

THE PARADOX OF SOVEREIGNTY: AUTHORITY, CONSTITUTION,
AND POLITICAL BOUNDARIES

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INTRODUCTION

This dissertation examines a paradox inherent in modern ideals of sovereign authority, and argues that several democratic paradoxes identified by contemporary theorists are instances of this more fundamental paradox of sovereignty. By calling attention to the paradoxical nature of modern sovereignty, I aim to do for sovereignty what theorists like Bonnie Honig, Alan Keenan, Seyla Benhabib, and Carol Gould have done for democracy: To show that its importance and value lie, not in the way that it axiomatically frames or founds a particular people's politics, but in the ways that it invites, sustains, and indeed *requires* ongoing political contest over the constitution and the identity of 'the people' itself.

Sovereignty is a very powerful political norm that has been articulated, defined, and enacted in very diverse ways.¹ I focus on a modern ideal of sovereignty that is frequently, although perhaps too simplistically, associated with the 1648 Treaties of Westphalia and the subsequent development of the modern interstate system.² According to this ideal, sovereignty is internally supreme, externally independent, and bounded political authority.³ This basic

¹ Several broad studies of sovereignty have been especially influential on my project: F. H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 1986); Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995); Steven Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999); Robert Jackson, *Sovereignty* (Malden, MA: Polity Press, 2007); Jean Bethke Elshtain, *Sovereignty: God, State and the Self* (New York: Basic Books, 2008); Joanne Pemberton, *Sovereignty: Interpretations* (London: Palgrave Macmillan, 2009).

² Joseph Strayer, *On the Medieval Origins of the Modern State* (Princeton: Princeton University Press, 1970). Recent studies have challenged the significance of the Treaties of Westphalia as a clear turning point in the development of modern sovereignty. See John Gerard Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organization* 47, no. 1 (1993): 139-174; Hendrick Spruyt, *The Sovereign State and Its Competitors* (Princeton: Princeton University Press, 1996); Benno Teschke, *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations* (London: Verso, 2003); Hannes Lacher, *Beyond Globalization: Capitalism, Territoriality and the International Relations of Modernity* (London: Routledge, 2006); Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2006).

³ "Sovereignty requires independence from any outside power and final authority over men who live within certain boundaries." Strayer, *Medieval Origins*, 58. This is obviously a simple and schematic conceptualization of a very fluid political ideal, and it will be significantly complicated and clarified in Chapter 2. However, the four components of the general definition (internal supremacy, external independence, boundedness, and authority) comprise a relatively unchanging core that defines modern sovereignty through its various historical articulations.

conception of sovereignty is sometimes regarded as a classical or standard view of sovereignty; throughout this dissertation, I refer to it as the ‘general definition’ of sovereignty or, simply, ‘the modern ideal’ of sovereignty. The modern ideal of sovereignty as supreme, independent, and bounded authority is inherently paradoxical, I argue, insofar as it presents sovereignty as a particular kind of authority that authoritatively constitutes the source of its own authorization.

Contemporary political theory has given much attention to the purportedly paradoxical nature of democracy, but not to this more foundational paradox of sovereignty. Although there are several distinct and important versions of “the democratic paradox,” I focus on a paradox of democratic constitution, which expresses the logical and practical impossibility of constituting a democratic people—a *demos*—according to democratically legitimate means.⁴ A *demos* cannot be constituted democratically because any genuinely democratic (or democratically legitimated) procedure for constitution presupposes the very *demos* that it would engender. Because the *demos* that could legitimate the act of constitution does not exist prior to that act, democratic

For theoretical and historical studies that characterize modern sovereignty as supreme, independent, and bounded political authority, see: Alan James, *Sovereign Statehood: The Basis of International Society* (Boston: Allen and Unwin, 1986), 3, 5; Spruyt, *The Sovereign State*, 3, 36; Julie Bunck and Michael Fowler, *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty* (University Park, PA: Pennsylvania State Press, 1995), 36-7; David Held, *Democracy and the Global Order* (Stanford: Stanford University Press 1995), 36; Krasner, *Sovereignty*, 3-4, 2-25; James Caporaso, “Changes in the Westphalian Order: Territory, Public Authority and Sovereignty,” *International Studies Review* 2:2 (2000): 2, 5, 10; Daniel Philpott, “Usurping the Sovereignty of Sovereignty?,” *World Politics* 53, no. 2 (2001): 316, and *Revolutions in Sovereignty* (Princeton: Princeton University Press, 2001) 16-9; Julie Mostov, *Soft Borders: Rethinking Sovereignty and Democracy* (London: Palgrave MacMillan, 2004) 19-20; Charles Maier, “Transformations of Territoriality: 1600-2000” in *Transnationale Geschichte: Themen, Tendenzen und Theorien*, G. Budde, G., et al, eds. (Göttingen: Vandenhoeck & Ruprecht, 2006), 35; Robert Jackson, *Sovereignty*, 6, 10-12.

⁴ Hannah Arendt, *On Revolution*, (New York: Penguin Books, 1977), 175-6; Robert Dahl, *After the Revolution? Authority in a Good Society* (New Haven: Yale University Press, 1970), 46; Frederick Whelan, “Prologue: Democratic Theory and the Boundary Problem,” in *Nomos 25: Liberal Democracy*, J. Pennock and J. Chapman, eds. (New York: New York University Press, 1983), 13-47; William Connolly, *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995), 139; Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000); Benhabib, *Rights of Others*, 455, 206, and *Another Cosmopolitanism* (Oxford: Oxford University Press, 2006), 33-5, 167; Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004), 39-41, 174-5; Martin Loughlin and Neil Walker, eds. *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2007); Sofia Nasström, “The Legitimacy of the People,” *Political Theory* 35, no. 5 (2007): 624-658; Arash Abizadeh, “Democratic Theory and Border Coercion,” *Political Theory* 36, no. 1 (2008): 37-65, Bonnie Honig, *Emergency Politics* (Princeton: Princeton University Press, 2009), 12-39.

self-constitution always outpaces, or exceeds, democratic legitimacy. This paradox is philosophically and politically significant because it marks at the level of theory an inherent limit to what can be done, at the level of practice, in the name of one of our highest political norms.

The paradox of sovereignty is similar to the paradox of democratic constitution. As I will argue, the modern ideal of sovereignty indicates a particular kind of political authority that, in order to be internally supreme and externally independent, must constitute its own collective subject—‘the people’—over which it is exercised. At the same time however, sovereignty, like all forms of political authority, cannot function without the authorization of its subject. Whereas authority in general depends upon authorization by the individual subjects that it commands, sovereignty in particular depends upon authorization by the *collective* subject that it commands and constitutes. Every sovereign—whether it is a single monarch or an entire people, and regardless of whether its authority is exercised through unitary or divided institutions—is ultimately indebted, for its sovereign authority, to the constituted people over which that authority is exercised. According to the modern ideal of sovereignty, then, the exercise of sovereign authority constitutes its own collective subject but, paradoxically, cannot be exercised without authorization from the very collective subject that it constitutes. Sovereignty authority, in other words, engenders the people from which it emanates. That is the paradox of sovereignty. Whereas the paradox of democratic constitution indicates a limit to what can be accomplished by democratic decision-making procedures, the paradox of sovereignty indicates a limit to the ways that supreme and independent authority can be exercised over (and potentially by) a people.

Democratic theorists note that the paradox of democratic constitution does not only appear in mythical moments of political founding. Nor is it limited to exceptional moments of

reconstitution, as when a revolutionary assembly convenes to constitute a new body politic, or suffragists extend the *demos* to include the previously disenfranchised. Rather, the clear appearance of the paradox in these exceptional moments tells us something about the normal functioning of democracy. Democracies are continually reconstituting themselves through the myriad and mundane acts of inclusion, exclusion, enfranchisement, naturalization, entitlement, and subjection by which the boundaries of the *demos* are established, policed, and maintained by its agents.⁵ Beyond this, the *demos* continually reconstitutes itself through the self-government that is characteristic of democracy: “Every act of self-legislation is also an act of self-constitution. ‘We, the people’ who agree to bind ourselves by these laws, are also defining ourselves as a “we” in the very act of self-legislation.”⁶ Because the everyday activity of democratic politics involves the reconstitution of the democratic body politic, democratic politics invokes the paradox of democracy every day.

The paradox of sovereignty is similarly persistent. Sovereign authority is exercised both within and over the boundaries that are essential to it. By continually establishing, maintaining, regulating, and policing the spatial, civic, and ideological boundaries of its jurisdiction, a sovereign continually constitutes the collective subject that is circumscribed by those boundaries. In order for this continual process of constitution to be authoritative, however, it must be continually authorized by the constituted collective subject itself. Thus, the paradox of sovereignty arises in all of the acts of bounding and bordering by which a sovereign determines who is, and who is not, a member of the people that is its collective subject. The sovereign’s continual constitution of the people always outpaces, or exceeds, its sovereign authority.

⁵ Honig, *Emergency Politics*, 15.

⁶ Benhabib, *Another Cosmopolitanism*, 33.

This does not, however, entail the finality or incontestability of sovereign acts of constitution. Just the opposite. The paradox of sovereignty expresses a circular interdependence of constitution and authorization that cannot be broken by any invocation of God, nature, nation, territory, tradition, or *raison d'état*, or any arbitrary political act, as a pre-political and incontestable source of either the sovereign's authority or the people's constitution. This is what an analysis of the paradox of democratic constitution reveals concerning the more fundamental paradox of sovereignty: *Because every sovereign constitutes the basis of its own authority—its collective subject—the constitutive authority of any sovereign, and the constitution of its subject, always remain politically contestable, indeterminate, and incomplete.*

Insofar as modern sovereignty is idealized as unambiguous internal supremacy and inviolable external independence, 'sovereignty' would appear to name a particular *end of*, rather than an *occasion for*, political contestation. Nevertheless, although sovereign authority is exercised through acts of self-bounding and bordering that are indeed acts of political closure, the paradoxically interrelated preconditions and effects of this closure—the authority of the sovereign and the constitution of the people—themselves remain open sites for critical political engagement. Like the paradox of democracy, then, the paradox of sovereignty is politically productive rather than obstructive. It is because a *demos cannot* legitimately constitute itself once and for all that democracy is a dynamic, creative, and potentially just mode of political contest. Similarly, it is because a sovereign cannot authoritatively constitute its subject once and for all that sovereignty is, and should be recognized as, a dynamic, creative, and thoroughly contestable mode of political organization.

These claims will be substantiated over the course of four chapters and a brief interlude between Chapters 2 and 3. In Chapter 1, I develop an account of political authority that will be

used, in later chapters, to analyze the modern ideal of sovereignty. Although I draw upon normative theories of authority and political obligation, my account is descriptive rather than normative. I do not deny that authority is a normative concept, but I follow Max Weber and Hannah Arendt in focusing on questions of what authority is, how it is exercised, and how it can be resisted or forfeited, rather than on questions concerning whether or not authority relations involve moral obligations or duties to obey certain commands. In doing so, I substantiate a claim about authority that underlies the modern ideal of sovereignty, namely that political authority must be authorized by the subjects over which it is exercised. Every authority depends, for its authority, upon its subjects.

In Chapter 2, I examine the three other components of the modern ideal of sovereignty: internal supremacy, external independence, and boundedness. In order to be supreme and independent in the relevant senses, sovereign authority must be not merely bounded, but *self*-bounding. By determining the limits of its own authority, I argue, a sovereign circumscribes its subjects within its jurisdiction and constitutes them, by virtue of their shared subjection, as a *collective* subject. Sovereign authority, in other words, is constitutive authority. Sovereigns constitute, at least in a ‘thin’ sense, the collective subjects over which they rule. This important aspect of internal (or domestic) sovereignty is conceptually and politically inseparable from more commonly studied aspects of external (or international) sovereignty.

In the interlude between Chapters 2 and 3, I combine the arguments of the previous chapters in order to clarify the paradox of sovereignty. Sovereignty is, according to its modern idealization, a kind of authority that authoritatively constitutes the source of its authorization. I illustrate the paradox with a brief discussion of Hegel and Marx, who, when read together, illuminate a political ambiguity at the core of the modern ideal of sovereignty. I then preview

my argument that the paradox of democratic constitution is a species of the more fundamental paradox of sovereignty.

In Chapter 3, I identify different expressions of the paradox of sovereignty in the political philosophy of Niccolò Machiavelli, Jean-Jacques Rousseau, and Emmanuel Sieyès, each of whom directly engage the circular relation of authorization and constitution that is essential to modern sovereignty. Over the course of the chapter, I show that the paradox of sovereignty is not exclusive to either absolutist or popular sovereignty, and that it in fact marks a continuity between these forms of political organization. I end the chapter with a discussion of Sieyès's failure to ground the paradox of sovereignty in a purportedly pre-political (and so unauthorized and unconstituted) source of political authority and constitution. By arguing that the bases of political authority and constitution are always themselves political, I begin to connect the paradox of sovereignty to the paradoxes of democratic constitution.

In Chapter 4, I examine different but related articulations of the paradox of democratic constitution in the work of Frederick Whelan, Seyla Benhabib, and Carol Gould. I then argue that these particularly democratic paradoxes are instances of the more fundamental paradox of sovereignty. Once this is understood, the paradoxes of democratic constitution can be made to shed light on the paradox of sovereignty. In particular, they affirm what is suggested by the discussion of Sieyès in the previous chapter: that the depoliticization of either the authority of the sovereign, or the constitution of the people, is itself a politically contestable act that cannot effectively dissolve the paradox of sovereignty. Exactly this kind of depoliticization, I argue, has been facilitated by the persistent modern connection between sovereignty and territoriality, which presents the composition of the sovereign's collective subject as a fact of geography rather than an effect of a particular (and paradoxical) political relation. As alternatives to this

inadequate way of negotiating the paradox, I critically examine Benhabib's and Gould's proposals for responding to the paradoxes of democracy with political contest rather than political closure. The paradox of sovereignty, I conclude, demands continual political contest over the acts of political constitution that are both the expressions and sources of sovereign authority.

CHAPTER I

AUTHORITY

It is widely agreed that sovereignty is a kind of political authority.⁷ However, the concept of authority itself is often unexplored by contemporary theorists of sovereignty, and occasionally an author will simply refer to a prevalent account of authority as if it can be imported, without modification, into an account of sovereignty.⁸ Rather than make the same assumption, in this chapter I outline what I will call a political account of political authority. I will both retain and complicate this account in the following chapters, where I argue that sovereignty is a unique—and uniquely paradoxical—form of political authority.

By emphasizing that mine is a *political* account of political authority, I mean to distance myself from important debates concerning the *moral* justification of authority. I turn to those normative debates—and the thought of Robert Paul Wolff and Joseph Raz in particular—in order to borrow what I take to be compelling descriptions of political authority, its functions, and its stakes. However, I do not take up their central questions concerning whether or why authority is morally justified. This is not because such questions are insignificant, but because my larger project—an investigation of *sovereign* authority—does not make claims about the morality of sovereignty. Consequently, I do not intend my own descriptive account of authority to directly

⁷ Allen Buchanan's *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press, 2004) is an instructive exception. Buchanan links sovereignty to political legitimacy, but sharply distinguishes the latter from political authority. He does so in order to avoid serious objections to normative theories that attempt to ground political authority in moral obligation. On Buchanan's view, sovereignty need not, and does not, make reference to any obligation to obey (187, 234-249). I engage Buchanan's work more directly in Chapter 2. Here I simply note my agreement that a theory of sovereignty does not require an account of moral obligation. While I theorize sovereignty as a kind of political authority, I do not understand authority in terms of moral obligation, so my work does not depend upon the kinds of arguments and concepts that Buchanan rightly rejects.

⁸ See, for instance, Matthew Noah Smith, "Rethinking Sovereignty, Rethinking Revolution," *Philosophy and Public Affairs* 36 no. 4 (2008): 421.

compete with Wolff's and Raz's normative arguments concerning the moral justification of authority. Nonetheless, I charitably reconstruct and then criticize their portrayals of authority just enough, I hope, to clear space for my own.

What ultimately distances my account of political authority from these familiar debates is my focus on the political contestability and negotiability, rather than the moral propriety, of political authority. Drawing upon Max Weber and Hannah Arendt, as well as some key insights of Wolff and Raz, I outline a descriptive account of authority that acknowledges the moral arbitrariness at the heart of many actual authority relations. Political authority is primarily a political concept, and politics, far from being a branch of applied ethics, involves the contest and negotiation of social relations that, regardless of their ultimate moral justification, deeply structure our actions and lives.⁹ 'Authority' is the name of one such relation, and its grip on us does not depend exclusively on its moral status.¹⁰

Authority relations are political relations insofar as the impositions of authority express an agency that is alien to, and potentially in conflict with, the agency of the subject over which authority is exercised. In this chapter, I am particularly interested in the ways that authorities and subjects negotiate this potential conflict of agency, and the ways that their interactions constrain or broaden, and foreclose or open, the avenues of practical action available to each other. Despite the significant merits of Wolff's and Raz's views regarding the moral justification of political authority, I argue below that neither Wolff nor Raz focuses on the potentially

⁹ My formulation of this point is influenced by Raymond Guess's *Philosophy and Real Politics* (Princeton: Princeton University Press, 2008), 1-18.

¹⁰ This is not to deny that authority is a normative concept. Even merely *de facto* authorities rely upon the inherent normativity of the concept when they claim authority. See below, page 10-15, 38-40. In my descriptive account of this normative concept, I attempt to explain how this normativity is articulated, attributed, and appealed to in negotiations between authorities and subjects. I do not take up the important task of asking whether authority is itself moral or legitimate, but I do describe the various aspects of authority relations that, in specific cases, can be normatively evaluated. Ultimately, I do not need an account of the moral justification of authority (or of political obligation) because I am attempting a philosophical interpretation of, rather than argument for, the modern ideal sovereignty.

conflictual interaction of agencies that defines authority as a political relation. I signal this now, not to raise a premature objection to Wolff's and Raz's accounts, which have influenced my own, but to indicate a line of inquiry that differs from the important moral inquiries that dominate contemporary philosophical debates on authority.¹¹

By theorizing political authority in terms of contestable social relations, rather than moral duties, I am not claiming that authority is identical to, or reducible to, blunt power. Despite their very different presuppositions and conclusions, Weber, Wolff, Raz, and Arendt all agree that the compelling force of authority involves a claim to rightfulness that distinguishes it from coercive power. Following Weber and Arendt, I argue that the importance of this claim is not its moral legitimacy (the claim to rightfulness may be wrong or invalid, and authority may be morally unjustified), but the fact that the claim must be acknowledged, accepted, or recognized by the subject over whom authority is exercised. Authority makes an appeal to the independent judgment of its subject, and the subject has an active role to play in authorizing the authority that commands her. In other words, while power can be exercised over persons as if they were mere objects, authority depends upon the autonomous agency of the subject over whom it is exercised. This claim, which will be the conclusion of the present chapter, is essential to understanding the paradoxical nature of sovereign authority.

In part I of this chapter, I examine the influential theories of authority developed by Weber, Wolff, Raz, and Arendt in order to lay a foundation for my own brief account of political authority. In clarifying the shared commitments and disagreements that connect these thinkers, I

¹¹ By sketching a *political* account of political authority, and distinguishing this account from *moral* accounts, I do not mean to imply that authority relations do not pose crucial moral questions, or that authority is an amoral phenomenon. Regarding the moral justification of authority, I am somewhat sympathetic to the philosophical anarchist positions of Wolff and especially A. John Simmons. If authority is as Wolff or Simmons describes it, then a heavy burden falls upon those who would offer moral justifications of authority relations. Below, however, I note my reservations concerning Wolff's description of subjection to authority; some of these reservations would apply to Simmons as well. See A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), especially chapters 3, 4, 6, and 7.

make no attempt to summarize every aspect of their thought. Nor do I pretend that these four thinkers represent every important descriptive or normative position concerning political authority. My aim is simply to develop an informed and productive working account of authority based on the shared commitments of these very different thinkers. Despite highlighting their methodological and substantive differences, I emphasize a common thread that runs throughout Weber's, Wolff's, Raz's, and Arendt's accounts of authority. For all of these thinkers, authority cannot be exercised without the active participation of its subjects in their own subjection.

Clarifying this common commitment will open a space for the political account of authority that I develop in part II of this chapter. There, I emphasize the contestability and durability of political authority, as well as the ways that authority makes claims upon, but ultimately preserves, the autonomy of its subject. I conclude the chapter by defending the claim that *all authorities continually depend, for their authority, upon their subjects*. This is a claim about the political relations, rather than moral justifications, that are required for the effective exercise of political authority. I will return to this claim and complicate it in Chapters 2 and 3, where I examine modern and contemporary theories of sovereign authority.

Part I: Descriptive and Normative Theories of Authority

Weber on authority

In his very influential conceptualization of authority, Max Weber does not fundamentally separate authority (*Herrschaft*) from power (*Macht*).¹² Whereas power is “the probability that

¹² For discussions of the terms and translations that have influenced this section, see Max Weber, *Economy and Society*, 2 vols., ed. by Guenther Roth and Clause Wittich (Berkeley: University of California Press, 1978), 62 fn.

one actor within a social relationship will be in a position to carry out his own will despite resistance,” authority is a particular kind of power, namely the “assured power to issue commands.”¹³ Authority overcomes resistance in a particular way, namely by soliciting obedience, which is a form of compliance wherein “the action of the person obeying follows in essentials such a course that the content of the command may be taken to have become the basis of action for its own sake.”¹⁴ Elaborating on the “the authoritarian power of command,” Weber writes:

The manifested will (*command*) of the *ruler* or rulers is meant to influence the conduct of one or more others (*the ruled*) and actually does influence it in such a way that their conduct... occurs as if the ruled had made the content of the command the maxim of their conduct for its very own sake. Looked on from the other end, this situation will be called *obedience*.¹⁵

In his notes on this passage, Weber emphasizes his “as if” formulation.¹⁶ On his view, it is crucial that the authoritative command “is accepted as a ‘valid’ norm,” or “may be taken” as such, regardless of whether it is actually valid according to any external criteria.¹⁷ The difference between authority and power, then, is not that the former is legitimated by its moral propriety, but that it is *accepted* as legitimate by the subjects over whom it is exercised.¹⁸

Authority, in other words, involves a correlation between the recognized “power to command and duty to obey,” which is based on a judgment or belief about the legitimacy of what

31; Peter Blau, “Critical Remarks on Weber’s Theory of Authority,” *American Political Science Review* 57:2 (1963): 306; Anthony Giddens, *Capitalism and Modern Social Theory* (Cambridge: Cambridge University Press, 1971), 156.

¹³ Weber, *Economy and Society*, 1:52-3, 215. Whereas Arendt strictly separates power and authority, Weber notes that power may enable, complement, or transform into authority, and vice versa. See *Ibid.*, 1:53-4, 2: 943-8.

¹⁴ *Ibid.*, 1:215.

¹⁵ *Ibid.*, 2:946.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, 1:215.

¹⁸ Throughout this discussion, I have abstracted the two roles of “authority” and “subject” from the three positions that Weber identifies in different systems of authority: the leader (or chief or ruler), the administrative staff and the subjects (or the ruled). For Weber, when all three of these positions are present in a single system, they resolve into a network or series of binary authority-subject relations.

is commanded.¹⁹ Even more than coordinated interest, affective bonds, or force, a belief in legitimacy provides a “sufficiently reliable basis” for the correlation of command and obedience that is essential to authority.²⁰ Weber writes:

So far as it is not derived merely from fear or from motives of expediency, a willingness to submit to an order imposed by one man or a small group, always in some sense implies a belief in the legitimate authority of the source imposing it... The basis of every authority, and correspondingly of every kind of willingness to obey, is a *belief*, a belief by virtue of which persons exercising authority are lent prestige.²¹

Weber identifies legitimacy with “the prestige of being considered binding;” a legitimate command is one that is understood to make a valid claim to obedience.²² Because legitimacy correlates command with obedience, every system of authority “attempts to establish and cultivate the belief in its legitimacy.”²³ Weber’s famous ideal types of authority—legal, traditional, and charismatic—correspond to different ways that legitimacy is claimed by, attributed to, and made effective within different systems of authority.²⁴

Legal authority, which is the most rationalized and modern of Weber’s types, rests on a claim to the legitimacy of an impersonal and hierarchical social order that structures command and obligation. Legitimacy is attributed to the order insofar as it codifies and enforces norms in

¹⁹ Ibid., 2:943; cf. Ibid., 1:37, 53-4, 213, 2:954. Here I am breaking from the tendency of commentators to track Weber’s distinction of authority and power primarily in terms of legitimacy (for example, as legitimate *Herrschaft* vs *Herrshaft simpliciter*). It is true that, for Weber, all authority involves a belief in the legitimacy of the command on the part of the person subject to that command. However, the concept of authority refers primarily to the correlation between command and obedience, and only secondarily and derivatively to a belief in legitimacy, which facilitates this correlativity. Weber writes, “The sociological concept of domination [*Herrschaft*] must hence be more precise and can only mean the probability that a *command* will be obeyed... As far as sociology is concerned, power of command does not exist unless the authority which is claimed by somebody is actually heeded to a socially relevant degree” (Ibid., 1:53, 2:948). The belief in legitimacy enables the obedience required for authority, but authority cannot be reduced to legitimacy by itself.

²⁰ Ibid., 1:213.

²¹ Ibid., 1:37, 263.

²² Ibid., 1:31.

²³ Ibid., 1:213.

²⁴ Ibid. Weber is clear that actual systems of authority rarely, if ever, fully or purely instantiate the three ideal types (Ibid., 1:20, 263).

a rational, consistent, and reliable way.²⁵ Whereas systems of legal authority derive legitimacy from the official and transparent codification of norms, statuses and obligations, systems of traditional authority derive their legitimacy from the opacity of authority's origins. In such systems, authoritative commands are accepted as valid and binding because they have *always* been obeyed—or, at least, have been obeyed for so long that present social structures would otherwise be unimaginable. Although here again individual authority is derived from the social order as a whole, it is now personally appropriated by individuals: "Obedience is owed not to enacted rules but to the *person* who occupies a position of authority by tradition."²⁶ Unlike legal and traditional systems of authority, both of which tend to perpetuate existing social conventions, charismatic authority, Weber's third ideal type, specifically opposes established social orders.²⁷ The basis of its perceived legitimacy is personal charisma, "a certain quality of an individual personality by virtue of which he is considered extraordinary and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities."²⁸ Subjects obey the charismatic leader because they accept her personal extraordinariness as a valid basis for guiding their actions.²⁹

Inasmuch as each of these ideal types of authority corresponds to a different way of believing in legitimacy, each can be understood as illuminating a different way that the subjects of authority accept, and ultimately enable, their own subjection. Weber identifies the belief in legitimacy with "a willingness to submit to an order" or a "willingness to obey" that "confirms

²⁵ Ibid., 1:36, 217-220.

²⁶ Ibid., 1:227, italics added. Talcott Parsons's translation is more explicit: "The object of obedience is the personal authority of the individual which he enjoys by virtue of his traditional status." Weber, *The Theory of Social and Economic Organization*, trans. Talcott Parsons (New York: Free Press, 1964), 341.

²⁷ Weber, *Economy and Society*, 1:244.

²⁸ Ibid., 1:241-2.

²⁹ Ibid., 1:242.

the position of the persons claiming authority” in relation to the obedient subjects.³⁰ He notes that every authority relation involves “a minimum of voluntary compliance, that is, an *interest* (based on ulterior motives or genuine acceptance) in obedience.”³¹ This suggests that the belief in legitimacy is somehow *up to* the subjects of authority. They *submit themselves* to authority, although usually not directly. Rather, the three ideal types of authority correspond to three systems of mediation through which the subjects of authority actively participate in their own subjection. In each, it is ultimately the subject’s self-subjection that correlates command with obedience and distinguishes authority from other forms of power.³²

When subjects attribute legitimacy to an authority, and thereby submit themselves to its commands, they actively *authorize* that authority and *subject* themselves. However, they do not grant the authority full license to do just anything. Weber is clear that inasmuch as authority *requires* “a minimum of voluntary compliance,” it also *depends upon* this voluntary compliance, and this dependence constrains authority. For each of his three ideal types, Weber discusses ways in which authorities are constrained by the need to maintain the belief in legitimacy.

Regarding legal authority, Weber notes that authorities are themselves subject to the norms and procedures of the existing legal order, insofar as their ability to solicit obedience is a function of their office within a system that is perceived to be legitimate.³³ Traditional authorities are similarly constrained, even though they are better able to exercise their “free personal decision” than legal authorities.³⁴ If traditional authorities demand too much or stray

³⁰ Ibid., 1:37, 263, 214.

³¹ Ibid., 1:212. Parsons substitutes ‘submission’ for ‘compliance’ in Weber, *Theory of Organization*, 324.

³² Weber, *Economy and Society*, 1:212-215.

³³ Ibid., 1:217-8.

³⁴ Weber, *Theory of Organization*, 341. Although Weber claims that “traditional prerogative rests primarily on the fact that the obligations of personal obedience tend to be essentially unlimited,” I agree with Parson that Weber’s phrasing is “a very unhappy formulation of the essential point.” See *Economy and Society*, 1:227; *Theory of Organization*, 341, fn. 24. Weber is clear that “there is a double sphere” of traditional legitimacy, essentially a

too far from entrenched norms, their subjects appeal to tradition in order to negotiate the limits of authority:

The exercise of [“authority”] is oriented toward the consideration of how far the master and staff can go in view of the subjects’ traditional compliance without arousing their resistance. When resistance occurs, it is directed against the master or his servant personally, the accusation being that he failed to observe the traditional limits of his power. Opposition is not directed against the system as such.³⁵

Finally, charismatic authority is constrained by the authority’s need to be continually recognized as exceptional. Charisma effectively solicits obedience “so long as it is proved; that is, as long as it receives recognition... If proof and success elude the leader for long... above all, if his leadership fails to benefit his followers, it is likely that his charismatic authority will disappear.”³⁶ Because personal exceptionality is difficult to institutionalize, maintain, or delegate, charismatic authority tends to be more fragile than the other types.³⁷

In short, authority requires a “willingness to submit” on the part of its subjects. The subjects’ belief in the legitimacy of authority, and consequently their willingness to obey authoritative commands, makes authority effective *qua* authority. This does not mean, however, that authority involves permanent, invariable, or total dominance over obedient subjects. Just the opposite. The “assured power of command” requires maintaining a belief in legitimacy, and this belief becomes a site of negotiation and contest between authorities and their subjects. Subjects

range of personal freedom within wider traditional constraints (*Economy and Society*, 1:227). The range of personal prerogative is vague, and is constrained—partly in the name of tradition—by the subjects themselves.

³⁵ Weber, *Economy and Society*, 1:227. The Clause and Wittich edition of *Economy and Society*, which is the source of this quote, has “power” in place of “authority”. I have substituted in “authority” from the Parsons’s edition, which is a better translation of “die tatsächliche Art der Herrschaftsausübung.” Otherwise, the quoted translation is superior. See Weber, *Theory of Organization*, 342; Weber, *Wirtschaft und Gesellschaft: Grundriß der verstehenden Soziologie* (Tubingen: J. C. B. Mohr (Paul Siebeck), 1972), 130-1.

³⁶ Weber, *Economy and Society*, 1:244, 242. Rousseau says almost exactly the same thing regarding the “Lawgiver” in *On the Social Contract* (Cambridge: Cambridge University Press, 2003), 68-72. Authority that comes ‘from on high’ does not compel obedience unless it is recognized *as authority* by those over whom it would be exercised. In Chapter 3, I return to this thought by reading Rousseau through the work of Bonnie Honig.

³⁷ The longevity of charismatic authority often depends on its transformation into legal or traditional authority (Weber, *Economy and Society*, 1:246-9).

resist authority when they no longer believe that it is legitimate and no longer submit to its commands. Nonetheless, they cannot simply shirk off their subjection, however, insofar as systems of authority and individual authorities themselves tend to encourage, solicit, or perpetuate the voluntary submission of their subjects. They do so through positive means, such as education, reward, induction into social statuses, coordination of interests, and imposition. Authority and subjection are also maintained through negative means, as when authorities conform to existing norms of legitimation and refrain from behavior that would risk their legal, traditional, or charismatic authority.³⁸

The active role played by authorities in securing the self-submission of their subjects suggests the importance of this submission. Although the systems of mediation through which submission is volunteered often involve “a large measure of imposition,” authority ultimately depends upon the “voluntary compliance” of its subjects.³⁹ This dependence, even where it is minimal, entails that authority remains a negotiable and contestable relation. Unlike other forms of power, authority does not treat those over whom it is exercised as passive objects. Rather, authority cannot function unless its subjects are also active agents in their own subjection. Because of this, there is always the potential for them to resist, challenge, or subvert the authority that commands them.

Weber does not attempt to justify political authority.⁴⁰ On his view, authority is a correlation between command and obedience that is predicated on a belief in legitimacy; it need

³⁸ Weber, *Economy and Society*, 1:217-220, 225-8, 242-4.

³⁹ *Ibid.*, 1:51, 212.

⁴⁰ I emphasize this point in order to distance Weber, and ultimately myself, from critiques of “attitudinal” accounts of morally legitimate authority. For example, in *Justification and Legitimacy*, A. John Simmons argues that “No plausible theory of state legitimacy could maintain that a state has the rights in which its legitimacy consists—rights to exclusively impose and coercively enforce binding duties on its subjects—simply in virtue of its subjects’ feelings of loyalty or its own capacities to generate such feelings” (134). Simmons’s line of criticism fails because it does not track the kind of “theory of state legitimacy” that Weber attempts. Weber does not try to explain the state’s *right* to do anything (i.e., coerce, impose duties, etc), where ‘right’ signifies a morally justified ability or

not be legitimate according to any external moral perspective. This is a descriptive account of authority, but it does not merely report *the way things are* with regard to authorities and subjects. Rather, Weber's account serves a critical purpose precisely by refusing to ground authority in an objective, universal, or final basis of legitimacy. He presents political authority as a relation that, because it is morally arbitrary, is also variable, negotiable, and contestable. Most importantly, he reveals the way that authority—regardless of whether it is entrenched in legal or traditional norms, or appears as a unique exception to those norms—always makes a claim upon, and so depends upon, the autonomous beliefs and actions of its subjects.

This last thought will gain significance throughout this chapter, culminating with the political claim that authorities always depend, for their authority, upon their subjects. Authority is first and foremost an ability to compel obedience, but it is also a kind of indebtedness to the subjects who, by acknowledging or accepting claims to legitimacy, authorize authorities and subject themselves. To substantiate this claim, I must first clarify the ways that, by authorizing authority, subjects subject themselves. To begin to do so, I turn to Wolff's critique of authority, which contains a very strong reading of the self-subjection that makes authority possible.

Wolff on authority

In his classic essay, *In Defense of Anarchism*, Robert Paul Wolff argues that political authority imposes obligations that necessarily conflict with the moral autonomy of individuals.

prerogative. Rather, Weber attempts to explain how authority functions. This requires explaining what is *accepted as right* (i.e., what is juridically, traditionally, or charismatically validated—even if not *morally* valid). By conceptualizing the legitimacy that underwrites authority as a belief in the normative validity of command, Weber remains agnostic regarding what it would take for commands to be actually normatively valid and binding in a way that would satisfy philosophers interested in moral accounts of political authority. Importantly, Weber's theory of authority *could* contain a moral account of political authority. One can easily imagine a fourth ideal type of authority in which the belief in legitimacy (and so the practical correlation of command and obedience) rests on whether commands satisfy, for example, the criteria of Raz's service conception of authority. However, it is hard to imagine such an ideal type ever corresponding to actual social and political relations.

Because the “primary obligation” of every individual is autonomy, he argues, authority can never be morally legitimate; the concept of *de jure* legitimate authority is thus “vacuous.”⁴¹ In making this argument, however, Wolff goes a long way in theorizing the concept he regards as vacuous. He does so, not only in order to ultimately reject it, but also to explain instances of *de facto* authority, such as that exercised by existing states over their subjects. Because actual authorities can never be *de jure* legitimate, their compelling and obligating force must lie in something other than moral duty itself.

For Wolff, the compelling force of *de facto* authority depends upon a mistake. Actual authorities are able to obligate their subjects because the latter incorrectly “believe in the existence of legitimate authority,” which they mistakenly attribute to *de facto* authorities.⁴² In other words, the ability of *de facto* authority to compel action depends upon a misapplication of the concept of *de jure* authority. For this reason, a quick sketch of *de jure* authority is necessary to explain the practical compulsion inherent in actual authority relations, whether or not such compulsion is truly legitimate and thereby worthy, from the perspective of the moral philosopher, of the name ‘authority’.

According to Wolff, *de jure* authority involves a correlation between command and obedience.⁴³ He writes, “Authority is the right to command, and correlatively, the right to be obeyed.”⁴⁴ Accordingly, *de jure* authorities are persons who have a “right to command,” while *de jure* subjects are persons who have a “correlative obligation to obey the person who issues the

⁴¹ Robert Paul Wolff, *In Defense of Anarchism* (New York: Harper, 1970), 18-19.

⁴² Wolff writes, “What can be inferred from the existence of *de facto* states is that men believe in the existence of legitimate authority, for of course a *de facto* state is simply a state whose subjects believe it to be legitimate (i.e., really to have the authority it claims for itself). They may be wrong. Indeed, all beliefs in authority may be wrong... But so long as men believe in the authority of states, we can conclude that they possess the concept of *de jure* authority” (Ibid., 10-11).

⁴³ Ibid., 4-5, 9.

⁴⁴ Ibid., 4.

command.⁴⁵ The roles of authority and subject are defined in relation to one another by the deontological correlation of command and obedience.

Importantly, this correlation depends, not on the *content* of authoritative commands, but on their *source*. Wolff writes:

Authority resides in persons; they possess it—if indeed they do at all—by virtue of who they are and not by virtue of what they command. My duty to obey is a duty owed to them, not to the moral law or to the beneficiaries of the actions I may be commanded to perform... Obedience is not a matter of doing what someone tells you to do. It is a matter of doing what he tells you to do *because he tells you to do it*.⁴⁶

In other words, authority and the correlative form of obedience are “content independent.”⁴⁷ The content-independent right to command is not merely a mark of authority; rather, it *is* authority. Similarly, the correlative obligation to obey does not merely indicate subjection; it *is* subjection.

According to Wolff, *de jure* and *de facto* authority alike involve claims to rightful command and the correlative obligatory obedience. These claims distinguish authority from power, which involves the threat or use of force to coerce compliance; unlike power, *de jure* and *de facto* authority make appeals to their own legitimacy.⁴⁸ Wolff argues that these appeals are always invalid, because content-independent command and obedience conflict with the moral standing of individuals as rationally autonomous and self-determining agents.⁴⁹ He writes, “The autonomous man, insofar as he is autonomous, is not subject to the will of another. He may do what another tells him to do, but not *because* he has been told to do it.”⁵⁰ Because autonomy is “the primary obligation” of all rational persons, such persons cannot be morally obligated to

⁴⁵ Ibid., 9.

