purpose, but we can never justify on these grounds why *this* guy or *this* party or *this* country has to pay the price for our social solidarity. But if political action is to be justified, *these* decisions are in need of justification.

If we say this then the choice of enemy itself requires justification, and then it seems we are back to the *practical* interpretation. After all, how else are we going to justify the choice—*justify* it, not just *make* it—of an enemy except by sitting down and determining which aspects of our way of life are most important to us, etc. The critical problem with the ontological interpretation is that the political entity has simply *decided* who is to be the enemy. There is nothing here on which to build any justification, at least not without giving up the ontological interpretation and returning to the practical interpretation and its associated difficulties.

The ontological interpretation is, I think, clearly hopeless as the basis for constructing an account of political justification. It is hopeless because it starts by abandoning any normative basis for the particular actions the political entity must undertake. Only by blinding ourselves to

what the state actually does (the people imprisoned, the countries attacked) could we feel comfortable that the state's actions are justified by the vague way of life they provide us with. The ontological interpretation makes political action the simply *self-assertion* of the state. It rests on a form of decisionism which, though we may feel we need such a state, can never provide the state's particular actions with any justification.

The project over the last three sections has been to determine whether or not Schmitt's argument from (1)-(3) could be used to yield a positive conclusion about political justification. The question is whether existential reasons—reasons concerning the survival of society—could justify political action. The overall problem, I think, has been this: the justification of political action against the enemy could be justified only on the *value* of our way of life and not simply the *fact* of it, whether that fact is pre-political or the product of a political act of identification. We see this on both interpretations of Schmitt's thesis. On the practical interpretation we saw that the notion that the defense of a way of life provides *prima facie* justification for political action only if we assume that a people's way of life is actually of value to those people. On the ontological interpretation, we saw that the selection of the enemy by the political entity cannot be justified except by reference to the value of the way of life it "creates". But the value of our way of life or a way of life (perhaps one we don't have but would like to have) is going to be grounded in just the sort of considerations from which Schmitt would like to argue the political is autonomous. Our way of life is worth defending—worth taking action against the enemy—only because it is *right* or *just* or *good* or *pious* or *for the common benefit* or whatever. Just the sorts of considerations from which the political is supposed to be autonomous must be brought in for the justification of political action.

Schmitt's Autonomous Reason

In the end, I think Schmitt must be at least partly right. That is, I think he must be right that there is a difference between on the one hand employing our moral and religious reasons to persuade ourselves and others to act rightly, employing bargaining techniques and economic exchange to establish relations with our fellows, and using law as a means to compel individuals to act in ways we find acceptable; and on the other hand taking the aim of defending a way of life, a concrete system of norms, practices, laws, and exchanges, against its enemies. Whether we want to call the latter the political or not, I think Schmitt has to be right to point out this important distinction.

What Schmitt's argument fails to do is substantiate the dreams of Friedrich Meinecke and other reason of state theorists who have sought for the political domain an independent standard of justification, an autonomous cache of reasons for justifying political action. Reasons that fall back on the defense of a pre-political society are not justifying in themselves, but only in virtue of citizens' endorsement of that pre-political society (and even then we might raise questions about this sort of justification). Reasons that reflect the random assertion of a political entity—a party, a powerful politician, or a bureaucratic state—cannot supply the necessary justification either, and as we saw this line of argument is forced to appeal back to a pre-political social essence.

I think the question that emerges from Schmitt's discussion and its relation to reason of state view is this: Is there a way of life that emerges from the moral, ethical, religious, economic, legal and (generally speaking) "cultural" activity we engage in? Or is the idea of a way of life always simply an afterthought, the product of someone's having taken over the political role and identified "our" enemies? Do "we" really have something to defend (over and above our individual lives and our individual concerns) before some party, faction, powerful individual, or political apparatus comes along and unifies us in a common mission to annihilate our enemies?

Schmitt has clearly elaborated an important distinction between (for lack of a better word) the *everyday* and (to use Schmitt's term) the *political*. But in doing so, has Schmitt gotten to the heart of any group's *existential destiny* or has he simply set out a piece—an undeniably interesting and important piece—of political mythology?

“Authority constrains obedience, but reason captivates it.”
-Cardinal Richelieu

V. The Autonomy of Public Reason

The work of John Rawls provides a new interpretation of the thesis that the political is autonomous. I will refer to this as the *public reason* interpretation.¹²⁴ The central thesis of the public reason view is that democratic decision-making must proceed on the basis of reasons that all parties (citizens, for example) could accept as reasons. Moral, ethical, and religious reasons can play a political role only if they can count as reasons for all parties. Under conditions of moral, ethical, and religious pluralism, this means that the scope of admissible political reasons—the scope of *public reason*—will be limited with respect to the scope of moral, ethical, and religious reasons at play in society. The resulting conception of public reasons is *autonomous* with respect to morality, ethics, and religion insofar as these reasons have no political role to play in virtue of their moral, ethical, and religious credentials alone. That Φ is immoral, unethical, or impious can count for or against a proposal within democratic deliberation only if all parties could accept Φ 's immorality, unethicalness, or impiety as a reason.¹²⁵ The public reason view thus separates the political from the moral, the ethical, and the religious by means of a democratic constraint on reasons.

¹²⁴ Jürgen Habermas and Joshua Cohen have also put forward what I would think of as public reason views, but my discussion in this chapter focuses on Rawls' view and objections to it. See Jürgen Habermas, *Between Facts and Norms*, “Reconciliation Through the Public Use of Reason: Remarks on John Rawls' Political Liberalism,” and “On the Relation Between the Nation, the Rule of Law, and Democracy”; and Joshua Cohen, “Deliberation and Democratic Legitimacy,” and “Procedure and Substance in Deliberative Democracy.”

¹²⁵ I am focusing on moral, ethical, and religious considerations because they seem to be the most important cases. A Rawlsian conception of reason would be autonomous *simpliciter* in the following sense: no reason could count as a political reason except if it could count as a reason for all affected parties, and therefore no reason counts as a political reason except on the basis of these *political* credentials.

Rawls' public reason account part of an interpretation of *democratic* deliberation. It is obviously not an analysis of democracy or of collective action, but it provides an interpretation of how the deliberation of a group of people could be regarded as democratic. The basic idea finds expression in Rawls' argument for the original position.¹²⁶ Certain information is denied the parties to the original position: information about their race, sex, wealth, talents, and so on. The idea behind this restriction on information is to restrict the sorts of *reasons* available to the parties in their deliberation on what principles of justice to select.¹²⁷ I cannot offer as a reason in favor of proposal *P* that it will benefit me given my wealth if I don't know that I am wealthy. This restriction on information in the original position is the expression of a more general conception of democratic deliberation, a public reason conception according to which there are some reasons that ought not count when we are deliberating democratically about political matters.

What is the restriction on reasons? Following Joshua Cohen, we can put it as follows: only those reasons should count in democratic deliberation that count as reasons for all citizens.¹²⁸ We can start by distinguishing cases where a particular consideration is not a good reason and cases where a consideration is not a reason at all. Imagine two cases where I am trying to convince you that we should go to Monrovia. In the first case, the consideration I adduce in favor of going to Monrovia is the fact that I want to see some of Africa. In the second case, the consideration I adduce is that I want to see the Eiffel Tower. It should be clear that in the first case I have

¹²⁶ See Rawls' *A Theory of Justice* (henceforth *TJ*): §§1-4 and chapter III.

¹²⁷ See, e.g., *TJ* p.17 on this point.

¹²⁸ See Cohen, "Deliberation and Democratic Legitimacy" and "Procedure and Substance in Deliberative Democracy." I think it is fair to say that Cohen expresses generally what Rawls operationalizes in the particular case of the veil of ignorance. The idea behind the veil of ignorance is that it allows us to see what sorts of reasons we would be able to accept as reasons, whether or not we would in the actual world find them compelling or convincing. Whether or not we find the original position argument compelling depends in part on whether or not we agree that the right reasons have been excluded.

offered a bad or insufficient reason for going to Monrovia. After all, Africa's a big place and there's no need to go to a place as dangerous as Monrovia. So while going to Monrovia would be a way to see some of Africa, and hence my desire to see some of Africa can be said to be a reason for going to Monrovia, it isn't a particularly good reason. Contrast this with the second case. In the second case, it should be clear that I have offered no reason at all. The Eiffel Tower is not in Monrovia¹²⁹ and therefore my desire to see the Eiffel Tower is not a reason for going to Monrovia. It isn't that it's a bad reason for going there; it isn't a reason for going there at all.

In societies where there is great disagreement about fundamental moral, ethical, and religious matters, there will be deep disagreement about which considerations are reasons (either in general or for particular courses of action). Considerations in favor of prohibiting homosexual sodomy or abortion that derive from particular religious doctrines may not count as reasons for those who do not espouse the religion in question. It is not that these considerations are bad or insufficient reasons for prohibiting sodomy or abortion; they are not, for these non-believers, reasons at all. The public reason restriction on democratic reasons takes its orientation from this observation. The public reason claim, then, is that when we are deliberating as a democratic body only those considerations should count that can count as reasons for all.

The public reason interpretation of democracy, like the interpretations of political autonomy discussed in previous chapters, responds to a concern about the possibility of stable government in light of intractable and unavoidable disagreements and conflicts within modern democratic societies. As Rawls notes, not only are fundamental disagreements about morality, ethics, and religion unlikely to disappear, there is good reason to think they are fostered and even encouraged under liberal institutions that respect freedom of religion, freedom of speech,

¹²⁹ As of July 13, 2003.

freedom of organization, and the political liberties.¹³⁰ Rather than incorporate these conflicts in politics itself (as Machiavelli does) or exclude all normative considerations from politics altogether (as, e.g., Hobbes proposes), Rawls' proposal is that we gather together those what normative beliefs about political issues we share—those considerations that count as reasons for all—and build these into a conception of public reason that can be used in political deliberation but which is nonetheless autonomous of any particular moral, ethical, or religious standpoint. Public reason, so understood, is autonomous of these standpoints because none of them is sufficient to determine the content of public reason: the fact that Φ is impious on religion X does not in itself provide a reason in favor of any Φ -prohibiting proposals. Considerations arising from citizens' moral, religious, or ethical doctrines are not political reasons on the basis of the moral, religious, or ethical credentials alone. They must pass the test of public reason as well. They must be reasons that all parties can accept as reasons.

In part, Rawls' is concerned with finding a shared normative basis for political decision-making—rather than withdrawing political decision-making from citizens' moral, ethical, and religious concerns altogether—because he is not simply interested in finding a basis for political stability; his interest is, as he says, in finding a foundation for “stability for the right reasons.”¹³¹ A political settlement or a conception of reason by which political decisions are made must be able to appeal to reasonable citizens from within their various and diverse doctrines and worldviews. “Only so is it an account of the legitimacy of political authority as opposed to an account of how those who hold political power can satisfy themselves, and not citizens generally, that they are acting properly.”¹³² Rawls' account of public reason does not exclude all moral,

¹³⁰ John Rawls, *Political Liberalism*, p. 4.

¹³¹ See, e.g., Rawls' introduction the paperback edition of *PL*: p. xliii, and also his “Reply to Habermas,” pp. 390-2.

¹³² *PL*: pp.143-4.

ethical, and religious considerations from democratic deliberation. What public reason denies to these considerations is a role in democratic deliberation on the basis of their moral, ethical, and religious credentials alone.