⁴⁶ Ibid., 6, 9.

⁴⁷ H. L. A. Hart, “Commands and Authoritative Legal Reasons,” 101-2. Cf. Scott Shapiro, “Authority,” in *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford, Oxford University Press, 2002), 389-90.

⁴⁸ Wolff, *Defense of Anarchism*, 4-5, 9.

⁴⁹ Ibid., 18-19.

⁵⁰ Wolff, *Defense of Anarchism*, 14.

obey the commands of authority.⁵¹ Thus, there can be no morally legitimate, or *de jure*, authority.⁵²

This means that *all* actual instances of authority are *merely de facto*; they are believed to be legitimate when, in fact, they are not.⁵³ Like the concept of *de jure* authority, upon which they depend, instances of *de facto* authority are characterized by an essential correlativity; here again, the correlation of command and obedience explains the ability of an authority to compel action. However, the *de facto* correlation of command and obedience is predicated upon practical dispositions rather than duty. For Wolff as for Weber, it is the subject's *beliefs and actions*, rather than moral duty itself, that enable the practically compelling—if not morally legitimate—force of *de facto* authority.

More specifically, *de facto* authority depends exclusively upon an act of acknowledgement, acceptance, or accession by the subject over whom it is exercised. According to Wolff, authority is established when an actor claims or asserts the right to command and, regardless of the illegitimacy of this claim, it is “acknowledged and accepted by those at whom it is directed.”⁵⁴ By accepting a claim of rightful command, or by otherwise acknowledging or acceding to the right of a particular actor to issue commands, a subject *attributes de jure* authority to the actor, and simultaneously obligates herself to obey the actor's commands.⁵⁵ In other words, she *authorizes* the other actor and *subjects* herself. This act of authorization and subjection is crucial to the politics of political authority, and it is what Wolff means when he

⁵¹ *Ibid.*, 18.

⁵² *Ibid.*, 18-9. Wolff does not necessarily advocate non-compliance. The content-independent nature of authority and obligation conflicts with autonomy, but autonomous reasoning may independently confirm the content of authoritative commands.

⁵³ *Ibid.*, 10-11.

⁵⁴ *Ibid.*, 5.

⁵⁵ *Ibid.*, 5-8.

claims that subjects *believe in* the legitimacy of the authority that commands them.⁵⁶ Whether or not the claimed right and correlative obligation are in fact morally valid, the subject's act of acknowledgement, acceptance, or accession expresses a belief in legitimacy that, even in the absence of an actual moral duty, practically correlates command and obedience.

Wolff is careful to distinguish the subjects acknowledgement, acceptance, or accession from deliberate consent. He writes:

Most commonly today... authority is granted to those who occupy official positions... We become conditioned to respond to the visible signs of officiality, such as printed uniforms and badges. Sometimes we may have clearly in mind the justification for a legalistic claim to authority, as when we comply with a command because its author is an *elected* official. More often the mere sight of a uniform is enough to make us feel that the man inside it has the right to be obeyed.⁵⁷

On Wolff's account, *de facto* authority does not depend upon a conscious or purposeful act of consent. It does, however, ultimately depend upon the autonomous agency of the subject over whom it is exercised, insofar as it is the subject's act of acknowledgement, acceptance, or accession that practically correlates command and obedience.⁵⁸ The subject of *de facto* authority is, in this sense, an agent of her own subjection.

This account of authority is persuasive, up to a point. By emphasizing the subject's role in authorizing *de facto* authority, Wolff captures something essential about authority, namely that it involves "a minimum of voluntary compliance, that is, an *interest...* in obedience," as Weber puts it.⁵⁹ However, in order to facilitate his criticism of *de jure* authority, Wolff *overemphasizes* the subject's self-subjection. On his account, obedience requires forgoing practical deliberation

⁵⁶ Ibid., 10-11.

⁵⁷ Ibid., 7. Here, Wolff explicitly draws upon Weber's ideal-type of legal authority; in the surrounding passages, he implicitly draws upon the ideal-types of traditional and charismatic authority (Ibid., 6-7, 16-18). See Weber, *Economy and Society*, 1:215-245.

⁵⁸ Wolff, *Defense of Anarchism*, 5-8.

⁵⁹ Weber, *Economy and Society*, 1:212. This is not to deny that authority also involves "a large measure of imposition" (Ibid., 51).

regarding the content of authoritative commands. Once a subject acknowledges or accepts a claim to rightful command, she is obligated to “obey the commands of [the authority] without making any attempt to decide for [her]self whether what is commanded is good or wise.”⁶⁰ In other words, authority and obedience are not only content-independent; they also preempt a subject’s decision-making process.⁶¹ Because the subject surrenders her independent judgment to the commands of authority, Wolff claims that the acceptance of authority is itself tantamount to a “forfeiture of autonomy.”⁶² On his view, every investiture of *de facto* authority is a divestiture of autonomous judgment and agency.⁶³

The idiom of forfeiture appears continually throughout Wolff’s argument, repeatedly signaling an opposition between authority and autonomy.⁶⁴ However, both the idiom and the opposition rely upon an exaggerated account of the subject’s self-subjection.⁶⁵ Wolff is correct that authority involves a measure of heteronomy; in acknowledging the authority of another agent, a subject does indeed open herself to imposition. However, the impositions of authority do not completely trump or preempt the subject’s own practical deliberation. The subject does not totally “forfeit” her autonomy.

If the subject of authority did forfeit her autonomy, resistance to authority would be conceptually nonsensical and practically impossible. However, subjects *do* sometimes resist the

⁶⁰ Wolff, *Defense of Anarchism*, 14.

⁶¹ *Ibid.*, 6, 9, 14-17. Shapiro helpfully imports the language of preemption from Raz’s work to Wolff’s argument. See Shapiro, “Authority,” 389-90.

⁶² Wolff, *Defense of Anarchism*, 15.

⁶³ “When I place myself in the hands of another, and permit him to determine the principles by which I shall guide my behavior, I repudiate the freedom and reason which give me dignity” (*Ibid.*, 72). Wolff clarifies that autonomy may be forfeited in degrees, but he insists that subjecting oneself to authority is an act of unspecified and unrestricted forfeiture (*Ibid.*, 14-18).

⁶⁴ *Ibid.*, 14-16, 41, 43, 47-48, 70, 72. The idiom is so crucial that “Autonomy, forfeiture of” is listed in the index.

⁶⁵ The overstatement becomes evident when it is noted that, on Wolff’s view, the obligation to honor promises involves a similar forfeiture of autonomy. Rather than bite this bullet, Wolff concedes that “contractual democracy is legitimate... for it is founded on the citizens’ promise to obey its commands” (*Ibid.*, 69). As Simmons points out, this contradicts Wolff’s main argument that “the concept of a *de jure* legitimate state would appear to be vacuous” (*Ibid.*, 19). See Simmons, *Justification and Legitimacy*, 111, fn. 15.

authority to which they are subject. They can do so precisely because they retain a degree of autonomy, which—*pace* Wolff—they exercise by evaluating for themselves the source of authoritative commands. When resistant subjects disobey, they turn their unforfeited autonomy against the authority that commands them, but this does not amount to a denial or dissolution of *de facto* authority. Rather, both autonomy and authority are present at the scene of resistance, and neither of them fully dominates the authority relation. The subjects may deny the *de jure* legitimacy of the authority that they oppose, but generally there is no question that the authority exercises *de facto* authority, as this is what the resistant subjects resist and, only in some cases, attempt to abolish. In other words, resistance to authority—from acts of civil disobedience to simple instances of talking back—express the autonomy of the resistant subject *in the face of* authority.⁶⁶ Such instances make clear that a degree of autonomy persists through and during subjection to authority. The subjects of authority retain some of their autonomous judgment and agency, which they may exercise through continuing to acknowledge, or potentially resisting, claims to authority. Authority makes demands upon, but does not negate or appropriate, the autonomy of its subject.

In short, Wolff overstates the subject's self-subjection. At the same time, he *understates* the authority's dependence upon this self-subjection. By theorizing the acknowledgement of authority as an assumption of obligation, Wolff correctly recognizes that *de facto* authority

⁶⁶ Despite Wolff's anarchism (or maybe because it is "*philosophical* anarchism"), he does not discuss the possibility of resisting, disrupting, abolishing, or even transforming or negotiating authority. In fact, he *declines* to consider these topics. See Wolff, *Defense of Anarchism*, 19. Simmons describes Wolff's position, and his own, as such: "Philosophical anarchists do not take the illegitimacy of the state to entail a strong moral imperative to oppose or eliminate states; rather they typically take state illegitimacy simply to remove any strong moral presumption in favor of obedience to, compliance with, or support for our own or other existing states." Simmons, *Justification and Legitimacy*, 104. For related reasons, David Miller has described the philosophical anarchist as "a rather bloodless member of the [anarchist] species." Miller, *Anarchism*, (London: J. M. Dent, 1984), 15. Carol Pateman makes the point more seriously: "Wolff offers an abstract 'solution' to a 'problem' generated by his own philosophical apparatus. No political ruler need quake at the implications of Wolff's 'anarchism'... it is an extension of a purely philosophical skepticism... Wolff's 'denial' of the authority of the state is of exactly the same character and status as the philosopher's 'denial' that there are other minds, or material objects—or that promises oblige." Carol Pateman, *Problem of Political Obligation* (Berkeley: University of California Press, 1985), 137.

depends upon the autonomy of the subject over whom it is exercised. However, by theorizing the subject's assumption of content-independent obligation as an autonomous *forfeiture* of autonomy, Wolff construes authority's dependence as momentary, such that it is satisfied by a single, irreversible act of authorization and self-subjection. In doing so, he fails to recognize that authority *continually* depends upon the subject over whom it is exercised. Authority is continually in need of authorization by its subject; without this authorization, authority would become mere power, and its compulsion would become mere coercion. Consequently, the subject must retain her independent agency in order to continually authorize the authority. Put more strongly, authority is *incompatible* with a total forfeiture of the subject's autonomy, because, in order to maintain itself, authority continually depends upon, and makes demands upon, that autonomy.

Because every *de facto* authority continually depends upon the autonomy of its subject, there is always the potential for the subject to disrupt, resist, or subvert *de facto* authority.⁶⁷ This does not mean, however, that authority is necessarily fragile, or that subjects can simply and easily rescind their acknowledgement and undo the authority relation. Rather, authority relations are frequently durable and stable, due to persistent and continual—rather than complete or final—acts of authorization and subjection.⁶⁸ Authority tends to beget further authorization. Ironically, by considering the autonomous agency of the subject to be strictly incompatible with subjection to authority, Wolff cannot theorize what might be, to the philosophical anarchist, the

⁶⁷ Weber and Arendt argue that because authority is made possible by the agency of subjects, this agency constitutes an ultimate limit to the impositions of authority. Moreover, both thinkers understand losses of authority in terms of an interaction between authorities and their subjects; subjects do not simply undo authority relations at will. See Weber, *Economy and Society*, 1:217-8, 227, 242, 244; Arendt, *On Violence*, 45, and *Between Past and Future*, 92-3, 102-3, 107, 132-3.

⁶⁸ If the philosophical anarchist is right to be concerned about authority, it is not because authority *abolishes* the subject's autonomy, but because authority *exploits* that autonomy by diffusing, co-opting, or redirecting it in ways that potentially perpetuate subjection.

most insidious characteristic of authority: that it preserves and directs the autonomy of its subjects in ways that make possible—and perhaps demand—continual acts of self-subjection.

Raz on authority

Joseph Raz's "service conception" of legitimate authority is intended, in part, to meet the challenges raised by Wolff's argument.⁶⁹ Raz preserves the basic command and obedience structure emphasized by Wolff, and he agrees that authorities claim "a right to rule those subject to their power."⁷⁰ This claim to rightful rule is, with regard to the potential subjects of an authority, "an appeal to compliance... an invocation of the duty to obey."⁷¹ Thus, for Raz as for Wolff, an authority's commands are correlative to a subject's obligation. However, Raz rejects Wolff's claim that *de jure* authority is a vacuous concept. On Raz's view, authority is *de jure* legitimate when it serves its subject in a particular way.

Raz's service conception is based on three theses or conditions that connect the service performed by authority, its claim to legitimacy, and the obligation of its subject. According to the first two theses, authority is legitimate—and obedience to it is obligatory—when (1) by following the directives of the authority, a subject "would better conform to reasons that apply to him [or her] anyway (that is, to reasons other than the directives of the authority)" than by not

⁶⁹ Joseph Raz, *The Morality of Freedom* (Oxford, Oxford University Press, 1986), 55-69. Raz has developed the service conception over the last two decades, but its basic commitments remain largely the same. I will focus mainly on Raz's recent reformulation of the service conception in *Between Authority and Interpretation* (Oxford: Oxford University Press, 2009). Importantly, the service conception is an account of *de jure* authority; it clarifies what is necessary for authority to be legitimate. Consequently, the following discussion may at first appear to be tangential to the previous section's focus on *de facto* authority. It is not. For both Wolff and Raz, the concept of *de jure* authority is necessary to understand instances of *de facto* authority. See Wolff, *Defense of Anarchism*, 10-11; Raz, *Authority and Interpretation*, 129, 132-3.

⁷⁰ Raz, *Authority and Interpretation*, 128.

⁷¹ Raz, *Morality of Freedom*, 26. See also Raz, *Authority and Interpretation*, 135: "Directives issued by authority aim to constitute reasons for their subjects and are binding on their subjects because they are meant to be so binding. If we recognize a duty to obey them we recognize that they have a right to command us, not only to affect the circumstances that shape our opportunities and the obstacles on our path." Here again, the claim to legitimate rule and obligatory obedience is supposed to distinguish authority from other forms of power, which make no such appeal (*Ibid.*, 128-9).

following and (2) the matters in question are “such that with respect to them it is better to conform to reason than to decide for oneself.”⁷² These two theses describe the service that authority provides the subject: it helps her to act rationally by complying with the reasons that apply to her. The third thesis gives content to the subject’s obligation. Since the directives of a legitimate authority already take into account all of the relevant reasons that apply to the subject (from thesis 1), (3) every legitimately authoritative directive “preempts” relevant reasons *against* the required conduct by excluding and replacing them.⁷³ Although preempted reasons cannot be used to deny the force of the authoritative directive, this does not mean that authority is ultimately incontestable. Although “we are bound to obey it, and are not allowed to question its force” regarding specific directives, we are still “allowed to question its wisdom and advocate its reform” in general.⁷⁴ Nonetheless, as the third thesis makes clear, “authority involves accepting the directives of another,” even when these directives conflict with a subject’s own judgment.⁷⁵

In short, authority’s service lies in the way that it improves the subject’s conformity with reason without her having to consider all relevant reasons regarding certain matters (theses 1 and 2). Its obligatory force lies in the way that it prohibits her from acting upon some of these reasons (thesis 3). If the conditions specified by all three theses are met, “authoritative directives, just like promises, are binding because, and where, they improve our powers by

⁷² Ibid., 136-41. Raz calls these two conditions the “normal justification thesis” and the “independence” condition. The former condition is consistent with Raz’s earlier formulations in *The Morality of Freedom*, while the latter is a new formulation. It appears to do some of the work of the “dependence thesis” that appeared in the earlier works. See Raz, *Morality of Freedom*, 46-8, 52-3.

⁷³ This is a paraphrase of Raz’s remarks on preemption in *Authority and Interpretation*, 140-1, 143-5. That discussion retains some of the content of the “dependence thesis” that appears in earlier formulations of the service conception. See Raz, *Morality of Freedom*, 46-8. There, Raz’s discussion of preemption is generally clearer: “*The fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them...* To the extent that legitimate authorities have power over us, the preemption thesis governs our right attitude toward them” (Ibid, 46, 47).

⁷⁴ Raz, *Authority and Interpretation*, 140-1. In other words, authority constrains action rather than judgment. See Raz, *Morality of Freedom*, 38-42. This view is close to that of Kant in “An Answer to the Question: ‘What is Enlightenment?’” See Kant, *Political Writings* (Cambridge: Cambridge University Press, 2003), 54-60.

⁷⁵ Raz, *Morality of Freedom*, 48. See also Raz, *Authority and Interpretation*, 142-3, 151.

enabling us to conform to reason better than we could without them.”⁷⁶ It is this service that grounds the legitimacy of authority and establishes a correlative duty of obedience.

Like Wolff, Raz emphasizes the subject’s active participation in the authority relation. Although Raz’s account is not primarily a recognitive theory, the subject’s recognition of authority is essential to the correlation of authoritative commands and the subject’s obligation to obey. Raz writes, “It is one’s own judgment which directs one to recognize the authority of another... The only reliable way of conforming to authority is through having a reliable belief that it is an authority, and therefore should be obeyed.”⁷⁷ Although an authority must be recognized as such in order for its commands to legitimately obligate obedience, the subject’s act of recognition need not involve explicit consent.⁷⁸ Nonetheless, as on Wolff’s account of *de facto* authority, the subject’s participation in the authority relation is a necessary condition of authority; the subject’s recognition makes authority possible.⁷⁹ Here again, authority depends upon the autonomous judgment and action of the subject over whom it is exercised.

Unlike Wolff, however, Raz does not believe that subjection to authority requires a forfeiture of autonomy. Although he rarely discusses autonomy *per se*, Raz claims that legitimate authority—i.e., that which simultaneously serves and obligates subjects—actually preserves and enhances the “rational capacity” and “ultimate self-reliance” of a subject by helping her to comply with relevant reasons for right action.⁸⁰ On his account, authority is an instrument, “simply one device, one method, through the use of which people can achieve the

⁷⁶ Raz, *Authority and Interpretation*, 142.

⁷⁷ Ibid., 140, 147. See also Raz, *Morality of Freedom*, 65: “In most cases the normal justification [of legitimate authority] cannot be established unless the putative authority enjoys some measure of recognition and exercises power over its subjects.”

⁷⁸ Raz, *Morality of Freedom* 48, 92-94; *Authority and Interpretation*, 147, 159-65.

⁷⁹ For Raz, this is true of both *de jure* and *de facto* authority, inasmuch as the latter implies a concept of, and a claim to, the latter. See Raz, *Authority and Interpretation*, 129, 132-3. Importantly, although Raz does not consider the concept of legitimate authority to be vacuous, he is explicit that many *de facto* authorities fail to meet the conditions of the service conception (Ibid., 131).

⁸⁰ Raz, *Morality of Freedom*, 48; Raz, *Authority and Interpretation*, 139, 140.

goal (*telos*) of their capacity for rational action, albeit not through its direct use.⁸¹ In other words, the subject's subjection to authority facilitates, rather than erodes, her autonomy. Raz writes:

This way of understanding matters is reinforced by the fact that in following authority... one's ultimate self-reliance is preserved, for it is one's own judgment which directs one to recognize the authority of another, just as it directs one to keep promises, follow advice, use technical devices and the like.⁸²

For Raz, the autonomous judgment and agency of the subject is expressed in, and preserved by, the act of recognition that authorizes the authority and simultaneously subjects the subject. This commitment is the core of Raz's disagreement with Wolff.

Above, I criticized Wolf for overstating the conflict between authority and autonomy and consequently understating authority's dependence upon the autonomy of its subjects. Because Raz emphasizes the compatibility of authority and autonomy, his view initially appears to remedy these defects. Nonetheless, his particular form of instrumentalism inadequately captures two important aspects of authority. First, by theorizing authority and obligation in terms of *particular instances* of command, decision, and compliance, the service conception does not acknowledge the continuity of authority and obligation between and beyond these instances. Second, by reducing authority to an instrument for subjects, the service conception exaggerates the autonomy of subjects while underestimating the agency of authorities. I will pursue these two lines of criticism in turn. My aim is not to definitively refute Raz. Rather, I hope to begin clarifying ways that a *political* account of political authority—that is, an account of authority's *contestability*, rather than its justification or propriety—will differ from even a successful *moral* account of political authority.

⁸¹ Ibid., 140.

⁸² Ibid. See also Raz, *Morality of Freedom*, 48.

As discussed, the service conception considers commands to be legitimately authoritative (and thus obligatory) when obeying them would help subjects conform to reason in matters where conformity to reason is more important than deciding for oneself (theses 1 and 2 above). In such cases, subjects are meant to regard authoritative commands as preemptive reasons that trump reasons for acting otherwise (thesis 3 above). On this account, authority and the correlative form of obligation affect the practical reasoning of subjects *only* when and where authoritative directives (those satisfying the conditions in theses 1 and 2) are issued. In other words, authority and subjection are limited to *particular instances* of command, decision, and compliance.⁸³ The “right to rule” and the “duty to obey” are thus analyzed episodically, as motivating factors in particular instances of practical reasoning about particular matters in particular circumstances, rather than as a durable prerogative and obligation, or as aspects of an ongoing relationship between an authority and subject.⁸⁴ In short, Raz’s account of authority denies the continuity of authority and subjection between and beyond particular instances of command and compliance.

Raz’s emphasis on instances or episodes of decision-making may be appropriate to a theory of *theoretical* authority (the kind of authority that, for example, a well-regarded scholar has in her particular area of study), because theoretical authorities provide reasons for belief

⁸³ Raz, *Morality of Freedom*, 59, 61-2, 68-9; Raz, *Authority and Interpretation*, 136-7, 142-3, 149-150.

⁸⁴ In his critique of the service conception and other “decision models” of authority, Scott Shapiro emphasizes the episodic nature of Raz’s account. See Shapiro, “Authority,” 415-417. According to Shapiro, accounts like the service conception make three questionable and interrelated assumptions. First, they assume that obligation to authority is the outcome of a decision-making process that occurs whenever a potentially authoritative directive is issued. Thus, the correlation of command and obedience is relevant only to particular commands about particular matters in particular circumstances (Ibid., 415). Second, accounts like Raz’s assume that the subjects of authority *decide* to obey *each time* an authoritative directive is issued; as Shapiro puts it, “Each act of compliance involves a choice to comply” (Ibid., 417). Third, such accounts assume that authoritative directives affect a subject’s practical reasoning at the level of preferences or reasons for action (or beliefs about preferences or reasons); obedient subjects choose to obey particular commands because they *prefer* to conform (Ibid.) Cf. Raz, *Authority and Interpretation*, 136-9.

when consulted, and these reasons are not generally obligatory.⁸⁵ However, *political* authority (both *de jure* and *de facto*) guides, permits, and prohibits action even when it is *not consulted*—i.e., between and beyond those instances in which subjects actively invite the dictates of authority into their practical reasoning.⁸⁶ This is not to say that political authority exists when it does not compel subjects; that is a view that Raz rightly rejects.⁸⁷ Rather, political authority exists, and compels subjects, even beyond those moments when subjects decide upon authoritative directives. The compelling effects of political authority, in other words, are not contained within instances of reason-giving, and obligation to authority is not limited to particular instances of decision-making and compliance. By reducing authority and subjection to episodes of command, decision, and compliance, the service conception excludes too much. Authority—both *de jure* and *de facto*—involves more than the service conception theorizes.

A second line of criticism operates similarly, by questioning Raz’s reduction of authority to instrumentality. This reduction also misses something important about authority, namely the persistence of the authority’s autonomy in and through authority relations. Because of this, the service conception underestimates the ways that authority imposes upon subjects, and it misconstrues the potential for subjects to resist authority’s impositions through disobedience.

For Raz, *de jure* authority serves its subject, and *all it does* is serve its subject. He frequently describes “the whole point and purpose of authorities,” “the point of having authorities,” and “the function of authorities” entirely in terms of the service that authorities provide to obedient subjects.⁸⁸ He even goes so far as to suggest that subjects would not subject themselves to authority if it did not serve them: “The point of being under an authority is that it

⁸⁵ Raz, *Authority and Interpretation*, 155-7.

⁸⁶ This seems to be Shapiro’s thought when he theorizes the self-subjection of the subject as an act that constrains her “future self to act on the demands of the authority, whatever they may be” (Ibid., 415).

⁸⁷ Raz, *Authority and Interpretation*, 158.

⁸⁸ Raz, *Morality of Freedom*, 47-8, 67; Raz, *Authority and Interpretation*, 141.

opens a way of improving one's conformity with reason. One achieves that by conforming to the authority's directives."⁸⁹ To employ this service, a subject simply uses an authority's directives to preempt her other reasons for action, just as she would consult "professional advice" as a way of "reducing the burdens of decision and inquiry."⁹⁰

This reduction of authority to instrumentality requires the subordination of the authority's autonomous agency to that of the subject. Raz makes this clear when he compares obedience to authority with "making vows, taking advice, binding oneself to others long before the time for action with a promise to act in certain ways, or relying on technical devices to 'take decisions for us,' as when setting alarm clocks, speed limiters, etc."⁹¹ Only one of these examples—taking advice—admits the agency of anyone other than the self-submitting subject; a subject can make vows, bind herself, and promise without actually interacting with another agent. The last two examples—relying on alarm clocks and speed limiters—explicitly involve mechanical tools rather than a second agent. Although Raz later notes that obedience to authority is unlike setting an alarm clock because the former "involves subjecting our will to that of another," his instrumentalist account consistently denies this will any agential role other than serving the subject.⁹²

Even this way of putting it, however, attributes more autonomy to the authority than is actually at work in Raz's account. According to the service conception, the commands of an authority are merely reasons to be included in a subject's decision procedures. If they have any compelling force at all (which they must, if they are authoritative), this is only because the

⁸⁹ Raz, *Authority and Interpretation*, 147.

⁹⁰ *Ibid.*, 149-50. See also 160-2.

⁹¹ *Ibid.*, 140.

⁹² *Ibid.*, 161.

subject herself *treats* them, individually, as preemptive reasons.⁹³ Raz writes, “To the extent that legitimate authorities have power over us, the preemption thesis governs our right attitude toward them.”⁹⁴ For its part, the authority functions like a passive supply of reasons, from which the subject draws in order to act rightly, just as she might consult a doctor for “professional advice” to trump her own self-diagnosis.⁹⁵ It is up to the subject to *choose* to comply with the reasons (or advice) that she receives; thus, it is the subject’s autonomous agency *alone*—in particular, her practical rationality—that compels her to act in accordance with authoritative directives.⁹⁶ On this view, the subject, and not the authority, is the sole agent of her own obligation.

Although subjects do indeed play an important agential role in authorizing authority and subjecting themselves, Raz exaggerates this role by *completely* evacuating the autonomous agency of the authority from his account. In this regard, his account is similar to Wolff’s, only now it is the *subject* that enjoys a monopoly of the autonomy within the authority relation. Raz’s account of authority recovers the autonomy that Wolff believes is forfeited by the subject, but it only does so by reducing authority to a non-agential *tool* or a “device,” a passive multiplier of the subject’s autonomy.⁹⁷

This reduction goes too far. Authority relations are never purely instrumental, because neither party fully appropriates or subordinates the autonomy of the other. Rather, authority is an interactive relation between two *autonomous agents*, in which both parties negotiate a correlation of command and obedience. Through this negotiation, each agent expresses her

⁹³ In obeying authority, “we follow reason, and thus exercise our judgment—though...we do it at one remove—by accepting, through our judgment, the binding force of... directives... that preempt our freedom to act for some of the background reasons” (Ibid., 142).

⁹⁴ Raz, *Morality of Freedom*, 67.

⁹⁵ Raz, *Authority and Interpretation*, 149.

⁹⁶ Raz writes, “In following authority... one’s ultimate self-reliance is preserved, for it is one’s own judgment which directs one to recognize the authority of another, just as it directs one to keep promises, follow advice, use technical devices and the like” (Ibid., 140). See also Ibid., 139, 142-3; Raz, *Morality of Freedom*, 48.

⁹⁷ Raz, *Authority and Interpretation*, 140.

autonomy in relation to the other. It is true that the subject must authorize the authority and subject herself, but the authority will actively solicit authorization, both at the inception of the authority relation and throughout its duration. Likewise, the authority may actively forfeit or squander this authorization; authorities are at risk of losing authority precisely because they are agents. In short, authority relations come into being, are maintained, and are dissolved through the interacting agencies of authorities and subjects. The autonomy of each may be constrained by this interaction, but it is not forfeited. Neither agent is a passive object for the other.

Within the interactive authority relation, authorities may exercise their agency in ways that involve “a large measure of imposition,” as Weber puts it.⁹⁸ Raz attempts to allow for this by noting that authority is responsive to the relevant reasons that apply to a subject, rather than to the subject’s own perceived interests.⁹⁹ However, because he understands subjection in terms of the subject’s “right attitude” toward authoritative reasons, expressed through her *choice* to comply with those reasons, Raz cannot account for the ways that authority sometimes functions through, and is experienced as, imposition.¹⁰⁰ *Pace* Raz, authority operates through imposition precisely because subjects obey authoritative directives *without* appropriating them as *their own* reasons for action. In fact, when authority serves its subject, it is the impositional nature of authority—its unappropriated, unchosen intrusion into the subject’s practical options—that benefits the subject by compelling right action.¹⁰¹ Authority functions this way because the subject can authorize an authority without deciding on particular directives. As discussed,

⁹⁸ Weber, *Economy and Society*, 1:51.

⁹⁹ Raz, *Morality of Freedom*, 48.

¹⁰⁰ “To the extent that legitimate authorities have power over us, the preemption thesis governs our right attitude toward them” (Ibid., 67).

¹⁰¹ This is why it makes sense to speak of resistance to authority. If authority were simply an instrument for its subject, then disobedience would be a matter of the subject’s failure to responsibly or successfully use this instrument; resistant non-compliance would amount to the subject’s failure to constrain *herself*. This misses something important about resistant disobedience, namely that it, just like obedience, involves an interaction between two *agents*.

subjects authorize authorities to intervene in their lives between and beyond particular instances of deliberation. This, in turn, depends upon the autonomous agency of the authorities, which are not simply reservoirs of reasons for subjects to decide upon.

In sum, Raz's service conception goes a long way in clarifying what is required for authority to be justifiable. His focus on the autonomous agency of the subject is especially notable, insofar as the subject's autonomy is necessary for the acts of recognition that establish and maintain authority.¹⁰² However, by theorizing authority in terms of particular episodes of reason-giving and deliberation, his view underestimates the ways that authority structures the lives and roles of agents between and beyond actual instances of command. Moreover, by reducing authority to an instrument for subjects, the service conception understates the agential role that authorities play in every authority relation. Regardless of the service they may provide their subjects, the impositions of authority express an autonomous agency that is alien to, and potentially in conflict with, the subject's own. This crucially *political* aspect of authority warrants examination that the service conception does not provide.

Toward a political account of political authority

Despite their differences, the theories of authority developed by Wolff and Raz both miss something essential to political authority, namely that authority is established and maintained through continual interactions between authorities and their subjects, both of whom exercise degrees of autonomy in these interactions. Political authority is *political* precisely because, through their acts of subjection and authorization, authorities and subjects continually and necessarily constrain or broaden, and foreclose or open, the avenues of practical action available to each other. These interactions cannot eliminate the autonomous agency of either party;

¹⁰² Raz, *Authority and Interpretation*, 140.

otherwise, the compelling force of authority gives way to coercive power, or becomes a mere tool for decision making. Both parties, then, are agents of the authority relation that binds them. Each exercises a degree of autonomy within the authority relation, but nonetheless neither enjoys unlimited freedom with regard to the other.

By theorizing the subject's acknowledgement of authority as a forfeiture of autonomy, or by reducing the agency of the authority to a mere instrument of the subject over whom it is exercised, both Wolff and Raz (respectively) mischaracterize the interactive relation specific to political authority. Their divergent mischaracterizations stem from their shared presuppositions regarding the subject of authority. Both thinkers implicitly assume this subject to exercise autonomous judgment and agency *separate from and prior to* her subjection to political authority. That is, were it not for authority, the autonomy of the subject would not be in doubt. Moreover, it is only because subjection is implicitly opposed to autonomy that *political* authority is presented as a *moral* problem in the first place. Given the autonomy of the unsubjected agent, Wolff and Raz ask, can subjection to political authority be morally legitimate?¹⁰³ The morality of authority is thus made to hang on whether the subjected agent retains the autonomy she presumably would have had, had she never acknowledged, recognized, or acceded to authority.

However, it is not at all clear that subjection should be so strictly opposed to autonomy in the framing of an account of authority. By assuming that an individual's autonomous agency is separate from her subjection, and by construing the normativity of authority in terms of the fate of this autonomy once the individual is subjected, both Wolff and Raz ignore important ways that autonomy is *not* separate from or prior to authority relations. *Pace* Wolff and Raz, subjection to authority can be compatible with the autonomous agency of the subject, even while an authority makes demands upon that autonomy. Moreover, subjection to authority may be

¹⁰³ Wolff, *Defense of Anarchism*, 18-9; Raz, *Authority and Interpretation*, 126, 134-5.

conducive to the development of autonomy; autonomous judgment and agency may even *require* cultivation within authority relations.¹⁰⁴ For example, the authority relations that structure families, communities, educational and religious institutions, and symbolic networks are not antithetical to rational and moral autonomy; they are, rather, sites of its development. Such relations can be conducive to autonomy even when they include the kinds of impositions that would vindicate Wolff's concerns about *de facto* authority and violate Raz's instrumentalist account of *de jure* authority.

More to the point, relations of *political* authority can also be conducive to independent rational and moral agency. Autonomy may develop *through*, and not merely *despite*, political heteronomy. This is Kant's central thought in the famous essay, "An Answer to the Question: 'What is Enlightenment?'" There, Kant argues that the political authority of Frederick the Great, together with the correlative form of obedience, may actively enable the rational autonomy of the Prussian public. According to this argument, authority is not merely *compatible with* autonomy. Rather, subjection to political authority may be a *necessary condition* of the subjects' autonomy.¹⁰⁵

A Kantian concern for autonomy underlies Wolff and Raz's common line of moral inquiry, and both contemporary thinkers presuppose a Kantian ideal of the rational and moral individual. However, Wolff and Raz ignore Kant's commitment to the development of autonomy through heteronomy, insofar as their arguments presuppose an unsubjected and autonomous agent whose autonomy can only be fully negated or fully preserved—but never

¹⁰⁴ In recent decades, this thought has been pursued by so-called 'post-modern' theorists, such as Michel Foucault, Judith Butler, and Pierre Bourdieu. However, it is also fully elaborated in the work of decidedly modern thinkers, such as G. W. F. Hegel, Karl Marx, Friedrich Nietzsche, Emile Durkheim, Sigmund Freud, and Max Weber.

¹⁰⁵ Kant, "What is Enlightenment?," 54-60. Shapiro notes that Kant treats autonomy and authority as compatible, but he does not acknowledge Kant's commitment to the development of autonomy through subjection to authority. See Shapiro, "Authority," 388.

cultivated, nor merely infringed upon—through subjection. Thus, their major disagreement is whether this agent does a disservice (Wolff) or service (Raz) to her preexisting rational and moral autonomy by acceding to the claims of authority.¹⁰⁶ Consequently, neither of their theories acknowledges the possibility that the subject’s autonomy may be, not merely forfeited or preserved, but also *shaped* by, her subjection. Moreover, neither theory acknowledges that it is the non-instrumental, impositional character of authority that enables it to shape—and potentially cultivate—the autonomy of the subject. Perhaps most importantly, neither theory appreciates the ways that the non-instrumental aspects of authority are themselves continually enabled by the autonomy of the subjects upon whom they impose. As a result, neither theory considers what may be the most difficult moral and political problem of authority, namely that subjects might continually and persistently exercise their autonomy by acknowledging as rightful or legitimate—and thereby authorizing, and subjecting themselves to—commands that do a disservice, or even violence, to the subjects themselves.¹⁰⁷

In short, neither Wolff nor Raz appreciates authority as a mutually interactive and potentially conflictual negotiation between agents, in which the stakes of authorization and subjection are various *degrees* of autonomy and heteronomy, freedom and constraint, prerogative and imposition. Their common focus on the all-or-nothing status of the autonomous individual is an artifact of a presupposed opposition between autonomy and subjection. This presupposition

¹⁰⁶ Carol Pateman charges Wolff with presupposing “radically abstract individualism,” and the same charge can be leveled against Raz. See Pateman, *The Problem of Political Obligation*, 134. This individualism prevents both thinkers from understanding authority as an interactive relation. Pateman writes, “Philosophical anarchists... like all consistently radical individualists, fail to deal coherently with the mutuality and reciprocity of social relationships. ‘Authority,’ for example, is treated not as a relationship but as a property of individuals (although... this view of authority is not confined to philosophical anarchists)” (Ibid., 135).

¹⁰⁷ Weber, of course, does entertain this idea; authority’s dependence upon voluntary submission can limit, but never rule out, authorized but non-instrumental and potentially abusive uses of authority. See *Economy and Society*, 1:225-8, 242-244. This idea is also central to Pierre Bourdieu’s theory of symbolic power, which attempts to understand the “complicity, based on misrecognition, which is the basis of all authority,” including authority which does violence to the authorizing subject. See Bourdieu, *Language and Symbolic Power*, 113; cf. 114-6, 170, 209-212.

is suited to their moral inquiries, which focus on whether or not authority can be morally justified. However, a *political* account of political authority would not presuppose this opposition, because such an account would focus on the ways that authority is established and variably maintained, contested, obeyed, negotiated, and resisted through interactions that express various degrees and forms of autonomy, and which affect the lives—the practical options, interests, and avenues of agency—of authorities and subjects alike. The limits of Wolff’s and Raz’s views of authority, in other words, are the limits of non-political conceptions of authority.

Arendt on authority

Hannah Arendt’s account of authority is a political account, insofar as it understands authority as a dynamic relation of interdependence that serves and constrains both authorities and subjects, albeit in different ways. More than Wolff or Raz, Arendt recognizes that authorities and subjects continually negotiate authority relations by negotiating the prerogatives and obligations stipulated by those relations. Because she theorizes authorization and subjection as *up for grabs* within an interactive relation, Arendt is not tempted to theorize the moral status of authority *in general*.

Like Weber, Wolff, and Raz, Arendt theorizes authority in terms of a particular correlation between command and obedience. She writes:

Authority precludes the use of external means of coercion; where force is used, authority itself has failed... The authoritarian relation between the one who commands and the one who obeys rests neither on common reason nor on the power of the one who commands: what they have in common is the hierarchy itself, whose rightness and legitimacy both recognize and where both have their predetermined stable place.¹⁰⁸

¹⁰⁸ Arendt, *Between Past and Future* (New York: Penguin Books, 1993), 92-3.