The public reason account of democratic deliberation is the focus of in this chapter and the next. The account as stated is admittedly very abstract and tells us nothing substantive about which reasons would or would not be admissible in democratic deliberation. But the general and abstract conception does tell us quite a bit nonetheless. It tells us that the justificatory test for collective political action is ultimately *democratic*: citizens must be able to accept collective decisions as reasonable (whether they endorse the particular decisions themselves, and whether the decisions are decisions about particular legal-political actions or decisions about political first principles). It tells us that the scope of acceptable political reasons is *limited*, and that the restrictions on reasons are a function of the beliefs, values, and so on of the parties to be affected by these decisions. Finally, it gives us an abstract test of what reasons are democratically acceptable: viz., those that could be accepted by all parties as *reasonable*, i.e., providing reasons for political decisions. This abstract and procedural account of public reason shows us that whatever its content, our conception of public reason popular (or unpopular) moral, ethical, or religious views. It makes clear that even in the extreme (and unlikely) case of moral, ethical, and religious homogeneity, the identity of content between public reason and moral or ethical or religious reason is explained by the *fact* of moral, ethical, and religious agreement and not by the truth or validity of accepted moral, ethical, and religious views. The content of public reason, the reason to be employed in political decision-making, is thus always independent or autonomous of morality, ethics, and religion.

Rawls employs the original position to elaborate the abstract, procedural account of public reason outlined above. The original position argument is a way of giving specific content to the

conception of public reason. The principles of justice represent a specification of the general and abstract conception of public reason for the particular purpose of guiding the state's regulation of the distribution of primary goods within the basic structure. The principles specify more exactly the reasons that are admissible in political deliberation and the ends and aims toward which collective power is to be employed. The conditions of the original position—the veil of ignorance, the aim of the participants to select general principles that will regulate the decisions of the state—reflect the basic ideas behind the public reason thesis. The veil of ignorance, as I noted above, filters out inadmissible reasons. The aim of the participants—to find principles that will govern the institutions they themselves live under—ensures that deliberation is deliberation on *collective* decision-making. The two principles are not something separate from the animating notion of public reason discussed above, nor are they simply moral principles applied to (among other things) collective action and the state. They are an elaboration or specification of the democratic conception of public reason sketched above, and insofar as they are grounded in the public reason argument (as they are in Rawls' argument) they are autonomous of the moral, the ethical, and the religious.

For the purposes of this chapter and the next I treat the original position as one possible implementation of the general and abstract conception of public reason. The latter is the primary subject of these chapters, because this conception represents a unique interpretation of the notion that the political domain is autonomous and is the fundamental notion behind Rawls' original position argument. The public reason view diverges sharply from many of the standard assumptions made in political philosophy. These divergences are important to understand, and the aim of this chapter will be to draw out these features of the public reason view as exemplified by the Rawlsian view. There are four major implications of the basic public reason account that I would like to highlight in this chapter. They are:

- that the fact that people could agree on particular political principles or political actions (under the right conditions) is normatively important in itself, over and above the normative significance of the considerations brought forward in reaching that agreement;
- that the democratic state cannot be seen as an instrument for the realization of moral or ethical or religious values;
- that the concern with finding a democratic basis for collective decision-making imposes its own normative imperatives, and these imperatives are independent of and distinct from the imperatives of morality, ethics, and religion; and
- that we cannot treat moral, ethical, and religious reasons as in some sense intrinsically or necessarily political reasons, i.e., reasons for the state to act.

My plan is to draw out these points by examining four objections to Rawls' public reason argument.

The Fact of Agreement

Rawls argues that if it can be demonstrated that individuals would agree to principles of justice under the conditions imposed by the original position then that would be a reason for accepting those principles as the fundamental principles for organizing the basic structure of society. Although the agreement is hypothetical and (as Rawls makes clear) the setup of the original position is such that the parties are essentially guaranteed to reach the same conclusions, the fact (if it is a fact) that individuals in these conditions would agree on a particular set of principles is supposed to have some argumentative force over and above the argumentative force of the considerations adduced in the original position deliberations. As I have already explained, Rawls' original position is supposed to execute a more fundamental democratic idea. The fundamental idea is that decisions about collective action should be reached through a process of

deliberation oriented toward agreement based on the right sorts of reasons. The presumption or guiding idea, then, is that decisions about collective action get their justification from the fact that the members of the collective could agree to them on the basis of the right sorts of reasons. As Rawls employs this idea in the original position, the presumption is that the fundamental political principles that individuals would, hypothetically, agree to under the conditions of the original position are the political principles that ought to guide political decision-making and fill out our abstract conception of public reason.

Ronald Dworkin has objected to this aspect of Rawls' argument (among others). Dworkin's thesis is that when we appeal to what we would hypothetically have agreed to, the appeal has no more force than the considerations we would hypothetically have adduced in reaching in this agreement.¹³³ Thus the fact that we would have agreed to the principles of justice as fairness under the conditions of the original position has no force over and above the force of the considerations that would have been adduced in favor of those principles as against the alternatives.

Dworkin's argument runs as follows. Suppose we've been playing poker for a few hours. You haven't been doing very well, while I have amassed a small fortune. At this juncture we discover that one of the cards is missing from our deck. You now attempt to convince me that we should redistribute the money (to the original distribution) and start over again. The argument you give in favor of redistribution is something like this: Before we started playing I (the big winner) would have agreed that the right way to resolve a situation like this (in which we belatedly discover a card is missing) would be to redistribute and start over again. We made no

¹³³ Ronald Dworkin, "The Original Position."

such agreement, of course, but your point is that had we only thought to set ground rules on the subject we would have agreed to redistribute under these circumstances.¹³⁴

In making this argument you present various considerations that would have swayed me had we discussed the matter before the game started. You might point out that with one card out some players are being disadvantaged in a way that is arbitrary, or that one missing card undermines the sense in which the outcome of the game reflects the skills of the players, or something along these lines. But it seems clear, Dworkin says, that I am only going to be convinced by your argument *now* to the extent that these considerations you have *now* adduced are convincing. In appealing to what we would have agreed to, you are in effect presenting me now with the exact same argument you would have presented me with before the game started (had you only thought of it). If I am convinced now, it is only because the argument you would have presented is a good one. I'm not going to be convinced now in virtue of the fact that we would have all agreed to this principle before.

[Y]ou use the device of a hypothetical agreement to make a point that might have been made without that device, which is that the solution recommended is so obviously fair and sensible that only someone with an immediate contrary interest could disagree. Your main argument is that your solution is fair and sensible, and the fact that I would have chosen it myself adds nothing of substance to that argument.¹³⁵

The fact of hypothetical agreement has no argumentative force of its own in this case. What force such an appeal has derives from the force of the considerations hypothetically adduced.

Dworkin's point, as addressed to the hypothetical poker players, seems to me to be correct. As an argument against Rawls' employment of the device of a hypothetical agreement (the original position), however, Dworkin's argument fails. While Dworkin is clearly right that our appeals to hypothetical agreements often have no argumentative force of their own, and that we

¹³⁴ Needless to say, if we'd thought of it in advance we probably would have just counted the cards rather than wasting time working out the principles of rectification.

¹³⁵ Dworkin, "The Original Position," p.18.

often use this device to make points “that might have been made without that device,” this is not true of the argument from the original position.

The independent relevance of the fact (if it is a fact) that we would have agreed to Rawls’ principles of justice derives from the fact that our aim in elaborating these principles is to lay a foundation for democratic decision-making. In the Rawlsian argument we use the original position to elaborate democratic principles of public reason, principles that specify the sorts of reasons and considerations that should play a role in political decision-making. We want principles that all parties can agree to because we want democratic decision-making to proceed in terms of reasons that all parties can, given their various and diverse doctrines and worldviews, accept as reasons. Therefore the fact that citizens would agree to these principles (even if there is no actual agreement) is important in itself, over and above the argumentative force of the considerations adduced within the original position. The fact that citizens would agree to them (even if they don’t actually do so) gives us reason to think that these principles are suitable to guide democratic deliberation.

The democratic project of outlining a conception of public reason that is to guide collective decision-making on the basis of reasons that all parties can accept as reasons thus gives us a reason to be concerned with what individuals *would* agree to over and above the reasons they might have for agreeing. Dworkin is clearly imagining a very particular kind of case in which the function of the appeal to a hypothetical agreement is to compel the respondent to concede that he would have found certain considerations convincing, even if now self-interest or other motives cloud his judgment and incline him to deny that they are. This is what happens in the poker case. You present your points in the form of an appeal to a hypothetical agreement as a way of showing me that they really are convincing considerations, despite the fact that my self-interest in retaining my winnings might lead me to deny it. The device of the hypothetical

agreement has no role except to shame me into seeing through my self-interest and recognizing the real weight of the considerations you have adduced. But this is clearly not what's happening in Rawls' argument. Rawls appeals to a hypothetical agreement because it matters in itself what individuals would agree to under the conditions of the original position. It matters because our aim is to produce principles that can function as a conception of public reason, a conception that is to guide democratic decision-making in terms of reasons that all parties can accept as reasons and thereby produce actions that are collective in the democratic sense. Thus although Dworkin is right to point out that as used by our imaginary poker players the hypothetical fact of agreement has no argumentative force over and above the considerations hypothetically adduced by the agreement's participants, the function of the hypothetical agreement in Rawls' argument is entirely different. In Dworkin's example, the appeal is motivated by an interest in persuading the respondent to see through his self-interest and recognize as compelling considerations he would ordinarily (i.e., if his self-interest were not interfering) find compelling. In the Rawlsian case, the appeal is motivated by a concern with elaborating a conception of public reason the employment of which would ensure (or go a long way toward ensuring) that the actions of the state are collective in the democratic sense.

Another point in response to Dworkin is that the considerations adduced in the original position are compelling in part *because* they are adduced within the original position. Outside the original position, the fact that the difference principle is going to guarantee me if nothing else the best worst position may not be a convincing reason for endorsing the difference principle as a political principle for distributing primary goods. When Rawls appeals to the original position, he appeals not to the argumentative force of the considerations adduced in the original position take on their own; he appeals to the fact that the principles of justice as fairness would be accepted under conditions we, if we accept his argument, believe to be appropriate conditions for

determining principles of justice. Dworkin claims that the appeal to the hypothetical argument can have no more (nor less) argumentative force than the considerations hypothetically adduced by the parties to the agreement. But what exactly are these in the case of the argument from the original position? If the considerations in question are the purely rational and self-interested concerns that move the parties to the original position, then Dworkin is clearly wrong. The fact that the difference principle (for example) would be endorsed within the original position is clearly a more compelling argument for the difference principle than the fact that the difference principle would guarantee *me* the best worst economic position of all the available principles of distribution. The considerations adduced within the original position are compelling reasons in favor of these principles in part *because* we are engaged in elaborating principles of justice.

Given that this is our larger project, there isn't going to be an argument for Rawls' principles of justice (that is, as principles fulfilling this role) that does *not* appeal to the facts about what we would agree to. Given that we are looking to give specific content to a conception of public reason, we will need to know what sorts of reasons and considerations citizens could agree to accept as part of their collective democratic deliberation. Far from being an extraneous device, the appeal to the hypothetical agreement is essential if, following Rawls, we are looking for substantive principles that could function as a conception of public reason in democratic decision-making.

So I think Dworkin is wrong on all counts: (a) that in the Rawlsian case we have no reason to be interested in what individuals would agree to (over and above the reasons they might have had for agreeing) (b) that the appeal to hypothetical agreement is simply a way of calling attention to the considerations adduced hypothetically; and (c) that the device of the hypothetical agreement is always dispensable because the argument could have been made without it.

I have drawn attention to Dworkin's argument because what Dworkin is objecting to is not so much the original position argument as the idea that it is of fundamental normative importance what individuals would agree to under the appropriate conditions. That this is of fundamental normative importance is a central implication of the Rawlsian public reason view. Drawing out Dworkin's objection allows us to see the importance of this point to Rawls' argument.

The Moralistic Conception of the State

Liam Murphy's objection to the Rawlsian argument strikes at a similar point.¹³⁶ What is at issue once again is the normative constraints and imperatives imposed by the project of providing a *democratic* basis for collective action. What Murphy objects to specifically is Rawls' isolation of the basic structure as the "subject of justice." The basic structure consists of institutions—the economy and the political institutions. The principles of justice selected in the original position are to regulate the way these institutions distribute primary goods. The principles of justice are not principles for the regulation of, e.g., individual behavior (except indirectly, as the behavior of individuals is regulated by institutional rules). They are principles for determining the constitutive rules of these fundamental social institutions.¹³⁷

Murphy presents his disagreement with Rawls as a disagreement about the nature and number of fundamental normative principles. Murphy espouses what he calls *monism*, the view that "all fundamental normative principles that apply to the design of institutions apply also to

¹³⁶ Liam Murphy, "Institutions and the Demands of Justice."

¹³⁷ I should also emphasize that, as I understand the remarks, Rawls' discussion of moral development and the sense of justice in *TJ* chapter VIII do not undercut the thesis that Rawls' principles are principles for governing the institutions of the basic structure and not the behavior of individuals. As I understand Chapter VIII (and related remarks in other chapters), this discussion is meant as an answer to concerns about the stability of a society well-ordered by the two principles of justice as fairness, and not as the elucidation of moral obligation stemming from these principles.

the conduct of people.”¹³⁸ The idea is that our fundamental principles assert our commitment to the realization of certain basic values. These fundamental principles may have different implications for the actions of institutions and the actions of individuals, but at bottom there is just one set of principles, applied to two cases. Rawls, on the other hand, appears to be committed to *dualism*, because Rawls apparently believes that the principles that apply to institutions are distinct from those that apply to individuals. The principles of justice are fundamentally distinct from the principles for individual conduct in that the two sets of principles are not the product of applying more general normative principles to institutions and individuals respectively. They are the product of an original position argument that does not supply us with a general account of what individuals ought to do.

Murphy’s assumption is that the isolation of the principles for the basic structure of society signals a commitment to realize egalitarian or other values through institutions alone, rather than through institutions and individual actions. But these values can be realized through individual actions as well (as G.A. Cohen has emphasized in his writings on the difference principle and incentive inequalities¹³⁹). Rawls’ isolation of the basic structure is thus difficult to explain. If we care so much about these values, don’t we want to employ whatever means available to realize them? In effect, Rawls’ isolation of the basic structure means denying ourselves the use of an important resource that could make an obvious and visible contribution to the realization of values we admit are important (values that motivate our institutional principles).

Thus if the function of Rawls’ principles of justice is to realize fundamental values (e.g., equality or liberty or some variation on these) through institutions then Rawls’ dualism is difficult to justify, especially when we reflect that these values could also be realized through the

¹³⁸ “Institutions and the Demands of Justice,” p.251.

¹³⁹ See, e.g., G.A. Cohen, “Incentives, Inequality, and Community” and “Where the Action Is: On the Site of Distributive Justice.”

actions of individuals. Rawls' approach—the isolation of the basic structure and formulation of distinct principles that do not imply analogous obligations for individuals—appears to amount to an unjustifiable neglect of the capacity of individuals to realize our most cherished values. The design of institutions clearly plays an important role in bringing about economic equality or equality of opportunity or the protection of basic liberties. But the actions of individuals can play an equally important role. If the members of society cultivate an egalitarian ethos that encourages them to limit their demands for payment, as Cohen suggests, we can expect to better realize our egalitarian values. The point is fairly general. If we espouse more libertarian values—a concern for the protection of self-ownership rights, for example—we can expect to achieve our aim more effectively if individuals cultivate a “libertarian ethos” that condemns the violation of others' natural rights. Institutions have a role to play in the realization of both libertarian and egalitarian (and liberal-egalitarian) values, but so do individuals. Our commitment to these values would therefore appear to entail a commitment to principles that apply equally to individuals and institutions (even if the particular consequences differ).

This is Murphy's criticism in a nutshell. It should be clear that what is at stake here is not simply the adequacy or accuracy of Rawls' notion of the basic structure, nor any of the other details of Rawls' argument from the original position. What is at issue in Murphy's critique is Rawls' thesis that we can have normative *political* principles—or, to put the point more broadly, a conception of public reason—that are not simply a consequence of a moral or ethical doctrine. What Murphy refers to as Rawls' dualism is Rawls' political autonomy: the thesis that the conception of public reason that is to guide political decision-making in a democratic society cannot simply be derived from one's preferred moral or ethical theory. Murphy's thesis is that whatever normative political principles we have must either at the same time be principles for individual conduct or be a consequence of more general normative principles that have

consequences for the conduct of individuals as well. Political principles can never be autonomous because they always derive their normative force from a concern with more general and not specifically political values.

The crucial assumption in Murphy's argument is that Rawls (like Murphy) sees institutions and the state in particular as *instruments* for realizing fundamental and perfectly general (i.e., not specifically political) values. The fact that the principles of justice are to principles to guide the state—i.e., for collective democratic decision-making—imparts nothing distinctive of normative importance to the equation. Political action is for the sake of achieving our general values, values that apply to the moral as well as the political. This *moralist conception of the state* and of the political in general is quite common, and is in many ways the intellectual descendent of theocracy. The state serves the purpose of bringing about general moral values just as the state has often been seen (and is often still seen) as the instrument of religious purposes. On this way of thinking, whether our orientation is moral or religious, political principles are generalizations about the strategies this institution—the state—ought to employ in realizing our cherished values. The fact that it is the action of the state that we are talking about (rather than individuals or sub-political organizations) is of no importance except in the fact that the peculiar power of the state and its distinctive instruments (the police, the military, etc.) allow the state to realize our fundamental values in ways that individuals or sub-political organizations generally cannot.

The best example of a political theory that employs a moralist conception of the state is classical utilitarianism. Utilitarianism tells us to maximize the overall utility. What this requires of an agent depends in part on what that agent is capable of doing. Utilitarianism does not hold me responsible for not acting in particular utility-maximizing ways if it is not possible for me to act in those ways. What utilitarianism asks is that I choose from amongst the actions I could conceivably commit the actions that bring about the greatest overall utility. From the utilitarian

perspective, the state is distinctive because it is so much more powerful than the average individual and therefore is capable of performing actions that no other social agent could be expected to perform. This is what makes political philosophy a distinctive endeavor from the utilitarian perspective. The distinctive *quantitative* properties of the state—*it has more*—make it worthy of its own set of normative principles (principles which are, of course, only consequences of the more general principle of utility).

The public reason approach that Rawls employs clearly does not look on the state as a moral instrument in the way that Murphy does. The need to elaborate a conception of public reason is motivated by a concern with making political action *democratic*. We want the deliberation that guides political decision-making to be such that all parties can at least regard the reasons behind political decisions as reasonable. This is not a general value that could equally be applied to the actions of individuals. It is not a fundamental value to be realized through the actions of the state as well as the actions of individuals. It is a value that can be realized in a decision-making process oriented toward producing democratically acceptable outcomes. This democratic aim runs counter to the moralist interpretation of the state. On this democratic view, it matters *how* the state acts and not just what the state realizes through its actions.

Murphy's objection to Rawls supposes that what normative principles bind the state bind it only in virtue of its capacity for realizing general and essentially moral values. The objection therefore ignores the central aim of Rawls' argument, viz., to elaborate principles that are to function as a conception of public reason for democratic deliberation, and whose adequacy therefore depends not in their capacity to guide the state in realizing a more fundamental set of moral values but in their ability to specify reasons that all deliberating parties could accept as reasons. This democratic aim gives political principles—the conception of public reason—a function that is not determined by values we might expect to realize through the actions of

individuals. The democratic state as Rawls understands it is not an instrument to *any* purpose; it is an agent that insofar as it is democratic is bound to act on a conception of reason.

The Democratic Aim

A similar point arises when we consider another criticism of Rawls, one offered by Charles Larmore, although the criticism itself is very different.¹⁴⁰ Larmore focuses not on Rawls' isolation of normative political principles but on Rawls' thesis that political justification proceed in terms of reasons that all parties can accept. Larmore's contention is that this restriction must be motivated by a moral concern and that consequently Rawls cannot claim that his political principles are independent of morality and ethics. They are grounded in morality insofar as they are the product of an essentially moral argument, i.e., an argument that begins with the principle Larmore refers to as *respect for persons*.

Larmore reveals the "underlying moral foundations"¹⁴¹ of Rawls' demand for a freestanding political account.

Moral principles fall into two groups. With some we believe people can be rightly forced to comply, but others we do not regard as valid objects of enforcement, whatever disapproval or even outrage we may feel when they are violated. The first group alone has the status of political principles.¹⁴²

The question of which principles can count as political principles is thus a question of tolerance. Of the moral norms we believe to be valid, some we believe others can be coerced into following while others we believe ought not be coercively enforced. What we require is a principle for distinguishing between the two types of norms: those whose violation we will tolerate and those whose violation we may meet with coercion. Larmore's suggestion—and this suggestion is

¹⁴⁰ Charles Larmore, "The Moral Basis of Political Liberalism."

¹⁴¹ "The Moral Basis of Political Liberalism," p. 599.

¹⁴² "The Moral Basis of Political Liberalism," pp. 606-7.

intended to be an interpretation of Rawls—is that we look to the overlap of the moral principles endorsed by reasonable citizens. We should be willing to coercively enforce only those moral norms that other reasonable citizens also endorse.

This distinction is presented as the basis for Rawls' requirement that our conception of public reason have a freestanding justification. "While we want a political conception to have a justification by reference to one or more comprehensive doctrines, it is neither presented as, nor as derived from, such a doctrine applied to the basic structure of society. . . . [A] distinguishing feature of a political conception is that it is presented as freestanding and expounded apart from, or without reference to, any such wider background."¹⁴³ Larmore interprets this as follows. The political conception must draw on for its justification only those basic moral principles that all citizens could agree on. Otherwise it could be argued that the conception is the product of applying some particular comprehensive doctrines (or class of similar doctrines) to the basic structure. But then the question arises: What reason we have for restricting the basis of political justification in this way? What justification do we have for excluding at least some of the moral principles we endorse and agreeing to draw only on those principles all citizens endorse? Larmore's answer is his principle of *respect for persons*.

According to Larmore, the animating principle behind the distinction between coercible and non-coercible moral norms (and hence between the principles that can provide justification for an account of public reason and those that cannot) is Kant's dictum that we treat others always ends in themselves and never simply as means. We treat others as means alone, Larmore suggests, when we coercively impose on them norms they do not accept. This Kantian principle, which Larmore refers to as the principle of *respect for persons*, provides a moral basis for Rawls' requirement that political principles have a freestanding justification. This principle

¹⁴³ PL 12.

gives us a moral basis for refusing to justify political decisions on moral principles that not all citizens accept.

The point of Larmore's argument, as I said above, is to demonstrate that at bottom the Rawlsian requirement that the justification of political principles be freestanding is founded on a moral principle. The justification of political principles can therefore be said to be "freestanding" only in a somewhat attenuated sense: it stands free of the particular moral (and ethical and religious) doctrines that citizens endorse, but it rests firmly on a moral principle (*respect for persons*) that reasonable citizens may or may not universally endorse. It is worth noting that Larmore does not take this to be a knock on either the principles of justice as fairness or the project of political liberalism more generally. He instead presents it as an objection to the Rawlsian treatment of the principles of justice as articulating a conception of public reason that is autonomous of morality. What is at issue in Larmore's critique is the public reason interpretation of the autonomy of the political. If Larmore is correct about the "underlying moral foundations" of Rawls' argument, then public reason is not autonomous from morality: the idea of public reason as elaborated by Rawls¹⁴⁴ trades on a fundamentally moral distinction between public and non-public.

There are number of questions to ask about Larmore's argument. The first point we should get out of the way is obviously: Does the Kantian principle of *respect for persons*—understood to be Kant's imperative that we treat others always as ends and never as means alone—really support restricting the field of coercive norms to those that all (reasonable) parties could accept? If the Kantian principle cannot do the work that Larmore says it can do, then his argument never really gets off the ground. I have my doubts about this part of the argument. For starters, most would agree that using coercion to prevent theft is justified even when the would-be thief does

¹⁴⁴ And Habermas, as Larmore argues in the same paper.

not believe that there is anything wrong with theft. We cannot assume that just because he does not believe that theft is wrong he must therefore be unreasonable, so we cannot justify ignoring him on those grounds. Are we treating the thief as a means alone when we prevent him from thieving? We may be treating him wrongly (because perhaps he's right and there's nothing wrong with theft), but it doesn't seem like we're treating him as a means alone. Maybe there's a subtle Kantian answer to this question, I'm not sure. But I don't want to dwell on the point as I think there are more important questions about Larmore's argument. Suffice it to say that it's not obvious to me why Kant's dictum should have the implication Larmore says it does.