On this account, command and obligation are correlated by the recognition that a hierarchical relation between authority and subject is legitimate. According to Arendt, “the compelling element lies in the relationship itself and is prior to the actual issuance of commands;” this is why authorities need not resort to forceful coercion, violence, or persuasion to compel obedience.¹⁰⁹

Arendt specifies that the “hallmark” of authority is “unquestioning recognition by those who are asked to obey.”¹¹⁰ Here again, the subject actively participates in the authority relation by acknowledging and acceding to authority, thereby acting as an agent of her own subjection. Nonetheless, the subject does not forfeit her independent agency by recognizing a particular hierarchical authority relation as legitimate; as Arendt emphasizes, “authority implies an obedience in which men retain their freedom.”¹¹¹ This freedom is not the “uncompromising self-sufficiency and mastership” that is sometimes associated with individual autonomy, but the freedom to act, to make new beginnings. For Arendt, freedom is expressed only *in action*, which always occurs in relation to others.¹¹² This freedom is compatible with subjection to authority, which may even facilitate the freedom of its subjects.¹¹³

Because subjects do not forfeit their freedom, their obedience is never guaranteed, and authorities must continually solicit recognition that the authority relation is legitimate. In other

¹⁰⁹ Ibid., 106. Force, violence and persuasion may even work against authority, inasmuch as they are instruments suited for compelling one’s equals—or one’s superiors—to comply. As such, their employment by an authority calls into question the hierarchy that is essential to authority. See Ibid., 92-3, 102-3, 107, 132-3, and Arendt, *On Violence* (New York: Harcourt Brace & Company, 1970), 40-54.

¹¹⁰ Arendt, *On Violence*, 45. Neither violence nor persuasion can compel obedience that is simultaneously free and unquestioning.

¹¹¹ Arendt, *Between Past and Future*, 106.

¹¹² Arendt, *The Human Condition* (Chicago: Chicago University Press, 1998), 234. For Arendt, “Men are free... as long as they act, neither before or after; for to *be* free and to act are the same” (*Between Past and Future*, 153). Action, unlike behavior or fabrication, is a kind of spontaneous, public virtuosity that is always open to, and shaped by, unpredictable effects and the actions and reactions of others. See *Between Past and Future* 148, 153-4, 162-7; *Human Condition* 178-84, 188-190, 220, 233-4, 245; *On Violence*, 4.

¹¹³ Whereas totalitarianism attempts to script the behavior of subjects in ways that erode their freedom, relationships of authority compel subjects to act in ways that are guided, but not fully legislated, by authority. Authorities compel *action* structured by commands, while tyrants coerce *conformity* to commands.

words, authority must always present its subjects with reasons for obedience, and this means that it must be responsive to the interests and judgments of its subjects, even as it guides them.

Following Kant, Arendt believes that this aspect of authority tends toward the preservation of political spheres of publicity and freedom.¹¹⁴ Thus, there is an instrumental aspect to authority, both in terms of subjects' particular interests and the wider political context in which these interests are formed and negotiated. However, authority is not reducible to instrumentality insofar as the authority retains its autonomous agency and the expression of this agency does not always or by definition serve its subjects. An authority's responsiveness to its subjects is a consequence of its dependence upon their agency, but authority is more than this dependence.

On Arendt's view, then, authority is a dynamic and alterable relationship that can be maintained, challenged, or lost depending on whether the authority relation is recognized as a legitimate hierarchy by those at its bottom. This does not mean that recalcitrant subjects can simply excuse themselves from an authority's demands and thereby bring down an existing authority relation. Arendt acknowledges that authority relations are powerfully self-perpetuating, and she understands the ability of authorities to solicit recognition and thereby continually compel obedience. However, she is also aware that the continual *need* to solicit recognition and obedience practically constrains authorities. In order to command obedience, authorities must avoid treating their subjects as equals, using violence against them, or inviting disdain or ridicule. Arendt writes, "To remain in authority requires respect for the person or the office. The greatest enemy of authority, therefore, is contempt, and the surest way to undermine it is laughter."¹¹⁵ Although she never rules out the ability of subjects to challenge authority,

¹¹⁴ Arendt, *Human Condition* 180-3, 200, *Between Past and Future* 95, 148-9, 153-4, 189-90.

¹¹⁵ *On Violence*, 45. Arendt also notes that "a father can lose his authority either by beating his child or by starting to argue with him, that is, either by behaving to him like a tyrant or by treating him as an equal" (Ibid). See also *Between Past and Future* 92-3, 102-3, 107, 132-3.

Arendt realizes that such challenges are usually prompted by the authorities themselves when they squander, forfeit, or fail to secure the recognition and obedience of their subjects.

In other words, authority may be self-perpetuating, but it is always precarious.¹¹⁶ An authority continually depends upon its subjects for the recognition that authorizes it. Because the compelling force of authority is *internal* to the hierarchical authority relation, and because external coercion works against this internal compulsion, the authority has no way to *make* subjects recognize the legitimacy of the relation if they do not. It may solicit or encourage recognition by acting in ways ‘proper to’ authority, but any lapse in authority erodes its ability to do this effectively.

Moreover—and more importantly for Arendt’s political theory—every political authority is continually dependent upon its subjects for their *power*. On Arendt’s view, power “corresponds to the human ability not just to act but to act in concert.”¹¹⁷ Whereas free action may be performed by individual agents—but always in relation to others—power is always exercised by groups. Power sometimes appears as authority, but authority is not a type of power.¹¹⁸ Arendt writes, “The most conspicuous characteristic of those in authority is that they do not have power.”¹¹⁹ Elsewhere, she claims that “the true seat of authority” is characterized by an explicit “lack of power.”¹²⁰ Authority may command and coordinate power, but power is exercised collectively by the subjects of authority. As with freedom, subjects do not forfeit or alienate this power when they authorize an authority; rather, authority *depends upon* the

¹¹⁶ Indeed, Arendt is concerned with the *absence* of genuine authority in the contemporary world. See *Between Past and Future*, 91-2.

¹¹⁷ Arendt, *On Violence*, 44.

¹¹⁸ Arendt, *Between Past and Future*, 93, 96, *On Violence*, 45-7.

¹¹⁹ Arendt, *Between Past and Future*, 122. Following Cicero, she continues, “*Cum potestas in populo auctoritas in senatu sit*, ‘while power resides in the people, authority rests with the Senate’” (Ibid). This separation is not exclusive to the Roman context; Arendt argues in various texts that contemporary authoritarian and democratic governments are also founded on a separation of authority and power. See *Between Past and Future*, 98, *On Violence*, 44-7, and Arendt, *On Revolution* (New York: Penguin Books, 2006), 148, 191-3.

¹²⁰ Arendt, *On Revolution*, 192.

persistent power of the subjects inasmuch as authoritative demands solicit collective action from them.¹²¹ Political authority consists precisely in an authority's ability—made possible by a recognized relationship of inequality—to make demands on the power of collective subjects in order to accomplish what the authority itself cannot.¹²²

By theorizing authority as a relation in which subjects retain both their freedom of action and their power, and by acknowledging that authorities perpetually solicit the obedience of their subjects in order to remain in authority, Arendt refuses to identify authority in general with either domination or instrumental value. Although she maintains that authority is a relation of hierarchy, she is clear that subjects are not finally and fully controlled by authorities; at the same time, she is clear that authorities are constrained by their dependence on the recognition, obedience, and power of their subjects. Neither party, then, exercises unconstrained autonomy, but neither totally forfeits autonomy, either. Moreover, both parties benefit from the authority relation. The authority benefits from its access to power through the obedient subjects, while the subjects benefit from the authoritative coordination that augments their power. Nonetheless, authority cannot be understood as a purely instrumental relation, because authority serves no consistent or necessary purpose (such as helping subjects act according to right reasons). For Arendt, the *ends* of authority are just as variable, negotiable, and contestable as its means.

By refusing the positions staked out by Wolff and Raz, Arendt is freer to develop a theme that is latent in all of the accounts of authority reviewed in this chapter. I have shown that, for Weber, Wolff, and Raz, authority does not compel unless its subjects authorize an authority through an act of acknowledgement, accession, or recognition. The correlation of command and

¹²¹ For this reason, authority may exploit, but can never disempower, its subjects.

¹²² Arendt does not deny that governments employ power or violence—which she also sharply distinguishes from authority—but she thinks that these forms of coercion tend to undermine authority. For this reason, she is impressed by regimes that institutionalize, rather than ignore, the distinction between power and authority. Arendt, *On Violence*, 44-49, *Between Past and Future*, 98-100, *On Revolution*, 148, 191-3.

obedience, in other words, is established by the *subjects* of authority, and this means that authorities are *dependent upon their subjects for their authority*. Whereas Weber, Wolff, and Raz are all committed to this claim as regards the initial moment of authorization and subjection, Arendt understands authorities to be *constantly* dependent upon their subjects. She makes this dependence central to her account of authority and her political thought more generally. On her view, authority is a negotiable relation of hierarchy in which the authorities on top are ultimately indebted to the subjects on the bottom.

In the next part of this chapter, I develop an account of authority that takes seriously this political insight, even as it leaves out some of Arendt's core commitments. Mine is not an Arendtian account of authority, but it draws heavily upon the thought of Arendt and Weber in order to sketch the ways that authority is established and maintained, the claims it makes upon its subjects, and the ways that it can be negotiated, reinforced, and resisted. Rather than evaluating the moral status of authority, I aim to clarify its political conditions of possibility, and so also its limits. This will enable me to develop a political theory of *sovereignty* in the following chapters.

Part II: A Political Account of Political Authority

Despite their important differences, a common commitment links the theories of authority articulated by Weber, Wolff, Raz, and Arendt. For each of these thinkers, authority compels action because the subjects over whom it is exercised submit to it. It is the subject's submission that distinguishes obedience to authority from mere compliance with simple power. By accepting, acknowledging, believing, or recognizing that another actor legitimately or rightfully commands her, the subject actively participates in her own subjection to authority.

This basic thought plays different roles in the work of Weber, Wolff, Raz, and Arendt, who use it to pose different questions and reach different conclusions. In particular, Wolff and Raz direct it toward normative moral inquiries focused on whether the ability to command obedience can be morally justified. Although their projects are philosophically and politically important, I will not pursue the moral questions they pose. Rather, I aim to give a descriptive account of authority as a political relation. This means that although I continue to rely upon some of their most important insights, which I highlighted in previous sections, I will not use the term ‘authority’ in exactly the same ways they do. In particular, I do not follow Raz in defining ‘authority’ as a “right to rule” or using the term ‘authority’ to refer to “legitimate authority.”¹²³ Nor do I define authority as a form of command that creates new moral obligations. Rather, I follow Weber and Arendt—as well as others, such as H. L. A. Hart—in distinguishing the concept of political authority from normative questions concerning its moral legitimacy.¹²⁴ On my descriptive view, authority *can* be legitimate, but it need not be legitimate in order to be authority; it *can* create moral obligations, but this is not a necessary condition of authority.¹²⁵ Authority relations *pose*, rather than answer, normative questions about the moral legitimacy of command and obedience.

Nonetheless, a descriptive theory is not limited to describing *merely de facto* authority.

What connects the descriptive theories of Weber and Arendt with the normative theories of

¹²³ Raz, *Authority and Interpretation*, 134, 129.

¹²⁴ See Hart, *Concept of Law* (Oxford: Oxford University Press, 1961), 151-207. Importantly, Hart is clear that legal obligations, which are based on authority, have normative grip even though their grip is not the force of *moral* normativity. Early on, he writes, “The most prominent feature of law... is that its existence means that certain kinds of human conduct are no longer optional, but in *some* sense obligatory... [T]heories that make [a] close assimilation of law to morality seem, in the end, often to confuse one kind of obligatory conduct with another, and to leave insufficient room for differences in kind between legal and moral rules and for divergences in their requirements” (7-8).

¹²⁵ Nonetheless, I agree with Raz that “the concept of legitimate authority has explanatory priority over that of a *mere de facto* authority. The latter presupposes the former but not the other way around” (*Authority and Interpretation*, 128, italics added). I would *not* agree, however, that the concept of legitimate authority has explanatory priority over that of *authority simpliciter*. The latter is the object of my inquiry.

Wolff and Raz is the common thought that authority, in order to be politically effective, must be recognized as legitimate by the subjects over which it is exercised. The subjects may be correct; the authority relation may indeed be actually morally legitimate. For this reason, it would be misleading to say that a descriptive theory of authority focuses on merely *de facto* authority. Rather, a descriptive theory of authority describes the conditions of possibility of authority and the correlative form of obedience while remaining agnostic about the moral legitimacy of authority *tout court*. Nonetheless, this agnosticism does not prevent a descriptive theory from applying the term ‘authority’ to relations of command and obedience that meet its criteria.

Descriptive theory may be unsatisfying to those seeking a justification of political authority, but description can still be critical. Raz is entirely correct when he writes:

What makes mere de facto authorities different from people or groups who exert naked power... is that mere de facto authorities claim, and those who have naked power do not, to have a right to rule those subject to their power. They claim legitimacy. They act, as I say, under the guise of legitimacy.¹²⁶

Moral accounts of political authority, like Raz’s, ignore the guise of legitimacy and focus on whether authority is, or can be, morally legitimate. A *political* account of political authority, on the other hand, will take seriously the guise of legitimacy by trying to explain its conditions of possibility, its significance, and its stakes.

In what follows, I motivate key insights from the first half of this chapter toward a political account of political authority. I will provide a conceptual sketch, rather than full-fledged account, of political authority. Nonetheless, I intend this sketch to be robust enough to argue from a *conceptual* claim, namely that authority requires the participation of subjects in their own subjection, to a *political* claim, namely that all authorities are ultimately indebted, for

¹²⁶ Raz, *Authority and Interpretation*, 128.

their authority, to their subjects. In later chapters, I will argue that this indebtedness is an essential aspect of modern sovereignty and the sovereign state.

Authority, subjection, and recognition

Political authority and subjection are correlated relational concepts. They are correlated insofar as they are defined in relation to one another. They are relational insofar as each characterizes the way that a particular agent (or agents) relates to another agent (or agents). A drill sergeant, for example, exercises authority *over* new recruits, who are subject *to* the drill sergeant. The authority of the sergeant correlates to the subjection of the recruits. There are no political authorities without subjects, and there are no subjects—in the relevant sense—without political authorities.

The correlation of authority and subjection takes the form of a relation between two autonomous *agents*. I have shown above that Wolff and Raz misconstrue the interactive nature of this relation in ways that underemphasize the political aspects of political authority. Following Weber and Arendt, I understand authority and subjection to refer to an interactive relation in which agents negotiate their autonomous agency vis-à-vis one another. Within an authority relation, authorities command and subjects obey, and while the correlation of command and obedience may constrain the autonomy of each agent, it does not fully eliminate it.

What correlates command and obedience, and distinguishes an authority relation from the exercise of coercive power, is the subject's acceptance, acknowledgement, or affirmation that the authority's command is a legitimate or rightful basis for action. A subject obeys, not because she affirms the content of a command, but because she accepts the right of another agent to command her, and/or she accepts that she has a legitimate obligation to obey the authority's

commands.¹²⁷ Through her acts of acceptance, acknowledgment, and affirmation, the subject expresses the “willingness to submit” that Weber identifies as a necessary condition of authority.¹²⁸

In this regard, my account differs slightly from Weber’s, which locates the subject’s submission in a *belief* in legitimacy. Here I have been influenced by Hart, who stresses that it is the subject’s “voluntary co-operation,” manifested in various acts of acknowledgement and acceptance, that is essential to authority.¹²⁹ Loosely following Raz and Arendt—as well as Pierre Bourdieu’s important work in social theory—I will use the broad term ‘*recognition*’ to refer to the subject’s acceptance, acknowledgement, or affirmation of the legitimacy of authority and subjection.¹³⁰ It is the subject’s recognition of legitimacy that distinguishes an authority’s commands from mere coercion and a subject’s obedience from mere compliance.¹³¹ Put differently, it is by recognizing an agent as legitimately or rightfully able to command her that a subject *authorizes* that agent. In so doing, she also *subjects* herself, due to the correlativity of authority and subjection. In this way, the subject actively participates in her own subjection to authority.

¹²⁷ On content-independence, see pages 5 and 13, above. The right to command and duty to obey are correlative, as Wolff stresses. It is *because* they are correlative, however, that the belief in *either* is sufficient for obedience. Subjects may obey because they recognize an authority’s right to command without ever recognizing the corollary duty to obey; they simply obey “*because he tells you to do it,*” as Wolff puts it (*Defense of Anarchism*, 9).

¹²⁸ Weber, *Economy and Society*, 1:37.

¹²⁹ Hart, *Concept of Law*, 196. See also pages 59-60, 198-9. Hart is interested in the authority of law, but the same voluntary co-operation is necessary for authority more generally (19-20).

¹³⁰ Raz, *Morality of Freedom*, 65, *Authority and Interpretation*, 140, 147; Arendt, *On Violence*, 45, *Between Past and Future*, 92-3; Bourdieu, *Language and Symbolic Power* (Cambridge: Harvard University Press, 2001), 72-3, 111-5.

¹³¹ I have chosen the term ‘recognition’ in order to capture both reactive and proactive ways that subjects may relate to authority. Since authority is frequently understood as an advantageous ability exercised *over* another agent, it is often theorized in terms of an authority’s claim to authority and the subject’s accession to this claim. While this correctly highlights the necessary participation of the subject in the authority relation, it construes the subject’s agency as merely reactive. In point of fact, subjects proactively bestow authority just as much as they accede to it.

The recognition of an agent as a legitimate source of command is a necessary condition for authorization and subjection. Authority depends upon recognition.¹³² This means that there are no political authorities that are not recognized as legitimately or rightfully able to issue commands and guide the actions of the subjects they command.¹³³ While there are obviously leaders and despots and experts and fathers that are not recognized in this way, they are not political authorities. However, the recognition of legitimacy does not entail actual legitimacy.¹³⁴ It is not the case that every recognized authority has an actual right to command, or that every subject of such an authority has an actual moral obligation to obey.

Regardless of whether the recognition of legitimacy corresponds to actual legitimacy, there is a diversity of reasons why subjects may recognize an agent as a legitimate source of command. Weber's account of authority highlights many potential bases of recognition, including status, office, position in a traditional hierarchy, conformity to traditional rules, exceptional deeds, and reputation. To some extent, Wolff and Arendt echo Weber in their own accounts.¹³⁵ More recently, Bourdieu has extended and enriched Weber's analyses with the concept of symbolic capital, which encapsulates an even wider variety of bases of recognition.¹³⁶

¹³² The subject's recognition is not a sufficient condition of authority, insofar as the recognized agent must also actually issue commands. In *Authority and Interpretation*, Raz correctly notes that authority does not exist separate from its exercise (158).

¹³³ This does not mean that a subject can simply refuse to recognize an authority and thereby de-authorize the authority. Nor does it mean that every authority must be recognized at all times by every person subject to its command. Political authority is frequently discussed as if it is a one-to-one relation between two agents. Usually, however, it is a much wider social relation and, when it is, some important qualifications apply. See below, pages 47-8, 51.

¹³⁴ My account is descriptive, not normative. It explains what authority is and how it functions, not what justifies it. For this reason, Simmons's objection to "attitudinal" justifications of authority does not apply to my own view. See Simmons, *Justification and Legitimacy*, 134.

¹³⁵ Wolff, *Defense of Anarchism*, 6-7, 16-18; Arendt, *Between Past and Future*, 92-3.

¹³⁶ According to Bourdieu, subjects recognize an agent's symbolic capital (i.e., the various symbols of status that are favored within a particular social, economic, linguistic or political context) and thereby invest that agent with *symbolic power*. Its name notwithstanding, symbolic power functions much like authority, and Bourdieu's theories have been influential on my sketch of political authority. See *Language and Symbolic Power*, especially pages 72-5, 106, 113, 164, 170, 239 and *Practical Reason* (Stanford: Stanford University Press, 1998), 47.

In addition to these broadly *social* bases of recognition, there are also specifically *political* bases, as when citizens recognize the legitimate authority of an individual on the basis of her victory in an election, or on the basis of some other accepted procedure. There are also *situational* bases of recognition. For example, the passengers from a crashed plane may recognize a flight attendant as a legitimate authority on the basis that, given her training, she is most likely to lead them to safety.¹³⁷ Additionally, there are *moral* bases for recognizing an agent as a legitimate source of command. Raz's service conception, for instance, may indicate one such basis for recognition.¹³⁸ When an authority relation is founded on moral bases, recognized legitimacy may correspond to the actual legitimacy sought by some normative theorists, such that the recognized authority actually has a right to command and the recognizing subjects actually have a moral obligation to obey.¹³⁹ In such cases, it may be morally wrong *not* to recognize the legitimacy of an authority.¹⁴⁰

This survey of the bases of authority is by no means exhaustive. It is only meant to show that subjects may authorize an authority, and subject themselves, for a variety of reasons. My descriptive sketch of authority is not meant to adjudicate between such reasons, even though identifying them may be crucial to evaluating the legitimacy of particular authority relations. In fact, one virtue of descriptive accounts is that they emphasize the *moral arbitrariness* of

¹³⁷ This example occurs in David Estlund's *Democratic Authority* (Princeton: Princeton University Press, 2008), 124. Through a detailed examination of this example, Robert Talisse and Michael Harbour effectively challenge the core of Estlund's normative theory of authority. See Talisse and Harbour, "Questions about Normative Consent" (unpublished paper on file).

¹³⁸ I.e., if certain commands help obedient subjects act in accordance with reason, and acting according to reason is better than deciding for oneself, then there may be a moral basis for recognizing as a legitimate authority an agent who issues such commands.

¹³⁹ However, this is not necessarily the case. For instance, the doctrine that 'might makes right' may be considered a moral basis for authorizing an authority, but many normative conceptions of authority would not count the ensuing authority relation as actually legitimate.

¹⁴⁰ This thought is inspired by David Estlund's theory of normative consent, which claims that there are situations in which it is immoral to refrain from *consenting* to authority. See Estlund, *Democratic Authority*, Chapter 7. Recognition and consent are sufficiently different that I am not committed to Estlund's conclusions. On the difference between recognition and consent, see below, pages 45-49.

authority relations, and of the underlying bases of recognition. A descriptive account of authority does not affirm such arbitrariness, but presents it as one feature of authority that requires normative evaluation and enables political contestation.¹⁴¹

This emphasis on moral arbitrariness notwithstanding, my account denies that forceful coercion can be a basis of the recognition that authorizes an authority. The same goes for any other denial or negation of the recognizing subject's basic autonomy. But these restrictions are themselves descriptive, rather than normative. Part of what defines authority is its crucial difference from blunt power: the subject of authority is a participating agent, and not merely a passive object, of her subjection. As Raz succinctly puts it, "One's ultimate self-reliance is preserved, for it is one's own judgment which directs one to recognize the authority of another."¹⁴² The subject participates in her subjection by recognizing—for whatever reason—the legitimacy of the authority exercised over her, and this act of recognition expresses the autonomous agency and judgment that she retains even through her subjection.¹⁴³

Recognition, not consent

At first glance, my account of authority may appear similar to consent theories of authority, in which the legitimacy or moral justification of authority is founded, either directly or indirectly, upon the consent of the subjects over whom authority is exercised. My account does share a central feature with consent theory, namely that authority depends upon authorization by its subjects. However, my account differs from consent theories in two significant ways. First,

¹⁴¹ Descriptive accounts can pose questions regarding the morality of actual authority relations without denying, as some normative accounts do, that authority can be morally arbitrary. That is, they can pose the question, "Is this particular authority relation moral?" instead of simply, "Is this particular relation *really* authority?" See Raz, *Authority and Interpretation*, 128-9.

¹⁴² Raz, *Authority and Interpretation*, 140.

¹⁴³ For this reason, authority is a normative concept—it advocates for certain relationships. The normative function of the concept can be described, however, without an account of moral obligation. A descriptive account of a normative concept can be useful for understanding its function and the stakes of the normativity it articulates.

mine is not an account of legitimate or justified authority; it is not a normative account.

Recognition, then, is not simply another idiom for consent, insofar as it plays a different role in my account (i.e., a necessary condition of authority) than consent does in consent theories of authority (i.e., a necessary condition of legitimate authority).

Second, my account says nothing about the *intention* of subjects to authorize an authority. Consent theories, on the other hand, ultimately depend upon the intention of subjects to authorize authorities and subject themselves, although this intention may not be expressed directly. According to theories of *express* consent, the consenting subject voluntarily and intentionally agrees to precisely what the theories attempt to explain, namely the legitimacy of an authority. According to theories of *tacit* consent, consent is implied in, or expressed by, certain everyday practices of subjects, such as enjoying the protection of a government. The strength of tacit consent theories depends upon the links they draw between the actual acts of subjects and the voluntaristic intentionality that is purported to be a necessary condition of legitimate authority.¹⁴⁴ Finally, *hypothetical* consent theories claim that a certain authority relation is legitimate because, under certain ideal conditions, subjects would have consented to it.¹⁴⁵

At the core of consent theory is a notion of consent as a voluntary and intentional act of authorization and subjection, and this causes problems for all forms of consent theory. Theories of express consent are problematic because subjects rarely, if ever, expressly and intentionally consent to the authorities that subject them; there are few, if any, authorities that satisfy the conditions of express consent theory. Theories of tacit consent are problematic because it is

¹⁴⁴ On express and tacit consent theories, see A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), 57-95 and *Justification and Legitimacy*, 158-78. Simmons emphasizes the intentionality that is necessary to both express and tacit consent on pages 177-8 of *Justification and Legitimacy*. See also John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 2004).

¹⁴⁵ See, for instance, John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); Cynthia Stark, "Hypothetical Consent and Justification," *Journal of Philosophy* 97, no. 6 (2000): 313-334; Estlund, *Democratic Authority*, 117-135.

difficult to convincingly identify, within everyday practices, the intentional and voluntary submission that is characteristic of consent. This is especially true given that the practices that are said to imply consent—such as living under the protection of a particular government—are themselves not usually the result of intentional or voluntary choices.¹⁴⁶ A similar line of argument can be applied to hypothetical consent theories, insofar as it is unclear how non-actual consent captures the voluntary and intentional self-subjection needed to do the normative work of consent theory.¹⁴⁷

My own account of authority does not compete with consent theory, insofar as I am not offering a justification of political authority. Nonetheless, it is illustrative to note that the problems just mentioned do not affect my account. Although recognition and consent are both ways that subjects participate as agents in their own subjection, only consent involves an (express, tacit, or hypothetical) intention to authorize an authority or submit to its command. On my account, recognition correlates command with obedience and authorization with subjection, but a subject may recognize an authority's prerogative to command without intending to authorize the authority and subject herself. She may do so for a variety of reasons and on a variety of bases, none of which need involve any awareness that her act of recognition actually authorizes that authority. A similar lack of awareness might well undermine the authorizing power of *consent* (we might consider the subject to be cheated, for example, if she does not know how her consent operates). However, the authorizing power of *recognition* is not similarly undermined. While consent and recognition both express a crucial moment of autonomous agency in the establishment of an authority relation, they differ insofar as recognition does not

¹⁴⁶ Simmons, *Justification and Legitimacy*, 77, 137-9, 177-8.

¹⁴⁷ Ronald Dworkin, "The Original Position," in *Reading Rawls*, (New York: Basic, 1975), 17-21. In "Hypothetical Consent," Stark rescues hypothetical consent theories by abandoning any link to the voluntarism and intentionality that are crucial to theories of express consent (232-334). My own descriptive account of authority is influenced by this move.

require the subject to (expressly, tacitly, or hypothetically) intend to authorize the authority or subject herself to the authority. By recognizing an authority on the basis of status, office, or charisma (etc), subjects may authorize authorities without knowing it.

My account can dispense with the intent to authorize, and thereby avoid the problems of consent theory, because it is not a normative account; the bar is lower, so I do not need voluntarism and intentionality to do any normative work for me. This does not mean, of course, that I can dispense with the subject's role in authorizing the authority or the uncoerced nature of her act of recognition. However, once the subject's act of recognition is separated from the intent to authorize, it is no longer difficult to discover acts of authorization in everyday practices. Subjects authorize authorities and subject themselves all the time by recognizing, for whatever reason and on whatever bases, the right of other agents to command them. As Wolff notes, authorization often occurs through reflex or habit rather than intentional expressions of consent.¹⁴⁸ Moreover, authorization and subjection may occur through acts of recognition that are embedded in long-term practices or ways of life. By accepting or regularly obeying laws, fulfilling the duties of citizens and otherwise living *as subjects* of a particular government, subjects *do* recognize, if only tacitly, the right of that government to command them.¹⁴⁹ Through

¹⁴⁸ Wolf, *Defense of Anarchism*, 7.

¹⁴⁹ Within a society-wide network of authority relations, there will be many different ways of recognizing the authority that structures society. In *The Concept of Law*, Hart makes a point that is relevant here, despite the differences in our accounts of authority. He writes: "The officials of the system may be said to acknowledge explicitly such fundamental rules conferring authority: the legislators do this when they make laws in accordance with the rules which empower them to do so: the courts when they identify, as laws to be applied by them, the laws made by those thus qualified, and the experts when they guide the ordinary citizens by reference to the laws so made. The ordinary citizen manifests his acceptance largely by acquiescence in the results of these operations. He keeps the law which is made and identified in this way, and also makes claims and exercises powers conferred by it" (59-60). Hart notes that a "sufficient number" of persons in a society must accept a rule as authoritative in order for it to be so (196). The same is true on my account of authority. In a society-wide network of authority relations, there is no need for *all* subjects to recognize the authority that structures society. A number of subjects may not recognize the legitimacy of a president or a court, for example, without threatening their authority. In such cases, the president and the court will still exercise authority over the non-recognizing members of society. I will not speculate as to the proportion of non-recognizers it takes to alter or dissolve a society-wide authority relation. Authority relations are variable, negotiable, and contingent, and political authority is not absolute. This is why there

this kind of recognition, they may continually invest in their government an authority that, unless challenged, indefinitely structures their practical options. The tacit nature of this recognition is not a problem for my account, because in it there is no need to connect everyday acts of recognition to the intentionality that is crucial to consent.

Because my account stresses that subjects authorize authorities without necessarily intending to do so, it can affirm insights from branches of critical theory and social theory that are often ignored by moral theories of political authority. Rather than review these here, I will simply note that thinkers like Marx, Weber, Freud, Lukács, Adorno, Bourdieu, and Butler take seriously what Raz calls “the guise of legitimacy,” as well as the ways that subjects reinforce it through their own acts of authorization.¹⁵⁰ There is a critically democratic impulse to this line of thought, insofar as it emphasizes authority’s dependence upon the subjects over whom it is exercised. However, from Marx onward, critical and social theorists have known that agents cannot always recognize their own agency when it is at work in the forces that compel or coerce them. Authority does not usually advertise the fact that it depends upon the autonomy of those over whom it is exercised. Moreover, as Bourdieu emphasizes, subjects may “misrecognize” their own acts of recognition, mistaking the bases of their recognition for the bases of authority itself.¹⁵¹ When this happens, authority appears to be a consequence of social facts, rather than the

is a *politics* of political authority. However, I will suggest that it is harder to deauthorize authority than it would at first appear, especially within a society-wide network of authority relations. One reason is that acts of authorization and subjection may be indirect and transitive, such that one recognized authority (i.e., a mayor) may authorize an intermediate authority (i.e., a police officer), thereby subjecting her own subjects to the new authority. In this case, to challenge the authority of the police officer may be to challenge the authority of the mayor, as well as other authorities within the network. This makes it difficult for particular subjects to simply ‘opt out’ of a particular authority relation. On the other hand, if a large majority of subjects refuse to recognize the authority of a sufficiently important authority, such as a president, then the authority of the president’s delegates may also be challenged. Another reason that it is difficult to simply deauthorize a particular authority is that subjects may not be aware that they play any role in authorizing the authority in the first place; authority may appear to them as an independent social fact. A final difficulty consists in the ways that authorities use their authority to continually solicit recognition. See below, pages 50-53.

¹⁵⁰ Raz, *Authority and Interpretation*, 128.

¹⁵¹ Bourdieu, *Language and Symbolic Power*, 139-140, 142-3, 169-70, 209-210, 214-6 and *passim*.

effect of social acts.¹⁵² Misrecognition thus conceals the role that subjects play in authorizing (and so potentially transforming or abolishing) the authority to which they are subject. This phenomenon is crucial to the *politics* of political authority, and it complicates the voluntarism that underlies some moral accounts of political authority.

Although my account dispenses with the voluntarist core of consent theories, it captures what may be their most attractive aspect, namely the way that they construe subjects as *agents* of the authority that compels them. Raz suggests that consent theories are appealing because they attempt to make subjects the authors or owners of the limits that authority imposes on their freedom.¹⁵³ My account attempts something similar, but more modest. On my view, subjects do not author or appropriate authoritative commands *as their own*, but they do authorize the authorities that can issue such commands. This is a necessary condition of authority; authority depends upon authorization by the subjects over which it is exercised. This means that although the subjects are not the sole authors or owners of authoritative commands, neither are the authorities. Although subjects do not voluntaristically and intentionally will authority into existence, their autonomous agency makes authority possible, and authorities, if they are to remain in authority, cannot ignore this.¹⁵⁴

¹⁵² For instance, citizens in a democracy may recognize the authority of a president on the basis of her victory in a fair electoral process, and then attribute her authority to the *process itself*, rather than to their own acts of authorization. The election itself does not make the president an authority; rather, she is an authority because the election is taken as a legitimate basis of authority by the subjects whose acts of recognition authorize her. Misrecognition hides the fact that the president's authority depends upon the citizens' agency and acts.

¹⁵³ Raz, *Authority and Interpretation*, 162.

¹⁵⁴ In *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008), David Estlund develops an innovative version of hypothetical consent that "retains the idiom of consent" but motivates it toward a surprising conclusion: "Authority can simply befall us, whether we have consented to it or not" (130, 117). Although Estlund's arguments raise challenges for the view I am developing here, a full engagement with them is beyond the scope of this dissertation. I hope to consider Estlund's normative consent view more fully in a later work.

The politics of political authority

I have claimed throughout this chapter that subjects participate as agents in their own subjection to authority. This claim may seem hyperbolic, bringing to mind early modern debates about the ability to sell oneself into total and perpetual slavery. However, as I argued in responses to Wolff and Raz, authority relations are not founded on a forfeiture of autonomous agency, nor is authority immutably established by a single act of consent. Rather, an authority relation is an ongoing and variable interaction between two agents, one of whom commands the other and one of whom recognizes the legitimacy of the other to command her. The acts of commanding and recognizing express the autonomous agency of the authority and subject alike, and their agency is negotiated through the interactive authority relation.¹⁵⁵ Because the subject's autonomy is constrained but never fully alienated, the potential for resistance, subversion, and transformation is always present in every authority relation. When this potential is absent, as in the hypothetical case of total and perpetual slavery, the relation is one of domination by power, rather than subjection by authority.

This last claim, however, may also seem hyperbolic, this time erring toward the opposite extreme by implying that subjects can easily avoid, subvert, or shrug off authority relations. Such an implication would fail to appreciate the durability and elasticity of authority's compulsion. Authority *can* be effectively challenged; authority relations *are* sometimes changed by the resistance or recalcitrance of subjects. However, the autonomy of subjects can be, and often is, realized in the *affirmation* of existing authority relations. Subjects actively participate in their own subjection and, insofar as their autonomy is not eliminated by authority, they may

¹⁵⁵ The agencies of the authority and subject are not exercised in identical ways, and it would be a mistake to think that their mutual necessity to the authority relation entails their equality in terms of ability or possibility. However, it would also be a mistake to think, as Wolff and Raz seem to, that the inequalities present within the authority relation guarantee one agent a monopoly of agency over the other.

always continue to authorize it. Moreover, because authority relations are often embedded in a society-wide network of authority and subjection, subjects cannot very simply ‘opt out’ of particular authority relations.¹⁵⁶ Most importantly, authorities do not simply wilt in the face of potential resistance. Rather, they use their authority to solicit further recognition, and they continually manufacture, reestablish, remotivate, and reconfigure the bases of that recognition, thereby continually providing their subjects with reasons to recognize them as legitimate. Thus, while the autonomy of subjects persists through their subjection, this does not mean that the existence of the authority relation is solely *up to them*. Autonomy does not entail absolute agency, and authority relations—like all social relations—are sites where autonomy is expressed and realized in negotiation with the autonomy of others.

Consequently, neither authorities nor subjects exercise total control over the authority relations that bind them. Authority is a variable and negotiable relation between two agents, and it is responsive to the agency and actions of authorities and subjects alike. Throughout the life of an authority relation, authority and subjection will wax, wane, and change in quality according to ongoing interactions of command, recognition, and obedience. These interactions do not simply initiate authority relations. They also perpetuate authority relations, as subjects continually authorize authorities, and subject themselves, through new acts of recognition. These acts must be uncoerced, and they must express the autonomous agency of the subjects who perform them; otherwise, authority degrades into coercive power. Thus, the characteristic that ultimately distinguishes authority from power, namely the uncoerced participation of the subject in her own

¹⁵⁶ For instance, the authority that a police officer exercises over me may be underwritten by my recognition of *other* authorities within a network of authority relations, such as the state officials who delegate authority to the police officer. In that case, my refusal to recognize the authority of the officer depends upon my refusal to recognize the authority of the state officials; if I continue to recognize the authority of the officials, I transitively recognize the authority of the police officer. If I refuse to recognize the authority of the whole network (i.e., the state), it may indeed be the case that police officer exercises coercive power, rather than authority, over me. However, unrecognizing and deauthorizing authority may be difficult for additional reasons. See above, pages 47-8, note 149.

subjection, also denies the possibility of final authorization and total subjection. Final authorization and total subjection would negate authority, rather than perfect it.

In short, the autonomy of a subject is not merely *compatible* with her subjection to authority, but is a necessary condition of her subjection. Insofar as the authority cannot be authorized, and the subject cannot be subjected, without the subject's independent and uncoerced recognition that the authority legitimately commands her obedience, authority depends upon the autonomy of the subjects over whom it is exercised. This dependency is not satisfied by a single act of recognition that establishes the authority relation once and for all. Rather, authority *continually* depends, for as long as it is exercised, upon the autonomy of its subjects.

This conceptual sketch points to a political claim that will be elaborated throughout the rest of this dissertation. If authority continually depends upon the autonomy of the subjects over whom it is exercised, then *authorities themselves*—the persons who exercise authority—*constantly depend, for their authority, upon their subjects*. Every authority must be authorized, and the source of authorization must ultimately be—even in cases of tacit or indirect authorization—the subjects who recognize an obligation to obey authoritative commands. When authorities are no longer recognized as authorities, their prerogative to command becomes ineffective because it is no longer correlated with a recognized obligation to obey; the authority is no longer an authority. This means that every authority is ultimately indebted, for its authority, to the subjects whom it commands. The exercise of authority requires the continual negotiation of this debt.

Of the thinkers reviewed in part I, Weber and Arendt are most concerned with the political institutionalization of authority. It is not surprising, then, that these two thinkers theorize the indebtedness of authorities most explicitly. In each of his three ideal types, Weber

claims that the exercise of authority is contingent upon the subjects' recognition of legitimacy, and he emphasizes that authorities must always be responsive to—and are ultimately constrained by—what their subjects consider legitimate or excessive exercises of authority.¹⁵⁷ If an authority's commands conflict with the bases of the subjects' recognition, then the subjects will resist.¹⁵⁸ Arendt makes similar claims, noting that authorities must act in ways appropriate to their position if their authority is not to be compromised in the eyes of their subjects.¹⁵⁹ For Arendt, the dependence of an authority upon its subjects becomes especially evident in instances where its commands are viewed as laughable or abusive, or the authority itself appears incompetent, unfit to rule, or unworthy of respect. In such instances, the authority cannot depend upon the participation of its subjects in their own subjection, and the authority relation is jeopardized.