Next, Larmore tells us that the distinction between norms that can provide the foundation for political principles and those that cannot is a distinction between norms that can permissibly be coerced and those that cannot. The *respect for persons* test is a test for determining which norms can be coercively enforced. The implication is that the only important distinction between the political from the moral in general is coercion. Even if we accept that the *respect for persons* test is the right test for determining which moral principles may permissibly be coerced, the test is a test for singling out *political* principles only if what is importantly distinctive about the political is that it employs coercion. The state coerces; it is not always permissible to coerce, even when the norms we coercively enforce are valid; therefore we must restrict the class norms when we move from the moral to the political. Two questions come up immediately: (i) Is coercion the only thing that distinguishes the political from the moral? and (ii) Is the issue of coercion one that arises only when we move to the political?

Take the second question first. Clearly, the issue of coercion does not arise only when we move to the political. The state is not the only entity that uses coercion. Individuals do as well, and individuals must also ask themselves which of the moral norms they believe in may be coercively enforced on others. Indeed, there is nothing intrinsically political about the question

Larmore asks of the principle he answers it with. It is a moral question that arises for individuals, states, and everything in between insofar as the agent in question has moral beliefs and may potentially encounter situations requiring the use of force. This is important to see: Larmore's argument is an argument about the political only insofar as political bodies (states) are among the things that use coercion, and Larmore's conclusions (if valid) do not apply only to political bodies.

This leads us back to the first question; viz., is coercion the *only* relevant factor that distinguishes the state? Rawls' contention is that democratic deliberation ought to be based on a conception of public reason. Rawls also contends that the state exercise of power ought to be democratic in this way. The exercise of state power is the subject of a conception of public reason because the decisions of the state affect us all. It is, of course, true that the state employs coercion, a fact of which Rawls is no doubt aware. The question is, is it simply in virtue of the state's employment of coercion that Rawls concludes that the state's decision-making ought to be constrained by a democratic conception of public reason? That is, is the fact that the state employs coercion the only reason for the line Rawls draws between the moral, ethical, and religious forms of reason that we employ in determining our own actions and judging individuals and the public reason that is to guide democratic decision-making? I think it must be clear that the fact that the state employs coercion is not sufficient to explain this distinction. Rather, Rawls' distinction is based on a concern for making state decisions *democratic*. Now, of course, we could argue that Rawls' concern for making state decisions democratic is motivated by the fact that state decisions are backed by coercion, but this does not undercut the point that Rawls' democratic concern is a distinct concern with distinctive ramifications. We can argue that the only relevant difference between the actions of the state and the actions of the individual is that the

former but not the latter are generally backed by the threat of coercion simply ignores an important (possibly the *most* important) aspect of Rawls' argument.

This brings us to a final point about Larmore's argument. Even if we concede that Larmore has given *an* argument for requiring that political principles have a freestanding justification (that is, if we set aside questions about the implications of the Kantian *respect for persons* principle), this is not sufficient for us to conclude that Larmore has given *Rawls'* argument, that he has drawn out the "underlying moral foundations" of political liberalism. And we clearly have reason for thinking that he *hasn't* given Rawls' argument. Rawls has an argument that begins from the importance of democratic decision-making and the public reason interpretation. While there may be a moral basis to a view like Rawls' political liberalism, the moral basis that Larmore identifies—the principle of *respect for persons*—is not the basis of Rawls' actual argument.

What this demonstrates is that if we don't see how Rawls' argument is built on a concern for making political decision-making *democratic*—and not simply built on concerns about (e.g.) the coercive enforcement of moral norms in a pluralist society—then we miss something very important about Rawls' argument and the public reason interpretation of political autonomy generally. This is why I have examined Larmore's argument. It allows us to bring into focus one of the more important features of Rawls' public reason view, viz. the democratic imperative to make collective decision-making the decision-making of the collective's members by confining democratic deliberation to reasons that all parties can accept as reasons. The value of *democratic* decision-making is, on this view, what distinguishes on its own the political from the moral. This democratic concern is not the product of principles regarding how we should treat individuals, such as the Kantian dictum that we treat others as ends and never as means alone.

Rather, it is this democratic aim that sets public reason apart from the various existing moral, ethical, and religious reasons.

Tolerance and the Scope of Public Reason

The idea behind formulating a distinct conception of public reason is, in part, that there are certain reasons and considerations that should not play a role in collective decision-making. The scope of reasons that are admissible in collective decision-making must exclude certain sorts of reasons which, if given free play, would likely undermine the democratic-collective character of the decisions. To take an obvious example, it seems intuitively clear that in democratic deliberation one participant may not attempt to sway another by threatening that other participant with violence. That one will suffer violence if one does not change one's mind is not an acceptable reason in democratic deliberation. If reasons of violence and reasons involving threats of violence are allowed free play in deliberation on collective action, then it becomes very difficult to regard the agreements and decisions reached as collective and democratic

As I have noted several times, Rawls' veil of ignorance is a way of formalizing democratic restrictions on which considerations can play a role in collective political deliberation. Obviously, the veil of ignorance involves much more substantive and controversial restrictions than the prohibition on reasons of violence and threats of violence described above, but the idea is the same. In democratic deliberation, Rawls claims, one should not be able to offer as a reason in favor of a particular proposal that it would favor citizens of one's own race or sex or religion or economic position. A conception of public reason in which fundamental political decisions are going to be made must therefore exclude such reasons. The veil of ignorance achieves this:

denying a person the knowledge of his race denies him the opportunity to present his race as a reason in deliberation.¹⁴⁵

Rawls' later work takes this same point a step further. In *Political Liberalism*, we find the requirement that the conception of public reason must have a "freestanding" justification: it must not depend on any particular moral view for its justification.¹⁴⁶ While Rawls believes that a political conception of justice (a particular conception of public reason) must be something that can be embedded in most if not all reasonable comprehensive doctrines, the conception must be "presented as freestanding and expounded apart from, or without references to, any such wider background."¹⁴⁷ What this translates into is a constraint on the sorts of reasons admissible in deliberation (hypothetical or actual) on political questions. Controversial moral, ethical, and religious reasons cannot play a role in democratic deliberation. To the extent that they do, we end up with a political justification that is tied to this or that moral or ethical or religious doctrine. Political decisions are grounded in reasons that do not count as reasons for at least some members of the society and thus cannot, democratically speaking, be thought of as *their* decisions.

Rawls tells us that in imposing these constraints on democratic deliberation the public reason view "applies the principle of toleration to philosophy itself."¹⁴⁸ And indeed the traditional conception of liberal tolerance—e.g., religious tolerance—provides the model for this sort of restriction on reason-giving. Liberal religious tolerance requires that political decisions not be

¹⁴⁵ Obviously, the veil of ignorance is not the only way to restrict admissible reasons. Judges and juries are forced to do this all the time, determining which considerations are appropriate to the decision at hand and excluding whatever reasons are deemed inadmissible. Rawls' reliance on the veil of ignorance is a consequence of his decision to fill out his conception of public reason by means of a rational choice situation. This issue will be discussed in greater detail in the next chapter.

¹⁴⁶ *PL*: pp.12-3.

¹⁴⁷ *PL*: p.12.

¹⁴⁸ *PL*: p.10.

motivated by controversial religious concerns, i.e., religious considerations that do not count as reasons for all.¹⁴⁹ It requires that in our political deliberations we not appeal to controversial religious reasons. There are many possible motivations for such a conception—that it is necessary for stability in a religiously pluralistic society, that the imposition of religious views on unbelievers violates their autonomy, and so on. But one available motivation for the liberal conception of religious tolerance is a concern for making political decisions the democratically collective decisions of citizens as a whole, regardless of their religious convictions. If this is our motivation, we can easily see the impetus for extending toleration to “philosophy itself,” i.e., to the moral and ethical principles that make up the background of most normative political theories. The call to apply the principle of toleration to philosophy itself is thus a call to extend the restrictions on religious reasons to moral and ethical reasons as well.

Ronald Dworkin has raised an objection to the restriction on reasons implied in this conception of tolerance.¹⁵⁰ Dworkin argues that Rawls’ public reason approach results in an untenable “discontinuity” between the “personal perspective” of the citizen (roughly, the interests, moral principles, and ethical beliefs that guide the citizen’s “everyday” or “normal” decision-making) and the citizen’s “political perspective” (roughly, the beliefs and principles that guide the citizen’s thinking about political action). Dworkin argues that if we accept the public reason view we are forced to *prescind* (Dworkin’s word) from the reasons provided by our respective personal perspectives when we take up the political perspective. What would appear to be considerations relevant to political decision-making (in particular, moral considerations) must be ignored or denied from the political perspective. The essence of the problem, then, is that the public reason approach, by restricting the scope of admissible political reasons, puts the

¹⁴⁹ Another version of liberal religious tolerance would require that political decisions not be determined by *any* religious concerns, no matter how universally espoused. Such conception of tolerance would have a different motivation from the sort of tolerance I am concerned with here.

¹⁵⁰ Ronald Dworkin, “The Foundations of Liberal Equality.”

citizen in the position of having to act or judge *as though* certain actually very important considerations are either irrelevant or even non-existent.¹⁵¹

What kind of problem is this alleged discontinuity supposed to pose? Two possibilities come to mind. The first is that it is a problem of *motivation*. Citizens will not be motivated to support their political institutions or cooperate with its laws if the reason that guides political decision-making is one that ignores the considerations arising from the citizen's personal perspective. The second possibility is that Dworkin has presented us with a problem of *justification*. To the extent that the actions of the state are justified on a conception of public reason that prescind from the stock of available valid moral reasons, the actions of the state are likely to conflict with what we (some of us, at least) believe to be morally right. Public reason cannot justify collective action because public reason denies and potentially conflicts with relevant moral (or ethical or religious) considerations, and we will each be left with our undeniable "private" moral or ethical objections to "public" acts.

Going back to the earlier discussion of tolerance, we might wonder if Dworkin's objection misses the mark. At first blush, the standard liberal conception of, e.g., religious tolerance appears to require that we prescind from our religious conceptions when we make religious judgments. I may believe that blasphemy is impious and that the world would be a better place if there were no blasphemy. But if I adopt a political attitude of religious tolerance I will conclude that this is not a reason to take legal-political action against blasphemers. So on at least one common way of understanding liberal tolerance, it is essential for tolerance in political affairs that citizens be able to prescind from deeply-held beliefs within their personal perspectives when they ascend to the political.

¹⁵¹ "The Foundations of Liberal Equality," pp.199-209.

Dworkin's response to this is that the liberal's tolerance with respect to religion is founded on his moral, ethical, or religious views. The liberal is tolerant because he believes that all things considered—his moral, ethical, and presumably his religious beliefs—being tolerant is the right thing to do. Thus tolerance is the conclusion the liberal reaches after consulting the totality of those beliefs, interests, and commitments that make up his personal perspective. On this version of tolerance—what Dworkin refers to as “neutrality in operation”—denying religious reasons a place in the political perspective thus does not mean ignoring them or denying them their due respect.¹⁵² Religious reasons are left out of the tolerant liberal's political perspective because of the place these reasons are assigned in our personal perspective as a whole. Tolerance understood as “neutrality in operation” does not involve *prescinding* properly speaking: our political tolerance reflects the sum total of the contents of our personal perspective.

Dworkin contrasts this liberal neutrality with “neutrality of appeal,” a position he takes to be at the heart of Rawls' public reason view.¹⁵³ Neutrality of appeal requires that political decision-making proceed on the basis of reasons or principles that are capable of gaining wide support across various moral, ethical, and religious doctrines. On this interpretation of tolerance, we are tolerant when we appeal only to principles and considerations that we expect will have broad support, regardless of whether we think that arguments so formulated will yield the best conclusions. The supposed conflict between personal and political perspectives comes arises from this interpretation of tolerance. If I am forced to argue for a proposal on the basis of popularly accepted principles and considerations alone, leaving aside those beliefs and concerns that are central to my personal perspective, then I am clearly forced to *prescind* from my personal perspective when I move to the political. I am denying these heartfelt personal considerations a political place not because of the overwhelming weight of other considerations

¹⁵² “The Foundations of Liberal Equality,” pp. 300-5.