There is thus a politics, and not simply a moral normativity, to political authority. Authorities impose upon their subjects, but this imposition is constrained by the indebtedness of every authority to its subjects. This indebtedness is both an effect of, and testament to, the autonomy of the subjects, which is exercised through acts of authorization or resistance. The dependence of authorities upon their subjects may even grant subjects a degree of agency *over* their authorities; authorities may be *subject to* their subjects. In light of this, as Arendt and Weber both note, authorities adopt strategies for securing and resecuring the recognition upon which their authority depends. Even when such strategies are successful, however, they affirm rather than eliminate the authority's dependence upon its subjects. Unlike the coercive force of power, which can be exercised over persons as if they were passive objects, the compelling force of authority is purchased at the price of indebtedness to the agents over whom it is exercised.

¹⁵⁷ Weber, *Economy and Society*, 1:217-8, 227, 242-4.

¹⁵⁸ *Ibid.*, 1:227.

¹⁵⁹ *On Violence*, 45; *Between Past and Future*, 92-3, 102-3, 107, 132-3.

CHAPTER II

SOVEREIGNTY

According to the general definition established in Chapter 1, sovereignty is supreme and independent political authority within boundaries. This definition refers to a modern *ideal* of political organization, rather than a characteristic of actual political communities. This ideal is rarely, if ever, perfectly realized; few sovereigns, if any, exercise totally independent or unquestionably supreme authority.¹⁶⁰ Nonetheless, the ideality of modern sovereignty does not disqualify its real importance. Just the opposite; aspirations to sovereignty have crucially shaped post-medieval political life at every level, from local power struggles to international and global affairs. The continual effort to achieve and maintain sovereignty is the *sine qua non* of the international state system, the basic structure within which, and against which, contemporary political struggle occurs.

Although the modern ideal of sovereignty is frequently associated with the 1648 Treaties of Westphalia, in truth a long and uneven transition was required for it to become a dominant norm of political organization.¹⁶¹ Nonetheless, the Treaties of Westphalia provide a convenient

¹⁶⁰ On sovereignty as a political ideal, see Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995); Alexander Murphy, "The Sovereign State System as a Political-Territorial Ideal: Historical and Contemporary Considerations" in *State Sovereignty as a Social Construct*, T. Biersterker and C. Weber, eds. (Cambridge: Cambridge University Press, 1996); Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).

¹⁶¹ For a classic, Westphalia-centered historical overview, see Joseph Strayer, *On the Medieval Origins of the Modern State* (Princeton: Princeton University Press, 1970); Hendrick Spruyt's *The Sovereign State and Its Competitors* (Princeton: Princeton University Press, 1996) is less Westphalia-centered. Recent work in historical international relations theory, political economy, sociology, and political theory challenges the significance of the Treaties of Westphalia as the central turning point in the development of modern sovereignty. See John Gerard Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organization* 47:1 (1993): 139-174; Benno Teschke, *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations* (London: Verso, 2003); Hannes Lacher, *Beyond Globalization: Capitalism,*

marker for this long history because they formalize the crucial innovation of the modern ideal of sovereignty: the reconciliation of classical and medieval aspirations to *imperium* and *dominium* with the modern acknowledgement of multiple, locally supreme political authorities. Whereas medieval systems of political authority were characterized by tangled networks of feudal obligation and overlapping spheres of imperial and ecclesiastical rule, modern sovereignty depends upon discrete and exclusive spheres of authority and subjection.¹⁶² By extending the thirteenth century principle that a ruler is supreme *within its own realm* (*Rex est imperator in regno suo*) to multiple, earthly polities, the modern ideal of sovereignty makes sense of an “anti-medieval” world of multiple sovereigns.¹⁶³ It is this ideal that underlies the (post-)Westphalian interstate system, in which the local supremacy of one sovereign is compatible with the supremacy of others, while the independence of each is achieved in relation to the independence of all.

Today, the modern ideal of sovereignty remains essential to the material and ideological structures, motivations, and epistemological frameworks that are characteristic of contemporary states. Correlatively, the same ideal also underlies the norms and laws of contemporary international relations. This does not mean that the modern ideal of sovereignty has persisted unchanged since the sixteenth and seventeenth centuries; rather, it has been articulated and approximated in diverse forms throughout its history.¹⁶⁴ Nonetheless, as evidenced by twentieth

Territoriality and the International Relations of Modernity (London: Routledge, 2006); Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2006).

¹⁶² Strayer, *Medieval Origins*; Bartelson, *Genealogy of Sovereignty*, Chapters 4-6; Spruyt, *Sovereign State*, Chapters 3 and 5; Sassen, *Territory, Authority, Rights*, 32-73.

¹⁶³ Robert Jackson, *Sovereignty* (Malden, MA: Polity Press, 2007), 6. See also F. H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 1986), 88-9; Jean Bethke Elshtain, *Sovereignty: God, State and the Self* (New York: Basic Books, 2008), 57-75; Joanne Pemberton, *Sovereignty: Interpretations* (London: Palgrave Macmillan, 2009), 54-9.

¹⁶⁴ Bartelson, *Genealogy of Sovereignty*; James Caporaso, “Changes in the Westphalian Order: Territory, Public Authority and Sovereignty,” *International Studies Review* 2, no. 2 (2000): 1-28; Daniel Philpott, *Revolutions in*

century struggles for decolonization and succession, as well as twenty-first century concerns about state autonomy in a globalizing world, the ideal of sovereignty as supreme, independent, and bounded authority remains fundamental to contemporary politics.

Its primacy notwithstanding, this ideal is characterized by an irreducible internal tension that is generally unacknowledged by actors and institutions aspiring to sovereignty. In fact, it could be argued that the most significant ideological function of the modern state is the disavowal of the self-contradictory nature of modern sovereignty.¹⁶⁵ On one hand, sovereignty is idealized as a kind of constitutive authority, which not only commands, but also continually constitutes, its own collective subject. In other words, the sovereign defines ‘the people’ over which it rules, either by founding a political community or by regulating its borders and differentiating its members from non-members. On the other hand, sovereignty is idealized as a kind of authority that must be authorized by the very ‘people’ that it constitutes. Because of its supremacy and independence, sovereign authority cannot be bestowed from ‘on high’; rather, it necessarily “flows upwards” from the collective subject over which it is exercised.¹⁶⁶ The tension internal to the modern ideal of sovereignty is thus a tension between the sovereign’s constitutive authority and its dependence, for that authority, upon the collective subject that it constitutes.

This tension underlies several core problems of modern and contemporary political philosophy. Most importantly, it underlies what I will call the paradox of sovereignty, whereby the authority necessary to constitute a sovereign polity is consequent upon, or immanent to, the

Sovereignty (Princeton: Princeton University Press, 2001); Georg Sorensen, *Changes in Statehood: The Transformation of International Relations* (New York, Praeger MacMillan, 2001), 145-161.

¹⁶⁵ The present chapter lays a foundation for this claim, which will be elaborated further in Chapter 4.

¹⁶⁶ Pemberton, *Sovereignty: Interpretations*, 19. This commitment to the popular authorization of the sovereign is, of course, central to ideals of popular sovereignty. However, it is also latent in absolutist theories of sovereignty, as I will show here and in Chapter 3.

act of constitution itself. According to the modern ideal of sovereignty, the sovereign is not self-authorizing; its authority comes from the constituted people. The people, however, is not self-constituting; its constitution comes from the authorized sovereign.¹⁶⁷ A problematic circularity thus links the sovereign and the people in their capacities as, respectively, constitutive authority and constituted subject. The sovereign is both the creator and the creature of the constituted people, and the constituted people is both the precondition for and result of sovereign authority.

Although this paradox of sovereign constitution may at first appear as a purely abstract philosopher's problem, it has concrete consequences for modern and contemporary politics. As I will argue in later chapters, the territorial frameworks that have fundamentally structured modern politics are themselves symptoms of the paradox of sovereign constitution. If these frameworks are currently becoming less and less important to contemporary political life, then it is necessary to understand the paradox of sovereignty in order to imagine alternative, non-territorial frameworks of authority and constitution.¹⁶⁸

In the present chapter, I work toward these later arguments by theorizing sovereignty as a type of constitutive authority. In part I, I focus on the supremacy, independence, and boundedness conditions of sovereign authority. To be supreme and independent in the relevant senses, I argue, an authority must determine the limits of its own jurisdiction. Sovereign authority, then, must be not merely bounded, but *self*-bounding. By giving itself boundaries, sovereign authority inscribes certain political agents within its jurisdiction, thereby determining who is, and who is not, subject to its command. In short, sovereignty is an ideal of political authority that determines its own limits and identifies its own subjects.

¹⁶⁷ As I will show in the Chapter 4, this holds true even when the people *is* the sovereign. Rather than solve the paradox, the identification of the people and the sovereign merely tightens it.

¹⁶⁸ See below, pages 163-5, 192-205, 224-8.

In part II, I argue that sovereign authority not only identifies its own subjects, but also constitutes these subjects as a coherent *collective* subject. The sovereign's constitution of its collective subject is equally essential to ideals of absolute and popular sovereignty; regardless of whether the sovereign is a single monarch, or the people itself, it is sovereign authority that ultimately engenders 'the people'. Turning to Hegel, whose political philosophy epitomizes the modern ideal of sovereignty, I argue that in a system or society of sovereign states, it is the supreme constitutive authority of each state that must be independent from the authority of other states. Constitutive authority, in other words, is the core of modern sovereignty, which supremacy and independence qualify.

Constitutive authority is frequently underemphasized by contemporary accounts of sovereignty. In international relations theory and international law especially, sovereignty is identified with external independence, while the internal aspects of sovereignty are either ignored or understood as a derivative effect of a sovereign's external relations. In part III, I take issue with such views by briefly referring to the political transformations that would seem to be *prima facie* evidence for the primacy of external independence, namely the successful decolonization struggles of the 20th century. Decolonization does indeed demonstrate the importance of external independence, but it also demonstrates the importance of internally exercised constitutive authority. Moreover, the experiences of post-colonial states that have achieved external independence *without* supreme internal authority make clear that sovereignty's internal aspect is not secondary to its external aspect. Sovereignty cannot be reduced to external independence; external independence and internally supreme authority are both necessary conditions of modern sovereignty. According to its modern idealization, sovereignty is self-

bounding and constitutive authority that is supreme with regard to the collective subject that it constitutes, and independent with regard to all other political actors.

Part I: Boundedness, Supremacy, and Independence

The major innovation of the modern ideal of sovereignty is the situation of supreme and independent authority within a bounded sphere of jurisdiction. The boundaries of this sphere are the limits of sovereign authority, within which a sovereign's command is the highest political command. In what follows, I analyze the ideal of modern sovereignty in terms of its boundedness, supremacy and independence and argue that, in order to be sovereign, a political authority must satisfy all three of these conditions together. I then argue that this entails that sovereign authority must be self-bounding.

Modern sovereignty is necessarily bounded. Its boundaries may be *de jure* or *de facto*, material or notional, and marked or unmarked.¹⁶⁹ What is essential is that they facilitate an inside-outside dichotomy and inscribe a jurisdiction wherein the recognized rightfulness of a sovereign's commands correlates to the obedience of those who are commanded.¹⁷⁰ As seen in the previous chapter, this correlation is accomplished through the interactive relation of an authority—in this case the sovereign—and its subjects. For this reason, it is appropriate to think of jurisdiction as a sphere of relationality wherein a sovereign and one or more subjects are constituted, as sovereign and subjects, by their relation to each other. Within this sphere, the

¹⁶⁹ “Boundaries are central to the discourse of sovereignty. It is not merely a case of physical boundaries which separate one sovereign state from another, but of cultural boundaries which separate the ‘same’ from the ‘other’ and of conceptual boundaries which distinguish the domestic from the international, community from anarchy, the universal from the particular.” Joseph Camilleri and Jim Falk, *The End of Sovereignty?: The Politics of a Shrinking and Fragmenting World* (London: Edward Egar, 1992), 236.

¹⁷⁰ I do not intend the concepts of authority and obedience to signal moral obligations. See Chapter 1 for a descriptive account of authority and subjection.

sovereign and subjects are bound together in such a way that it makes sense to talk about the sovereign and *its* subjects or the subjects and *their* sovereign. For the rest of this dissertation, I will refer to such spheres as 'spheres of sovereignty'. Sovereign command and the correlative form of subjection are inscribed within bounded spheres of sovereignty.

Most definitions of sovereignty are committed to one or more specifications of the sphere of sovereignty. Very frequently, sovereignty is conceptualized in spatial terms, as supreme and independent political authority *within a territory*. According to this definition, the reach of sovereign authority corresponds to the boundaries of political-geographic space. This understanding of sovereignty has been prevalent for roughly five hundred years, during which time the modern state and the international state system have served as predominant frameworks for the organization of political authority. This does not mean, however, that the limits of territorial integrity have any *necessary* connection to the limits of command and obedience or to the supremacy and independence that define sovereignty.¹⁷¹ Authority always has a determinate reach, and the supremacy and independence of authority do require boundaries, but there is no reason that these boundaries *must* map onto territorial borders.¹⁷²

¹⁷¹ Although modern political sovereignty has generally functioned according to a secular “territorial ideal,” the essential elements of the modern ideal sovereignty— boundedness, supremacy and independence—can be divorced from territoriality. Murphy, “Sovereign State System,” 42. In the present chapter, I attempt to make the idea of non-territorial sovereignty initially compelling by presenting the modern ideal of sovereignty without relying on the concept of territoriality. The arguments here do not ignore notions of territorial sovereignty, but they mark the possibility of other criteria of boundedness. This will allow me, in Chapter 4, to consider territoriality *functionally*, as being *in the service of* and *subordinate to* the modern ideal, and project, of political sovereignty.

¹⁷² “What seems epistemically irreducible in the sovereignty claim is only the general proposition that the claim should be one of supreme authority ‘over’ some represented unity. This in turn implies a self-constructed boundary between the inside and outside, rather than the more specific proposition that the imagined unity should involve an exclusive territorial claim and that the boundary should be one of physical borders.” Neil Walker, “Sovereignty, International Security and the Regulation of Armed Conflict: The Possibilities of Political Agency,” in *The Politics of Protection*, ed. Jef Huysmans et. al. (London: Routledge, 2006,) 166-7. It is a mistake to identify territorial sovereignty with modern sovereignty itself. This mistake is especially pernicious whenever the incoherence, insignificance, or impracticality of *territorially bounded* sovereignty is taken as an argument for the incoherence, insignificance, or impracticality of modern *sovereignty itself*. For instances of such arguments in the service of very different political ideals, see Krasner, *Sovereignty*; and Michael Hart and Antonio Negri, *Empire* (Cambridge: Harvard University Press, 2001) and *Multitude: War and Democracy in the Age of Empire* (New York: Penguin, 2004).

Similarly, there is no necessary connection between the jurisdiction of sovereign authority and the boundaries of a particular nationality, ethnicity, or ideology. Various criteria of unity and difference may play important roles in facilitating sovereignty, and some, such as nationality, have been crucial to the development of today's sovereign states. Nonetheless, the ideal of sovereignty itself—as supreme, independent, and bounded political authority—need not refer to any particular territorial, national, ethnic, or ideological mode of structuring or representing relations between sovereigns, subjects, and non-subjects. Sovereignty is necessarily bounded—at least in the sense that the reach of rightful command extends only as far as do the subjects over whom it is exercised—but the criteria for the specification of its boundaries are contingent.

The condition of sovereign supremacy refers to a political authority's hegemonic status as the ultimate and overriding source of political command. A supreme authority is the last court of appeal regarding all matters within its jurisdiction; it exercises the *ultimate* (recognized) right to command the subjects within its boundaries. As Daniel Philpott puts it, "In the chain of authority by which I look to a higher authority, who in turn looks to a higher one, the holder of sovereignty is highest."¹⁷³ According to both theological and secular ideals of sovereignty, the supremacy of rightful command correlates to the supremacy of obedience. Within their own realms, the sovereign authority of God, king, and state demand the deepest form of subjection. Obedience to the commands of a sovereign (usually expressed as law) trumps other obligations whenever they conflict, except where stipulated by sovereign authority itself.

The supremacy condition entails a kind of exclusivity; there can be only *one* supreme authority commanding a particular group of subjects in a particular sphere of sovereignty.¹⁷⁴

¹⁷³ Philpott, *Revolutions*, 16-7. See also Jackson, *Sovereignty*, 10.

¹⁷⁴ Caporaso, "Changes in the Westphalian Order," 10.

Sovereign authority either subordinates, incorporates, or negates competing sources of political command within its sphere, or it bars them from that sphere all together. This does not mean, however, that a sovereign is exclusively authoritative. There may be multiple authorities—even multiple, potentially competing authorities—within a sovereign’s jurisdiction. These authorities, however, must all be subject to sovereign authority, which, because of its supremacy, is exclusively able to establish, regulate, and coordinate intermediate authorities, such as mayors, police officers, judges, teachers, and presidents. These intermediate authorities are not sovereign, because their authority and jurisdictions are dependent upon, and can be revoked by, another authority. They are, however, unified by the supreme authority of the sovereign, which is the only authority that can organize the potential competition of all intermediate authorities into a coherent hierarchy of command. Thus, the modern ideal of sovereignty rationalizes (in the Weberian sense) the specialization, and potential conflict, of diverse authorities by subjecting them all to the sovereign.

Finally, the condition of sovereign independence refers to a political authority’s “external autonomy” vis-à-vis other authorities.”¹⁷⁵ No external authority or power can be “regularly entitled to have a controlling or an overriding voice” in a sovereign’s authoritative relation to its own subjects, and no external authority or power can be the source of a sovereign’s authority over its subjects.¹⁷⁶ If either of these is the case, the sovereign in question is a subordinate, rather

¹⁷⁵ Spruyt, *Sovereign State*, 3. As Jackson puts it, “A sovereign is not someone else’s dependency.” Jackson, *Sovereignty*, 10.

¹⁷⁶ Alan James, “The Practice of Sovereign Statehood in Contemporary International Society,” *Political Studies* 47 (1999): 464. See also James, *Sovereign Statehood: The Basis of International Society* (Boston: Allen and Unwin, 1986): “Such a community may be said to possess sovereignty, or to be sovereign, if it does not look beyond its own borders for the ultimate source of its own legitimacy” (3). See also the language of the 1948 Charter of the Organization of American States: “No State or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.” Quoted in Krasner, *Power, the State and Sovereignty: Essays in International Relations* (New York: Routledge, 2009), 195.

than supreme, political authority.¹⁷⁷ Thus, the ideal of sovereign independence, like the ideal of sovereign supremacy, entails exclusivity; the independent authority of the sovereign necessarily excludes other independent authorities from commanding the subjects within its sphere of sovereignty.¹⁷⁸ Sovereign independence entails non-interference.

Sovereign independence does not mean, however, that a sovereign is never answerable to external political actors. Rather, sovereigns may exercise their independence by participating in, and even obligating themselves to, external authority structures such as treaties, conventions, and cooperative organizations, as long as the relevant forms of participation, consent or cooperation are ultimately *up to* the sovereign. If they are not, the sovereign's authority is neither independent nor supreme, and thus not sovereign.¹⁷⁹ This restricted notion of independence does not invoke an ideal of unconstrained agency; it does not imply a frictionless world in which a sovereign, unimpeded by any other political actor, can do whatever it wants. Rather, it

¹⁷⁷ In *non-sovereign* forms of political authority, authority may indeed emanate from 'on high', as when a governor authorizes a police officer. In such cases, the authority of the police officer is borrowed from, and continually depends upon, that of the governor (or of the state itself). Subjects may recognize the authority of the governor or state, but not the officer, without forfeiting the officer's authority (of course, they may also recognize the authority of the officer directly). In relations of authority *simpliciter*, then, authorization can occur from 'above' and 'below'. However, in relations of sovereignty—which deny any possible 'above'—authorization must come from below: "Sovereignty flows upward through an act of collective will only to move downwards in the form of supreme authority and political power." Pemberton, *Sovereignty*, 19.

¹⁷⁸ As Neil Walker puts it, the modern ideal of sovereignty involves the "ideological assumption that ultimate authority over the internal operation of the polity is *exhausted* by internal sources and modes of expression and that there is no remainder available to external sources." Walker, "Sovereignty and the Regulation of Armed Conflict," 157.

¹⁷⁹ Even Hans Morgenthau, who is notable for his realist emphasis on state interest, acknowledges the compatibility of sovereign independence and international convention and contracts: "A state can take upon itself any quantity of legal restraints and still remain sovereign, provided those legal restraints do not affect its quality as the supreme law-giving and law-enforcing authority. But one single legal stipulation affecting that authority is in itself sufficient to destroy the sovereignty of the state." Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (Alfred A. Knopf, 1948), 247. Quoted in Julie Bunk and Michael Fowler, *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty* (University Park, PA: Pennsylvania State University Press, 1995), 85. Next to Morgenthau, Stephen Krasner's neo-realist suspicion of international conventions and contracts seems hyperbolic. See Krasner, *Power, the State and Sovereignty*, 198-208. Even Krasner, however, admits that conventions and contracts can be consistent with sovereign autonomy, although his analysis of sovereignty as "organized hypocrisy" is devoted to exposing the constant violation of norms of sovereignty. Less realist positions are more comfortable acknowledging the compatibility of sovereign independence and international cooperation. See James, *Sovereign Statehood*, 53-57, 209-222; Hinsley, *Sovereignty*, 1986, 232; Bunk and Fowler, *Law, Power, Sovereign State*, 84-8; Jackson, *Sovereignty*, 10.

presupposes a modern world of multiple, bounded sovereigns, in which the independence of each is limited and enabled by the independence of the others.

This limitation constitutes rather than undermines sovereignty. The supremacy condition of sovereignty suggests that *only* actors beyond a sovereign's jurisdiction can interfere with that sovereign's authority over its subjects. The independence condition affirms the possibility of this interference, but denies its actuality. Sovereign authority is limited, beyond its own jurisdiction, by the *only* kind of political actor that can limit it—i.e., other sovereigns—but it is not impeded, within its own jurisdiction, by *even* those actors. In other words, the exercise of sovereign independence requires the existence of other independent sovereigns to be *independent from*; external sovereignty is a denial of dependence upon the only kind of political actor that *could* exercise control over a sovereign. In this way, sovereignty is like personal autonomy, which is meaningless except when it is achieved and exercised in relation to other agents. In short, sovereign independence requires the existence of other sovereigns, and it is achieved, not despite, but in relation to, their own independence. For this reason, the development of modern sovereignty is coeval with the development of the modern system (or 'society') of sovereign states.

The three conditions of boundedness, supremacy, and independence are mutually enabling and mutually conditioning. It is their *interrelation*, rather than simple addition, that marks the modern ideal of sovereignty as a conceptually, historically, and politically specific organization of authority. This interrelation is most evident in the way that boundedness qualifies the other two conditions of sovereign authority.

Whereas imperial and ecclesiastical authorities throughout the European medieval period aspired to supreme authority, this aspiration was bounded only by the practical limits of an

emperor or pope's effective command. *Imperium* and *dominium* could only extend so far, practically speaking, and whatever fell beyond the scope of a particular ruler's authority could be interpreted, simply on the basis of its exteriority, as calling that authority into question. In other words, whatever exceeds supreme but unbounded authority suggests the failure of that authority. Consequently, the exterior of medieval *imperium* and *dominium* had to be disqualified: only barbarians existed beyond the frontiers of imperial and ecclesiastical rule.¹⁸⁰ Whatever exceeded the reach of unbounded authority was not worth reaching.

The transformation of the thirteenth century principle *Rex est imperator in regno suo* (the king is emperor is within his own realm) changed this.¹⁸¹ While the principle had originally enabled the coexistence of secular and theological rulers, its application to multiple terrestrial realms enabled an ideal of political supremacy that was no longer undermined by the existence of secular authority elsewhere. Boundedness enabled supreme authority to be qualified as *internally* supreme authority—the ultimate right to command subjects within a certain jurisdiction—and this is perfectly compatible with the fact of multiple supreme authorities. The particular boundaries of supreme authority, of course, are the stakes of late medieval, modern, and contemporary power struggles. What is *not* at stake is the boundedness of supreme political authority itself.

Similarly, the ideal of independent authority was not absent from pre-modern European politics; there is nothing specifically modern about the aspiration of rulers to rule their subjects *themselves*. The extension of *Rex est imperator in regno suo* to terrestrial spheres of authority, however, gave this aspiration a particularly modern form, insofar as territorial boundaries made evident *which* subjects a ruler considered to be *its* subjects. In other words, the boundedness of

¹⁸⁰ Charles Maier, "Being There: Place, Identity, and Territory" in *Identities, Affiliations and Allegiances*, S. Benhabib, et al., eds. (Cambridge: Cambridge University Press, 2007), 79.

¹⁸¹ Jens Bartelson details this political-epistemic shift in *Genealogy of Sovereignty*, Chapters 4 and 5.

modern sovereignty gives definition to a ruler's claim to exclusive rule over a particular set of subjects—those inscribed within the boundaries of authority—and thereby makes intelligible the ideal of sovereign independence and the complaint of interference. Combined with the ideal of internal supremacy, this ideal of external independence creates the image of authority that is specific to modern sovereignty: authority that operates within a particular jurisdiction without depending upon, or answering to, *anyone anywhere*.

In short, the boundedness of supreme and independent authority makes possible—both conceptually and politically—the distinction between *internality* and *externality* that is characteristic of modern sovereignty.¹⁸² By inscribing distinct, non-overlapping spheres that are “subversive of multiple claimants of authority,” the boundaries of sovereignty mark and facilitate the exclusivity that is required by both the supremacy and independence conditions.¹⁸³ Once political authority is understood to be bounded, its supremacy and independence can be realized and maintained by subordinating any internal competition for rightful command, while excluding any external competition.

While boundedness qualifies the supremacy and independence conditions, supremacy and independence also qualify the boundedness condition. In order for a sovereign to exercise supreme and independent authority, the boundaries of that authority must be determined by the (bounded) sovereign itself. In other words, a sovereign must exercise authority not only *within* its own boundaries, but *over* them as well.¹⁸⁴ Sovereign authority must be *self-bounding*.

This point can be helpfully illustrated by a comparison with non-sovereign political

¹⁸² As Robert Jackson puts it: “Supremacy and independence are not two separate characteristics: they are two facets of one overall characteristic: sovereignty. Facing inward, the sovereign is the supreme authority within the country... Facing outward a sovereign is but one of many among such authorities around the world. In the outward exercise of their sovereignty states are never in a position of supremacy. They are in a position of independence.” Jackson, *Sovereignty*, 11.

¹⁸³ Caporaso, “Changes in the Westphalian Order,” 10.

¹⁸⁴ Julie Mostov, *Soft Borders: Rethinking Sovereignty and Democracy* (London: Palgrave MacMillan, 2004) 19-24; Walker, “Sovereignty and the Regulation of Armed Conflict,” 166-7.

authority. Non-sovereign authority—political authority *simpliciter*—can thrive within externally imposed limits. Indeed, imposed limits may even be generative of authority, as when a higher authority (e.g. a queen) delegates a particular sphere of command to a subordinate authority (e.g. a local lord). However, *sovereign* authority is incompatible with such an imposition. If the limits of a political authority's command are heteronomously determined, then that authority is not supreme even within the imposed limits, because the imposition itself violates the finality and exclusivity of the authority's command. Nor is it independent with regard to the exterior of those limits, insofar as the reach of its own command is determined by the authority of another. The heteronomously bounded authority is thus dependent upon, and subject to, the command of another authority. It is not, or not yet, sovereign.¹⁸⁵

Consequently, the boundedness necessary to supreme and independent authority must be achieved by a supreme and independent authority *itself*. Modern sovereignty, then, is not merely supreme, independent, and bounded political authority—it is supreme, independent, and *self-bounding* political authority. These three conditions are all interdependent and must be achieved together. It is only because a sovereign exercises supreme and independent authority that it *can* effectively bound an exclusive sphere of sovereignty, and it is only because a sovereign is self-bounding that it can genuinely exercise supreme and independent authority.

Although some sovereigns may originally establish their own limits, most achieve sovereignty within pre-existing limits. The crucial point, however, is that in order to be sovereign, a political authority must appropriate these limits *as its own boundaries*, by assuming the exclusive prerogative to maintain and police them, and negotiating their alteration with other sovereigns. Supreme and independent political authority must bound itself, and where this

¹⁸⁵ Thus, for example, states whose borders have been imposed by colonizing forces are not sovereign until they assume the prerogative to maintain—and potentially alter—those boundaries.

requires transforming imposed boundaries into *self*-imposed boundaries, it is the transformation itself that marks the achievement of sovereignty. Where this requires negotiating boundaries with another sovereign—as in the case of territorial borders shared by two states—it is a mark of sovereignty that each supreme and political authority *must* participate in such negotiation. Self-boundedness, like supremacy and independence, is a relational condition, and this means that a sovereign usually does not act *alone* in bounding itself.¹⁸⁶ Nonetheless, the relation particular to self-boundedness entails that no sovereign can have its boundaries altered *for it*, just as no sovereign can have its boundaries imposed *upon it*. Every sovereign is an active agent—and, from the perspective of its subjects, the primary agent—of its boundedness.

Sovereign self-bounding cannot be reduced to a single moment of boundary-setting. Rather, sovereign authority continually establishes, articulates, and maintains its own limits. In contemporary political affairs, sovereign states determine the scope of their own authority by, for example, policing their territorial borders, enforcing and refining the criteria used to differentiate citizens from non-citizens or subjects from non-subjects, naturalizing immigrants and deporting illegal residents, regulating the actions of citizens at home and abroad, engaging diplomatically with other sovereigns, and deciding whether and how to be accountable to international institutions. Not all of these operations involve drawing lines or establishing physical or social borders. However, they all involve negotiations of the scope of supreme and independent authority. Through such negotiations, sovereign authority continually bounds itself.¹⁸⁷

¹⁸⁶ There are some boundaries of authority and subjection, such as the criteria for citizenship, residency, or civic belonging, that a sovereign has the exclusive prerogative to establish and alter. These boundaries are still relational, though, insofar as they mark an inside and outside of sovereign authority, and thus put the sovereign into a particular relation vis-à-vis the actors within, and those beyond, its boundaries. Other boundaries, such as the territorial borders shared by two or more sovereign states, can only be altered through the (violent or peaceful) negotiation of multiple sovereigns.

¹⁸⁷ It is worth reemphasizing that I do not mean to imply that sovereignty requires the exercise of perfectly supreme and independent authority within and over boundaries at all times. Only a hyperbolically strict view would consider an unregulated border crossing, for example, to completely undermine state sovereignty. According to my

In determining the scope of its own authority, the self-bounding sovereign interiorizes all those actors with regard to which its authority is supreme and exteriorizes all those actors with regard to which its authority is independent. In so doing, the sovereign achieves and maintains its sovereignty. This, then, is the full extent of the modern epistemic and political shift that resituated medieval aspirations to supreme and independent authority within bounded spheres of sovereignty: Whereas before, the existence of agents beyond the reach of a ruler's command challenged that command simply by falling outside it, now such exteriority testified to, rather than undermined, sovereign rule. While medieval authorities tended to deny or downplay the world beyond their realm, modern sovereigns could not only admit to that world, but also proclaim it as *excluded* from the boundaries that they themselves established, maintained, and policed. In other words, Deleuze and Guatarri's claim that "sovereignty only reigns over what it is capable of interiorizing," is only partly correct. According to the modern ideal of sovereignty, sovereign authority also reigns, negatively, over what it is capable of exteriorizing.¹⁸⁸ What might be said to *escape* the reach of a particular sovereign is, from the perspective of the modern ideal of supreme, independent, and self-bounding authority, *cast out* or *kept out* and interpellated as an outsider or foreigner.¹⁸⁹ This applies equally to stateless persons and sovereign states.

exegesis of the modern ideal of sovereignty, sovereignty is something to be continually achieved, and although this achievement may be durable, it may also be eroded. However, sovereignty is not eliminated every time this achievement is thwarted. Because sovereignty is an active and ongoing project, rather than a static characteristic or status, the fulfillment of this project can be violated in full or in part.

¹⁸⁸ Giles Deleuze and Felix Guatarri, *A Thousand Plateaus*, (London: Continuum) 2004, 397.

¹⁸⁹ According to its modern idealization, sovereignty not only differentiates insiders from outsiders, but also discriminates between different *kinds* of insiders and outsiders. In the same way that sovereign authority can rationalize intermediate authorities by organizing them hierarchically, it can differentiate and rationalize various forms of subjection as well. Thus, while there is a real distinction between a full citizen and a mere member of a polity, according to the ideal of internally supreme, externally independent, and self-bounding political authority, citizens and members alike are *subjects* of the sovereign. This is true even if some subjects (i.e., citizens in a democratic polity) formally participate in the exercise of sovereign authority, and even if some subjects bear the burdens of subjection more heavily than others. As will be discussed below, the sovereign is authorized by all subjects who recognize its authority over them—including members and citizens alike—regardless of whether they are formally enfranchised. Just as there are different forms and degrees of subjection to sovereign authority, there

It should not be surprising that the modern ideal of sovereignty as supreme, independent and bounded political authority implies a conception of authority that bounds itself. After all, this ideal originally developed out of, and in connection with, Christian theological debates concerning God's ability to place limits on his own powers.¹⁹⁰ Despite this genealogy, however, contemporary political theory frequently overlooks the self-bounding character of sovereignty and, in so doing, mystifies the relation of sovereign authority to its (usually territorial) borders. As Jens Bartelson points out in *A Genealogy of Sovereignty*, political geographers and political theorists have long debated a chicken-or-egg question regarding sovereignty and boundaries. He writes, "A bounded territory can either be interpreted as a necessary condition of sovereignty, or conversely sovereignty can be interpreted as a necessary condition of a bounded territory."¹⁹¹ According to the former interpretation, "sovereignty must be demarcated by boundaries, and therefore also [must be] logically and historically posterior to them;" according to the latter, "sovereignty has to exist prior to boundaries, and is that which demarcates territory through the drawing of boundaries."¹⁹² These two interpretations, however, pose a false distinction. Neither boundedness nor sovereignty is prior to the other. Rather, a sovereign political authority both realizes and exercises its supremacy and independence through giving itself boundaries. A self-bounded sphere of sovereignty—territorial or otherwise—is coeval with sovereignty.¹⁹³

are different forms and degrees of authorizing sovereign authority, and not all are explicitly institutionalized. For discussion of related points, see above, pages 47-51 and below, pages 72-5, 106-112, 176-189, 221-228.

¹⁹⁰ Elshstain, *Sovereignty*, 1-55. See also Ernst Kantorowicz, *The King's Two Bodies* (Princeton: Princeton University Press, 1997).

¹⁹¹ Jens Bartelson, *A Genealogy of Sovereignty*, 30.

¹⁹² Ibid.

¹⁹³ I will return to this discussion in Chapter 4, which directly interrogates the ways that modern territoriality facilitates modern sovereignty.

Part II: Sovereign Constitutive Authority

I have shown that, as opposed to the tangled networks of personal obligation that characterize feudalism, as well as the overlapping aspirations to universal command that characterize imperial and ecclesiastical authority, the modern ideal of sovereignty conceptually and practically associates supremacy and independence with discrete and non-overlapping spheres of authority.¹⁹⁴ I have argued that the modern ideal is only coherent, however, if the boundedness of sovereignty is understood as *self*-boundedness. Each sovereign must inscribe its own sphere of authority if it is to be truly supreme and independent.

In this section, I argue that by inscribing its own sphere of authority, a sovereign inscribes a correlative sphere of subjection and thereby determines which agents are, and which are not, subject to sovereign authority. In so doing, the sovereign constitutes its own collective subject. Sovereignty, then, is supreme, independent, self-bounding, and therefore *constitutive* authority, in the sense that sovereign authority, by bounding itself, binds together the members of the collective subject over which it is supremely and independently exercised.

As with the arguments above, my arguments in this section refer to sovereignty as a modern political *ideal*, which exists today as a dominant norm of international political organization and a fundamental aspiration of state politics. Although the ideal of sovereignty is fundamental to modern and contemporary politics, I do not mean to suggest that political authority ever fully lives up to this ideal. In particular, I do not mean to suggest that sovereign authority creates its collective subject *ex nihilo*, or that it is an irresistible constitutive force that by itself sorts individuals into political communities, or that it determines nationalities or other ‘thick’ forms of collective political identity. Rather, I mean to argue that the political ideal of

¹⁹⁴ Spruyt, *Sovereign State*, 34, 56.

supreme, independent, and bounded authority is consistent only if this authority is self-bounding (the argument of part I, above) and, consequently, if it constitutes its own collective subject, in the minimal sense that I will describe below. ‘Sovereignty’ names an ideal of political authority that constitutes the people it over which it rules. This ideal warrants investigation, not because it is perfectly realized somewhere, but because it is striven for, or imposed, everywhere.

Sovereign self-bounding is not an act of self-isolation. Boundary-setting is always a relational act, and by determining the limits of its own authority, a sovereign puts itself in a different relation to the actors that fall on the different sides of that limit. The self-imposed limit inscribes a sphere of relationality that includes every actor subject to sovereign command and excludes those actors not subject to it. It is through this dual action of inclusion and exclusion that sovereign authority constitutes its own collective subject.

The sphere of sovereign authority is, correlatively, a sphere of subjection; every actor within it is subject to sovereign authority.¹⁹⁵ By determining the exclusive boundaries of this sphere, a sovereign determines the extent of its authority and the extent of subjection to that authority. It thereby determines which political actors are *its* subjects. As Bartelson puts it, “Sovereignty... furnishes the very divide between what is internal and what is external with a meaning, and thus with political reality for the agents themselves, whose identity in turn hinges on this division.”¹⁹⁶ By bounding itself, sovereign authority *identifies* its subjects *qua* subjects and distinguishes them from non-subjects. This is not necessarily an act of political identification in any ‘thick’ sense; it need not attribute a common culture, aim, or ideology to the

¹⁹⁵ Just as this chapter relies upon the previous chapter for a provisional account of authority, it also relies upon the previous for a provisional account of subjection. Thus, by ‘subjection’ I have in mind here the recognized “obligation to obey” a sovereign authority, where obedience refers to content-independent compliance motivated by an explicit or implicit recognition of the authoritative nature of the relevant commands themselves, or their source. The recognized obligation may not correspond to any actual moral obligation. Sovereignty involves an explicit or implicit appeal, to the subjects in its bounded jurisdiction, for the recognition required for supreme authority; according to the modern ideal of sovereignty, this appeal is successful.

¹⁹⁶ Bartelson, *Genealogy of Sovereignty*, 47.

various actors who are subject to sovereign authority.¹⁹⁷ These actors may have nothing in common other than their burden of sovereign law, and even this may vary—in degree and quality—among them.¹⁹⁸ Moreover, different *kinds* of subjects will be differently related to the sovereign; citizens and non-citizen members of a polity, for example, will experience subjection to sovereign authority differently, and they will participate differently in the authorization of the sovereign. Despite these differences, however, the actors inscribed by a sphere of sovereignty are all *subject to* the sovereign’s supreme authority.¹⁹⁹ They share the status of ‘subject’, which differentiates them from actors outside the sovereign’s jurisdiction. They are therefore united, in a ‘thin’ sense, as a *collective* subject.

In the act of bounding itself, then, supreme and independent political authority constitutes its own collective subject. As Étienne Balibar writes, “It is precisely the correlation between inside and outside that makes sovereignty what it is... and, above all, that constitutes a ‘political community’ submitted to a sovereign authority and in some sense ‘created’ by it...”²⁰⁰ This is only a community in the minimal sense of a collective subject composed of diverse actors united by their common subjection and differentiated from other actors who are not subject to the same

¹⁹⁷ Sovereignty’s identification of its subjects *can* be connected with (and either facilitate or be facilitated by) a more substantial act of political identification. This occurs, for example, when the boundaries of sovereign authority are also national boundaries, such that inclusion within them interpellates actors as members of a national community. Indeed, it may be the case that sovereign self-bounding is *always* a matter of this kind of ‘thicker’ political identification. My claim, however, is the more minimal claim that sovereigns, in determining the limits of their own authority, also identify which actors are subject to that authority—namely, the ones inscribed by those limits. This minimal claim is not a claim about ‘thick’ political identities like nationality.

¹⁹⁸ In particular, the burdens imposed by sovereign command will vary along with the attitudes, interests and social positions of both the subjects and the sovereign. The common subjection of all to law, for example, does not mean that law weighs equally upon all. Moreover, some subjects will occupy positions of intermediate authority, or enjoy sanctioned positions of power under the umbrella of sovereign authority, and others will not.

¹⁹⁹ There are of course some determinate exceptions to this, such as those related to norms of diplomatic immunity. Insofar as such exceptions are granted by the sovereign itself, they affirm the ideal of sovereignty as supreme and independent authority over all actors within the sovereign’s jurisdiction.

²⁰⁰ Étienne Balibar, *We, The People of Europe?: Reflections on Transnational Citizenship*, trans J. Swensen (Princeton: Princeton University Press, 2003), 158.

sovereign.²⁰¹ Nonetheless, insofar as the boundaries between unity and difference are drawn by the sovereign itself, it is accurate to say that the collective subject inscribed within those boundaries is “‘created’ by” sovereign authority.²⁰²

In other words, the modern ideal of sovereignty is an ideal of *constitutive* authority. Sovereign authority does not merely command; it also constitutes—and maintains—the collective subject that it commands by determining which actors compose that collectivity. The collective subject is constituted through both unification and differentiation. Its members are internally united by their common obligation to sovereign authority, and externally differentiated from political actors who do not share that obligation. Even though the relevant unity and difference are ‘thin’, in the sense described above, they are both necessary for the sovereign’s collective subject to be constituted as a *determinate* collective subject. Determinate constitution is also negation. Because each sovereign exercises supreme, independent, and self-bounding authority, to be included in one sovereign’s collective subject is to be excluded from all others. Thus, each sovereign constitutes a collective subject that is its and its alone.

Sovereign constitutive authority is openly exercised in exceptional moments of political transformation, as when sovereignty is first achieved in relation to a newly defined collective subject, or when an existing sovereign extends its sphere of sovereignty—by conquest, colonization, or political incorporation—to include new subjects. However, sovereign authority is also at work in the everyday acts of official inclusion and exclusion that, on a much more

²⁰¹ Frederick Whelan identifies “the establishment of political boundaries” with “the formation of a group of people sharing a common political identity” and “the determination of political membership;” this is the kind of ‘thin’ sense of constitution that I have in mind. Frederick Whelan, “Prologue: Democratic Theory and the Boundary Problem,” in *Nomos 25: Liberal Democracy*, J. Pennock and J. Chapman, eds. (New York: New York University Press, 1983), 15-6.

²⁰² Balibar is actually more ambivalent than I have here portrayed him. He writes: “In reality it is precisely the correlation between inside and outside that makes sovereignty what it is (and, above all, that constitutes a “political community” submitted to a sovereign authority and in some sense “created” by it, or creating itself through the institution of sovereignty).” Balibar, *We, the People*, 158. This ambivalence gestures to the paradox of sovereignty that I will describe in the Interlude following this chapter and explore more fully in Chapters 3 and 4.

intimate scale, continually reconstitute the sovereign's collective subject by allowing some persons to enter into the sphere of sovereignty while turning away, or actively expelling, others. Today, sovereign constitutive authority is most evident at the territorial borders between states, where passports, vehicles, suitcases, and personal histories are inspected to determine who is eligible to enter a particular sphere of sovereignty and subjection. However, physical borders are not the only sites where subjects are differentiated from non-subjects—the former group to be further differentiated into citizens, residents, tourists, and aliens—or where sovereign authority “interiorizes” some persons while passing over, or actively exteriorizing, others. Indeed, as I will argue in Chapter 4, the boundaries of sovereign authority need not map onto the physical, territorial borders of states. At their territorial borders, as well as throughout and beyond their territory, states determine the jurisdiction of their sovereign authority through the operations of inclusion, exclusion, and differentiation that constitute and reconstitute their collective subjects.

The ideal of sovereign constitutive authority has been articulated throughout the history of Western political philosophy, and it is essential to theories of absolutist and popular sovereignty alike. From Machiavelli onward, supreme authority is associated with the prerogative or ability to constitute a collective subject, a people, through acts of inclusion and exclusion. However, it is not until the 19th century, with Hegel, that the ideal of constitutive authority is paired with an ideal of reciprocal independence between sovereigns.

Like the ideal of self-bounding sovereignty, the ideal of constitutive sovereignty can probably be traced to theological conceptions of a divine ruler who literally creates the subjects (the creatures) over whom it rules.²⁰³ Medieval and early modern conceptions of the divine right of kings certainly express the similarity. The 1609 speech of King James I of England is exemplary: “For if you wil consider the Attributes to God, you shall see how they agree in the

²⁰³ Elshaint, *Sovereignty*, 31-55.

person of a King. God hath power to create, or destroy, make, or unmake at his pleasure... And like power have Kings: *they make and unmake their subjects.*”²⁰⁴ The parallel between God and King is revealing: the power to create and constitute is a consequence of supremacy alone. The link between constitution and independence is not relevant until later, in the context of a society of sovereigns wherein each sovereign must claim its subjects *as its own*, to the exclusion of competing claims.

In early republican philosophy, supreme authority is frequently claimed to be essential to the political community, not only for the maintenance of order, but as the source of the community’s form and unity—its constitution. Indeed, insofar as early republicanism revived Roman political thought, a founding act of constitution could be both evidence for, and a source of, supreme political authority.²⁰⁵ Machiavelli, for instance, celebrates political founders who “introduced any form they pleased” upon the “matter” available to them by constituting disparate persons into a people or by reconstituting existing peoples into new collective subjects.²⁰⁶ Moreover, Machiavelli is clear that maintaining supreme authority requires continually reconstituting the collective subject of authority.²⁰⁷ Similarly, for Jean Bodin, a republic cannot exist “without sovereign power, which unites all the members and parts thereof... into a body... for it is not the town or the individuals who make up a [state], but a union of the people under

²⁰⁴ King James I’s speech, March 21, 1609, cited in Elshstain, *Sovereignty*, 98, italics added.

²⁰⁵ See Hannah Arendt, “What is Authority?” in *Between Past and Future* (New York: Penguin Books, 1993), especially pages 120-8.

²⁰⁶ Niccolò Machiavelli, *The Prince*, H. Mansfield, trans. (Chicago: University of Chicago Press, 1998), 23, 102, 104.

²⁰⁷ For Machiavelli, the moment of political founding continues throughout the life of any political order. See his *Discourses on Livy*, J. Bonadella and P. Bonadella, trans. (Oxford: Oxford University Press, 2003), 125, 246-250. As Leo Strauss puts it, “Foundation is, as it were, continuous foundation; not only at the beginning, but ‘every day,’ a commonwealth needs ‘new orders.’” Strauss, *Thoughts on Machiavelli*, (Chicago: University of Chicago Press, 1995), 44. The *Discourses* concludes with a parable of supreme authority preserved through reconstituting the collective subject: “Quentin Fabius, who was the censor, placed all of these new people, who were the source of this disorder, within four tribes, so that they could not, reduced to such small spaces, corrupt all of Rome. This matter was well understood by Fabius, and he provided a suitable remedy for it without changing the government; it was so widely accepted by that civic body that he deserved to be called Maximus” (Machiavelli, *Discourses*, 359).

sovereign strength.”²⁰⁸ For both Machiavelli and Bodin, rulers achieve supremacy by unifying individuals under their command and differentiating this unity from its outside. A similar idea is essential to Hobbes’s thought, which can be seen as a link between theories of absolutist sovereignty and later theories of full-fledged popular sovereignty. For Hobbes, the disorganized multitude becomes an organized people only when its individual members submit themselves to the rule of the sovereign. The sovereign’s command over these individuals constitutes them as a collective political subject, and the sovereign enjoys the right of further determining this subject by expelling certain individuals (i.e., lawbreakers) from the collective.²⁰⁹

The sovereign’s constitution of the collective subject remains fundamental to later ideals of popular sovereignty, where sovereign and subject are (ideally) coextensive.²¹⁰ Here, it is tempting to invert earlier political ideals and think of the collective subject of sovereignty as the agent that constitutes its sovereign. There is some truth to this, insofar as the collective subject of sovereignty does authorize the sovereign. However, as I will show in later chapters, this is ultimately true of *all* forms of sovereignty—including absolute sovereignty. What gives popular sovereignty its specificity is that ‘the people’ (or *populus*, *demos*, or public) exercises sovereign authority; however, it is still *through this exercise* that ‘the people’ is constituted. As Robert

²⁰⁸ Jean Bodin, *Les six Livres de la République: Faksimiledruk der Ausgabe 1583* (Darmstadt: Scientia Aaleen, 1961) 12. My translation from French.

²⁰⁹ Thomas Hobbes, *Leviathan*, R. Tuck, ed. (Cambridge: Cambridge University Press, 2004), Chapters 16-22, 28.

²¹⁰ Recently, Andreas Kalyvas has derived from theorists of popular sovereignty a view of sovereignty as constituent power. Kalyvas, “Popular Sovereignty, Democracy, and the Constituent Power,” *Constellations* 12, no. 2 (2005): 1-222-244. This essay is an excellent introduction to the extent to which theories of popular sovereignty invoke the notion of constitution that I am describing here. However, I have avoided adopting Kalyvas’s theoretical framework, and his language, for two significant reasons. First, I believe that the sovereign’s constitutive role is much more widely evident, and much more important to Western political philosophy, than Kalyvas’s view of sovereignty as popular constituent power suggests. Divine right and secular absolutist theories of sovereignty, for instance, also invoke a notion of the constitutive sovereign, as discussed above. By identifying constituent sovereignty exclusively with popular sovereignty, Kalyvas underestimates the ways that the sovereign’s constitution of its collective subject suggests a continuity, rather than discontinuity, between absolutist and popular sovereignty. Second, and related, I strongly reject Kalyvas’s distinctions between sovereignty as “the coercive power of command” and sovereignty as “the power to found, to posit, to constitute,” and the “sovereign commander” and “constituent sovereign” (225). Sovereignty is a political ideal that brings together both command and constitution.

Jackson writes:

The people in a representative democracy are creatures of the constitutional arrangements of the state; they do not and cannot exist on their own. There cannot be ‘a people’ in any meaningful sense without a democratic constitution and institutional arrangements deriving from it which enfranchise and organize the population into a political community.²¹¹

The people *constitutes itself* through subjection to the sovereign authority that it, itself, exercises.²¹² As with Machiavelli’s and Bodin’s rulers, sovereign authority constitutes its collective political subject (even when this subject exercises sovereign authority), and not the other way around.

This remains true even when sovereignty is achieved by individuals that are already organized as a group, such as the natural, pre-civil communities in Locke’s *Second Treatise*. In this case, the natural community may constitute itself as sovereign, but, as sovereign, it reconstitutes the natural community into a collective *political* subject. The pre-civil community is changed through the achievement of sovereignty; sovereignty makes it into ‘the people’.²¹³ Despite substantial disagreement with Locke, especially regarding the idea of pre-civil communities, Rousseau is also committed to the idea that the collective political subject is constituted—*qua* collective political subject—by sovereign authority. Rousseau’s contracting individuals participate in two *civil* groups, the collective subject (“*State*”) and collective sovereign (“*Sovereign*”), and it is their participation in the latter (their role as “*Citizens*” rather than as “*Subjects*”) that first enables them to constitute themselves as a body politic.²¹⁴ They do

²¹¹ Jackson, *Sovereignty*, 92.

²¹² This paradoxical formulation will be explored further in Chapters 3 and 4. For an excellent critical discussion of contemporary (*popular*) sovereign self-constitution, see Hans Lindahl, “The Paradox of Constituent Power: The Ambiguous Self-Constitution of the European Union,” *Ration Juris* 20:4 (2007): 485-505.

²¹³ Locke, *Two Treatises of Government*. P. Laslett, ed. (Cambridge: Cambridge University Press, 2004), Chapters 2-10.

²¹⁴ Rousseau, *On the Social Contract* (Cambridge: Cambridge University Press, 1997), 51, emphasis in original. See also 67: “But when a whole people enacts statutes for the whole people it considers only itself, and if a relation is then formed, it is between the entire object from one point of view and the entire object from another point of

so by exercising sovereignty over themselves. For both Locke and Rousseau, then, the collective subject of sovereignty is constituted—as a political entity—by sovereign authority. The ideal of popular sovereignty is an ideal of constitutive authority.

This very brief survey is meant to show that the ideal of sovereign constitutive authority is consistent across theories of absolutist and popular sovereignty. As such, it appears in the work of many modern political philosophers. However, it does not become adequate to a ‘Westphalian’ system of multiple, bounded sovereigns until it is theorized by Hegel. While earlier thinkers acknowledge that sovereign authority constitutes its subject through exclusion as well as inclusion and differentiation as well as unification, Hegel understands these acts of exclusion and differentiation as interactions, not only between sovereigns and their potential subjects, but also among multiple sovereigns. This enables him to theorize a world in which sovereign acts of self-bounding and constitution not only bind a sovereign to its collective subject, but also relate each sovereign, through reciprocal independence, to every other sovereign. Hegel’s political philosophy contains one of the most important accounts of modern sovereignty. This is not because it is politically admirable or a reliable guide for *realpolitik*, but because it accurately expresses the necessary interrelation of sovereignty’s internal and external aspects, and presents these aspects as active relations between a sovereign and its internal and external others.

Hegel’s philosophy pairs the ideal of sovereign constitutive authority, which I have explained with reference to Machiavelli, Bodin, Locke, and Rousseau, with a commitment to the reciprocal independence of sovereigns. This commitment emerges out of the law of nations tradition that includes Vittoria, Grotius, and Vattel, each of whom contributes to the modern

view, with no division of the whole.” Importantly, the individual contractors themselves are also doubled, prior to the social pact, so that each is “a private individual contracting with himself” (Ibid., 49-53). For a more detailed reading of Rousseau, see Chapter 3 below.

antecedents of contemporary international law. Vattel's account of sovereign independence has been especially influential. He writes:

Every nation that governs itself, under what form soever, without dependence on any foreign power, is a *Sovereign State*. Its rights are naturally those of any other state. Such are the moral persons who live together in a natural society, subject to the law of nations. To give a nation a right to make an immediate figure in this grand society, it is sufficient that it be really sovereign and independent, that is, that it govern itself by its own authority and laws.²¹⁵

For Vattel, all sovereigns are equally sovereign insofar as they are all equally independent and individual members of the "natural society" of nations.²¹⁶ Because each sovereign is independent in relation to the others, the subjects of each are off-limits to every other sovereign.²¹⁷ Hegel's innovation is to theorize this reciprocal independence in terms of each sovereign's constitutive authority, essentially bringing Machiavelli's form-giving founders into the modern system of states.²¹⁸ What must be reciprocally independent, for Hegel, is precisely the ability of each sovereign to constitute and reconstitute its own collective subject.

For Hegel, sovereignty is not a property that a state possesses in isolation; rather, it is an *achievement* that must be constantly accomplished through the state's relation other states and to its subjects. On the basis of these two relations, Hegel theorizes two different moments or

²¹⁵ Emerich de Vattel, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, (Philadelphia: T & J. W. Johnson and Co, 1863), 66.

²¹⁶ Ibid. Vattel writes, "Nations... are naturally equal, and inherit from this nature the same obligations and rights. Power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom." Ibid., 59.

²¹⁷ Ibid., 154-6.

²¹⁸ Hegel's innovation is vaguely foreshadowed by Kant's break with Vattel in "Perpetual Peace," which would have introduced Hegel to Vattel's thought even if he did not read Vattel himself. Kant regarded Vattel's *Law of Nations* as the "beste Arbeit über Völkerrecht," and he drew from it heavily throughout *Perpetual Peace*. William Ossipow, "Kant's *Perpetual Peace* and Its Hidden Sources: A Textual Approach," *Swiss Political Science Review* 14 no. 2 (2008): 357-89. While Kant accepts the Vattelian understanding of sovereignty as reciprocal independence within a society of sovereigns, he refuses Vattel's dismissal of internal political organization as irrelevant to sovereignty. In direct opposition to Vattel, Kant argues that in order to achieve a stable international community of independent states, each member state must be domestically organized as a republic. The internal aspect of sovereignty, then, is inseparable from the external aspect. Unlike Hegel, Kant does not explicitly theorize this internal aspect of sovereignty as constitutive authority. His break with Vattel, however, opens a space for Hegel to do this work. See Kant, "Perpetual Peace: A Philosophical Sketch," in *Political Writings* (Cambridge: Cambridge University Press, 2003, especially 96, 99-105, 112-4. See also J. E. Nijman's, *The Concept of International Legal Personality*, which suggests that Kant intentionally opposes himself to Vattel regarding internal sovereignty (82-4).

aspects of sovereignty, which he calls “external” and “internal” sovereignty.²¹⁹ These two aspects are equally important and practically indissociable in the modern, sovereign state.

Following Vattel, Hegel theorizes external sovereignty as a state’s independent “individuality [as] an *exclusive* unit.”²²⁰ This aspect of sovereignty is a matter of the state’s relation to, and orientation towards, the political actors beyond its jurisdiction—in particular, the other sovereigns with regard to which it is independent. Hegel writes, “Individuality, as exclusive being-for-itself, appears *as the relation* [of the state] *to other states*, each of which is independent in relation to the others.”²²¹ Independent individuality is reciprocally achieved. In an encounter between two states, each recognizes itself as independent and exclusive only by differentiating itself from the other.²²² By recognizing the other as like itself, but negating it as *not* itself, each state excludes the other from itself and recognizes itself as a particular, determinate individual.²²³ This negation may be violent; Hegel’s infamous bellicosity is tightly linked to his understanding of external sovereignty.²²⁴ However, external sovereignty can also be realized through other encounters in which two supreme authorities act, and are recognized, as independent sovereigns, such as the assumption of international obligations and contracts.²²⁵

Putting aside the idiom of encounter and recognition, Hegel’s basic thought accurately captures the social logic and political strategy of the modern interstate system. In this system,

²¹⁹ Hegel, *Elements of the Philosophy of Right*, A. Wood, ed. (Cambridge: Cambridge University Press, 2004), 315, 359.

²²⁰ *Ibid.*, 304; cf. 315, 359.

²²¹ *Ibid.*, 359.

²²² *Ibid.*, 359-360.

²²³ *Ibid.*, 315-6, 359-360.

²²⁴ *Ibid.*, 315-6, 360-5, 369-371.

²²⁵ *Ibid.*, 365-368. Recognition is central to Hegel’s account of external sovereignty, which has been greatly influential on the legal and political practices of recognition through which states acknowledge one another’s sovereignty. However, it is crucial to note that Hegel does not consider external recognition to be a *source* of sovereignty. Rather, he is very clear sovereignty is a matter of the state’s own *self*-recognition. This self-recognition, however, is prompted by the presence of a formally identical but numerically distinct political entity. When a state confronts and differentiates itself from another sovereign state, it affirms this other as *like* itself, but negates it as *not* itself, thereby recognizing itself as a particular, independent individual. See *Ibid.*, 315-6, 359-360, 366-7.

each state is an individual sovereign *only* in relation to other individual sovereigns, by virtue of their mutual exclusion and reciprocal differentiation. In other words, it is because each sovereign bounds itself in relation to the others that it achieves external sovereignty. In a system or society of multiple, bounded sovereigns, external sovereignty is both a matter of what each sovereign excludes and, equally, what it is excluded from.

By itself, however, external sovereignty says almost nothing about the authority exercised by a sovereign, other than it is independent. An account of internal sovereignty is necessary to say *what*, precisely, is independent. In a system or society of sovereigns, each is independent from the others with regard to its internal authority relations, and it is by virtue of these internal relations that each is the specific kind of political actor that can participate in a system or society of sovereigns.

Hegel theorizes internal sovereignty as “the organization of the state and the process of its organic life *with reference to itself*, in which it differentiates its moments within itself and develops them to *established existence*.”²²⁶ Internal sovereignty is the state’s achievement of an organic “internal constitution,” in which the various elements of civil society and the state apparatus, including the particular wills of individual citizens, “are ultimately rooted in the unity of the state as their simple self” and are “determined by and dependent on *the end of the whole*.”²²⁷ This constitutional unity is held together by a kind of authority in which, according to Hegel, the subjective freedom and particular interests of diverse individuals are mediated and realized, rather than overruled.²²⁸ Although this authority is exercised by the state itself, through its various organically linked components, Hegel understands *supreme* internal authority to be

²²⁶ Ibid., 304.

²²⁷ Ibid., 305, 315-6. Cf. 314, 317-321, 327-330, 359.

²²⁸ Ibid., 275, 282-7, 329-330.

personified by a single monarch.²²⁹ The monarch represents the organic constitution's "ultimate instance and *non plus ultra*;" his decision is authority's last word, under which the various moments of the constitution are unified.²³⁰

In other words, for Hegel, internal sovereignty holds the state together. It is supreme authority that, because it is interwoven through the apparatus of the state and culminates in the will of the monarch, unifies its various subjects into an organic political community. As for Machiavelli, Bodin, Locke, and Rousseau, sovereign authority constitutes its own collective political subject.²³¹ It does so for as long as it is the supreme source of political obligation for the various members of that collective.

It is the exercise of this supreme constitutive authority that is rendered independent in the achievement of external sovereignty. For Hegel, the reciprocal independence theorized by Vattel consists in this: that each sovereign is free to constitute its own collective subject without interference by any other sovereign. This does not mean that each sovereign constitutes its subject in isolation. Rather, each sovereign-subject pair—that is, each *state*—stands in a relation of mutual exclusion from all the other pairs within the system or society of sovereigns. This

²²⁹ Ibid., 316-325.

²³⁰ Ibid., 321. Cf. 308-313, 316-325. The monarch's authority should not be mistaken for unlimited power. Although the monarch is the highest moment of the state's constitution, and thus "the apex and the beginning of the whole" it is still only one moment within the whole (308). Hegel divides the state into three elements: the legislative power, executive power and monarchical power. Supreme internal authority rests in the interoperation of these, such that "sovereignty belongs to the *state*," not the monarch alone (318). Consistent with the account of authority developed in Chapter 2, and the conclusions of the present chapter, Hegel explicitly limits the sovereign's prerogative by making him dependent upon his own subjects: "He is bound by the concrete content of the advice he receives, and if the constitution is firmly established, he often has nothing more to do than sign his name... In a fully organized state, it is only a question of the highest importance of formal decision, and all that is required in a monarch is someone to say 'yes' and to dot the 'i'; for the supreme office should be such that the particular character of its occupant is of no significance (321, 323). Shlomo Avineri's commentary on this point is instructive. He writes, "Herein lies the paradox of Hegel's theory of the monarchy. While keeping the traditional form of the monarchy, Hegel divests the monarch himself of any real power by making the Crown into the symbol of self-determination... The king can thus be both essential—without him, the 'i's go undotted—but also ultimately trivial." Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1974), 187-8.

²³¹ Like Montesquieu and Fichte, whom he criticizes, Hegel attempts to bring together, but hold separate, elements of autocratic, aristocratic, and democratic republicanism in his theory of the state's constitution. For this reason, the internal organization of the Hegelian state reflects the absolutism of Machiavelli and Bodin, and the popular sovereignty of Locke and Rousseau, in various ways and to different degrees.

mutual exclusion is achieved and maintained by each sovereign's exercise of supreme and independent constitutive authority over its subjects. It is because each sovereign constitutes its collective subject *independently* that each state is an individual with regard to every other state, and a unity with regard to itself: a "*single individual whole*," as Hegel puts it.²³² In short, for Hegel, sovereignty is the independent exercise of supreme authority that constitutes and reconstitutes its own collective subject *as its own* and, in doing so, continually differentiates itself and its subject from other sovereigns and their subjects.

Hegel's theory of the state is an especially illuminating expression of the modern ideal of sovereignty, insofar as sovereignty's internal supremacy and external independence are here writ large, in an almost exaggeratedly idealist image of the state's organic unity and individual personality. What is most revealing is the way that these internal and external aspects of sovereignty are dialectically inseparable, such that each makes possible and shapes the other. For Hegel, as for Machiavelli, Bodin, Hobbes, Locke, and Rousseau, the supremacy of sovereign authority is expressed in the way it constitutes the collective subject over which it is exercised. Only for Hegel, however, is the independence of sovereign authority expressed in the way that it makes this subject *its own*, to the exclusion of all other sovereigns. This collective subject is a *determinate* collective—an individual whole—by virtue of its internal unity and external differentiation, while the distinction between interiority and exteriority is determined, in turn, by the boundaries of sovereign authority. Where boundaries of sovereignty meet, they are negotiated by the sovereigns that they bound. Such negotiations may be violent or peaceful, but what is essential is that, for Hegel as well as for Vattel and the law of nations tradition, sovereigns negotiate only with one another, as equally individual and reciprocally independent

²³² Ibid., 305. See also 359. Regarding the dialectical connection of external and internal sovereignty more generally, see 282-3, 304-5, 360-363, 365-366. See also *The German Constitution* in Hegel, *Political Writings* (Cambridge: Cambridge University Press, 1999), especially pages 31-40.

authorities that have no claim over each other's internal affairs. By bringing together external independence and internal constitutive authority in this way, Hegel accurately captures the "ideality" of modern sovereignty and affirms the conclusion of the argument that I have been making: Supreme, independent, and bounded political authority bounds itself, through interactions with actors both inside and outside its jurisdiction, and thereby constitutes its own collective subject.²³³

Sovereign constitutive authority need not be exercised by an exceptional figure, like Hegel's monarch, which is distinct from the collective subject that it constitutes. Rather, as discussed in relation to Locke and Rousseau, the people itself may exercise sovereign authority *over itself* and thereby constitute itself as a collective political subject. Of course, in actual political practice, the popular sovereign and popular subject are never truly identical. Even if they were, however, it would still be meaningful to distinguish, along with Rousseau, between the people-as-sovereign and the people-as-subject. In the theory and practice of popular sovereignty, the people-as-sovereign constitutes the people-as-subject. In actual democracies, representatives and agents of the sovereign people make and enforce decisions about immigration, nationalization, citizenship, and enfranchisement, all of which determine who is included in, and who is excluded from, the people-as-subject. Such decisions, along with the acts that enforce them, continually constitute the collective subject of sovereignty, the version of 'the people' that is subject to the law. Whereas in instances of absolutist sovereignty, the sovereign constitutes 'the people' as *its* collective subject, in instances of popular sovereignty, sovereign constitutive authority is the means by which 'the people' constitutes *itself*.

Nonetheless, even in its most democratized forms, the self-constitution of the popular sovereign contains traces of the absolutism that characterizes Machiavellian form-givers,

²³³ Ibid., 315.

Bodinian princes, and Hobbesian leviathans. Whenever a democratic people constitutes *itself* as its own collective subject, subject to its own law, there is something in the act of constitution that exceeds, escapes, or is otherwise untouched by the *popular* or *democratic* aspect of that act. This thought was suggested in the Introduction, by way of reference to the paradoxes of democratic constitution elaborated by Whelan, Benhabib, and Gould, and it will become a central focus of the rest of this dissertation. For now, however, I want to simply suggest that there is something *imperious* about the ideal of sovereign constitutive authority, regardless of whether the sovereign is a single monarch or the people itself. I take Hegel's theory of the state to be an essential moment in the history of the modern ideal of sovereignty, not because Hegel's theory is politically laudable, but because it clearly illuminates sovereignty's imperiousness in *both* the internal and external relations through which the sovereign constitutes its own collective subject.

My argument thus far can be easily summarized. According to the modern ideal of sovereignty, as defined in the Introduction, sovereignty is supreme and independent political authority within a bounded jurisdiction. To be internally supreme and externally independent, a political authority must distinguish between the interior and exterior of its jurisdiction *itself*. To do this is to determine the boundaries of authority and subjection, and thereby subject all political actors within those boundaries, while excluding political actors who are not subjected. To do this, in turn, is to constitute a collective subject, the members of which are unified by their common subjection to sovereign authority and differentiated from political actors that are not subjected to that authority. In short, the modern ideal of sovereignty is an ideal of political authority that is supreme, independent, and self-bounding, and which constitutes its own collective subject.

Part III: Independence and Self-government

The above arguments make clear that the modern ideal of sovereignty necessarily involves both internal and external relations. Internally, the relations between a sovereign and its subjects are primarily relations of supreme constitutive authority, by which the sovereign constitutes its own collective subject. Externally, the relations between sovereigns are primarily relations of independence. On my account, which follows Hegel more than any other modern philosopher in this regard, the internal and external aspects of sovereignty are inseparable. It is the internal aspect of sovereignty—i.e., supreme constitutive authority—that is rendered independent in the achievement of external sovereignty.

Nevertheless, the modern ideal of supreme constituent authority does not feature prominently in much of the contemporary literature on sovereignty. This is because that literature tends to concentrate on the *external* aspects of sovereignty—that is, the relations of reciprocal exclusion and independence that connect sovereigns within a system or society of sovereigns. This focus is especially evident in disciplines that study the system of sovereign states directly, such as international relations theory and international law. While it may be obvious that *international studies* would emphasize the relations *between* sovereign states, these disciplines are extremely influential in generating and elaborating contemporary theories of sovereignty, as well as in shaping political practices related to sovereign statehood. International relations theory and international law essentially set the terms of wider discourses of sovereignty. As a result, some very influential conceptions of sovereignty emphasize the external relations between sovereigns in a way that overshadows the internal relations binding each sovereign to its

subjects.

This subordination of internal to external sovereignty presents a challenge to the arguments I have made in this chapter. According to those arguments, external independence is only *one part* of sovereignty, which qualifies the other part of sovereignty, namely supreme constitutive authority. This does not mean that external independence is not a necessary condition of sovereignty; it does mean, however, that external independence is not a sufficient condition of sovereignty. More importantly, my arguments deny that external independence is *primary* or *prior* to the internal aspects of sovereignty, which is precisely what is suggested by the contemporary focus on external relations between sovereigns.

In order to meet this challenge, I will clarify and then argue against the primacy of external independence to internal authority that is frequently articulated by contemporary theories of sovereignty. I will do so by referring to the political transformations that would seem to be *prima facie* evidence for the primacy of external independence, namely the successful decolonization struggles of the 20th century. Where these struggles have resulted in the achievement of both the internal and external aspects of sovereignty, it is easy to mistake the whole for its part, and to understand the achievement of post-colonial sovereignty exclusively or primarily in terms of external independence. However, where these struggles have resulted in external independence *without* supreme internal authority, so-called ‘state failure’ reveals the stakes of privileging relations between sovereigns over and above relations between each sovereign and its subjects.²³⁴

²³⁴ The language of state ‘failure’ is problematic because it reiterates a notion of ‘success’ that obviously privileges, and is arguably imposed by, the former colonial powers whose domination of African, Middle Eastern, Asian, and Latin American states continues to hamper their chances of ‘success’. When this is admitted, however, the entire ideal of modern sovereignty *itself* is revealed to be similarly problematic. And indeed it is. The modern ideal of sovereignty developed through practices of colonial hegemony, which it continues to support, albeit in different ways—and this is only *one* aspect of its problematic nature. I will continue to use the language of state failure, with some reservation, to mark the tip of the iceberg, so to speak. That the modern ideal of sovereignty (or

The contemporary subordination of internal to external sovereignty has its roots in Vattel's influential contribution to the law of nations tradition, which deeply informs contemporary international law. In outlining his theory of sovereignty as reciprocal independence, Vattel declines to provide a detailed account of the internal authority structures that bear on sovereignty. In his view, constitutional matters like the exercise of authority over subjects, the generation of law, and the rights of subjects are not immediately relevant to the rights and duties exercised by sovereigns with regard to one another. He writes:

It is sufficient to establish the general principles necessary for the decision of those disputes that may arise between nations... It is not here necessary to consider in detail what that constitution and those laws ought to be: that discussion belongs to public law and politics... We here consider the duty of a nation toward itself, principally to determine the conduct that it ought to observe in that great society which nature has established among all nations.²³⁵

This does not mean that Vattel completely ignores the internal composition of states; indeed, Book I of *The Law of Nations* focuses, in broad strokes, on “Nations Considered in Themselves.”²³⁶ However, he generally separates this discussion from Books II-IV, which focus on the external relations between states, themselves understood as unitary and independent moral persons within a society of such persons.²³⁷ The unity of each state is presupposed by Vattel's

at least, its global monopoly over legitimate political organization) generates a politically problematic concept like state failure suggests that the *ideal itself* is a site of political contest. This dissertation engages in such contest, albeit in a very modest way, by attempting to show that the effects of sovereign authority—in particular, the constitution of the peoples that are subject to, and potentially the agents of, sovereignty—are never as finally, authoritatively, and incontestably accomplished as the language of sovereignty would suggest. For a compelling and careful post-colonial critique of sovereignty, which has greatly influenced the background of this dissertation, see Antony Anghie's *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), especially Chapters 4 and 5.

²³⁵ Vattel, *Law of Nations*, 65, 75.

²³⁶ *Ibid.*, 65.

²³⁷ Vattel is an early and influential proponent of what Charles Beitz calls the “autonomy of states” argument, which understands the independence of sovereign states in terms of the independence of individual persons. See Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1999), 76-83. This view of sovereignty facilitates the subordination of internal to external sovereignty because, at least in the dominant modern political imaginary, individuals do not *have* relations to themselves. Importantly, for Hegel, they do. Beitz locates Hegel, with Vattel, in the autonomy of states tradition but, *pace* Beitz, the “organic wholes” of Hegel's theory are achieved through internal, conflictual self-relation (*Ibid.*, 76).

view of sovereignty as external independence among states, with the result that the operations of authority internal to each state become irrelevant to international relations, and thus to sovereignty itself.

In other words, Vattel's contribution to the law of nations, which forms the foundation of contemporary international law, takes the international arena to be the stage of sovereignty and removes the internal aspect of sovereignty—supreme constitutive authority—from that stage. This subordination of internal political organization to external independence has been as influential as the rest of Vattel's account of sovereignty; as F. H. Hinsley puts it, "In the international context the theory of sovereignty has never implied more than the claim to independence."²³⁸ While theorists since Bodin have noted the inseparability of sovereignty's internal and external aspects, many since Vattel have construed external relations among sovereigns as more important to the theory and practice of sovereignty than internal relations between sovereigns and their subjects.²³⁹

In contemporary political theory, Alan James, for example, has influentially theorized sovereignty as "constitutional independence," which requires "being constitutionally apart... not being contained, however loosely, within a wider constitutional scheme."²⁴⁰ Consistent with the Vattelian law of nations tradition, James considers sovereign independence to be the foundation of international law. He writes, "International law presupposes sovereignty. It makes sense only

²³⁸ Hinsley, *Sovereignty*, 158. See also Hedley Bull, *The Anarchical Society*, 3rd ed. (New York: Columbia, 2002): "From the perspective of any particular state what it chiefly hopes to gain from participation in the society of states is recognition of its independence of outside authority, and in particular of *its* supreme jurisdiction over *its* subjects and territory. The chief price it has to pay for this is recognition of like rights to independence and sovereignty on the part of other states" (16-17, emphasis mine).

²³⁹ Hinsley mistakenly locates this priority in Hegel and his followers; Bull and Nijman attribute it to late eighteenth and nineteenth theorists of sovereignty more generally. See Hinsley, *Sovereignty*, 208-9; Bull, *Anarchical Society*, 16-7, 35; Nijman, *Concept of International Legal Personality*, 84.

²⁴⁰ James, "Practice of Sovereign Statehood," 461; cf. James, *Sovereign Statehood*, 24-5. Like Vattel, James equates sovereign independence with membership in a community of sovereigns. He writes, "International society admits only those governed entities which are sovereign in the sense of being constitutionally independent." (James, "Practice of Sovereign Statehood"). Unlike Vattel, however, James does not derive the formal equality of states from their common membership in international sovereignty. See James, *Sovereign Statehood*, 51.

on the assumption that there are sovereign states to which it can be applied. And those sovereign states are sovereign because they are independent in terms of their own constitutions.”²⁴¹ Also like the Vattelian tradition, James has little to say about the internal organization of sovereign states, except that the constitution of each state is independent from that of other states. He writes, “Whether or not a government behaves properly in internal matters is neither here nor there so far as the independence of its constitution is concerned.”²⁴² When he does recognize the inextricability of sovereignty’s external and internal aspects, James claims that the latter is merely derivative of the former. On his view, a sovereign’s authority over its subjects is merely an “internal reflection” of its external independence from other sovereigns.²⁴³

This subordination of internal sovereignty to external sovereignty is frequently affirmed in contemporary international law. As James Crawford notes, in his careful and comprehensive book, *The Creation of States in International Law*, “Sovereignty is the term for the ‘totality of international rights and duties recognized by international law’ as residing in an independent territorial unity—the State.”²⁴⁴ Because external independence is “the central criterion for statehood” within international law, it is also the central feature of sovereignty: “Sovereignty in the relations between states signifies independence.”²⁴⁵ The 1931 opinion of Judge Anzilotti of the Permanent Court of International Justice (the precursor to the ICJ) is taken to be “the classic statement” and “widely accepted definition” of sovereignty-as-independence in current

²⁴¹ James “Practice of Sovereign Statehood,” 463.

²⁴² James *Sovereign Statehood*, 25.