¹⁵³ “The Foundations of Liberal Equality,” pp.297-300.

arising from my personal perspective but simply because other members of society disagree with them. When we are tolerant of the religious beliefs in the sense that Dworkin approves (neutrality of operation), we are tolerant because we believe it's the right (or good or pious) thing to do. We have reasons for denying some of our reasons a political role, and we take these former reasons to be overriding. On the other hand, when we are tolerant out of a concern for neutrality of appeal, we deny any political role to certain of our moral or ethical beliefs simply because other citizens disagree with these beliefs. We are thus left believing that these shunned moral beliefs are both true and applicable to political questions, but deny them their rightful place because others think they are wrong. And the kicker, of course, that we are in all likelihood going to believe that the reasons these others have for disagreeing with us are not good reasons for doing so (or else, presumably, we would change our beliefs). This is what makes the whole thing so ridiculous: although I clearly think you're wrong in believing p , I am going to allow the fact that you believe it keep me from employing $not-p$ (which I believe) in my political perspective. Tolerance understood as neutrality of appeal thus appears to force us to ignore or deny important moral or ethical or religious convictions in a way that tolerance understood as neutrality in operation does not.

On closer inspection, however, Dworkin's argument breaks down. Dworkin distinguishes his brand of tolerance from Rawls' public reason by saying that on his view our tolerance is grounded in the moral and other beliefs that make up our personal perspectives. My tolerance represents the sum total of the contents of my personal perspective. Taken as a whole, these moral and ethical commitments require that I attach a certain weight to the facts about what other citizens believe (e.g., about religion). I believe that blasphemy is impious, say, and I believe the world would be a better place without it, but the fact that others do not share this religious belief requires that the state, out of tolerance, not act on the basis of my religious reason. The fact that

others disagree is important *because I am tolerant*, and the impact of this fact is that my religious belief about blasphemy cannot play a role in political justification.

So Dworkin's objection cannot be that on the public reason view we allow the facts about others' moral and ethical and religious doctrines to remove certain of our moral, ethical, and religious concerns from the arena of political justification. This is just what tolerance, as understood by liberals like Dworkin and as understood by Rawls, is.

Dworkin's objection must be that the Rawlsian concern with the moral and ethical and religious beliefs of others is *unjustified*. As Dworkin understands him, Rawls believes we should attend to the beliefs of other citizens for no adequate normative reason. Dworkin confuses the issue somewhat by saying that for Rawls neutrality of appeal is a "methodological axiom", but I think the main assertion is that Rawls has no normative justification for restricting the scope of admissible reasons in the way that he does. Perhaps Rawls is simply concerned with stability: political principles and political decisions with broader appeal are all things being equal going to be more stable and easier to carry out. But whereas Dworkin's rationale for tolerance (neutrality in operation) is founded in a broader moral/ethical perspective, Rawls' rationale for tolerance (neutrality of appeal) is either founded in nothing—a "methodological axiom"—or is founded on inadequate non-normative considerations such as stability.

From what has been said thus far in this chapter, it is clear that Dworkin is wrong on this point. The motivation for restricting public reason may not come from morality, ethics, and religion, but it would be hard to argue that it is non-normative. The democratic concern with finding a basis for collective decision-making leads us to restrict class of admissible political reasons to those that all parties can accept as reasons. If you think it's false that the world would be a better place without blasphemy, then *a fortiori* you won't be able to accept that consideration as a reason. This is the basis for Rawls' tolerance, and this makes clear that

Rawls' conception of tolerance differs from Dworkin's only in scope and not in form. The tolerance of public reason excludes a wider array of reasons from political arena, but it performs essentially the same function of constraining political justification on the basis of overriding normative concerns.

On the liberal conception of tolerance Dworkin espouses, tolerance does not force me to "prescind" from my religious views when I take up the political perspective because religious considerations (controversial ones, at least) do not apply to the political. There is no prescinding because religious reasons are not political reasons. If we accept Rawls' view about the requirements of democratic decision-making, then we can say the same about controversial moral and ethical reasons. These reasons are not political reasons, however much they may appear to be. Consequently, denying them a place in political decision-making involves no prescinding, no more than liberal religious tolerance requires us to prescind from our religious perspectives.

This handles Dworkin's problem of discontinuity as a problem of justification. As I mentioned earlier, we could also interpret Dworkin's criticism as pointing to a problem with *motivation*: the lack of continuity between the personal and political perspectives leaves the citizen with inadequate motivation to support and cooperate with democratic laws.¹⁵⁴ We are now in a position to give two responses to this argument. First, if there is no problem of justification then the fact that some people may have a hard time finding democratic law that is not supported by certain of their moral or ethical beliefs sufficiently compelling is, at the very least, *less* of a concern. Second, the comparison between Rawls' public reason and the religious tolerance that Dworkin himself endorses demonstrates that public reason should provide no more motivational problem than religious tolerance. It is only if we interpret Rawls' public reason

¹⁵⁴ See p. 197 above.

view as an expression of “neutrality of appeal” that any distinctive motivational concern arises. But as we have seen, that is not the view Rawls endorses.

The public reason view constrains the scope of admissible political reasons in much the same way that liberal tolerance does, although it excludes a much broader class of reasons. What separates the public reason view is that its restrictions on admissible political reasons derive from a democratic concern with making collective decisions the decisions of the collective’s members, whereas (according to Dworkin at least) the liberal conception of tolerance is the product of “a strategy [that] begins in ethics.”¹⁵⁵ Under conditions of moral, ethical, and religious pluralism, Rawlsian tolerance entails that political justification cannot come from contentious moral, ethical, and religious doctrines. Dworkin’s objection arises from the misconception that Rawls’ “neutrality of appeal” is either founded on non-normative concerns (e.g., stability) or is simply a “methodological axiom.” Once this misconception is dispelled, however, we see that the disagreement between Rawls and Dworkin is really about the normative basis for tolerance and the value and interpretation of our commitment to democracy.

I have examined these four objections to Rawls’ public reason account because I think each objection highlights an important aspect of Rawls’ overall view that has been misunderstood (and not just by the authors I have examined). The purpose of this investigation has been more elaboration than defense, although I hope that my explanation of Rawls’ view has gone some way toward defending it. I would expect that each of these objections could be reformulated in light of my comments, but then at least the battle lines would be clear. As I understand him, Rawls’ starting in *A Theory of Justice* and continuing through to the later “The Idea of Public Reason Revisited,” is to elaborate a conception of public reason and explain the role this

¹⁵⁵ “The Foundations of Political Equality,” p. 298.

conception is to play. This conception of public reason is to guide democratic deliberation—whether through parliamentary procedures, the system of checks and balances between branches of government, through the institutional rules governing administrative agencies, or by means of some other political form—in such a way that collective decisions can truly be said to be the decisions of the members of the collective. This democratic aim animates Rawls’ argument from the demand for a freestanding justification to the construction of the original position to the determination of principles of justice themselves.

Rawls’ aim is not to construct principles for the efficient implementation of moral values, nor is it to draw a moral distinction between coercible and non-coercible moral norms, nor is it to convince us to surrender our deeply held moral or ethical principles simply because there are others who disagree with them. The common thread that runs through the Rawlsian responses to all of these objections is that the fact that we are concerned with democratic decision-making—with the democratic interpretation of collective action—means that we must take up a normative perspective (the perspective of public reason) that is distinct from the perspectives of morality, ethics, and religion and their associated values. This is the public reason interpretation of the autonomy of the political. The democratic ideal demands a separation of the reason that guides collective decision-making from the reason of morality or ethics or religion. Whether or not moral reasons (for example) play a role in democratic decision-making, they cannot play a role on the basis of their moral credentials alone. They can play a role only insofar as they can count as reasons for all those whose collective decisions these are to be.

Morality, religion, metaphysics, all the rest of ideology and their corresponding forms of consciousness, thus no longer retain the semblance of independence.
-Karl Marx and Friedrich Engels

VI. On the Very Idea of Political Justification

Whatever their other merits and insights, the arguments offered by Machiavelli, Bodin, Hobbes, and Schmitt all fail to explain how political decision-making could be justified or how the autonomous state could be legitimate. All of these authors designate distinctive political concerns or functions that can only be attended to by an entity or by agents who are freed up from the constraints of morality, religion, and class concerns. In each of these arguments, the autonomy of the political is the *non-constraint* of political actors or entities in some respect. In Machiavelli it is the non-constraint of the political parties and the prince, along with the abandonment of any expectation that the political interests of society can be met by any self-conscious orientation toward their satisfaction. In absolutism it is the absence of institutional or popular control on the sovereign's action. The political is autonomous insofar as no one is in a position—in terms of power or in terms of authority—to constrain the sovereign's decision-making. And in Schmitt the autonomy of the political consists in the necessity of freeing up the political entity from moral or other constraints so it can attend to the enemy. The political is autonomous insofar as it is unconstrained in the exercise of its function. It is true, as I noted, that Schmitt at times appears to suggest that there could be an alternative positive account of political justification based on “existential” reasons, but as I argued in chapter IV this suggestion does not pan out. What we are left with is three versions of the thesis that the political is autonomous, each of which interprets political *autonomy* as the absence of constraints on political action in some respect.

In contrast, the Rawlsian interpretation elaborates a positive account of specifically *political* constraints on democratic decision-making. The Rawlsian autonomy of the political is not the independence of the political actor from moral or religious or other constraints; it is the independence of the distinctively political form of justification from the considerations employed in moral, ethical, religious, or other non-political reason. As a consequence, the Rawlsian interpretation of the autonomy of the political does not fall prey to the same sorts of problems as the other interpretations. The autonomy of the political on the Rawlsian interpretation does not deny us the means to evaluate political actions. On the contrary, Rawls' account of public reason provides us with an autonomous standard by which to assess and critique the actions of the state that is arguably a *better* standard for evaluating the state's actions than those standards proposed by traditional moral, religious, or class-partisan views. In providing a plausible standard of political assessment, Rawls' interpretation succeeds where the others fail. It provides us with a standard of political evaluation. It provides us with a way of making political authority legitimate. It provides us with an account of political justification and legitimacy that is plausible. And it does so without forcing us to allow the state or the political actors the freedom to act in an unconstrained manner.

What is it that allows Rawls to present an account of political justification that is both plausible and, in one sense at least, autonomous of the various moral, ethical, and religious doctrines at work in society? The thesis I defend in this chapter is that Rawls is able to present a plausible account of political justification, but in so doing ensures that his public reason account is not an example of the autonomy of the political in the sense I outlined in the introduction. Rawls' view does not represent a rejection of instrumentalism, but rather presents an alternative (and in some sense autonomous) conception of how the state should be used as an instrument for bringing about a particular part of society. This conclusion brings us to another, deeper,

conclusion about the autonomy of the political, viz., that the very idea of a plausible standard of political justification or political legitimacy depends on treating the state as an instrument for purposes and goals endorsed by individuals in society.

Public Reason, the Original Position, and the Principles of Justice

The first point to make is that Rawls' account of public reason is not in any sense "intrinsically" about the state. It is applied to the state by Rawls in the original position argument. It does not *apply to* the state in some deeper metaphysical sense. This is an important point.

The general and abstract account of public reason says that democratic decisions ought to be based only on those considerations that all parties can accept as reasons. This conception of public reason provides a partial account of how collective power ought to be exercised. It is an interpretation, or part of an interpretation, of democratic justification. This account of public reason is a model that can be employed by actual groups of people in their deliberations about collective decisions. It could also (as presented here at least) serve as model of individual decision-making, provided the individual in question is in a position to know what would count as a reason for other affected parties. What the general and abstract account of public reason specifies are the admissible sorts of considerations in decision-making that is, so Rawls argues, democratic.