²⁴³ “What this amounts to is that... a state is master in its own house... Thus sovereignty has real meaning for a state’s internal freedom of action... All this is the internal reflection of constitutional independence. It is because a state is constitutionally separate from others that, without its authority, others are not entitled to act in or in respect of its territory as if they owned it (Ibid., 52).

²⁴⁴ James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), 32, citing *Reparations for Injuries Suffered in the Service of the United Nations* (ICJ Rep 1949 p 174, 180). He notes, “The term ‘sovereignty is sometimes used in place of ‘independence’ as a basic criterion for statehood. However, it has another more satisfactory meaning as an incident or consequence of statehood, namely, the plenary competence that States prima facie possess” (89). Importantly, this preferred meaning retains the primacy of external independence, but construes it as a characteristic of, rather than condition for, statehood.

²⁴⁵ Ibid., 62; Judge Huber, *Islands of Palmas Case* (1928), cited in Ibid.

international law.²⁴⁶ Anzilotti writes:

Independence as thus understood is really no more than the normal condition of States according to international law; it may also be described as sovereignty (*suprema potestas*) or external sovereignty, by which is meant that the State has over it no other authority than that of international law...²⁴⁷

This influential definition of independent statehood identifies independence with sovereignty itself, via the subordination of internal sovereignty to external sovereignty. This subordination is especially characteristic of international legal definitions of sovereignty in the post-World War I era. Gerhard Kreijen writes:

While traditional legal doctrine essentially conceived of internal sovereignty as a necessary pre-condition for the establishment of external sovereignty or independence, modern doctrine does not seem to insist upon such a link... The commonly accepted modern condition of independence... allows for the exclusion of traditional aspects of internal sovereignty as relevant conditions for statehood.²⁴⁸

The result is that aspects of internal sovereignty—including the supreme authority that constitutes the sovereign’s collective subject—frequently drop out of discussions of sovereignty in contemporary international law. One aspect of sovereignty—external independence—is taken to be the whole of sovereignty itself.

Finally, contemporary international relations theory and policy-making also reflect this priority of external to internal sovereignty. For example, the methodological framing of Stephen Krasner’s very influential studies of sovereignty emphasize independence over internally supreme authority.²⁴⁹ Krasner’s typology of sovereignty is itself evenly split into internal and external aspects. It includes:

²⁴⁶ Crawford, *Creation of States*, 65; Gerard Kreijen, *State Failure, Sovereignty and Effectiveness* (Leiden: Martinus Nijhof, 2004), 23.

²⁴⁷ Judge Anzilotti, *Austro German Customs Unit case* (1931), PCIJ, Ser. A.B, No 41, cited in Kreijen, *State Failure*, 23 and Crawford, *Creation of States*, 65.

²⁴⁸ Kreijen, *State Failure*, 33.

²⁴⁹ Krasner’s work has been frequently cited (even by philosophers!) as central to contemporary understandings of sovereignty. Krasner himself has served as the Director of Policy Planning at the US State Department, and as a member of the National Security Council Staff, both during the administration of George W. Bush.

domestic sovereignty, referring to the organization of public authority within a state...; interdependence sovereignty, referring to the ability of public authorities to control transborder movements; international legal sovereignty, referring to the mutual recognition of states or other entities; and Westphalian sovereignty, referring to the exclusion of external actors from domestic authority configurations.²⁵⁰

However, Krasner's studies of sovereignty focus almost exclusively on the external aspects of sovereignty, which are captured by the concepts of "international legal sovereignty" and "Westphalian sovereignty." This focus is due to his overall aim of examining violations of sovereignty norms, and only international legal sovereignty and Westphalian sovereignty are "defined by clear logics of appropriateness."²⁵¹ In other words, Krasner's methodological preference for external sovereignty is explained by the prevalence of that aspect in determining "rules" of the sovereignty "game."²⁵² His subordination of internal to external sovereignty reflects a more general emphasis on external independence in theoretical, legal, and policy discussions of sovereignty. Krasner affirms this emphasis by arguing, on the basis of violations of *external* sovereignty norms alone, that *sovereignty itself* can be characterized as "organized hypocrisy."²⁵³

In sum, the Vattellican emphasis on external sovereignty is alive and well today. This focus on independence presents the international sphere as the primary terrain upon which sovereignty must be achieved and maintained, and construes the influence of other sovereigns as the main obstacle on this terrain. When the space in which sovereigns interact is understood as the space of sovereignty, the internal aspect of sovereignty—supreme constitutive authority—can be construed as a derivative side-effect of the interactions of sovereigns, as if the

²⁵⁰ Krasner, *Power, the State, and Sovereignty*, 184. In later versions of this typology, Krasner incorporates the first two types of sovereignty as simply domestic sovereignty. The three-element typology makes clearer his emphasis on external sovereignty. See *Ibid.*, 15.

²⁵¹ *Ibid.*, 182.

²⁵² *Ibid.*, *Sovereignty*, 46.

²⁵³ *Ibid.*, *Power, the State, and Sovereignty*, 19-20, and *Sovereignty, passim*.

achievement of external political independence is also, simply by default, the achievement of internal political authority. Something like this construal is evident in the international legal discourse surrounding twentieth-century decolonization, which was—for good reason—significantly focused on the external aspects of sovereignty. Nevertheless, while this discourse evidences the one-sided Vattellican emphasis on the independence of every sovereign state, the contemporary successes and failures of post-colonial states attest to the vital importance of each sovereign's internal constitutive authority.

The modern ideal of sovereignty was enlisted (and also imposed), along with the emerging norm of national self-determination, in twentieth century struggles for decolonization, devolution, and secession. In the context of these struggles, ideals of sovereign statehood were articulated primarily in opposition to colonial rule and similar forms of imposed dependency, with the result that sovereignty became increasingly associated with external independence *over and above* internal authority.²⁵⁴ In international law especially, sovereignty and independence were identified in ways that construed the achievement of even formal independence as tantamount to the achievement of sovereignty.²⁵⁵ In the context of world-wide struggles against colonial administration, independence from external authority was widely articulated as the necessary *and sufficient* condition for sovereignty.²⁵⁶

Even where the goal of decolonization was described in terms of “self-government,” as in

²⁵⁴ Pemberton, *Sovereignty*, 120-4.

²⁵⁵ “The decolonization process created a new category of sovereign entities... Juridical statehood no longer presupposes certain inherent positive qualities which may serve as the foundation for sovereignty... For the ‘juridical State’, sovereignty is merely the result—rather the acknowledgment—of having been in subject colonial status... Self-determination provided the conceptual backbone to independence, not positive or, for that matter, internal, sovereignty.” Kreijen, *State Failure*, 148-9. See, more generally, Robert Jackson, *Quasi-states: Sovereignty, International Relations, and the Third World* (Cambridge: Cambridge University Press, 1993); Siba N’Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans* (Minneapolis: University of Minnesota Press, 1996); Anghie, *Imperialism, Sovereignty*, 179-204.

²⁵⁶ “Independence essentially came to rest on categorical self-determination and arrived as a matter of right. The internal development of a unit no longer lay at the root of its outward manifestations as a sovereign State” Kreijen, *State Failure*, 142.

Chapter XI of the United Nations Charter, self-government *itself* was widely articulated in terms of external independence, rather than internally exercised political authority. For example, UN General Assembly Resolution 1541 clarifies:

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.²⁵⁷

Because colonial administration suppressed indigenous self-government, independence from colonial administration was understood to be normatively and practically prior to self-government. When it was related to sovereignty at all, internal authority was understood to follow, and follow from, external independence.

This priority of external to internal sovereignty would seem to be vindicated by the creation of so many sovereign post-colonial states on the basis of recognized independence. However, where the internal and external aspects of sovereignty have been achieved *together*, it is easy to mistake external independence—the most visible goal of decolonization—for the entirety of sovereignty. On the other hand, where external independence has been achieved *in the absence* of internally supreme authority, the specific and irreducible importance of internal sovereignty becomes strikingly manifest. In the cases of so-called ‘failed states’ like Somalia and the Democratic Republic of the Congo, supreme internal authority has neither followed nor followed from independence.

²⁵⁷ *GA Res 1541 (XV)*, Annex, Principle VI. Available online at: <http://www.un.org/documents/ga/res/15/ares15.htm>. Accessed June 3, 2010. The first method of self-government is the most common; as Crawford states, “In the terms of the Colonial Declaration and in practice, *independence* has been the central and most usual form of *self-government*.” Crawford, *Creation of States*, 623, emphasis added. While the other two methods (b and c) are coherent ways of achieving independence, it is not clear that they are coherent ways of achieving any notion of self-government that is not defined primarily in terms of independence. Independence may be transitive in a such a way that it can be achieved through integration with an already independent state. Self-government, understood as supreme political authority (let alone supreme *constitutive* political authority), would not be similarly transitive.

In an influential study of postcolonial Africa, Robert Jackson has persuasively argued that although sub-Saharan states possess juridical statehood on the basis of their external independence, “many have not yet been authorized and empowered domestically and consequently lack the institutional features of sovereign states as also defined by classical international law.”²⁵⁸ According to Jackson, these “quasi-states” enjoy only a formal, “negative sovereignty” insofar as their recognized independence does not correspond to “capabilities which enable governments to be their own masters.”²⁵⁹ The Democratic Republic of the Congo is a widely cited example. According to Kreijen, “the Belgian Congo became a sovereign State without an effectively functioning government;” as Crawford remarks concerning the early years of Congolese independence, “anything less like effective government... would be hard to imagine.”²⁶⁰ In later years, institutions of state government within the Democratic Republic of the Congo have been generally restricted to the capital city, and for a period of several months during 1993, the country (then Zaire) had “two concurrent governments and two concurrent parliaments.”²⁶¹ In short, since decolonization, the Democratic Republic of the Congo has not maintained internally supreme authority. It has been recognized as a sovereign state, however, purely on the basis of its independence from other sovereigns.

The more general point is that, by emphasizing external independence over internal authority, “the international community has accepted the sovereignty of states lacking effective government or governing institutions and organs.”²⁶² However, in the case of the Democratic Republic of the Congo and elsewhere, these states have *remained* without effective government

²⁵⁸ Jackson, *Quasi-States*, 21.

²⁵⁹ *Ibid.*, 27, 29.

²⁶⁰ Kreijen, *State Failure* 137; Crawford, *Creation of States*, 57. See also Krasner, *Sovereignty*, 201, 217.

²⁶¹ Neyire Akpinarli, *The Fragility of the Failed-State Paradigm: A Different International Law Perception of the Absence of Effective Government*, (Leiden: Martinus Nijhof, 2009), 16.

²⁶² *Ibid.*, 113.

despite the achievement of external independence and, correspondingly, the recognition of sovereign statehood. Independence, in other words, has not led to self-government in any robust sense. As Krasner puts it, “One of the most striking aspects of the contemporary world is the extent to which domestic sovereignty has faltered so badly in states that still enjoy international legal, and sometimes even Westphalian/Vattelian sovereignty.”²⁶³ The attribution of sovereignty to states like the Democratic Republic of the Congo is possible only when sovereignty, understood entirely in terms of external independence, has been completely separated from internal authority.

There are good reasons to hesitate before accepting Jackson’s and Krasner’s analyses of post-colonial sovereignty *tout court*.²⁶⁴ Nevertheless, one can acknowledge the discrepancies studied by Jackson and Krasner while challenging the presuppositions of their studies, remaining skeptical of their conclusions, and interrogating the language of state failure. The sovereign status of states like the Democratic Republic of the Congo suggest that, in a contemporary expression of the Vattelian tradition, sovereignty has indeed been divorced from internally exercised supreme authority. This holds true regardless of whether independence is granted by

²⁶³ Krasner *Power, the State, and Sovereignty*, 234.

²⁶⁴ For instance, these authors fail to consider how the experiences, norms, and procedures of colonial domination, as well as of decolonization and even contemporary international relations, contribute to a (potentially racist) legal and political hegemony that favors former colonial powers over postcolonial states. Grovogui persuasively criticizes Jackson on these grounds in *Sovereigns, Quasi Sovereigns, and Africans*, Chapters 1, 2 and 6. Additionally, the use of language like ‘failed’, ‘quasi’, and ‘negative’ attributes to post-colonial political communities the *intention* or *desire* (and so, the failure) of achieving the very form of sovereignty that, during the colonial period and perhaps even now, contributed to their subalternity. Recently, Anghie has made a very compelling case for the continuation of colonial practices and norms through theories and practices of sovereign recognition. Importantly, he argues that whether or not emerging nations (in particular, African polities) are recognized as sovereign, they are subject to the norms of Western international hegemony that are manifest in contemporary recognitive practices and ideals of sovereignty in general. See Anghie, *Imperialism, Sovereignty*, 75-8, 98-100. According to both Grovogui and Anghie, aspirations to sovereignty—regardless of the degree to which these aspirations were imposed or unavoidable—have had significantly detrimental effects of former African colonies and on the project of genuine decolonization. On the political implications of contemporary discourses of state failure more generally, see Margaret Denike, “The Human Rights of Others: Sovereignty, Legitimacy, and ‘Just Causes’ for the ‘War on Terror’,” *Hypatia* 23, no. 2 (2008): 95-121.

former colonizers, or *achieved* or *taken* by the colonized themselves.²⁶⁵ It also holds true whether or not histories of colonial imposition and oppression are recognized as contributing significantly to the internal political organization of post-colonial states. Finally, it holds true whether or not contemporary conditions that perpetuate subalternity are acknowledged. One does not have to share Jackson's and Krasner's perspectives (and I do not share their perspectives) in order to see that certain post-colonial states owe their sovereign status to a conceptual and practical separation of sovereignty from internally supreme authority.

In part I, I argued that the supremacy, independence, and boundedness conditions of sovereign authority are mutually enabling and mutually conditioning, and that their interrelation is characteristic of the modern ideal sovereignty. The states studied by Jackson and Krasner, which enjoy independence but do not exercise supreme authority, are not sovereign according to the modern ideal, insofar as they do not fulfill all of its conditions. As evidence against the Vattelian tradition, these states demonstrate that sovereignty without supreme authority is no sovereignty at all. This is not simply because such states lack internal authority, but because externally recognized independence, absent something approaching internally supreme authority, does not even live up to the Vattelian ideal of sovereign independence.

In *The Creation of States in International Law*, Crawford distinguishes between formal independence and actual independence:

Formal independence [*l'exclusivité de la compétence*] exists where the powers of government in a territory (in internal and external affairs) are vested with the separate authorities of the putative state... The vesting of power, in this sense, may... be the

²⁶⁵ For instance, in *The Wretched of the Earth* (New York: Grove, 2004), Franz Fanon makes clear that even well organized and successful opposition to colonial administration does not translate directly into post-colonial authority. He writes: "Instead of inspiring confidence, assuaging the fears of its citizens and cradling them with its power and discretion, the State, on the contrary, imposes itself in a spectacular manner, flaunts its authority, harasses, making clear to its citizens they are in constant danger... Such a dictatorship cannot, in fact, go very far" (111).

result of a grant of full power from the previous sovereign; it may be established, or recognized, by bilateral or multilateral treaty.

Actual independence [*plenitude de la competence*] is relative... a matter of degree... [I]t may be defined as the minimum degree of real governmental power at the disposal of the authorities of the putative [sovereign] State that is necessary for it to qualify as 'independent'.²⁶⁶

The states studied by Jackson and Krasner enjoy *formal* independence. However, insofar as they lack institutionalized internally supreme authority, they enjoy little or no *substantial* independence. This does not mean that their independence is unreal or worthless. The recognized right to non-interference makes a significant difference in a state's affairs, and, to the extent that it is respected by other states, it is no *mere* formality.

Nevertheless, the formal character of this independence becomes evident in cases like the Democratic Republic of the Congo in 1993. While it contained two conflicting governments, the state (then Zaire) was recognized as externally independent—despite the fact that there was no one supreme political authority that governed independently. In such cases, where formal independence exists without supreme political authority and therefore without substantial independence, it is not immediately clear *what* is protected by the right of non-interference. As discussed in parts I and II, sovereign independence means that a sovereign's *authoritative relation* to its subjects must be independent—but this authoritative relation is missing, or extremely limited, in states that enjoy only formal independence. Formal independence that is not also substantial is not sovereign independence.

²⁶⁶ Crawford, *Creation of States*, 67, 72. The distinction is motivated, at least in part, by the experiences of decolonization: "In particular it is important to distinguish independence as an initial qualification for [sovereign] statehood and as a condition for continued existence. A new State attempting to secede will have to demonstrate substantial independence, both formal and real, from the State of which it formed a part before it will be regarded as definitively created. On the other hand, the independence of an existing State is protected by international law rules against unlawful invasion and annexation, so that the State may, even for a considerable time, continue to exist as a legal entity despite lack of effectiveness" (63).

To clarify, the distinction between formal and substantial independence can be mapped onto a distinction between a state's being *ungoverned* by external authority, and its being *self-governed*. Originally, the Vattelian tradition understood sovereign independence in terms of self-government, or substantial independence. Vattel writes, "To give a nation a right to make an immediate figure in this grand society, it is sufficient that it be really sovereign and independent, that is, that it *govern itself by its own authority and laws*."²⁶⁷ By the mid-twentieth century, however, the Vattelian tradition had retained its emphasis on external independence as the key criterion for sovereignty, but had redefined it in terms of *formal* independence—that is, being *ungoverned* by the authority and laws of others.

Although this shift facilitated decolonization, it also evacuated independence of its positive meaning, insofar as formal independence is compatible with a *lack* of self-government, or even with the absence of government altogether. Kreijen writes:

The expansion of international society was paralleled by a transformation of the notion of independence from an inherently material concept based on internal sovereignty to a mere formal legal condition primarily depending on external recognition. This implies that *independence no long automatically means the ability to stand on one's own feet*... 'independence has lost its meaning'.²⁶⁸

When the criterion of external independence is entirely separated from the criterion of supreme internal authority, the former loses its meaning.²⁶⁹ The lack of centrally institutionalized authority in states like the Democratic Republic of the Congo prompts the question: *What, precisely, is externally independent? What is it that is recognized as not dependent on external authority structures?* Whether it is formulated as equal subjection to the law of nations, individual participation in the system of states, "constitutional independence," or "formal

²⁶⁷ Vattel, *Law of Nations*, 66. Italics added.

²⁶⁸ Kreijen, *State Failure*, 152.

²⁶⁹ That formal independence is explained *entirely* in terms of its being granted or recognized—in other words, that it is entirely *dependent* upon other sovereigns—is a clear sign that it is insufficient for sovereignty. See pages 62-4 above.

juridical independence,” the independence necessary to sovereignty must be grounded in a criterion of internally exercised supreme authority.²⁷⁰ Simply being ungoverned by external structures of authority is an insufficient criterion of sovereignty, because it is an insufficient criterion of external independence.²⁷¹

The separation of external independence from internally supreme authority is tantamount to separating sovereignty’s form from its content. By theorizing sovereignty in terms of formal independence from external government, the contemporary Vattellican tradition focuses on the borders and exteriors of spheres of sovereignty, without adequately considering their interiors. James almost says as much, when he writes:

A helpful way of envisaging sovereignty is as a kind of shell encasing an appropriately qualified state... not a physical but a constitutional shell... Using a different metaphor, sovereignty may be seen as a moat, cutting the state off from constitutional subordination to other states...²⁷²

James’s moat metaphor reduces sovereignty to a barrier between sovereigns, which is to be achieved only in relation to the external political actors that are construed as the major obstacles to sovereignty. In doing so, it illustrates the failure of contemporary Vattellican views to say anything substantive about the character and quality of sovereign authority as it is exercised, internally, over subjects. By understanding sovereignty as independence, and independence as simply being ungoverned by external structures of authority, these views affirm the conceptual

²⁷⁰ James, “Practice of Sovereign Statehood,” 464. Krasner, *Power, the State, and Sovereignty*, 180; c.f. 188-193.

²⁷¹ The contemporary identification of sovereignty with formal independence cannot admit the self-bounding and constitutive character of sovereignty, to disastrous effect. In the UN Charter and other sources of international law relevant to decolonization, the ‘peoples’ that enjoy a right of self-determination and, consequently, liberation from colonial rule are defined, almost exclusively, by the territorial borders that were established by colonial powers in their conquest of Africa, the Americas, and the Middle East. As I argued in section I, preexisting borders are compatible with sovereign self-bounding insofar as these borders can be appropriated by a sovereign. There is good reason to think, however, that the determination of post-colonial political communities by borders imposed by colonialism has a deleterious effect on the establishment of internally supreme authority within, and over, these borders. On the determination of peoples eligible for self-determination (I mean this formulation without irony), see Crawford, *The Creation of States in International Law*, 122-8. See also pages 202-3.

²⁷² James, *Sovereign Statehood*, 39.

contradiction and practical danger manifested by so-called ‘failed’ states: sovereignty without authority.

States like Somalia and the Democratic Republic of the Congo owe their sovereign statehood to twentieth century notions of sovereignty that separate the form of sovereignty, external independence, from its content, internal authority. This separation was beneficial insofar as it facilitated decolonization and independence—but these do not themselves amount to sovereignty.²⁷³ That some post-colonial states lack effectively supreme internal authority shows that this authority does not necessarily follow, or follow from, formal independence. Most importantly, the experiences of these states suggest that the international sphere is not the only terrain upon which sovereignty must be achieved, and that interference by other sovereigns is not the only obstacle to this achievement. The elimination of external governance does not default to the internal exercise of supreme authority, because the internal aspect of sovereignty must be achieved *in relation to different agents* than the external aspect. Far from being an “internal reflection” of external independence, then, the achievement of internally supreme authority is its own political task, and one that is necessary to sovereignty.²⁷⁴ An adequate account of sovereignty must specify the authority that is exercised as, and may be recognized as, independent.

Recently, Alan Buchanan has provided such an account, notwithstanding his hesitation concerning the concept of political authority.²⁷⁵ In *Justice, Legitimacy, and Self-Determination*,

²⁷³ This point is importantly double-edged. While I am here arguing that independence is not the same as sovereignty (i.e., the external aspect of sovereignty is not sovereignty itself), it is important to understand independence and decolonization as their own political ideals and political tasks. They should not be subsumed to sovereignty, and pursuit of these may, in some cases, be much more liberatory than the pursuit of sovereignty—whether achieving decolonization and independence requires achieving sovereignty first, or resisting sovereignty altogether. See Anghie] and [Grovgoui] for arguments to this effect, and important post-colonial critiques of sovereignty more generally.

²⁷⁴ James *Sovereign Statehood*, 25.

²⁷⁵ See Chapter 1, above, page 1, note 7. I discuss this further below.

Buchanan develops a normative theory of “recognitional legitimacy,” which specifies the criteria that members of the international community should use when recognizing new claimants to sovereign statehood. For the purposes of the present discussion, Buchanan’s theory is most significant for the way that it directly opposes the separation of sovereignty’s internal aspects from its external aspects.²⁷⁶ The theory is all the more important because it unites internal and external sovereignty *within* the framework of juridical recognition, which, as discussed, has been a key site for the subordination of internal to external sovereignty.

On Buchanan’s view, states are morally justified in recognizing “the independent statehood or sovereignty” of claimants to these only when certain criteria are fulfilled.²⁷⁷ Put schematically, these criteria are “a minimum internal justice requirement, . . . a nonusurpation requirement, and . . . a minimal external justice requirement.”²⁷⁸ Already it is evident that the recognition of sovereignty cannot focus only on a potential state’s external relations. Moreover, Buchanan is clear that the external requirement is an extension of the internal requirement. A potential state’s *internal* affairs—in particular, the degree to which justice is realized within its borders—is the fundamental basis of its claim to sovereignty.²⁷⁹

Buchanan avoids the concept of political authority in order to avoid serious philosophical difficulties concerning the moral justification of political obligation.²⁸⁰ He focuses instead on “political legitimacy,” which requires being “morally justified in wielding political power, where

²⁷⁶ Allen Buchanan, *Justice, Legitimacy and Self-Determination* (Oxford: Oxford University Press, 2004), 266-281. Later, Buchanan directly objects to the ‘autonomy of states’ view, which treats states as if they were independent and unitary persons (in a moral or legal sense) within a society of such persons (Ibid., 304). Vattel is one of the original proponents of this view, which is directly connected to his emphasis on external sovereignty. See page 89, note 237, above.

²⁷⁷ Ibid., 263.

²⁷⁸ Ibid., 266.

²⁷⁹ Ibid., 269-272.

²⁸⁰ Ibid., 237-247. I too have attempted to avoid the issue of political obligation’s moral justification, by outlining a descriptive account of the kind of authority that, as I showed in the Introduction, is central to the modern ideal of sovereignty.

to wield political power is to (make a credible) attempt to exercise supremacy, within a jurisdiction, in the making, application, and enforcement of laws.”²⁸¹ This, in turn, is a matter of protecting and furthering basic human rights, by means that themselves respect, rather than violate, human rights.²⁸² Importantly, one of the basic human rights that Buchanan emphasizes repeatedly is a qualified “basic right to democratic governance.” Realizing this right requires representative institutions for lawmaking, the non-exclusion of all competent adults from participation in these institutions, institutionalized means of removing government officials, and a measure of free speech and free association sufficient “for reasonably free and informed deliberation about political decisions.”²⁸³ Despite his reservations about committing to a moral account of political obligation, then, Buchanan builds into his theory of recognitional legitimacy a substantial description of the institutions through which internally supreme authority—in the sense I have used it here—should be exercised in order for a political entity state to be recognized an independent, sovereign state. In doing so he affirms, as against the Vattellic tradition and its echoes in twentieth century international law, the indissociability of sovereignty’s external and internal aspects. Sovereignty is *both* a matter of relations among sovereigns *and* a matter of relations between a sovereign and its subjects.

It is beyond the scope of this chapter to examine Buchanan’s theory in any further detail. In addition to noting that it, too, rejects any one-sided emphasis on external sovereignty, I want to simply add the thought that if sovereignty is indeed a matter of internal political organization, as Buchanan argues it is, then the achievement and maintenance of sovereignty requires internal recognition as well as external recognition. Buchanan focuses on a framework for guiding the international community’s cognitive practices, but this does not mean that international

²⁸¹ Ibid., 235.

²⁸² Ibid., 247-249, 267-8.

²⁸³ Ibid., 279.

recognition is by itself sufficient for the achievement sovereignty, even when that recognition is attentive to internal political structures. Rather, insofar as sovereignty is also a matter of internal political relations, achieving sovereignty requires something like the internal equivalent of the external recognition that Buchanan theorizes. It requires internal political *authorization*, in the sense I have described in Chapter 1.

Sovereignty must be achieved, not only in relation to other sovereigns, but also in relation to the subjects over whom it is exercised. Sovereignty that *only* exists in the eyes of other sovereigns is not sovereignty, because it is not authority, which depends upon recognition by its subjects. And it is the special prerogative of sovereignty, as I argued in part II, to determine who these subjects are, and to constitute them as a collective subject. Sovereignty, according to its modern idealization, is internally supreme, externally independent, and self-bounding political authority that constitutes the collective subject—the people—over which it is exercised.

INTERLUDE

Part I: Collective Subjection and the Paradox of Sovereignty

The aim of this dissertation is to identify and explain the paradox internal to modern ideals of sovereignty and to show that more familiar paradoxes of democracy are instances of this more foundational paradox. By now, enough has been said to make some progress toward the first aim. In this short interlude between chapters, I bring together arguments from the Introduction and Chapters 1 and 2 in order to give an initial description of the paradox of modern sovereignty. Chapters 3 and 4 will be dedicated to complicating and enriching this description.

In the Introduction, I began with a prevalent and general definition of modern sovereignty, according to which sovereignty is supreme and independent authority within boundaries. In Chapter 2, I argued that in order for political authority to be supreme, independent, and bounded—in order for it to be *sovereign*—it must also be self-bounding. Moreover, sovereign authority must constitute its own collective subject, insofar as independently self-bounding authority determines not only the limits of its own rightful command, but also the limits of subjection to that command. By subjecting the political actors circumscribed within its boundaries, sovereign authority constitutes these actors as its own collective subject. Sovereignty, according to its modern idealization, constitutes ‘the people’ over which it is exercised.

However, there is more to the relation between sovereign and subject than unilateral constitution and command. Modern sovereignty is a form of authority and, as such, involves a bilateral and reciprocal interaction between two or more agents. According to the arguments of

Chapter 1, the subjects of authority are never merely subjects; they are also agents of the authority that is exercised over them, insofar as they authorize that authority. If these arguments hold for *sovereign* authority, then the collective subject of sovereignty is also a collective agent of sovereignty—not because the sovereign and its subject are necessarily identical (as in the ideal-type of popular sovereignty), but because sovereign authority, like authority more generally, requires authorization by the subject over which it is exercised. To see whether these arguments do hold for sovereign authority, they must be reviewed in detail.

Recall that authority is a particular kind of practical compulsion in which command is correlated with obedience. This correlation depends, not on the legitimacy of authority, but the *recognized* legitimacy of authority. In contradistinction from power, authority makes an implicit or explicit claim to rightfulness that is accepted, acknowledged, and acceded to by the subjects over which it is exercised. This act of acceptance, acknowledgement, and accession—which I have indicated with the general concept of recognition—is necessary to *authorize* the authority and *subject* the subject.

In other words, in order for authority to be exercised, the subject over whom it is exercised must actively submit to it. The language of submission is central to Weber's influential account of authority, and it is echoed by Wolff's language of forfeiture. These idioms suggest the subject's *complicity* in her own subjection. Noting Raz's objections to Wolff and Weber, I have used the more neutral idiom of *participation*, rather than submission or forfeiture. A subject of authority necessarily participates in her own subjection, in the limited ways I have described, regardless of whether authority is detrimental or instrumental to her autonomy or her ends. The idiom of participation allows me to convey the central thought that is common to the work of Weber, Wolff, Raz, and Arendt, namely that authority makes a claim upon, and indeed

depends upon, the agency of the subject over which it is exercised.

This dependence is not always (and perhaps not usually) obvious. Authority does not advertise its indebtedness to its subjects, and subjects can authorize authority without intending to do so. Although authority does not compel obedience unless it is recognized as a legitimate source of command, its subjects need not understand the authorizing function of their own acts of recognition. In particular, subjects may *misrecognize* the bases of their acts of recognition for the bases of authority itself. In other words, they may mistake whatever motivates them to authorize an authority for the independent grounds of authority, and thereby fail to perceive their own role in enabling the authority that is exercised over them. Because of this, authority may appear to originate in divine election, heredity, tradition, or *raison d'état*, rather than in a relation between authorities and their subjects. However, these apparently external reservoirs of authority are, in fact, *reasons why* subjects recognize authorities as legitimate sources of command. It is the subjects' acts of recognition, and not the reasons behind those acts, that authorize an authority.

The subjects of authority, then, are not *mere* subjects. They are also *agents* of the authority to which they are subject, insofar as that authority cannot be exercised without their active participation in its authorization. As argued in the conclusion of Chapter 2, this means that every authority depends, for its authority, upon the agency of the actors over which that authority is exercised. Every authority is, to a degree, subject to its subjects. Put differently, an authority's ability to command obedience is predicated upon the authority's *indebtedness* to the subjects that it commands.

Sovereignty, as a kind of authority, is characterized by a similar form of indebtedness. Like any other type of authority, sovereignty must be authorized in order to be exercised. The

three characteristics that define sovereignty as a unique kind of authority—internal supremacy, external independence, and (self-)boundedness—do not eliminate the indebtedness of the sovereign. Supremacy is a matter of degree, and it does not change the fact that the sovereign must be authorized by the subject over which authority is exercised, while external independence simply means that sovereign authority cannot depend upon any *external* authority, such as another sovereign. In fact, it is *because* sovereign authority is internally supreme and externally independent that the source of its authority must be immanent to its jurisdiction, insofar internally supreme and externally independent authority cannot be bestowed by an external actor. The final characteristic of sovereignty, (self-)boundedness, specifies that the sovereign itself determines the jurisdiction over which its authority is exercised, and within which its authority originates.

However, the source of sovereign authority is not the individual subjects within a sovereign's jurisdiction, but those subjects "all together," as Machiavelli puts it.²⁸⁴ Sovereign authority is exercised over a collective subject and its individual members, but in order to be *supreme*—i.e. authoritative over *all* individual subjects and *any* faction of subjects—this authority must be authorized by the collective subject *as a whole*. One recent study expresses this well: "Sovereignty has its source in the community but it is located in the state which rules over it. Sovereignty flows upwards through an act of collective will only to move downwards in the form of supreme authority... Sovereignty depends for its existence on communal willing."²⁸⁵ Whereas authority *simpliciter* is ultimately indebted to the agency of individual subjects,

²⁸⁴ Machiavelli, *The Prince*, H. Mansfield, trans. (Chicago: Chicago University Press), 104.

²⁸⁵ Joanne Pemberton, *Sovereignty: Interpretations* (London: Palgrave Macmillan, 2009), 19, 38.

sovereignty emanates from and depends upon the agency of its *collective* subject.²⁸⁶ This thought is central to the political philosophy of Locke, Rousseau, Marx, and others. More generally, it is embedded in the modern ideal of internally supreme and externally independent authority, which cannot be authorized by just any faction within its jurisdiction or by any authority beyond its jurisdiction. In both its absolutist and popular forms, modern sovereignty, as a kind of authority, must be authorized by the people itself. Every sovereign is ultimately indebted, for its sovereign authority, to the *collective* subject over which that authority is exercised.

As with authority in general, the indebtedness that is characteristic of sovereignty is not always apparent. Here too, the bases of the act of recognition through which the people authorizes the sovereign may be mistaken for the origin of sovereignty itself. The sovereign authority of a king, for example, may appear to be grounded in divine investiture or venerable tradition, but these are simply empty stories unless the people accepts them and, on the basis of the perceived link to divinity or tradition, collectively recognizes the king as a rightful ruler. Even when the authority of the sovereign appears to originate from ‘on high’, it in fact originates ‘from below’, in the sovereign’s relation to its collective subject.

Bringing together the arguments from Chapters 2 and 1, it becomes clear that there is a tension internal to the modern ideal of sovereignty. On one hand, sovereignty is idealized as a unique kind of authority that *constitutes* its own collective subject. On the other hand, sovereignty is idealized as a unique kind of authority that originally and continually *depends upon* the agency of its own collective subject. The tension lies in the fact that it is the sovereign’s supreme, independent, and self-bounding authority that engenders the constituted subject, even as it is the constituted subject that engenders the sovereign’s supreme, independent,

²⁸⁶ Even if each subject recognizes the authority of the sovereign, the sovereign does not depend upon *each* of its subjects. Rather, it depends upon *all* of its subjects together, united as a collective subject. But this does not mean that one subject can simply ‘opt out’ and undermine a social network of authority. See above, pages 47-8, 51.

and self-bounded authority. This is the paradox of sovereignty.

This paradox appears, in theory and practice, as a problematic circularity. In order to constitute its collective subject through subjection to sovereign authority, the sovereign must be authorized by its collective subject. Consequently, the collective subject of sovereignty—the constituted people over which the sovereign rules—is both a necessary condition of sovereign authority, and its effect. The sovereign itself, insofar as the sovereign does not exist separate from its sovereign authority, is both the creator and the creature of the constituted people.

Surprisingly, this circularity is essential, rather than accidental, to the modern ideal of sovereignty as supreme, independent and bounded political authority. Taken together, the first three components of this ideal (supremacy, independence, and boundedness) entail that sovereignty must be exclusive and self-bounding. Exclusive and self-bounding authority, as I have argued, necessarily constitutes its own subject, at least in the ‘thin’ sense of uniting its subjects through their common subjection and differentiating this unity from whatever is not subject to it. The fourth component of this ideal (political authoritativeness) entails a need for authorization. The potential sources of authorization, however, are limited by the internal supremacy and external independence that are essential to sovereignty: authorization cannot come from a particular faction within the sovereign’s jurisdiction, or from any actor beyond that jurisdiction. Thus, when the four components of the ideal are combined, the need for authorization is specified: supreme, independent, self-bounding, and constitutive authority must be authorized by the collective subject bounded by the sovereign’s jurisdiction. According to the modern ideal of sovereignty as a whole, sovereignty constitutes its own collective subject and also requires authorization from that collective subject for any sovereign act—including the act by which it constitutes the collective subject.

In short, the modern ideal of sovereignty is essentially characterized by a circular relation between the sovereign's constitutive authority and its dependence, for that authority, upon the subject that it constitutes. The sovereign is not self-authorizing; its authority comes from the constituted collective subject. The collective subject, however, is not self-constituting; its constitution comes from the authorized sovereign. The authority of the sovereign and the constitution of the people each presuppose one another. This chicken-or-egg problem of authorization and constitution is inherent to the modern ideal of authority so imperious that it constructs its own political foundation. Modern sovereignty is an internally paradoxical ideal.

Part II: The Paradox of Sovereignty between Hegel and Marx

In Chapters 3 and 4, I will explore modern and contemporary philosophical engagements with the paradox of sovereignty. Here, however, I want to quickly illustrate the paradox with a brief reading of Hegel and Marx. Marx's disagreements with Hegel are well known, and he famously declared his dialectical method to be "exactly opposite" to Hegel's own, which he thought "must be inverted in order to discover the rational kernel within the mystical shell."²⁸⁷ One particular site of inversion is relevant here: Marx's trenchant criticisms of Hegel's theory of sovereignty. In his posthumously published "Critique of Hegel's Doctrine of the State," Marx proceeds section by section through Part III of Hegel's *The Philosophy of Right*, cataloguing his disagreements in the form of a running commentary. In doing so, he opposes the Hegelian view of sovereignty claim by claim, and at times line by line. Leaving aside any evaluation of Marx's critique, I want to point out that both Hegel's theory of the state, and Marx's almost total inversion of that theory, correspond to the apparently opposed but equally essential aspects of the

²⁸⁷ Karl Marx, *Capital*, vol. 1, B. Fowkes, trans. (New York: Penguin, 1992), 102-3.

modern ideal of sovereignty. The paradoxical nature of that ideal is manifest in the way that it is equally well reflected in Hegel's and Marx's "exactly opposite" understandings of the relation between the sovereign and its collective subject.

In Chapter 2, I claimed that Hegel's theory of the state is a superlative expression of the modern ideal of sovereignty insofar as it loudly proclaims the sovereign's constitutive authority. For Hegel, sovereignty is supreme and independent authority that constitutes its collective subject as an internally unified and externally differentiated whole. This authority "belongs to the state."²⁸⁸ Sovereignty is founded in the state's constitution—the organic interdependence of its various elements—and it is exercised by a sovereign monarch, who is the individual personification of the state itself.²⁸⁹ The constitution of the state in general, and the monarch in particular, are to be regarded as "divine and enduring, and as exalted above the sphere of all manufactured things."²⁹⁰ Moreover, they are the "inner life" and "eternal foundation" of the people itself.²⁹¹

According to Hegel, the exercise of sovereign authority unites the people as a collective subject, helps to organize its individual members into the various components of civil society and the state apparatus, and differentiates the collective people from other, foreign peoples.²⁹² Thus, the people is an artifact of the sovereign state.²⁹³ Hegel firmly rejects the idea that "all

²⁸⁸ Hegel, *Elements of the Philosophy of Right*, 318. Cf. 314-6.

²⁸⁹ Hegel's sovereign monarch is both authorized and constrained by the organic constitution of the state, in which each element of the state apparatus (the democratic legislature, the bureaucratic executive, and the individual sovereign himself) is "determined by and dependent on *the end of the whole*" (Ibid., 315). Cf. 308-312, 316-325.

²⁹⁰ Ibid., 312. "The very concept of monarchy is that it is not deduced from something else but *entirely self-originating*. The idea that the right of the monarch is based on divine authority is therefore the closest approximation to this concept, because it conveys the unconditional aspect of the right in question" (318).

²⁹¹ Hegel, *Lectures on Natural Right and Political Science: Heidelberg 1817-1818 with Additions from the Lectures of 1818-1819*. Translated by J. Stewart and P. Hodgson. (Berkeley: University of California Press, 1995), 301, 240.

²⁹² Hegel, *Philosophy of Right*, 304-366.

²⁹³ "The first and most important question seems to be: By whom is the constitution of a people or nation to be made? Yet the constitution should be regarded as the *foundation* of a people's life in the sphere's of rights and ethics, *existing in and for itself*, and essentially not as something *made* and something *subjectively posited*... In this

business relating to public affairs would gain its *life from below, from the people itself*,” insofar as the people, prior to the state’s sovereign authority, is “only an atomistic aggregate of individuals,” “a formless mass,” and “a shapeless, wild, blind force.”²⁹⁴ This mass is given a determinate shape by the sovereignty founded in the state and exercised by the monarch. For Hegel, in short, the sovereign constitutes the people.

Lambasting Hegel for beginning with a view of “objectified” sovereignty as “something independent,” Marx writes:

Hegel proceeds from the state and conceives of man as the subjectivized state; democracy proceeds from man and conceives of the state as objectified man. Just as religion does not make man, but rather man makes religion, so the constitution does not make the people, but the people make the constitution.²⁹⁵

According to Marx, the material basis of sovereignty—of the state’s constitution and the monarch’s authority—are “real subjects” that do indeed form a mass, but a mass differentiated into the families and strata of civil society that make up an organized people.²⁹⁶ The state evolves out of the “real differences” within this mass and remains an “abstraction” of these differences; “only the people is a concrete reality.”²⁹⁷ Thus the sovereign state is an artifact of the socially organized people.

There is a democratic impulse to Marx’s inversion of Hegel, insofar as it makes the (self-differentiated) collective subject of sovereignty into the basis of sovereign authority, and thereby

section we pose the question: Who is to make the constitution—the people or someone else? And the answer is: No one, it makes itself... The constitution is the foundation, the basis on which everything transpires. It must therefore be regarded as an eternal foundation, not as an artifact.” Hegel, *Lectures on Natural Right*, 239-40. Cf. *Philosophy of Right* 311-312.

²⁹⁴ Hegel, *Philosophy of Right*, 15, 311, 319; *Hegel’s Philosophy of Mind*, W. Wallace and A. V. Miller, trans. (Oxford: Oxford University Press, 1971), 273. Cited in Allen Wood’s notes to *Philosophy of Right*, 470. The view that Hegel rejects is held by Jacob Fries; see *Philosophy of Right*, 15.

²⁹⁵ Marx, “Critique of Hegel’s Doctrine of the State” in *Early Writings* (New York: Penguin, 1992), 80, 83.

²⁹⁶ *Ibid.*, 80, 63.

²⁹⁷ *Ibid.*, 66, 85.

makes sovereignty depend upon its subject.²⁹⁸ For Marx, this democratic impulse is relevant to all political constitutions insofar as they are *all* based upon material organization of the people.

He writes:

Democracy is the truth of monarchy; monarchy is not the truth of democracy. Monarchy is by necessity democracy in contradiction with itself... In monarchy the whole, the people, is subsumed under one of its forms of existence, the political constitution; in democracy the *constitution itself* appears only as *one* determining characteristic of the people, and indeed as its self-determination. In monarchy we have the people of the constitution, in democracy the constitution of the people. Democracy is the solution to the *riddle* of every constitution. In it we find the constitution founded on its true ground: *real human beings* and the *real people*; not merely *implicitly* in essence, but in *existence* and reality.²⁹⁹

Marx's ideal of democracy can be described as a form of self-determination without sovereignty.

However, Marx does not simply *oppose* this ideal to existing forms of sovereignty. Rather, his ideal is an expression of the democratic preconditions of actual instances of sovereignty ("the truth of monarchy"), which are also the conditions of sovereignty's revolutionary *Aufhebung*.

Sovereignty—even when it "belongs to the state" and is exercised by the monarch—always emanates from, and depends upon, the people. Popular sovereignty institutionalizes this dependence by identifying the people-as-sovereign with the people-as-subject. Absolute sovereignty, on the other hand, institutionalizes the denial of this dependence, but the absolute sovereign is not for that reason independent of its collective subject. In either case, Marx's critical diagnosis is the same: sovereign authority ultimately emanates from, and depends upon,

²⁹⁸ This is the basis of Marx's criticism of sovereignty, which takes the form of "irreligious criticism" insofar as a potentially oppressive source of command (the sovereign state, God) is revealed to be an abstract artifact of those it would command (subjects, believers). See Marx, "Critique of Hegel's Philosophy of Right. Introduction" in *Early Writings*, especially pages 243-250. Marx's critical project is not merely to dispense with the abstraction via revolution, but to revolutionize the material conditions that give rise to the abstraction—or perhaps to the *need for* the abstraction—in the first place (Ibid, 244). Marx's *ideal* form of democracy, then, may ultimately dispense with sovereignty. However, his critique of actual sovereignty involves revealing its *real* democratic aspect—its foundation in the people—which is the condition of possibility of its revolutionary overthrow, and so also of any form of post-sovereign or un-sovereign democracy.

²⁹⁹ Ibid., 87.

the people, even where it frustrates the people's free development. The people constitute the sovereign even if, ideally, the people might constitute itself *without* the sovereign.³⁰⁰

Both Hegel and Marx express something true about sovereignty. Hegel's thought epitomizes one aspect of the modern ideal of sovereignty insofar as it construes sovereignty as a unique kind of authority that constitutes its own collective subject. This is not the simplistic claim that sovereignty somehow creates a political community *ex nihilo*. Rather, sovereign authority, exercised over a set of individuals, constitutes those individuals as a community united by their subjection. This is true, I argued, whether sovereignty is exercised by a single monarch or an entire people; either way, it is through sovereign authority that the collective subject of sovereignty is constituted and continually reconstituted. Far from being some kind of mystical spirit, the supreme, independent, and self-bounding constitutive authority that defines sovereignty is evident, I argued, in the day-to-day operations by which contemporary states determine who can enter or remain within their jurisdiction.

However, Marx's thought can be read as suggesting something equally essential about the modern ideal of sovereignty, namely the way that sovereigns depend, for their authorization, upon the collective subject over which sovereignty is exercised. This is not the simplistic claim that the collective subject of sovereignty invents the sovereign at will, nor the contractualist fantasy of the people rationally choosing its sovereign. Rather, the people collectively (and often implicitly, through its everyday activity) recognizes the sovereign as supremely and

³⁰⁰ Whereas a liberal like Locke might take the people's constitution of the sovereign to be an argument for sovereignty's legitimacy, it can also be read as a frustration or perversion of creative social activity. In this way, the people's constitution of the sovereign can be read as simultaneously an indicator of revolutionary potential *and* (following Weber, Adorno, and Marcuse) as an indicator of the obstacles to the realization of that potential. This expression of social creativity (in the sovereign state, or God, or other dominating abstractions) presents a political task—the emancipation of creative social activity—and a critical diagnosis of the material conditions that both necessitate and frustrate that task. Acknowledging this critically diagnostic side of Marx's thought does not, however, amount to a denial of the political activist side of his thought, so long as his political ideals are not separated from the material conditions that both engender and require those ideals, and also potentially frustrate their realization.

independently authoritative, and this recognition authorizes the sovereign to command the people. For Marx, the sovereign's dependence upon this authorization indicates the possibility of democratic organization *without* sovereignty or the abstraction of the state. Indeed, the sovereign's collective subject can 'unmake' the sovereign by stripping it of its authority, but this is an exceptional matter of revolution.³⁰¹ However, Marx's democratic ideal also has a diagnostic function. Short of revolution, and as the condition of possibility of revolution, the sovereign's dependence upon the people is legible in the everyday operations by which states continually solicit the allegiance of their collective subjects, usually in the name of providing protection, justice, or some other good to those subjects. Such allegiance is frequently granted, not through explicit and obvious acts of authorization, but through the ongoing activities, dispositions, and forms of life through which the people implicitly acknowledges, accepts, or accedes to sovereign authority.³⁰²

The contrast between Hegel and Marx can be expressed in terms that will be useful for the following chapters: Hegel presents sovereignty as a fully *imperious* and almost divinely creative authority, while Marx presents sovereignty as a fully *indebted* and artificially created authority. According to Hegel, sovereignty knows no limits other than those it gives itself, and, in addition to issuing commands that trump all competing sources of obligation, it brings into existence the

³⁰¹ This task is especially difficult if, as I am arguing, the people owes its constitution to the sovereign and, ultimately, to its own recognition of the sovereign as an authoritative source of constitution. In that case, the people risks dissolving itself in overthrowing the sovereign. Hannah Arendt believes that the experience of the French Revolution illustrates this risk; see Hannah Arendt, *On Revolution* (New York: Penguin, 2006), page 181, 311. Marx's philosophy offers another alternative: affirming the transformation of the revolutionary subject through human emancipation rather than mere political revolution.

³⁰² Lukács's *History and Class Consciousness* (Cambridge: MIT Press, 1972) may be instructive for a Marxian reading of the people's authorization of the sovereign. However, the people's continual authorization of the sovereign should not be reduced to 'false' consciousness, insofar as it responds to actual material conditions. Adorno provides an important corrective to any such reduction: "Inasmuch as these massive social forces and institutions were once human ones, are essentially the reified work of living human beings, this appearance of self-sufficiency and independence in them would seem to be something ideological, a socially necessary mirage which one ought to be able to break through, to change. Yet such pure appearance is the *ens realissimum* in the immediate life of men. The force of gravity of social relationships serves only to strengthen that appearance more and more." Adorno, "Society," *Salmagundi* 10 (1969): 151-2.

collective subject that it commands. This theological image of the imperious sovereign is by no means exclusive to Hegel.³⁰³ As Marx's critical work indicates, on the other hand, sovereignty owes its authority to the collective subject, the people, that precedes it and institutes it. This "irreligious" image of the indebted sovereign is by no means exclusive to Marx.³⁰⁴ Taken by themselves, each of these images accurately illustrates one aspect of the modern ideal of sovereignty. Taken together, they illustrate something crucial about the ideal as a whole: sovereignty is both imperious and indebted in its relation to 'the people'.

According to its modern idealization, the sovereign constitutes its own collective subject through subjection to its own authority (the Hegelian moment of sovereign imperiousness) *and* the sovereign depends upon its own collective subject for its own authority (the Marxian moment of sovereign indebtedness). In terms of practice, the tension internal to modern sovereignty marks a political circle, insofar as the (Hegelian) moment of sovereign constitution presupposes, and is presupposed by, the (Marxian) moment of popular authorization. In terms of theory, the tension marks a paradox, insofar as a single ideal of internally supreme, externally independent, and (self-)bounded political authority accurately reflects *both* Hegel's theory of the state *and* Marx's "exactly opposite" inversion of that theory. Modern sovereignty is an internally paradoxical ideal that indicates a circular political task.

³⁰³ On this general point, see Arendt, *On Revolution*, 177-8; Jean Bethke Elshtain, *Sovereignty: God, State and the Self* (New York: Basic Books, 2008), chaps. 1-7; and Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, G. Schwab, ed. (Chicago: University of Chicago Press, 2006), 36. Importantly, the theological image of the sovereign appears in theories of sovereignty that reject the notion of divine investiture. Famously, Hobbes speaks "reverently" of the sovereign as a "*Mortall God*," and Rousseau claims, "The Sovereign, by the mere fact that it is, is always everything that it ought to be." Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1996), 120-1; Jean-Jacques Rousseau, *On the Social Contract*, V. Gourevitch, trans. (Cambridge: Cambridge University Press, 1997), 52. Similar theological images occur in the work of Bodin, Locke, Sieyès, Schmitt, Negri and Agamben, among others.

³⁰⁴ Marx, "Critique of Hegel's Philosophy of Right," 244.

Part III: Democratic Circles and the Paradox of Sovereignty

The circularity that I have described as a paradox of *sovereignty* is frequently understood as a political problem exclusive to *popular* sovereignty or *democratic* constitutionalism. The basic thought runs like this: No body politic can constitute itself democratically, or through popularly legitimated procedure, insofar as there is, prior to the act of constitution, no *demos* or people to legitimate the act. As Rousseau writes, speaking of the popular sovereignty of the constituted people, “The effect would have to become the cause.”³⁰⁵ At stake is not merely an issue concerning *how* the people will constitute itself, but a more fundamental issue concerning *who is the people*, prior to its constitution.

Contemporary democratic theorists are quick to point out that this circularity does not only affect mythical moments of original political founding. Rather, it affects instances of popular *reconstitution* as well, as when a revolutionary assembly convenes to constitute a new body politic, or secessionists declare themselves a distinct and independent political community, or suffragists extend the *demos* to the previously disenfranchised, or citizens vote on the criteria by which persons can be made citizens. In such instances, constitutive legitimacy cannot be grounded in any *existing* body politic, because that version of the people is precisely what is being challenged. These exceptional moments of reconstitution suggest something about the normal functioning of democratic constitution, namely that *any* attempt to democratically legitimate a particular *demos* will invoke a “vicious circle,” as Hannah Arendt puts it; a “fundamental” and “elusive problem” according to Robert Dahl; a “boundary problem,” as Frederick Whelan elaborates it; a “constitutional circle,” in Carol Gould’s terms, or a “paradox

³⁰⁵ Rousseau, *Social Contract*, 71.

of democratic legitimacy,” as Seyla Benhabib has recently described it.³⁰⁶

Whereas these thinkers understand the circular logic of popular sovereignty and democratic constitution as a *problem* to be solved or mitigated, another tradition of democratic theorists celebrates the paradoxical nature of democracy. Claude Lefort, William Connolly, and Chantal Mouffe, for instance, understand democratic politics to *require*, as Lefort puts it, “the experience of an ungraspable, uncontrollable society in which the people will be said to be sovereign, of course, but whose identity will be constantly open to question...”³⁰⁷ The impossibility of any final democratic determination of the people is, for these thinkers, a condition of political possibility.³⁰⁸

Despite their differences, both of these lines of thought agree that the circularity in question is characteristic of, and exclusive to, democracy in particular or popular sovereignty more generally. I disagree. As I will show in the next two chapters, the paradox that characterizes the democratic constitution of the people is, in fact, characteristic of sovereignty itself. The paradox is more obvious as regards democracy, because there the interdependence of the people-as-sovereign and the people-as-subject is more explicitly institutionalized, and the circular relation between constitution and authorization results in a clear democratic deficit whenever the people attempts to constitute itself. However, the paradox becomes visible in undemocratic forms of sovereignty once the people is understood to be constituted by the

³⁰⁶ Hannah Arendt, *On Revolution*, 175-6; Robert Dahl, *After the Revolution? Authority in a Good Society* (New Haven: Yale University Press, 1970), 46; Frederick Whelan, “Prologue: Democratic Theory and the Boundary Problem,” in *Nomos 25: Liberal Democracy*, J. Pennock and J. Chapman, eds. (New York: New York University Press, 1983), 22, 40; Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004), 39-41, 174-5; Seyla Benhabib, *Another Cosmopolitanism* (Oxford: Oxford University Press, 2006), 33, 167.

³⁰⁷ Claude Lefort, “The Image of the Body and Totalitarianism” in *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism*, J. Thompson, ed. (Cambridge: Polity Press, 1986), 303-4. See also William Connolly, *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995), 139; Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000) and *On the Political* (London: Routledge, 2005).

³⁰⁸ Toward the end of Chapter 4, I identify a similar commitment in the work of Benhabib and Gould.

authorized sovereign, and the sovereign is understood to be authorized by the constituted people. This circular interrelation also results in a deficit, not of democratic legitimacy, but of sovereign authority more generally. Regardless of whether the sovereign is the people itself, a group of people, or a single person, it is never sufficiently authorized to fully constitute the people as a collective subject in the way that is characteristic of sovereignty—i.e., through supreme, independent, and self-bounding authority. In cases of democratic and undemocratic sovereignty alike, the paradoxical interdependence of sovereign constitution and popular authorization ensures that neither of these political tasks is finally and incontestably accomplished. The familiar paradoxes of democracy are expressions of the more fundamental paradox of sovereignty.

Nevertheless, the specifically democratic versions of the paradox of sovereignty reveal something important about sovereignty itself. In the estimation of several of the theorists mentioned above, including Gould, Benhabib, and Connolly, the deficit that results from the paradox of democratic constitution may be an occasion for *more* democratic engagement, rather than less. Because the democratic authorization of the sovereign and the democratic constitution of the people are never finally complete, these unfinished political tasks become opportunities for new forms of engagement, negotiation, and contest that, while perhaps not democratic in a narrowly procedural sense, may be robustly democratic in a wider normative sense. In other words, the gap in democratic legitimation presents an opportunity for contesting, from beyond the scope and procedures of a particular constituted *demos*, the acts of authorization and constitution that define the *demos* as, simultaneously, collective sovereign and collective subject.

Because the more fundamental paradox of sovereignty entails a similar deficit of authority and a corresponding incompleteness of constitution, perhaps the paradoxical nature of

sovereignty itself also presents an occasion for *more* political contest, rather than less. This would be contrary to appearances. Insofar as sovereignty is idealized as unambiguous internal supremacy and inviolable external independence, ‘sovereignty’ would appear to name a particular *end* of political contestation. However, because the internal and external aspects of sovereignty depend upon interrelated acts of authorization and constitution that are never finally accomplished, ‘sovereignty’ may in fact name a particular *site* for ongoing political contestation. Although sovereignty is indeed a mode of continual political closure, the paradoxically related preconditions of this closure—the authority of the sovereign and the constitution of the people—may themselves be sites of open political engagement.

This seemingly postmodern thought is the lesson of Machiavelli’s *The Prince*, which emphasizes that the prince’s ability to found a state depends upon, not the *individual* Italians who are his potential subjects, but these subjects “all together,” united under the prince’s command as his “own arms.”³⁰⁹ The text ends with the aporetic exhortation to constitute the people via the kind of “power and virtue” that can only come from the constituted people itself.³¹⁰ It thus emphasizes, at the inauguration of modern political theory, the paradox inherent to modern ideals of sovereignty. For this reason, the second half of this dissertation begins with Machiavelli.

³⁰⁹ Machiavelli, *The Prince*, 104.

³¹⁰ *Ibid*, 31.

CHAPTER III

THE CIRCULAR LOGIC OF SOVEREIGNTY

The modern ideal of sovereignty is inherently paradoxical, insofar as it construes the sovereign as both the creator and creature of its own collective subject, and construes that subject—the people—as both the source and artifact of sovereign authority. I outlined this circular logic in the brief interlude prior to this chapter, and I made a case for its central premises in the Introduction and Chapters 1 and 2. The overall argument can be easily summarized: Sovereignty is supreme, independent, and bounded political authority (from Introduction). Political authority that is supreme and independent must be self-bounding, and authority that is supreme, independent, and self-bounding constitutes its own collective subject by determining the boundaries of its own jurisdiction. Sovereignty is, in other words, a kind of constitutive authority (from Chapter 2). However, authority cannot be unilaterally imposed upon subjects. Rather, the subjects must authorize the authority that is exercised over them. The compelling force of authority, as distinct from that of power, requires that its subjects actively participate in their own subjection. For this reason, every authority depends, for its authority, upon the agency of its subjects (from Chapter 1). Sovereignty is no different in this regard, except that it depends upon the agency of its *collective* subject. The source of sovereign authority must be the collective subject, insofar as sovereignty is internally supreme (i.e., authoritative over all individual subjects and any faction of subjects) and externally independent (i.e., neither originating in, nor dependent upon, anything beyond its jurisdiction). Thus sovereign authority, by constituting its collective subject, constructs its own foundation (from Interlude). In short,

according to its modern idealization, sovereignty is a unique kind of authority that constitutes the collective subject—the people—from which it emanates. This is a paradoxical political ideal.

In the present chapter, I aim to elaborate and complicate this rather schematic argument by exploring the work of modern thinkers who directly engage the circular logic that is characteristic of modern sovereignty. Specifically, I examine the ways that Niccolò Machiavelli, Jean-Jacques Rousseau, and Emmanuel Sieyès theorize the imperiousness and the indebtedness of any modern ruler—be it a prince or people—that constitutes the collective subject over which it rules. Although I focus on thinkers whose work has been influential to later modern and contemporary theories of sovereignty, my intent is not to present a comprehensive history or genealogy of sovereignty.³¹¹ Nor do I focus on the thinkers who have had the most influence over contemporary understandings of sovereignty (such as Grotius, Hobbes, and Pufendorf in the natural law tradition, or Bodin and Schmitt in the decisionist tradition). Rather, I focus on thinkers who best illuminate the paradoxical nature of modern sovereignty, as well as the political stakes of its paradox.

As is indicated by the arc of this chapter—which moves from Machiavelli’s princely founders, through Rousseau’s popular sovereign and Sieyès’s constituent nation, to Napoleon Bonaparte’s achievement of popular despotism—the paradox of sovereignty marks an ambivalent tension between the democratic and autocratic potentials latent in the ideal of supreme, independent, and (self-)bounded authority. This political ambivalence has already been suggested by the previous discussion of Hegel and Marx, and it will be explored further in

³¹¹ There are already several very admirable studies of sovereignty that do the historical work of tracing the influences and innovations that connect modern and contemporary political thinkers. I will continue to rely upon them, but I will not try to repeat their work. See F. H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 1986); Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995); Jean Bethke Elshtain, *Sovereignty: God, State and the Self* (New York: Basic Books, 2008); Joanne Pemberton, *Sovereignty: Interpretations* (London: Palgrave Macmillan, 2009).

Chapter 4, where I show several contemporary paradoxes of *democracy* to be, in fact, instances of the more foundational paradox of *sovereignty*. The present chapter builds toward this later work, and toward an enriched understanding of the politics of modern and contemporary sovereignty more generally, by tracing an unexpected continuity between modern ideals of absolutist and popular sovereignty.

In part I, I begin with the political writings of Machiavelli. Although Machiavelli does not have a modern concept of sovereignty *per se*, he clarifies the paradoxical interdependence that will become essential to later modern ideals of sovereignty. For Machiavelli, the modern world is characterized by an absence of the supposedly pre-political reservoirs of authority—such as divine investiture, righteousness, or lineage—from which medieval rulers could draw in order to maintain their rule. Instead, modern rulers depend, for their “power and virtue,” upon the ruled themselves—the many, the multitude, the people—that “all together” are more powerful than any ruler.³¹² The ruled, however, depend upon their rulers for the constitution and organization that makes them powerful. This is the form of political interdependence that underlies the paradox of sovereignty.

In part II, I turn to Rousseau’s *On the Social Contract*, which contains two distinct versions of the paradox of sovereignty. The first concerns the inability of a “blind multitude” to constitute itself as, simultaneously, sovereign and subject, while the second reveals a moment of heteronomy that haunts the foundation of even a robustly popular sovereign polity.³¹³ Distantly following Machiavelli, Rousseau reveals that even this moment of heteronomy expresses not only the imperiousness, but also the indebtedness, that are essential to sovereign constitutive authority.

³¹² Niccolò Machiavelli, *The Prince*. H. Mansfield, trans. (Chicago: Chicago University Press, 1998), 31, 104.

³¹³ Jean-Jacques Rousseau, *On the Social Contract*. V. Gourevitch, trans. (Cambridge: Cambridge University Press, 1997), 68.

Whereas Machiavelli and Rousseau are frequently cited in histories of sovereignty and discussions of political paradox, Sieyès and Bonaparte are not.³¹⁴ This is unfortunate, because Sieyès's revolutionary writings pose the paradox of sovereignty as, not merely a theoretical aporia, but a problem to be overcome in political practice. In part III, I argue that Sieyès's *failure* to solve this problem—as evidenced by Bonaparte's practical reassertion of the paradox in the aftermath of the French Revolution—illustrates one potential, and common, orientation to the paradox of sovereignty. *Pace* Sieyès, the circles or regresses of constitution and authorization that are essential to modern sovereignty cannot be eliminated by positing or assuming a pre-political and incontestable source of either authority or constitution, because the act of doing so is itself political and deeply contestable. This thought, which Machiavelli took to describe the basic conditions of modern political life, is reasserted in the autocratic close of France's democratic revolutions. As I will argue in the following chapter, resisting similar forms of closure *today* requires recovering this thought—the acknowledgement of the *interminability* of sovereignty's paradox—in the name of democratic politics.

Part I: Machiavelli

Machiavelli dedicates both of his major political works to exploring the tension between imperiousness and indebtedness that characterizes later modern ideals of sovereignty. In his political thought, the rulers of principalities and republics alike are founders who impose form and bring order to disparate subjects, continually constituting these subjects as collective subjects, as peoples. At the same time, the acts of founding and maintaining a polity—the two

³¹⁴ Two notable exceptions, which introduced me to this illuminating historical moment, are Hannah Arendt's *On Revolution* (New York: Penguin, 2006) and Loughlin and Walker's *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2007).

ends of Machiavelli's politics—require a kind of “power and virtue” (*potenzia* and *virtù*) that result from a particular relation between a ruler and the ruled.³¹⁵ Machiavelli's rulers are always dependent upon their collective subjects—the people—for their ability to marshal power and order virtue. This dependence cannot be admitted, however, without sacrificing the ability to rule. Consequently, founding and maintaining a polity requires projecting an image of imperiousness that can hide the ruler's indebtedness to the ruled.³¹⁶ Far more than offering crafty advice to would-be princes, then, Machiavelli's major works capture something essential about modern politics. In a world characterized by the absence of divine investiture and natural right, political power flows from *the many*—the multitude, the masses, or the people. Durable and authoritative rule over the many requires a distinctly modern negotiation of imperiousness and indebtedness, because the ability to constitute and command a people is ultimately, even if secretly, dependent upon the constituted and commanded people itself.

The Prince and *Discourses on Livy* are both primarily concerned with political foundation. In *The Prince*, Machiavelli's emphasis is on the acquisition of principalities, and he is clear that the best and most secure, but also the most difficult, means of acquiring a principality is to found one anew. In an early chapter, he claims that the greatest examples of political foundation involve “principalities that are altogether new both in prince and in state.”³¹⁷ With this phrase, he connects the newness of the prince with the newness of the polity, signaling that he will discuss princes who *become princes* by founding the polities over which they rule. As he later puts it, “Nothing brings so much honor to a man rising newly as new laws and new

³¹⁵ Machiavelli, *The Prince*, 31. Power is related to potential, and virtue to ability or strength.

³¹⁶ *Ibid.*, 70-1, 96. Machiavelli, *Discourses on Livy*, J. Bonadella and P. Bonadella, trans. (Oxford: Oxford University Press, 2003), 79, 119.

³¹⁷ Machiavelli, *The Prince*, 21.

orders found by him.”³¹⁸ This connection between prince’s rule and the polity’s foundation is reinforced by Machiavelli’s ambiguous use of the word “*stato*” (‘state’), which throughout *The Prince* variously signifies ‘power’ and ‘government’, as well as that which power and government are exercised over, namely ‘people’ and ‘territory’.³¹⁹ In the “altogether new” principalities, ruler and ruled come into being together, and in relation to one another, through the foundation of a new *stato*. Machiavelli’s favored examples of new princes are founders who become great rulers by introducing “any form they pleased,” as well as “new modes and orders,” upon the “matter” of disparate populations.³²⁰ The greatest and most difficult means of acquiring a principality is to constitute a new collective subject—a people—through its subjection.³²¹

This is the task Machiavelli puts to Lorenzo De Medici in the final chapter of *The Prince*, entitled “Exhortation to Seize Italy and to Free Her from the Barbarians.” To free Italy requires founding Italy anew.³²² A new constitution is needed because the Italians are “enslaved,” “servile,” “dispersed... without a head, without order,” just as were the Israelites, Persians, and Athenians before Moses, Cyrus, and Theseus brought them order.³²³ Properly speaking, there is no *Italy*, only once and future *Italians* “ready” to be constituted as a coherent *stato*, an ordered and ruled people.³²⁴ The dismal condition of the Italians thus presents a rare opportunity for the acts of foundation that make great princes and great polities. “So many things are tending toward the benefit of a new prince,” Machiavelli writes, “that I do not know what time has ever

³¹⁸ Ibid., 103-4.

³¹⁹ Bartelson, *Genealogy of Sovereignty*, 268. Mansfield notes that “*stato* means both status... and state, as today, but the meanings are more closely connected; *stato* is the status of a person or group while dominating someone else. Although NM sometimes speaks of ‘the state’, he always means someone’s state,” i.e., that which someone rules over (Machiavelli, *Prince*, 5 fn. 2).

³²⁰ Ibid., 23.

³²¹ Ibid., 25.

³²² The new prince must “introduce a form that would bring honor to him and good to the community of men there.” Ibid., 102.

³²³ Ibid.

³²⁴ Ibid.

been more apt for it... Matter is not lacking for introducing every form.”³²⁵ It is only by giving form to this matter—that is, constituting the dispersed Italians as a united people—that the new prince will become a prince.

Machiavelli’s exhortation, together with his review of the mythical founders of the past, would seem to suggest the opportunity and the need for acts of foundation are rare. However, the *Discourses* belies this impression by contextualizing acts of foundation in a Polybian cycle of political beginning, degeneration, and renewal.³²⁶ In order to preserve their polities, rulers must renew them by imposing new forms, new constitutions, upon the ruled. Foundation, then, is not a singular event. As Leo Strauss puts it, “Foundation is, as it were, continuous foundation; not only at the beginning, but ‘every day,’ a commonwealth needs ‘new orders’.”³²⁷ A great ruler is one who can identify this need and satisfy it.

It is sometimes suggested that *The Prince* focuses on acquiring a polity while the *Discourses* focuses on maintaining it. This distinction is too simple, given Machiavelli’s thought that acquisition requires foundation, and maintenance requires constant refoundation.³²⁸ Nor can it be said that *The Prince* focuses on principalities and kingdoms, while the *Discourses* focuses on republics. In addition to discussing principalities and kingdoms in the *Discourses*, as well as republics in *The Prince*, Machiavelli is clear that republics are to be renewed in the same ways that princes found principalities. He writes, “Never or rarely does it happen that a republic or kingdom is organized well from the beginning or is completely reformed... unless it is organized

³²⁵ Ibid., 102, 104. See also *Discourses* 66-7, 278.

³²⁶ Machiavelli, *Discourses*, Bk I Chap 2, Bk III Chap 1.

³²⁷ Leo Strauss, *Thoughts on Machiavelli* (Chicago: University of Chicago Press, 1995), 44. See also Peter Breiner, “Machiavelli’s ‘New Prince’ and the Primordial Moment of Acquisition,” *Political Theory* 36, no. 1 (2008): 66-92.

³²⁸ See Machiavelli, *Discourses*, 125, 246-50, 280-2, 310-1, 358-9.

by *one man alone*” who “gives it shape” and assumes “sole authority” over its constitution.³²⁹ In other words, the distinction between principality and republic disappears during moments of refoundation: “What princes are obliged to do at the beginning of their expansion republics must do as well.”³³⁰ Accordingly, Machiavelli’s discussions of political renewal in the *Discourses* frequently echo his advice in *The Prince*, with the added insight that *all* polities, in order to remain “healthy,” must be made to “return to beginnings” by an innovative form-giver.³³¹

Machiavelli may ultimately prefer republics to principalities, but this preference affirms, rather than renounces, his advice to princes. *The Prince* and the *Discourses* are linked by the common theme of foundation, in which a solitary ruler is said to achieve greatness by constituting the ruled as a collective subject. In order to acquire a principality or renew a republic, a “new prince” must employ violence, deception, and exemplarity when required, cultivate goodwill and inspire fear at all times, and “with absolute and excessive power... impose a restraint on the excessive ambition and corruption of the mighty.”³³² Most of all, the (re)founder of a *stato* must act alone to constitute a people through “his own power and virtue.”³³³

³²⁹ Ibid., 45, italics added. In republics, this authority may be exercised lawfully, “through the special excellence of a single regulation,” but it is crucial that such laws “be given life by the exceptional ability of a single citizen, who courageously strives to enforce them against the power of all those who fail to observe them” (247-8). Alternatively, “this return to beginnings in republics also arises from the simple talents of a single man without depending upon a law,” when the refounder is “of such reputation and exemplary behavior that good men wish to imitate them” (248). According to Machiavelli, Rome was repeatedly renewed—and saved from disaster—according to both means; in all cases, a prince-like individual acted alone to reform the people (247-9).

³³⁰ Ibid., 186. “As for changing all these institutions all at once... ordinary practices are no longer sufficient, once ordinary methods have become wicked, and it is necessary to turn to extraordinary methods, such as violence or arms, *and to become, above all else, prince of the city and arrange it as one wishes*” (70, emphasis added).

³³¹ Ibid., 248, 246. “If a republic were so fortunate... that it could often have a man who, with his exemplary action, could renew its laws and who would not only prevent it from racing toward ruin but would pull it back, that republic would be everlasting” (311). See also Ibid., 136, 248-9, 330.

³³² Ibid., 136. See also pages 45, 186, 221-3, 247-9, 311-314.

³³³ Machiavelli, *Prince*, 31. The title of this crucial chapter explicitly links “New Principalities” with the founder’s “Own Arms and Virtue” (Ibid., 21).

However, Machiavelli continually troubles the idea of the ruler's *own* power and virtue, ultimately indicating that the location of power and virtue is not a single exemplary individual, but the constituted people itself. A founder or ruler never truly *owns* his power and virtue. Rather, they are effects of his particular relationship to the ruled. This relationship is not sovereignty *per se*, and Machiavelli's concepts of power and virtue are not identical to modern concepts of authority, although here they function in similar ways. Nonetheless, in his discussion of the ruler's relationship to the ruled, Machiavelli reveals the interrelation of constitution and authorization, as well as the tension between imperiousness and indebtedness, that are characteristic of later modern ideals of sovereignty.

In *The Prince's* first chapter on new princes, Machiavelli briefly considers "whether these innovators stand by themselves or depend upon others; that is, whether to carry out their deed they must beg or indeed can use force."³³⁴ He concludes that "when they depend on their own and are able to use force," new rulers are free from peril.³³⁵ Here and throughout both books, the achievement and maintenance of independence requires commanding a military that is strong, united, and loyal. Power and virtue are repeatedly (though not exclusively) linked to such a military, which is needed not only for conquest, but also for the foundation and maintenance of a polity.³³⁶ The new ruler's *own* power and virtue will depend on whether he is the "total owner of his own arms," i.e., whether he can command a military in a way that preserves, rather than undermines, his independence from "the fortune and force of someone else."³³⁷

³³⁴ Machiavelli, *Prince*, 24.

³³⁵ Ibid.

³³⁶ Ibid., 21-5, 48-60.

³³⁷ Ibid., 55, 31.

The ruler's power and virtue are an effect, then, of his relationship with his military. This relationship is one of mutual dependence. The ruler always depends upon his own soldiers for his ability to rule independently of the whims and arms of other rulers, while the soldiers always depend upon their prince for their unity: "the former has need of the latter and the latter of the former."³³⁸ Because ruling and commanding both require good arms, a ruler must cultivate this relationship of mutual dependence in times of peace as well as war.³³⁹ At all times, the ruler must strive to keep his soldiers united, confident, faithful, and trusting in him.³⁴⁰ Above all, they must esteem him.³⁴¹ If the ruler relates to his soldiers in this way, then their power and virtue will be at his disposal, and he will be safe from both internal and external threats. Machiavelli writes:

For a prince should have two fears: one within, on account of his subjects; the other outside, on account of external powers. From the latter one is defended with good arms and good friends; and if one has good arms, one will always have good friends. And things inside will always remain steady, if things outside are steady.³⁴²

If the ruler fails to maintain the unity of his soldiers, or squanders the esteem that they hold for him, then he will lack the power and virtue necessary to prevent uprising and conquest, and the polity itself will be "wholly obliged to fortune since it does not have virtue to defend itself in adversity."³⁴³ To put it in the language of the previous chapter, the ruler depends upon his own "good arms"—his own loyal military—for his internal supremacy and external independence.

Machiavelli subtly generalizes this relation between the ruler and his soldiers to a wider relation of interdependence connecting the ruler and the people as a whole. First, he warns rulers

³³⁸ Machiavelli, *Discourses*, 292.

³³⁹ *Ibid.*, 164.

³⁴⁰ *Ibid.*, 177.

³⁴¹ *Ibid.*, 332-3.

³⁴² Machiavelli, *Prince*, 72.

³⁴³ *Ibid.*, 57. Cf. *Discourses*, 77, 114.

against the common practice of employing mercenaries and auxiliary forces sent by other rulers. Those kinds of soldiers will only undermine their employer's independence; they are never truly a ruler's *own* arms. Rather, "one's own arms are those which are composed of either subjects or citizens or your creatures... It is necessary, in order to hold on to a government and maintain a kingdom, to arm oneself with one's own subjects."³⁴⁴ Rulers who follow Machiavelli's advice will not be beholden to external forces for their power and virtue. However, they will ultimately depend upon "*internal* forces," insofar as a ruler's power and virtue really reside in his "good arms," and these are his own subjects.³⁴⁵ The dependence is mutual, insofar as the subject-soldiers need the ruler-commander to unite them, train them, and lead them in battle.³⁴⁶ Nonetheless, the ruler's dependence on the subject-soldiers runs deep, insofar as his power and virtue, and indeed his *stato* itself—in the double sense of his state and his rule over it—all depend upon his military.³⁴⁷ If the ruler cannot maintain this relation of mutual dependence, the subject-soldiers will not protect him from his internal and external enemies. External independence and internal supremacy are thus purchased at the cost of internal dependence. Rulers who "stand by themselves" and "depend on their own and are able to use force" are, in fact, dependent upon their own subjects.³⁴⁸

In addition to establishing the ruler's dependence upon *some* of his subjects, Machiavelli gradually presents the ruler's relationship to his "own arms" as one aspect of a more general interdependence that binds together ruler and ruled.³⁴⁹ The people itself—that is, the united individuals that make up the ruler's *stato*—is repeatedly described as a source of power

³⁴⁴ Machiavelli, *Prince*, 57, and *Discourses* 114. Cf. *Ibid.*, 330.