The general and abstract model of public reason is something used by Rawls as a way of working out what the state ought to do. This is the role of the original position. The original position restricts the range of admissible considerations so that the parties' conclusions about how primary goods should be distributed within the basic structure are fair and democratic. Public reason is, in this sense, *applied* to the state. Rawls applies public reason to the question of the state's role in the distribution of primary goods in that he argues that *this* standard—the

standard of public reason—is the standard that should be employed in determining how the state should act (in this regard at least). If we want to know how the state should act, we should ask ourselves what principles would be agreed on within deliberation guided by public reason.

What Rawls does not do is distill the essential or most fundamental features of the state (or the democratic state) and argue that the fact that the state has these essential features entails that its decisions must be made on the basis of public reason. Indeed, Rawls' political account offers no explanation of the fundamental nature or natural origins of the state. In this respect he differs from his social contract predecessors such as Hobbes, Locke, and Rousseau. All three of these earlier contractarians use the social contract in part as a way of *explaining* the state. The contract story tells us how the state arises and what its fundamental properties are. Each takes the social contract to reveal something important about what the state *really is*, and each concludes that this something has significant implications for what the state is obligated to do and what the state is obligated not to do. Rawls does not use his contract argument in this way. He does not argue that the state is the product of a fundamental agreement on how to distribute primary goods within the institutions of the basic structure. Nor does he offer any other “fundamental explanation” of the state. Most importantly, he does not claim that the state is, in reality if not apparently, the agent of citizens' collective action: the actions of the state are not *already* our actions in virtue of the state's essence. The original position and the principles that flow from it are not an analysis of the *real nature* of the state; they are a critical perspective from which the state's actions can be assessed and which *could* guide the state in its decision-making. Public reason is a model of democratic justification that should be applied to the state, not an interpretation of the democratic nature the state already has.

Thus on Rawls' argument public reason does not *apply to* the state (in the sense of *being true of* the state) in virtue of the state's nature. It is an account of democratic decision-making

applied to the state by us insofar as we believe that the state is something that ought to act democratically. The argument is not that the state is (really, naturally, intrinsically) democratic, and public reason provides the best or most appropriate account of this democratic character. It is that we (if we accept Rawls' argument) believe the state should be democratic and this provides the best interpretation of what it is for decision-making to be democratic.

This is very different from the other interpretations of the autonomy of the political. Each of the other interpretations assumes that there is a particular function or character that falls on or applies to the state. The political is autonomous not because of how we *make* the state; it is autonomous in virtue of how the state (or the political interests or the political function) *are*. Machiavelli's argument for the autonomy of the political rests on the distinctive importance of the political interests, the stability and security of the political society. The pursuit of these political interests is the function of the state, a function that can be performed adequately only by the republic. We can accept his argument for the autonomy of the political only insofar as we accept that there are these political interests, i.e., that there is an interest in the stability and security of political society *per se* as distinct from the stability and security of that political regime that pursues our interests. Machiavelli abstracts from the particular uses to which class parties and individuals might put the state (the pursuit of class interest or the pursuit of individual interest) and concludes that there are these abstract political interests. He then further concludes that given class conflict, etc., these interests can only be attained by a republican regime. But it is in virtue of the independence of these political interests from the particular interests of class parties and individuals that the political is fundamentally autonomous.

For Hobbes and Bodin, these same concerns about political stability and security are invoked to explain why the sovereign must be unconstrained by other institutions and social actors and why his authority must be absolute. This is clearer in Hobbes than in Bodin. The state arises out

of the social contract and the desire of each agent to exit the insecurity of the state of nature. The social contract explains the fundamental nature of the state (or of the sovereign's position), and this fundamental nature requires the sovereign's autonomy. The same sort of argument appears in Bodin. The sovereign is autonomous because sovereignty must fall undivided on a single agent. Insofar as any agent is going to be the sovereign—be the lawmaker in society—that agent must be autonomous of any other agents or institutions. What the sovereign does is guarantee a stable system of social cooperation. The sovereign is autonomous because this is what he does.

Schmitt's argument is that there is a distinctive political function that must fall on some social institution and traditionally falls on the state. Schmitt's concept of the political is not the product of an analysis of the state, but it is (as I argued in chapter IV) a product of an analysis of society and its essential needs. Society cannot exist (or cannot continue to exist) without the protection of a political entity that pursues and neutralizes its enemies. The autonomy of the political is a consequence of the way society is, not the consequence of a particular kind of society (e.g., a society we might actually want to preserve).

We could put the point this way: In each of the previous cases (Machiavelli, Bodin, Hobbes, and Schmitt) the autonomy of the political is the consequence of an *analysis* of society as a whole or the state/sovereign itself. Where there is society, there must be such a function and that function is necessarily autonomous. Where there is a sovereign, that sovereign must be autonomous. Where there is a political community, there are these political interests and they are autonomous of the particular class and individual interests at work in society. The autonomy of the political, on these views, is not an account of how society or the state *ought to be* or about how society or the state would be best. What makes the political autonomous is in no way *normative*.

The decisive difference between these arguments and the Rawlsian argument should now be clear. Rawls' application of the public reason account of democratic decision-making to the state does not rest on an analysis of the state nor does it rest on an analysis of the essential needs of society as a whole. Again, it isn't that the state is, deep down, really democratic, and public reason is the correct interpretation of this democratic essence. It's that public reason provides a plausible account of democratic decision-making and *ought* to be applied to the state.

The Autonomy of the Political and Political Justification

One important ramification of this approach to the autonomy of the political is that it allows Rawls to present a plausible positive account of political justification. As we have seen, this is something the other defenders of the autonomy of the political all fail to do.

The autonomy of the political, on the arguments of Machiavelli, Bodin, Hobbes, and Schmitt, confronts us as a fact about the social-political world. It has to do with the nature of society or political society or sovereignty. This autonomy is not itself something normative. It just *is*. We could put the problem that arises for these views in the following way: We have reason to be moved by these arguments only if (or to the extent that) we are moved by the concerns that the political—as analyzed by these various authors—addresses. But it is not easy to be moved by these concerns, abstract as they are. If we believe that it is something that *ought to be* (or something that in being is normatively significant), it is only because we believe that society or sovereignty or the state are, in the abstract, something that *ought to be*. But this is a hard thing to think. It is a hard thing to think because although stability and security may matter to us they generally matter to us *in the particular*: we care about the stability and security of *this* regime, but not *that* one. We care about the regime that pursues our interests or addresses our concerns, not about the one that walks all over us or violates our basic values. In short, we are rarely going

to be interested in political stability and security *whatever form the political regime in question takes*, and even less frequently are we going to conclude that a regime is legitimate and its actions justified solely on the basis of the fact that the regime ensures stability and security.

It is important to keep in mind that any argument from the autonomy of the political that proceeds from a political analysis (as the arguments of Machiavelli, Bodin, Hobbes, and Schmitt do) is going to have to settle on certain very *general* features of the political that explain political autonomy. Such an argument is compelling and can present *some* account of justification or legitimacy only in virtue of features of the state (or the political interests or the political function) *in the abstract*. And yet what we see from these views (those of Machiavelli, Bodin, Hobbes, and Schmitt) is that the state (or the political interests or the political function) *in the abstract* is simply not all that compelling. It does not provide a compelling case for legitimacy or political justification. Our normative beliefs about the state—that the state is legitimate or that its actions are justified—are generally based on the particulars of the state—what the state does, how it justifies its own actions—and not simply on the fact that *it is a state* or that it ensures stability and security or that it protects some society.

This gives us a general picture of why the non-Rawlsian arguments fail to deliver on any plausible account of political justification or legitimacy. They fail because we have insufficient reason to submit to political authority in general, in the abstract. If we have reason to submit to political authority, it is because the political entity pursues interests that are our interests, or acts in a way we find normatively acceptable, or protects a society we think worth protecting. The devil is in the details. If the autonomy of the political derives from a general analysis of the political (the state, the political interests, the sovereign, society as a whole), then it is unlikely to present us with reasons for supporting the political entity, for cooperating with its laws, for

finding its actions justified. All of these require evaluation of what the state or sovereign is actually doing.

The public reason view is obviously very different. Public reason is a standard of evaluation that we apply to the state and its actions. The political is autonomous because we believe it ought to be, not because it was already. The autonomy of the political is not derived from general features of society or the state, and so we need not assent to or accept the political on the basis of its abstractly *being society* or *being the state*. We endorse the democratic state and believe its actions are justified because they conform to an account of democratic decision-making that we endorse and believe ought to be applied to the state. Comparison with Hobbes makes the point clearer. In Hobbes the legitimacy of the state was forced to rest on the fact that the sovereign is the sovereign, what we in the state of nature would have agreed to establish. As we saw, the sovereign's legitimacy was (potentially at least) in tension with our own moral, ethical, religious, and self-interested views about how society should be and how the sovereign should behave. Accepting the sovereign's legitimacy meant, in effect, giving up our capacity to evaluate the sovereign on the basis of his particular actions. In Bodin's similar view, accepting the sovereign's legitimacy meant giving up the possibility of resisting the sovereign's actions on the basis of our moral, ethical, or religious evaluation. The Rawlsian view, on the other hand, is a standard for evaluating the state's actions and its interventions into society. It provides us with a means for assessing what the state does and acting to control it. And it applies to the state insofar as we apply it. It is not something we must accept insofar as we accept political authority generally. It is something we accept (as a standard of evaluation) because we think it is correct.

If we live under a political regime governed by public reason and we endorse the view that the public reason interpretation of democratic decision-making ought to be applied to the state, then we have normative reasons for complying with the particular decisions the state makes.

This much is obvious, but not insignificant. We have reason for complying and cooperating because we endorse the standard of decision-making that the state employs. We have reason for complying and cooperating with the state's demands because the state is constrained by that standard that we endorse (for the state). Our reasons for complying and cooperating are not simply that the state pursues its stability and security (and our compliance and cooperation are necessary for this task) or that the sovereign is the sovereign or that the state is pursuing its task of defending society against its enemies. In short, we have compelling reasons to comply and cooperate because we have applied a standard of political decision-making that we endorse to the state, rather than being forced to rely on the importance of the abstract political interests, or sovereignty in the abstract, or the defensive needs of society in general.

Rawls' account of public reason provides a plausible account of political legitimacy and justification not simply because of its content but more importantly because on this view political legitimacy and justification depend on what the state actually does and what the state actually pursues rather than the fact that it is the state or that it is pursuing its own defense or the defense of "the social essence." And this suggests that *any* plausible account of political legitimacy and justification would have to be a standard for evaluating the state that makes legitimacy and justification dependent on what the state actually does, and not just on its being the state or defender of society. The fact that the sovereign is sovereign is simply not enough to justify the sovereign's actions whatever he does, or give us reason to obey and not resist regardless of his actions. The defender of the autonomy of the political—the defender of one of the non-Rawlsian views—could certainly dispute the importance of justification or of legitimacy as I have understood it, but if we accept these requirements then we are compelled to give up on any interpretation of the autonomy of the political that derives that autonomy from features of *the state* or *society* in the abstract.

Public Reason in Society

What I want to argue here and in the next section is that the fact that the standard of public reason is a standard that is applied to the state (rather than, in some sense, already being true of the state) undercuts the thesis that Rawls' view is genuinely a version of the autonomy of the political. We can see this in two ways. First, public reason is a standard of justification that could potentially be applied not only to the state but to non-state phenomena, and we would have at least some reason to extend its application in this way. Second, if public reason is to be applied to the state then this presupposes some entity, e.g., *society*, that applies public reason to the state. Taken together, these two points undermine the claim that the public reason view represents a rejection of the instrumentalism I described in the introduction.

Within society, the patterns that arise from citizens' legally unconstrained choices exert a power on individuals—affecting their choices, opportunities, and economic standing—that no critical social perspective can deny. This issue is raised as a problem for Rawls by G.A. Cohen, and while I will not pursue his line of argument against Rawls I will rely on his account of the issue.¹⁵⁶ According to Cohen, the “informal” patterns in question—non-coercive norms, certain cultural practices, non-legal social rules—are distinguished by the fact that they obtain only insofar as individuals choose to conform their behavior to them. They are thus distinguished from formal or legal rules imposed on a population by an act of positive lawmaking and backed by the threat of coercive punishment. Examples of such informal patterns would include: generally-recognized yet non-coercive norms, rules of etiquette and protocol, many cultural practices, and in general the generic interpretations of individuals' needs, desires, and motivations that affect the decision-making of actors. Unlike positive laws, the issue of whether

¹⁵⁶ The line of attack I am drawing on in this paper is found in Cohen's “Where the Action Is: On the Site of Distributive Justice.”

these norms or rules obtain is not independent of the issue of whether individuals conform to them. The informal norm or rule obtains only to the extent that people (a sufficient number of them) go along.¹⁵⁷

These informal norms and practices are interesting from a normative-philosophical perspective because while they exert a significant power in society, it is not clear who we can point to as the *agent* of this power. The issue here is with *patterns* of individual actions and only indirectly (if at all) with the individual actions that constitute the pattern themselves. Patterns such as informal norms or social rules do not arise as a result of the actions of any particular individual. Generally speaking, the decision of any *particular* individual to conform or not to conform is entirely irrelevant to whether the pattern obtains. Consequently, the power that is exerted by the informal norm or social rule cannot be said to be exerted by any particular individual. At the same time, the many who conform do not (generally speaking) act as a coordinated collective body. Each makes his own decision, and the pattern is the sum total of these choices. Try as we might, it is hard to single out the agent we can hold responsible for the exercise of this informal social pressure.

The informal and non-coercive character of the informal norm or rule in no way detracts from its efficacy or social significance. As John Stuart Mill argues, these informal sources of power are capable of producing “a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating more deeply into the details of life, and enslaving the soul itself.”¹⁵⁸ The power of “public opinion” constrains the choices of individuals to much the same extent as positive law, albeit by different means and through different avenues.

¹⁵⁷ “Where the Action Is,” p. 20.

¹⁵⁸ John Stuart Mill, *On Liberty*: p. 4.

Whether or not this power to constrain makes the informal norm objectionable in itself, the effects of particular norms and informal practices is often a matter of genuine concern. G.A. Cohen's examples are those informal norms and practices that govern the family in many societies, including our own.¹⁵⁹ Norms and practices concerning the division of labor between men and women and informal rules that make for an unequal distribution of opportunities and resources among boys and girls within families have an obvious and undeniable effect on the lives of individual family members. The pattern of families' conformity to these informal rules and practices exerts a pressure on individuals to perpetuate these practices and rules in the particular cases, which in turn has clearly negative results for individual family members. The effects of these informal norms are arguably as significant, if not more significant, than the effects of positive laws governing the family (e.g., marriage laws, divorce and child custody laws, laws regulating parental leave, and so on).¹⁶⁰ The role that particular norms and practices play in determining individuals opportunities, resources, and conceptions of the good make these informal patterns a matter of *prima facie* normative concern.

It is important to realize that informal norms can have objectionable effects even when the individual actions that constitute the pattern are not clearly morally problematic in their own right. For instance, there are norms that govern the world of advertising according to which one should display skinny, scantily-clad women as the best way to sell products. Whether or not the individual company's decision to employ this technique in a particular case is morally objectionable, the effect of the pattern of individual choices to do so has a clear and clearly negative effect on women's self-esteem and (in many cases) physical health. The fact that this

¹⁵⁹ "Where the Action Is," p. 22.

¹⁶⁰ The question of the relative importance of informal and legal rules on an institution like the family is of course complicated by the fact that legal rules generally support or reinforce certain informal practices while discouraging others. The significance of these informal rules is nonetheless clear.

pattern obtains—the fact that it is *the norm*—is problematic in itself. To take another example, the norms that govern how individuals in our society should express their material success often have problematic effects. Take, for instance, the norm that says that the materially successful should drive large and fuel-inefficient vehicles. The fact that this pattern obtains—i.e., the pattern whereby people express their material success by driving large and fuel-inefficient vehicles—has unfortunate effects, both for the environment and for those living in the countries that provide the oil that fuels these vehicles. The individual’s decision to buy a the big SUV is not morally problematic in itself (or so it would seem to me); what is problematic is *that it is the norm* or, as we might put it, the *concrete fact* of the norm itself.

More generally, there are norms at work in modern capitalist societies that encourage those with rare talents to demand as much material compensation as the market will provide (insofar as patterns of individual economic behavior encourage individuals to accrue to themselves and their families as much wealth as possible). This is Cohen’s primary concern in “Where the Action Is.” While not clearly objectionable in the particular case—that is, while it is not clearly objectionable when the talented individual asks for higher pay because he knows he can get it—the pattern that arises out of such individual choices arguably has the effect of increasing material inequality in society.¹⁶¹ The informal norm—that is, the *pattern* of legally-unconstrained individual choices—raises concerns in its own right independent of any concern about any particular act that constitutes the norm.

At least some of the concerns that lead us to take an interest in how the state acts and how the state ought to act are also reasons for taking an interest in the role and effects of informal norms, practices, and social rules. For the purposes of this discussion we can divide our normative concern with the state into two branches, distinguished by the perspective we take when we take

¹⁶¹ Obviously, Cohen would disagree with this point, but that is the subject for another discussion.

up these concerns. On the one hand there is first-person (plural) perspective—*we* the state (or “we the people” or “we the community” or “we the righteous”). From this perspective we are concerned with the state’s actions because they are (or could be) *our* actions, our democratic-collective actions for example. The concern here is analogous to our moral concern with our individual actions (although there are clearly differences insofar as we are talking about collective rather than individual action). Just as I take a moral interest in my own actions because they are my doings we take a normative interest in (what could be) our actions because they are (or at least could be) our doings.

We also have concerns about the state from a third-person perspective. The state is a force in society that has effects on our lives, our plans, our liberties, and so on. The state is one agent or force in society among many that we as individuals or associations or corporations must contend with. The state is uniquely important, of course. It stands out from the other forces that I (or we) must contend with both in terms of its resources and in terms of its level of organization. And it is the power that these resources and this level of organization lend the state that make it the object of our concern from this third-person perspective. This power allows the state to intervene in our lives and our environment in ways that we cannot help but be concerned about. So from the third-person perspective the state is an object of concern insofar as it is one locus of power (among many) with the potential to have significant effects on our lives.

I will call these concerns, respectively, the “collectivist” concern (that of the first-person plural perspective) and the “liberal” concern (that of the third-person perspective). I use these particular labels not because I believe that collectivist and liberal views, however broadly understood, exhaust these two concerns but because collectivist and liberal views so clearly express the respective concerns. From the collectivist perspective, our concern with the state is a

concern is with our authority, our imperatives, our license. From the liberal perspective, our concern is with the fact and effects of the state's power.

Rawls' two principles of justice as fairness, and the general and abstract conception of public reason on which they are founded, represent one way of formulating the collectivist concern with the state. If the state's actions are our actions, then the state's actions should be guided by principles that we could agree to under appropriate deliberative conditions as represented by the conditions of the original position. But Rawls' public reason approach provides only one way of formulating the collectivist concern with the state. Obviously many answers have been proposed to the question of how *we* should employ political power: we ought to aim at equality in distribution, we ought to aim at the protection of individual rights, we ought to act as God would have us act, and so on. The collectivist concern is distinguished not by its specific content but by the fact that we are concerned with what the state does because the state's actions are (or could be or should be) *our* actions. The collectivist concern is given a democratic-egalitarian formulation on the Rawlsian public reason view, but the basic concern need not be either democratic or egalitarian.

Important as it may be as a way of presenting fundamental political questions, this collectivist concern cannot be our only concern with the ways in which power of the state is exercised. The liberal concern that sees the state as a (potentially very threatening) force in society must have a response in our political theory even if we believe that concerns about the tyranny of the state are ultimately going to be addressed through an account of how we should exercise political power. However this concern is ultimately addressed, the profound, systemic, and society-wide effects of the state's power are an issue which must be attended to. Given the pervasive effects of the state's power—how it impinges on our activities, how it affects our opportunities, how it determines our share of the social product, what role it plays in the

formation of our conceptions of the good—we have no choice but to be concerned with the state from this third-person liberal perspective.

It is these liberal reasons for being concerned with the state that also provide us with reasons for being concerned with the role and effects of informal norms, practices, and rules. The effects of these informal sources of power are similarly profound and systemic, and they are often (although not always) society-wide. As the earlier examples show, these informal patterns influence the distribution of resources and the division of labor within important social institutions, thereby influencing profoundly the liberties and opportunities of individuals. And as Mill notes, although they do not carry a legal and coercive sanction they often penetrate more deeply into the motivations of the individual, “enslaving the soul itself.” Finally, the norm, like the state, is “out there”. It affects us, constraining our choices, determining the distribution of resources and (perhaps most importantly) influencing our conceptions of the good. It is precisely because the existence or non-existence of the norm does not depend on *my* conformity or non-conformity that the informal norm or practice shows up as a concern from the third-person perspective. It is not mine or even (in the relevant sense) *ours*. The informal norm thus raises the same sorts of concerns as does the state when seen from the third-person “liberal” perspective.¹⁶²

I don’t want to argue that we are somehow compelled, out of a concern for consistency, to extend the scope of public reason in this way. But these norms clearly present *state-like* problems insofar as their effects are so profound and are frequently society-wide. Yet they are not states. They are not collective or coordinated agents of any kind. They are the product of individual actions, motivated from various sources (religious belief, moral concerns, “mere

¹⁶² This is not to deny that we often identify with the social norm or ethos as *ours* (“our way of life”). But insofar as these norms show up as the sort of problem highlighted we are interested in here they are not ours and we cannot take up the first-person perspective with respect to them. (Indeed, it is the fact that they are not ours to control or determine that makes for a problem.)

preferences” and so on). The problem of the informal norm thus gives us some reason for thinking that public reason could be extended into society. That is, it could be used as a standard for assessing certain important aspects of society. Such an assessment would not be an assessment of the individual actions that constitute the norm, much less the individuals whose actions constitute the norm. The problem is a problem that arises from these general *patterns* of behavior, and not a problem with the behavior itself.¹⁶³ But the application of public reason to these norms undeniably constitutes a critique of society and the “ways of life” (to use Schmitt’s phrase) that have a place within it.

As I discussed above, the standard of public reason is a standard we (if we accept the Rawlsian argument) endorse and apply to the state. What we see in this section is that public reason need not be an exclusively political standard of justification (i.e., a standard of justification to be applied *only* to the state). An examination of the problem of informal norms and our reasons for taking a critical interest in them put the standard of public reason in a new light. Rather than simply being a standard for assessing or guiding the actions of the *democratic state*, public reason provides us with a vision of a *democratic society*, one in which social power (like political power) is constrained and prevented from working in undemocratic ways. The possibility of such an extension of public reason is made possible by the fact that this is a theoretically independent standard that we agree (or that Rawls argues) should be applied to the state, and not an account of (or derived from an account of) how the state or the political interests or the political function really are.

State and Society

¹⁶³ So I am not arguing, as G.A. Cchen argues, that public reason or the principles of justice ought to be applied to the actions of individuals.

The standard of public reason, I have argued, is not an account of how the state really is or how the state really acts or even, in Hegelian fashion, what the state naturally moves toward. It is a standard which, if it is to be applied to the state, must be applied by us. We are the judges of the state, and we are the ones who ultimately control whether the state is democratic. This much, I think, follows just from the idea of public reason as an independent standard that can be used to assess and potentially determine the state's action. The political standard of justification requires some social actor or body in a position to judge and control the state.

In this way Rawls' view is much closer to the Lockean conception of civil society as the judge and controller of the state than it is to Hobbes' (or, on one interpretation, Schmitt's) conception of the state as the *precondition* of society and social cooperation. This is not to say that Rawls accepts the metaphysical picture of a civil society that arises independently of the state and then chooses to establish a political authority over itself. It is just to say that society or the people within society or some of the people within society must be the ones who *make* the state democratic (as understood by public reason) and who assess the actions of the state on the basis of the public reason standard.

What is clear is that the autonomy of the *state* that we find in the other versions of the autonomy of the political is not a feature of the Rawlsian view. The autonomy of the state is not the autonomy of the political, but the two are closely related. The autonomy of the state is clearest in absolutism. The autonomy of the political on this view is the autonomy of the sovereign. We can see the autonomy of the state in Schmitt's view as well. The state or political entity must be free of the moral, religious, and class forces at work in society if it is to fulfill its function. And it is even apparent in Machiavelli, although it is admittedly less clear. The republican state is clearly subject to the machinations and partial control of class parties, but the state has (in a sense) its own political interests apart from the class and individual interests

pursued through it. Admittedly this feature is not as pronounced in Machiavelli's view as it is in the others, but the autonomy of the state is nonetheless there.

Rawls rejects the autonomy of the state, and this rejection is part and parcel of his providing a plausible standard of political justification by which we can assess (and potentially control) the state's actions. This goes back to a point I made at the beginning of this chapter. Whereas each of the other defenders of the autonomy of the political interpret the thesis as entailing the *non-constraint* of the political actor or political entity or sovereign, Rawls' public reason presents an alternative account of how the state should be constrained. The Rawlsian view does not *leave the state alone*; it instead proposes to constrain it in an autonomous way.

The question that this raises is: Can we have the autonomy of the political without having the autonomy of the state? Let's return to the idea of *instrumentalism* to which I argued the autonomy of the political could be a response. Instrumentalism is the view that the state is an instrument for the achievement of social ends (e.g., religious or class ends) that could be achieved and will likely be worked toward by non-state means. Instrumentalism is most clearly seen in the religious fundamentalism that sees the possession of political power as a means to achieving a more pious or observant society, or the class-party perspective that sees political power as a means of achieving socioeconomic aims. Against instrumentalism I sketched the basic idea behind the autonomy of the political, viz., that the state or the political embody certain distinctive aims, interests, or functions, and the pursuit of these aims, interests, or functions required a certain autonomy for the state, political entity, or political actors. If we understand the autonomy of the political as a response to instrumentalism, then the autonomy of the state seems like only one way of ensuring that the state is not the instrument of any social agenda or movement. It makes sense to assert that the state is *unconstrained* by society and social forces, but it hardly seems necessary.

So we needn't conclude that the autonomy of the state is a necessary part of the autonomy of the political. This leaves open the question of whether or not the Rawlsian view is an example of the autonomy of the political. The differences between the Rawlsian autonomy of *reason* and the autonomy of the *state* that underlies the other views is worth noting. And the way in which Rawls' public reason is distinguished from accounts of political justification and legitimacy based on religious, moral, and class ends is also of great importance. But there is an important question here, one that requires that we stay focused on the original target of instrumentalism. So we could put the question thus: Is Rawls' view a rejection of instrumentalism, or does it in fact fail to meet the standard of the autonomy of the political set out in the introduction?

I think that Rawls' view is not an instance of the autonomy of the political, and I think it is important to see that it is not and why it is not if we are to gain any general understanding of the thesis that the political is autonomous. The Rawlsian view is not an instance of the autonomy of the political because the standard of public reason is compelling only as a way of achieving a society in which power is exercised in a democratic way, and this concern is perfectly general. It can be applied (whether or not we do so) to problematic sources of social power such as informal norms and practices. And it ultimately can only be applied to whatever it is applied by the members of society, through their control of the state or otherwise. Public reason provides one more, arguably one better, way of using the state's power.

However we use the state the state is a source of power that *is* used for particular ends. The state does not pursue stability and security in general or the preservation of society in the abstract, it pursues the stability and security of a regime that acts in particular ways for particular people, and if indeed it preserves society it preserves a particular society with particular qualities that we may reject or accept. The autonomy of the political asserts that there are these general values or concerns and that they should be the foundation for political legitimacy or justification,

and for this reason the autonomy of the political is inherently flawed. Public reason, on the other hand, is one more way of employing state power (and shaping society in general), although it may be better than others. It is a way in which social actors might control the actions of the state, and also a way that social actors might criticize or control the power exercised by informal norms. The standard of public reason is a standard by which we can ascertain not only the legitimacy of the state but also the legitimacy of those non-state forces whose effects are no less profound or pervasive.

It is reasonable to conclude, therefore, that the Rawlsian view is an instance of the instrumentalism to which I argued the autonomy of the political is a response. The public reason view sketches a picture of how society could be. It is a democratic society in which power is employed in ways that we all have reason to endorse. It is a picture of society that can be realized in part through the actions of the state (because the state is an important source of power in society) but also through critique and constraint of other sources of social power. What is more, it is a picture of society that can be realized only through the judgment and control of the state by society's members. The state, therefore, is one instrument for the realization of states of affairs that are social and that can be achieved through non-state means. This does not take away from Rawls' view in any way. Rawls' view stands or falls as a critique of other standards that could be applied to the actions of the state. The public reason account is undeniably autonomous in the sense of being autonomous of any particular moral, ethical, or religious comprehensive doctrine. But it is important to distinguish this "autonomy of reason" from arguments advanced by authors like Hobbes, Bodin, Machiavelli, and Schmitt.

The Failure of the Autonomy of the Political

The conclusions presented in this chapter are interesting less for what they tell us about Rawls' view than for what they tell us about the autonomy of the political in general.

Examination of Rawls' view brings out a tension between the thesis that the political domain is autonomous and the thesis that there is any plausible standard of political justification or legitimacy. The views of Machiavelli, Bodin, Hobbes, and Schmitt are clearly examples of the autonomy of the political. They are each in their own way rejections of instrumentalism. They present distinctive political concerns or imperatives that require that the state or sovereign be, in one sense or another, autonomous of the demands and imperatives and forces at work within society.

Yet each of these views decisively fails to deliver a plausible account of political justification or legitimacy. Machiavelli's political interests are not compelling, abstract as they are. Our concern with the survival of a political regime is in part (at least) a function of the quality and character of that regime, of what concrete interests it pursues, of who it favors, etc. The absolutism of Bodin really offers no account of legitimacy, and the Hobbesian view is legitimate only on the supposition that we have an interest in the existence of a sovereign *per se*, as opposed to an interest in a particular sort of sovereign who acts in accordance with particular normative principles. Finally, Schmitt's view rests on the importance of protecting society, but of course no one is interested in protecting society *per se*. They are interested, at best, in protecting a particular sort of society. Political justification or legitimacy requires something more, some more substantive values the state is pursuing or some more compelling principles that the state abides by.

The Rawlsian view provides a plausible account of political justification. This is public reason, an account of justification the content of which is not determined by any particular moral, ethical, or religious worldview. But public reason, as we have seen, is not really an

example of the autonomy of the political. The state's actions are justified or the state legitimate insofar as the state is acting to realize a certain sort of democratic society, a society that can be realized though non-state means. Rawls does not reject instrumentalism. He rejects certain undemocratic views about how the state's power should be used.

The fact that the non-Rawlsian views argue that the political is autonomous but fail to explain (plausibly) how political action could be justified or the state legitimate, while Rawls' view provides a plausible account of political justification without actually making the political autonomous, is telling. The idea behind instrumentalism was that the state's actions are justified insofar as the state pursues *our* interests or *our* concerns. For the politically-oriented religious fundamentalist, e.g., the state's actions are justified to the extent that they conform to religious rules or pursue states of affairs preferred by the religion in question. The autonomy of the political seeks to reject this view. The defender of the autonomy of the political must either reject notions of justification or legitimacy as I have understood them, or demonstrate that the justification of the state's action depends on something besides its pursuing my interests or concerns. But what does the defender of the autonomy of the political have on which to build such an account of justification? Clearly, only features or qualities of the state or political *in the abstract*. This is, after all, an account of the autonomy of the political, not a description of the autonomy of some particular regime. And then we reach the nub of the problem: our interest in the state *in general* or the political interests *in the abstract* are not particularly compelling. They do not provide for a convincing (or exacting) standard of justification, and they do not provide much in the way of reasons to cooperate. In uncovering these essential political features the defenders of the autonomy of the political have by no means uncovered what is important about the state (to us, down here), the things that make the state (from our perspective) good, valuable, justified, or legitimate. The things that make the state good, valuable, justified, or legitimate are

(largely, at least) features of particular states and not features of the state or the political in the abstract. And so the autonomy of the political fails in its efforts to provide an alternative account of political justification and legitimacy. There just isn't much justification for the state's doing what it is doing except that it is doing what matches our interests or concerns. The fact that it is the state, or that it pursues the state's essential concerns, just isn't going to be enough. In this respect, instrumentalism is right.

Conclusion

The question that the autonomy of the political raises is this: Could we have reasons for thinking the state is legitimate or justified in its actions if the state is not the instrument of a social, religious, class, or moral doctrine? That is, is there some other source of legitimacy and political justification besides these “social” views and interests?

What is available to the defender of the autonomy of the political, the theorist who argues that there is some such alternative source of political legitimacy or justification? For Machiavelli, it is the “political interests”: viz., the stability and security of the political regime and (to some extent) the society that that regime governs. As I argued in chapter I, these are insufficient. These interests are plausibly our interests only to the extent that we have an interest in the survival of the regime in question. But we are divided about what regime we have an interest in maintaining. That is the point of Machiavelli’s account of class conflict. The upper class wants a regime that pursues the interests of the upper class; the lower class wants a regime that pursues the interests of the lower class. We, the members of society, appear to have no interests. Or if we have some blank interest in the existence of a political regime *per se*, this is not sufficiently motivating to compel us to see the republican regime as legitimate or justified (or more legitimate or justified than any other regime).

Hobbes and Schmitt go beyond Machiavelli’s meager beginnings. They each present the state (or “political entity”) as the collective representative society. The sovereign or state acts *for us*, in maintaining the system of social cooperation or in protecting our society against its enemies. The legitimacy of the state is to be established, if it is to be established at all, by the fact that the state is our collective actor pursuing our collective concerns. But in each case this is a myth, as I argue in chapters III and IV. The Hobbesian social contract argument fails to

establish that there is anything normatively compelling about the sovereign, such that we would have normative reasons for obeying his commands. Schmitt, on the other hand, fails to establish that political action could be justified on the basis of “existential” reasons, and thus fails to explain in what sense the actions of the state could be justified. Neither Hobbes nor Schmitt, drawing on the value of social cooperation per se or the importance of protecting society (whatever society turns out to be), is able to establish that the state or sovereign or political entity is the collective representative of society’s members pursuing members’ collective interests. If this thesis could be established, then arguably it could substantiate the claim that the state or sovereign is legitimate, or that its actions are justified. But these gestures at the collective and the interests of “society as a whole” do not suffice.

Rawls’ public reason view presents a plausible account of the state as a democratic collective actor. The state is the democratic collective actor only if it acts on the basis of reasons that all can accept as reasons. But Rawls does not, as do Hobbes and Schmitt, attempt to deduce this collective character from the nature of the state or the essence of sovereignty. The public reason account is something to be applied to the state, not something that is true of it already. To put it another way, the state is not a collective actor, but we could make it one.

The issue of collective action and the idea of the state or sovereign as collective actor is an important one for the autonomy of the political. Bodin makes no such appeal, and his argument is, it is fair to say, the least compelling of the arguments examined in this thesis. Machiavelli’s political interests can be said to be the “interests of society as a whole,” but Machiavelli makes no attempt to demonstrate that they are, nor does it appear that he could demonstrate this if he wanted to. Thus the failure of these two versions of the autonomy of the political could reasonably be attributed to their failure to offer some explanation of the state or the political interests as collective. In the absence of any divine right explanation of political legitimacy, the

assertion that the state is the collective actor for society appears to provide the only non-instrumentalist source of legitimacy, unless we simply appeal to the equation of supreme power and legitimacy, of political might and political right.

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