³⁴⁵ Machiavelli, *Discourses*, 111, emphasis added.

³⁴⁶ See *Ibid.*, Bk I Chap 44, entitled 'A Crowd is Ineffective Without a Leader; and How One Should Not Make Threats First and Then Request Authority' (114-5). See also *Ibid.*, 294-5.

³⁴⁷ *Ibid.*, 114, 330. Cf. *Prince*, Chapter VII.

³⁴⁸ Machiavelli, *Prince*, 24.

³⁴⁹ *Ibid.*, 55, 58, 73, 79, 81.

and virtue, but also a source of danger, for the new ruler.³⁵⁰ On one hand, the people can elevate a ruler to a position of supreme authority, and a ruler who has the people on his side can defend against foreign and the domestic usurpation.³⁵¹ On the other hand, a ruler “can never secure himself against a hostile people,” which may rebel against him or support his adversaries.³⁵² Because the people can easily enable or undermine any individual’s rule, “it is not fortresses, but, rather, the will [*volontà*] of the people that maintains rulers in their position of power.”³⁵³ Here again, the relation of dependence is not one-sided; the people depends upon the ruler for its constitution, the unity and order that gives it power and virtue.³⁵⁴ This does not, however, lessen the significance of Machiavelli’s point: Every ruler is ultimately indebted to the people—the united collective subject—that can, if it so wills, rebel against him.

Importantly, it is not only republican rulers who are dependent upon the ruled. According to Machiavelli, principalities and tyrannies are also founded upon, and maintained by, the interdependence of ruler and ruled.³⁵⁵ Tyranny is particularly dependent upon the people and susceptible to the rebellion of dissatisfied subjects. This is because the conditions that create tyranny are also those that undermine it, namely “an excessive desire on the part of the people to be free, and... an excessive desire on the part of the nobles to rule.”³⁵⁶ The people will welcome a tyrant that promises liberation, but if this promise is not quickly fulfilled, the people will rebel against the tyrant.³⁵⁷ If a tyrant wishes to be independent of the people, he may align himself with the nobles, but this is a losing strategy, because the people is stronger than the tyrant and

³⁵⁰ *Ibid.*, 8, 18, 20-1, 38-42, 44, 72-82, 91, and *Discourses*, 61, 107-112.

³⁵¹ Machiavelli, *Discourses*, 109-111.

³⁵² Machiavelli, *Prince*, 39.

³⁵³ *Ibid.*, 223. In *The Prince*, he argues that a new ruler “must before everything else seek to gain the people to himself... [I]t is necessary to have the people friendly; otherwise he has no remedy in adversity” (40-1).

³⁵⁴ “[T]he many are not capable of instituting anything... [T]he popular multitude is useless in war” (*Ibid.*, 45, 294).

³⁵⁵ *Ibid.*, 24-5.

³⁵⁶ *Ibid.*, 110.

³⁵⁷ *Ibid.*, 24-5, 64, 97-8, 107-12 . See also Breiner, “Machiavelli’s ‘New Prince’,” 66-92.

nobles combined.³⁵⁸ Finally, a tyrant can attempt to rule the people by force, but he will lack “good arms,” since these come from the people itself.³⁵⁹ In order to successfully rule the people, a tyrant must continually indebted himself to the people and win over their power and virtue. This entails a crafty and apparently benevolent form of tyranny, if not a different form of rule altogether.

The ruler’s indebtedness to the people, then, is not unique to any particular type of regime. Instead, it is simply an aspect of what it means to rule the many, whose power and virtue always outweigh the power and virtue of the few. Effective rule of the many requires effectively indebted oneself to the many, who are complicit in their own subjection. This is one of Machiavelli’s most significant lessons for modern politics, and it will become crucial to later modern ideals of political sovereignty. In the absence of external reservoirs of authority, such as divine investiture, righteousness, or venerable tradition, the ability to effectively and durably rule the many originates in the many itself. Thus, *any* ruler, even an absolute or tyrannical ruler, will be ultimately indebted to the people for his or her rule.

Machiavelli’s most concrete advice concerns the ruler’s negotiation of his indebtedness to the people. In order to rely upon the people’s power and virtue, the ruler must keep his

³⁵⁸ “And so, when Appius abandoned the people and drew closer to the nobles he committed a very obvious error... because in wishing to hold something by force, the one who uses coercion must be more powerful than the one being coerced. Whence it happens that those tyrants who have the masses as their friends and the nobles as their enemies are more secure, since their power is upheld by greater forces than the power of those who have the people as their enemy and the nobility as their friend.” Machiavelli, *Discourses*, 111.

³⁵⁹ In *The Prince*, Machiavelli notes two counter-examples to this: “Now, it is necessary for all princes except the Turk and the Sultan to satisfy the people rather than the soldiers, because the people can do more than the soldiers” (81). He quickly disqualifies these examples from the present discussion, because the Turk and the Sultan (Selim I and Tuman Bey) each rule an “ancient order” rather than a new principality (82). Their kingdoms are not instructive examples for a new prince, and a tyranny that pits a massive number of soldiers against the people cannot be *founded* in that particular mode, or it will not last. Machiavelli’s advice still stands: “Anyone who undertakes governing a multitude of people, either under a free system or under a principality, and does not protect himself from the people who are hostile to the new order, creates a state of short duration (*Discourses*, 63). Elsewhere, Machiavelli emphasizes that tyranny is especially susceptible to conspiracy and assassination, and he includes the kingdom of the Turk’s father in his discussion.

subjects satisfied and “united and faithful” to his rule.³⁶⁰ To this end, he should refrain from oppressing the people and, when cruelty is necessary for effective rule, this should be minimally offensive and “turned to as much utility for the subjects as one can.”³⁶¹ On other occasions, he should reward his subjects for their service to the polity.³⁶² Additionally, the ruler should cultivate the people’s love, or, if this is fickle or impossible, at least their respectful fear—but never their hatred.³⁶³ This requires respecting the settled norms, customs, and culture of the ruled.³⁶⁴ Finally, and above all, the ruler must continually ensure that his dependence upon the people is mirrored by its dependence on him. Machiavelli writes, “A wise prince must think of a way by which his citizens, always in every quality of time, have need of the state [*status*: rule] and of himself; and then they will always be faithful to him.”³⁶⁵ By making himself needed, the ruler does not free himself of his dependence on the ruled. Rather, he doubles his indebtedness, insofar as “the nature of men is to be obligated as much by benefits they give as by benefits they receive.”³⁶⁶ Nevertheless, the mutual obligation of the ruler and ruled prevents either from being obligated to “the fortune and force of someone else,” i.e. to a foreign ruler.³⁶⁷

All of this is necessary to prevent the ruled from turning on the ruler, and all of it falls under the activity that Machiavelli calls ‘government’. He writes:

In substance, government is nothing more than the control of subjects in such a way that they cannot and must not harm you; this is achieved either by making yourself completely safe from them, by taking away from them every means from doing you harm, or by bringing them benefits in such a way that it would not be reasonable for them to desire some change in fortune.³⁶⁸

³⁶⁰Machiavelli, *Prince*, 65.

³⁶¹Ibid 37-8, 40; *Discourses* 233.

³⁶²Machiavelli, *Discourses*, 323.

³⁶³Machiavelli, *Prince*, 65-8; *Discourses* 304-7.

³⁶⁴Machiavelli, *Discourses*, 255.

³⁶⁵Machiavelli, *Prince*, 42.

³⁶⁶Ibid., 44.

³⁶⁷Ibid., 31.

³⁶⁸Machiavelli, *Discourses*, 216-7.

For Machiavelli, government simply *is* the negotiation of the ruler's indebtedness to the ruled, from whom he derives the power and virtue necessary to maintain his *stato*. In the passage above, Machiavelli apparently suggests two ways of doing this. However, the second is far superior to the first, because the means by which subjects might do harm to their ruler are the means by which they become "good arms" when they are well ruled. The power and virtue of the ruled always poses a latent threat to the ruler, but this threat cannot be eliminated without eliminating the power and virtue upon which the ruler depends. To govern well, then, requires ensuring that this dependence is always mutual. For Machiavelli, a lasting and independent *stato* is one in which the mutual—but not equal, and not obvious—interdependence of the people and prince can be preserved.

In short, Machiavelli's "new princes"—the founders and refounders of polities—embody both the imperiousness and the indebtedness that I have argued are characteristic of modern sovereignty. Reading *The Prince* and the *Discourses* together, it becomes apparent that Machiavelli considers founding and ruling to be continuous activities. The greatest rulers of the greatest polities are *all* "new princes," because the renewers of republics face the same difficulties, and must employ the same tactics, as the founders of principalities.³⁶⁹ In both cases, the founder's task is to give form to a population that is disparate and disorganized, either because it lacks a state altogether, or because it is the corrupt material of a state in need of refounding.³⁷⁰ In either case, the founder must act "alone" to "assume sole authority" and, with "enormous power" and "exceptional ability," "turn to extraordinary methods, such as violence or arms, and... become, above all else, *prince of the city* and arrange it as one wishes."³⁷¹ Here is the imperiousness that is characteristic of the modern ideal of sovereignty—the supremacy and

³⁶⁹ Breiner, "Machiavelli's 'New Prince'," 66-92.

³⁷⁰ *The Prince*, Chapter VI and XXVI; *Discourses* Bk I, Chap 9 and Bk III, Chap 49.

³⁷¹ *Discourses*, 47, 45, 67, 247, 70, italics added. See also *Discourses* 44-6, 66-7, 247-9.

independence that enable a sovereign authority to constitute its own collective subject, apparently without prior authorization. It characterizes Machiavelli's great founders and great rulers alike.

However, if ruling is continuous with founding, then founding is continuous with ruling, and Machiavelli's remarks on rulers apply to founders as well, just as his remarks on founding apply to rulers. As I have shown, Machiavelli is clear that rulers depend, for their own power and virtue, and their own arms, upon the people over whom they rule. Where divine investiture and natural right are absent, the power and virtue of the few resides in the many, and rulers maintain their *stato* by negotiating their indebtedness to the ruled. Moreover, it is not simply a population or mass that rulers depend upon, but the population or mass "*all together*," as Machiavelli puts it in a crucial passage.³⁷² Effective and lasting rule requires the power and virtue that comes, not from individual subjects or a disparate population, but from a united and ordered collective subject—a constituted people. Here is the indebtedness that is characteristic of modern sovereignty—the dependence of every sovereign authority upon its collective subject.

In the first half of this dissertation, I argued that there is a paradoxical tension between sovereignty's characteristic imperiousness and indebtedness, insofar as a sovereign depends, for its constitutive authority, upon the collective subject that it constitutes. Although he lacks a modern concept of sovereignty, Machiavelli explores this tension by casting it as an aporia of political founding. Whereas rulers have access to the power and virtue of the unified people, political founders do not, because the powerful and virtuous people does not exist prior to the act of founding that gives form and unity to a population. In the case of "altogether new" polities, the population is unformed and, in some of Machiavelli's examples, "enslaved and oppressed" or

³⁷² Machiavelli, *The Prince*, 104 [Chapter XXVI]. Italics added.

“dispersed.”³⁷³ In the case of existing polities in need of renewal, the refounder cannot count upon the people’s power and virtue, because “the material is corrupt” and “the social fabric has broken down over time.”³⁷⁴ In both cases, the (re)founder requires exceptional power and virtue, and good arms, to impose form upon the population, but the one source of power, virtue, and arms that Machiavelli continually emphasizes—the united and ordered people—is as yet absent.

Generally and for the most part, Machiavelli’s examples of “new princes” do not illustrate where, other than from the constituted people itself, founders may obtain the power and virtue necessary to single-handedly take over an entire population, give it a form and constitution that it will likely resist, and thereby ascend from the status of private individual to great prince. The one apparent exception is the example of Moses who, as “a mere executor of things that had been ordered for him by God,” received his power and virtue from ‘on high’.³⁷⁵ But, for precisely this reason, Machiavelli disqualifies Moses’s methods from those that may be imitated by his readers: “one should not reason about Moses.”³⁷⁶ Instead, Moses is invoked as an illustration of what, in the absence of divine authority, modern founders must accomplish by secular means. Nevertheless, Machiavelli is notably silent regarding all secular sources of power, virtue, and good arms *other than* the constituted people. This silence affirms what he says in one of the most important chapters of *The Prince*, just after invoking Moses: “Nothing is more difficult to handle, more doubtful of success, nor more dangerous to manage than to put oneself at the head of introducing new orders.”³⁷⁷ In a modern and secular age, where power and

³⁷³ Ibid., 21, 23.

³⁷⁴ Machiavelli, *Discourses*, 67, 280.

³⁷⁵ Machiavelli, *Prince*, 22-23.

³⁷⁶ Ibid.

³⁷⁷ Ibid., 23.

virtue reside in the people rather than in natural or divine right, founding a people through power and virtue is an aporetic task.³⁷⁸

This aporia appears twice in Machiavelli's major works. The most obvious appearance is in the *Discourses*, in a chapter devoted to the relationship between commanders and soldiers. Just after declaring that exceptional troops and exceptional commanders reciprocally "have need" of one another, Machiavelli writes, "It is possible to consider something else: is it easier for a good commander to create a good army or for a good army to create a good commander?"³⁷⁹ The question is interesting because the interdependence of commanders and armies is Machiavelli's synecdoche for the aporetic interdependence of ruler and ruled, founder and founded. Like a political founder, the commander unifies and orders the army but, like a constituted people, the unified and ordered army is the source of the commander's ability to unify and order.³⁸⁰

Machiavelli's curious answers to his own question affirm this aporetic interdependence. At first, he quickly and confidently answers in a way that contradicts his explicit remarks about founders, but affirms what I have noted regarding the dependence of rulers upon the ruled. He writes, "On this topic, I would say that this question is settled, because it is much easier for many good men to find or instruct one man so that he may become good than it is for one to do so with many."³⁸¹ However, he immediately gives three examples that all contradict this "settled" answer. Two of the examples are clearly examples of good commanders creating good armies: Sempronius Gracchus "in a brief time created an excellent army," and Pelopidas and

³⁷⁸ Machiavelli lacks "knowledge of things natural and supernatural;" his advice pertains to the social and secular (*Discourses*, 139). The resolution to the aporia of modern founding will not be found in natural nor divine right.

³⁷⁹ Machiavelli, *Discourses* 292-3.

³⁸⁰ "The foundation of all states is a good militia, and... where this is not a reality, neither good laws nor any other good thing can exist... [I]t is evident that a militia cannot be good if it is not trained, and that it cannot be trained if it is not composed of your own subjects." *Ibid.*, 330.

³⁸¹ *Ibid.*, 293.

Epaminodas “in very little time created out of Theban peasants excellent soldiers.”³⁸² The remaining example is the only one that affirms Machiavelli’s answer: the “inexperienced” Lucullus was made into a good commander by his soldiers.³⁸³ However, this example is peculiar *because it is false*; Machiavelli misrepresents history here.³⁸⁴ Lucullus *was* a good commander who created a good army out of bad soldiers, according to Plutarch’s *Lives*, which is Machiavelli’s source for his other discussion of Lucullus in the *Discourses*.³⁸⁵ These examples unsettle the quickly settled question.

Machiavelli does not note his self-contradiction, but he immediately reconsiders his answer: “Hence, the matter is even, because one good thing can find another.”³⁸⁶ But this conclusion is also undermined by the previous examples. Machiavelli offers a *third* answer, this time in a more hesitant tone: “I believe more confidence can be placed in a commander who has the time to teach his men and the opportunity to arm them than in an insolent army with a leader created by the army on the spur of the moment.”³⁸⁷ In a single paragraph, then, he affirms all three possible answers to the question he posed. There is no settled answer, and no clear way to

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Julia Conway Bondanella and Peter Bondanella note that some interpreters have attributed Machiavelli’s misrepresentation of this episode as “a lapse of memory.” See Machiavelli, *Discourses*, 406. Mansfield suggests that Machiavelli is being intentionally duplicitous, but he does not say why—at least not with regard to this particular passage. See Mansfield, *New Modes and Orders: A Study of the Discourses on Livy* (Chicago: Chicago University Press, 2001), 359-60. I believe Machiavelli intends his readers to recognize his misrepresentation and reject the quickly “settled” answer.

³⁸⁵ Machiavelli first discusses Lucullus in *Discourses*, 206, and his source is Plutarch’s *Lives*. See the Bondanellas’s notes on that passage (Ibid., 393). In *Lives*, Plutarch gives an account of Lucullus that says precisely the opposite of what Machiavelli has said of it: “Lucullus carried with him a legion under his own orders, and crossed over into Asia and took the command of the forces there, composed of men who were all thoroughly disabled by dissoluteness and rapine, and the Fimbrians, as they were called, utterly unmanageable by long want of any sort of discipline... Lucullus in a short time took down the courage of these, and disciplined the others, who then first, in all probability, knew what a true commander and governor was. Plutarch, *Lives*. Online at: <http://classics.mit.edu/Plutarch/lucullus.html>.

³⁸⁶ Machiavelli, *Discourses*, 293.

³⁸⁷ Ibid.

ground the interdependence that characterizes the commander and commanded, the ruler and ruled, or the constituting founder and the constituted people.

Attention to this aporia enables a new reading of the final chapter of *The Prince*, in which Machiavelli exhorts his reader, ostensibly Lorenzo de' Medici, to constitute anew the people of Italy. As discussed above, the task is to impose form onto the matter of a dispersed and oppressed population, and successful completion of the task will result in a great polity and a great prince. But with what power, virtue, and good arms, can Lorenzo impose form upon the Italian population and constitute a new *stato*? The preceding twenty-five chapters make the case that a *ruler's* power, virtue, and good arms come from the constituted people itself. Power, virtue, and good arms, in other words, are the *effect* of *stato*, in the double sense of rule and what is ruled. What power, virtue, and good arms, then, are available to the *founder* of the constituted people? The dedicatory letter preceding the text notes that Lorenzo is not yet great, and the text itself makes clear that princely greatness depends upon founding a great polity.³⁸⁸ How then, can Lorenzo be great enough to found a great polity and constitute a great people? The text ends with an exhortation to constitute the people via the kind of “power and virtue” that can only come from the constituted people itself.³⁸⁹ This aporia of founding is a direct antecedent to the paradoxical interrelation of constitution and authorization that characterizes the modern ideal of sovereignty.

³⁸⁸ Machiavelli, *Prince* 4, 221-42.

³⁸⁹ *Ibid.*, 31. Strauss thinks the task set to Lorenzo is impossible, at least for Lorenzo. Strauss, *Thoughts*, 71-4.

Part II: Rousseau

The paradox of sovereignty appears in Rousseau's work as a problem inimical to *popular* sovereignty, and it affects a people's *self*-constitution, rather than its constitution by a princely founder. Nevertheless, Rousseau's treatment of the paradox very much resembles Machiavelli's illustrations of the prince's and people's interdependence, and there is evidence in *On the Social Contract* to suggest that Rousseau greatly admired both *The Prince* and the *Discourses*.³⁹⁰ Questions of influence aside, however, it makes sense that Machiavelli and Rousseau would be similarly interested in the same paradox, insofar as it marks a tension, but also a continuity, between the most absolutist and popular aspects of sovereign authority. The paradox of sovereignty is neither a paradox of absolute sovereignty, nor a paradox of popular sovereignty. Rather, the paradox is inherent to modern sovereignty itself, insofar as sovereignty is an ideal of authority that constitutes the very collective subject—the people—from which it emanates.

In *On the Social Contract*, Rousseau presents popular sovereignty as a political ideal that unites self-legislation and self-constitution. The social contract, through which every individual “puts his person and his full power in common under the supreme direction of the general will,” is the origin of a political association and the “act by which a people is a people.”³⁹¹ However, this act is not consummated, and the association does not become a *sovereign* people, until the association consults the general will and legislates for itself. There are thus two stages through which the people constitutes itself. During the first, individuals contract together and alienate their rights to the association. During the second, the “nascent people” gives itself laws

³⁹⁰ Rousseau cites Machiavelli three times in the *Social Contract*, once declaring, “While pretending to teach lessons to Kings, he taught great lessons to peoples. Machiavelli's *Prince* is the book of Republicans” (95).

³⁹¹ Rousseau, *Social Contract*, 50, 49.

according to the general will.³⁹² It is only in the second stage that the people fully constitutes itself as a body politic that is both sovereign and subject.³⁹³

By making self-legislation key to the “fulfillment” of the merely “ideal and conventional” body politic established by the social contract, Rousseau connects authority and constitution in the way that is characteristic of the modern ideal of sovereignty.³⁹⁴ In the second stage of self-constitution, sovereign authority constitutes its own collective subject. Here, however, the people is both sovereign and subject. In order to adequately express the way that the political association gives laws to itself, and thereby constitutes itself, Rousseau characterizes the association and its members in terms of their active (authoring legislation) and passive (receiving legislation) capacities. He writes:

The public person thus formed by the union of all the others formerly assumed the name *City* and now assumes that of *Republic* or *body politic*, which its members call *State* when it is passive, *Sovereign* when it is active... As for the associates, they collectively assume the name *people* and individually call themselves *Citizens* as participants in the sovereign authority, and *Subjects* as subjected to the laws of the State (51).

The association formed by the social contract does not become Sovereign or State, and its members do not become Citizens or Subjects, until the association begins actively legislating for itself, on the basis of its general will. That activity *is* the expression of sovereignty (“the declaration of this will is an act of sovereignty and constitutes law”), and it is the means by which the association, in its capacity as Sovereign, constitutes itself as its own collective subject, in its capacity as State.³⁹⁵

³⁹² Ibid., 71.

³⁹³ Ibid., 49, 51, 68-9, 111.

³⁹⁴ Rousseau, *Geneva Manuscript* in *On the Social Contract: with Geneva Manuscript and Political Economy*, J. Masters, trans. (New York: Bedford/St. Martins, 1978), 177-8.

³⁹⁵ Ibid., 58. Indeed, through its sovereign authority the association constitutes itself as a *determinate* collective subject, insofar as it is law, and respect for law, that distinguishes members of the State from outsiders. Ibid., 64-5.

It is conceivable that the two stages of collective self-constitution could be fulfilled together, or at least that the body politic could begin to legislate for itself immediately after forming through the social contract. Rousseau's various remarks, however, suggest that the two stages are indeed distinct.³⁹⁶ This thought is most explicit in his early draft of *On the Social Contract*, known as *The Geneva Manuscript*. He writes:

Since the social union has a determinate object, its fulfillment must be sought as soon as the union is formed... Laws are the sole motivation of the body politic, which is active and sensitive only through them. Without laws, the newly formed State is only a dead body without a soul; it exists but cannot act. For it is not enough for everyone to be subject to the general will; to follow it, one must know it. From this arises the necessity for legislation.³⁹⁷

After the original social contract, the people must give itself laws in order to fully constitute itself as a collective sovereign and collective subject.³⁹⁸ This gap between the contract and the beginning of self-legislation is important, because it is the site of Rousseau's engagement with the paradox of sovereignty.

In book II of *On the Social Contract*, Rousseau raises serious doubts about the people's ability to collectively exercise sovereignty and constitute itself as its own collective subject. He writes:

The People subject to the laws ought to be their author; only those who are associating may regulate the conditions of the society; but how will they regulate them? ...How will a blind multitude, which often does not know what it wills because it rarely knows what is good for it, carry out an undertaking as great, as difficult, as a system of legislation?³⁹⁹

³⁹⁶ See *Ibid.*, 66-68 especially.

³⁹⁷ Rousseau, *Geneva Manuscript*, 177-8.

³⁹⁸ Christopher Bertram raises the possibility that the social contract and origin of the sovereign people may be accomplished in multiple stages. See Bertram, *Rousseau and the Social Contract* (London: Routledge, 2004), 144. Carol Pateman argues that Rousseau's contract differs from other "liberal contracts" insofar as it does *not* consist of two stages. Pateman, *Problem of Political Obligation* (Berkeley: University of California Press, 1985), 151. My reading is compatible with hers. There are not two stages of the contract, per se, in the form that she ascribes to Locke, but there are (at least) two stages of self-constitution: contract and self-legislation.

³⁹⁹ Rousseau, *Social Contract*, 68.

The issue is not that the people lacks a general will, but that it does not recognize what it wills. Consequently, the people “must be made to see objects as they are, . . . shown the good path which it is seeking, secured against seduction by particular wills.”⁴⁰⁰ Individually, the members of the people “must be obligated to conform their wills to their reason;” collectively, the people “must be taught to know what it wills.”⁴⁰¹ Until this is accomplished, the people cannot legislate for itself and thereby constitute itself as a popular sovereign—i.e., as both its own sovereign and subject.

However, the force that could teach the people what it wills, thereby enabling it to legislate for itself and fully constitute itself, is precisely what the people lacks, namely law. As Rousseau writes in *The Geneva Manuscript*, law is the “celestial voice that tells each citizen the precepts of public reason, and teaches him to behave according to the maxims of his own judgment and not be constantly in contradiction with himself.”⁴⁰² Law is a transformative force that would enable the people to know the general will, but the people cannot give itself law until it knows the general will.⁴⁰³ Bonnie Honig expresses this chicken-or-egg problem well:

In order for there to be a people well formed enough for good law-making, there must be good law, for how else will the people be well formed? The problem is: Where would that good law come from absent an already well-formed, virtuous people? . . . In the paradoxical moment of founding, however, no member of the community can yet be said to possess the needed perspective, which can only come post hoc, to form the rules or identify or advocate for a collective good by which the people need to have already been acculturated in order to be not a “blind multitude” but a “people” capable of the autonomous exercise of popular sovereignty.⁴⁰⁴

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² Rousseau, *Geneva Manuscript*, 177-8. Cf. *Social Contract*, 68-9.

⁴⁰³ Laws are capable of “transforming each individual who by himself is a perfect and solitary whole into a part of a larger whole from which that individual would as it were receive his life and his being.” Rousseau, *Social Contract*, 69.

⁴⁰⁴ Bonnie Honig, *Emergency Politics* (Princeton: Princeton University Press), 15, 19. Honig’s discussion of Rousseau, here and in an earlier essay, have been very influential on my own reading of Rousseau, and my attention to political paradoxes more generally. While I share Honig’s thought that paradoxes like Rousseau’s might be sites of democratic (and potentially radically democratic) contest, I do not want to downplay the possibility that they may

The circular logic that prevents the people from legislating for itself also prevents the people from fully constituting itself, insofar as the exercise of sovereign authority, expressed in law, is necessary to consummate the foundational contract by which individuals unite as a political association.⁴⁰⁵ The paradox of self-legislation is a paradox of self-constitution.

The problem of the people's initial self-legislation is structured much like the problem of the good commander and good army in Machiavelli's *Discourses*.⁴⁰⁶ Whereas there, the commander is distinct from the army that he commands and constitutes, here the Sovereign (made up of citizens) is simply a different aspect of the commanded and constituted State (made up of subjects). That is the difference that *popular* sovereignty makes—the people is both collective sovereign and collective subject. However, because “the former has need of the latter and the latter of the former,” the question is the same for Rousseau as it is for Machiavelli: How to command and constitute if, within this particular relation of mutual dependence, commanding and constituting presuppose the very effects that they would bring about?⁴⁰⁷ In Rousseau's version of the paradox of sovereignty, the people must perform the role of sovereign by giving itself law in order to fully constitute itself as a people that knows the general will. However, it must already be fully constituted as a people that knows the general will in order to give itself law. If the accomplishment of each task presupposes the accomplishment of the other, how can either be accomplished?

Rousseau's proposed solution initially appears to sacrifice popular sovereignty in the

also be sites of autocratic (and potentially radically autocratic) closure. This is why, in the next section, I follow Rousseau's paradox with the paradoxical continuity linking Sieyès and Bonaparte.

⁴⁰⁵ The problem is circular because, in order to achieve popular sovereignty, the people is supposed to legislate *for itself* and thereby constitute *itself* as a people bound by the general will, and knowledge of the general will is both the condition and the effect of legislation. With the introduction of the Lawgiver, who is not of the people, Rousseau opens up the circle by dropping the supposition that the people must initially legislate for itself. This, as we shall see, does not solve the problem.

⁴⁰⁶ See pages 140-2 above.

⁴⁰⁷ Machiavelli, *Discourses*, 292.

name of sovereignty itself, by transforming the paradox of *self*-constitution into something that even more resembles Machiavelli's aporias. He introduces a god-like "Lawgiver" to initially give the people the laws that will, over time, transform the human nature of its members into a civic disposition, teach the people what it wills, and enable the association to finally constitute itself as a Sovereign and State. Importantly, the Lawgiver is not a member of the people, and he does not exercise sovereign power. Rousseau writes: "The office which gives the republic its constitution has no place in its constitution. It is a singular and superior function that has nothing to do with human empire... [H]e who drafts the laws has, then, or should have no legislative right."⁴⁰⁸ The exteriority of the Lawgiver seems to solve the chicken-or-egg problem of the people's self-legislation by importing, from somewhere beyond the "blind multitude," the "celestial voice" that will initially make the people good, thereby enabling it to give itself good laws and eventually achieve sovereignty for itself.⁴⁰⁹

This apparent solution is problematic, however, for several reasons.⁴¹⁰ Most obviously, it would seem to make the realization of civic freedom and equality contingent upon a heteronomous act of constitution by an actor that is radically superior to the members of the association. Like a divine watchmaker, the Lawgiver designs the republic, starts it running, and then exits. There is no logical inconsistency in this solution, but it does eliminate the exercise of popular sovereignty at the very moment when the people is constituted as sovereign and subject, and this seems at odds with Rousseau's ideals of self-determination, self-legislation, and self-constitution. Additionally, the introduction of the god-like legislator seems to give up on

⁴⁰⁸ Rousseau, *Social Contract*, 69-70. Rousseau consistently describes the Lawgiver as foreign to the republic. For an analysis of the Lawgiver's exteriority, see Honig, *Democracy and the Foreigner*, 18-25.

⁴⁰⁹ Rousseau, *Social Contract*, 69, and *Geneva Manuscripts*, 177-8.

⁴¹⁰ According to Christopher Bertram, there is a potential regress problem here. The Lawgiver must come from *somewhere* with good laws, but "how did the people of the lawgiver's native country get themselves guided to just laws?" Bertram, *Rousseau*, 134. Bertram makes a convincing case that Rousseau was himself aware of this problem (133-5). He also outlines a problem similar to the one I describe, which he calls the "problem of natural inequality" (*Ibid.*).

Rousseau's method of "taking men as they are" in order to ground political ideals in political reality.⁴¹¹

Rousseau himself seems skeptical that the introduction of the Lawgiver solves the original chicken-or-egg problem.⁴¹² Most importantly, he suggests that the Lawgiver cannot simply *impose* the gift of law upon a passive people; it remains up to the people to actively accept the law. The Lawgiver must "prove his mission" to the people, which must recognize, understand, accept, and "freely obey" the laws given to it.⁴¹³ It is unlikely that the people will do so, however, given the obstacles that require the external introduction of law in the first place, notably that the "blind multitude... rarely knows what is good for it."⁴¹⁴ Rousseau suggests that the Lawgiver's gift will be refused for this very reason: "The wise who would speak to the vulgar in their own rather than in the vulgar language will not be understood by them."⁴¹⁵ The people that needs good laws is no more likely to understand and accept them than it is to author them itself.

Because the gift of law depends upon the people's reception of it, the introduction of the Lawgiver only replaces the circular problem of *autonomous* legislation and constitution with a problem of *heteronomous* legislation and constitution. In a passage that succinctly expresses the problem and, more generally, the circular logic of modern sovereignty, Rousseau writes:

For a nascent people to be capable of appreciating sound maxims of politics and of following the fundamental rules of reason of State, *the effect would have to become the cause*, the social spirit, which is to be the work of the institution would have to preside over the institution itself, and men would have to be prior to laws what they ought to become by means of them.⁴¹⁶

⁴¹¹ Rousseau, *Social Contract*, 41.

⁴¹² "So that one finds at one and the same time two apparently incompatible things in the work of legislation: an undertaking beyond human force, and to execute it an authority that is nil" (Ibid., 70).

⁴¹³ Ibid., 71.

⁴¹⁴ Rousseau, *Social Contract*, 68.

⁴¹⁵ Ibid., 70.

⁴¹⁶ Ibid., 70-1, italics added.

Despite the exteriority and superiority of the Lawgiver, the chicken-or-egg problem remains. The “blind multitude” that cannot give itself laws until it is legally reformed also cannot receive laws until it is legally reformed. The people that needs the gift of law cannot accept it; the people that can accept it will not need it. The people’s self-constitution remains incomplete, because the act of founding remains at least partly, but importantly, in the hands of the “nascent” people.

Even if the Lawgiver claims to be—or indeed *is*—ordained by a divine authority, this authority must still be *recognized* by the people, or it will not accept the law.⁴¹⁷ Rousseau writes, “The great soul of the Lawgiver is the true miracle which must prove his mission. Any man can carve tablets of stone, bribe an oracle, feign secret dealings with some divinity, train a bird to speak in his ear, or find other crude ways to impress the people.”⁴¹⁸ Because it is up to the people to distinguish the true source of law from its imposters, it is ultimately the people that performs the act of authorization that enables the Lawgiver to give it law.⁴¹⁹ As Honig puts it, “The lawgiver may offer to found a people, he may attempt to shape them, but in the end it is up to the people themselves to accept or reject his advances. They may be dependent upon his good offices, but *he is no less dependent upon their good opinion.*”⁴²⁰ Until it is properly founded, however, the people cannot properly authorize the Lawgiver to found it. Thus, like Machiavelli’s commander and army, the Lawgiver and the people “have need” of one another in

⁴¹⁷ Ibid., 71. In terms of the account of authority that I sketched in Chapter 1, the people must recognize the Lawgiver as a legitimate source of command. Proof of his divine mission—such as symbols of divinity, the performance of miracles, divine knowledge, etc—would be the *bases* of the people’s recognition of his authority. Other bases could be the superior intellectual and moral virtue that Rousseau attributes to him (68-70). These bases do not themselves *authorize* the Lawgiver. Like symbolic capital, they are the reasons (perhaps implicit or even non-intellectual reasons) that the people recognizes the legitimacy of the Lawgiver’s command, and it is this act of recognition that does the work of authorization. See pages 42-3, above.

⁴¹⁸ Ibid., 71

⁴¹⁹ Rousseau quotes Machiavelli’s *Discourses* here, approving the use of political theology to secure obedience (71). As we have seen, Machiavelli knew well that securing obedience entailed making oneself dependent upon the obedient subjects.

⁴²⁰ Honig, *Emergency Politics*, 21, italics added.

order to constitute each other qua legislator and collective subject, qua founder and state: “The effect would have to become the cause.”⁴²¹ That is the paradox of sovereignty: the imperious authority that would constitute a people is ultimately indebted to the constituted people for the authority required by the act of constitution.

Part III: Constituent Power

In very different ways, the writings of Machiavelli and Rousseau illustrate the mutual indebtedness of ruler and ruled in an age when divine right and hereditary privilege have proven inadequate bases for supreme authority. Machiavelli’s emphasis on rule by power and virtue does not yet amount to a modern concept of sovereign authority. However, Machiavelli’s work clearly suggests that effective rule, regardless of its legitimacy, requires the complicity of the ruled in their own subjection. The ruler and ruled have need of one another, and this mutual dependence presents the initiation of rule—the constitution of *stato*, in its double sense—as an aporetic task. The modern ideal of sovereignty incorporates this aporia as a paradoxical tension between a sovereign’s constitutive authority and its dependence, for that authority, upon the collective subject that it constitutes.

By the time that Rousseau writes *On the Social Contract*, the participation of the ruled in their own subjection has been widely (but not uniformly) recognized as a legitimate basis of sovereign authority: “The People subject to the laws ought to be their author.”⁴²² Yet, even Rousseau’s passionate commitment to popular sovereignty does not prevent him from introducing the solitary and exceptional Lawgiver. Rousseau resorts to this moment of

⁴²¹ Rousseau, *Social Contract*, 71.

⁴²² *Ibid.*, 68.

heteronomy in order to avoid the paradox of sovereignty, which first appears in his work in a distinctly *popular* form, as a vicious circle that prevents the people from its initial act of sovereign self-constitution.⁴²³ The introduction of the Lawgiver, however, merely recasts the paradox as a vicious circle of *unpopular* sovereignty that, much like the mutual dependence theorized by Machiavelli, reveals even heteronomous sovereign constitution to be an aporetic task. The paradox remains because the act of constitution, if it is to be effectively authoritative (that is, if it is to be truly hetero-*nomos*, rather than simply a violent imposition), ultimately requires authorization by the collective subject that it constitutes.

In his political writings, Emmanuel Sieyès attempts to retrieve popular sovereignty from this heteronomous foundation by substituting a collective actor—the nation—for Rousseau’s Lawgiver.⁴²⁴ Like the Lawgiver, the nation is intended to be the unconstituted, unauthorized, and unsubjected source of constitution, authorization, and subjection. Also like the Lawgiver, the nation is a singular, unitary founder that remains distinct from what it founds. Unlike the Lawgiver, however, the nation is not foreign to the people that it will constitute. It *is* the people, albeit in a pre-political, unconstituted, but naturally unified state. It is, to use the language that

⁴²³ The foreignness of the Lawgiver is essential to Rousseau’s attempt to dissolve the paradox. Sieyès’s own solution to the paradox—the introduction of the nation as a pre-political site of sovereignty—is characterized by a similar exteriority, as are the other potential solutions discussed in the following chapters.

⁴²⁴ An in depth study of the relations between sovereignty and nationality, or of nationalism’s role in shaping modern sovereignty, is beyond the scope of this dissertation. However, I intend this discussion of Sieyès to indicate one direction such a study might take, and to foreground future work on nationalism. Sieyès’s writing is particularly illuminating because he explicitly intends his concept of the nation to side-step a version of the paradox of sovereignty (the “petition of principle or a vicious circle” inherent in the idea of a constituted constituent power) (Ibid., 139). As I argue, this maneuver fails because the nation itself is a political artifact rather than a natural or pre-political community. In other words, it does not fall outside the circle of authorization and constitution that is essential to sovereignty. However, the nation’s role in Sieyès’s theory, and its failure, are suggestive of the ways that nationality may, in other contexts, *unintentionally* hide the paradox of sovereignty by displacing it onto the concept of the nation, so that the sovereign’s collective subject, the people, is originally defined by ethno-national boundaries that *appear to be* prior to, or separate from, sovereign acts of constitution and authorization.

Sieyès introduced to modern political thought, the people's *constituent power*, the origin of popular sovereignty.⁴²⁵

Constituent power is the ability to constitute a legal-political order.⁴²⁶ Because the concept of constituent power was articulated during the democratic revolutions of the 18th century, it is usually understood as the ability of a collective to constitute *itself* as its own supreme political authority through the foundation of a legal-political structure.⁴²⁷ As such, “unformed constituent power is... the condition of possibility of the modern idea of popular sovereignty.”⁴²⁸ This is a potentially revolutionary power, insofar as the ability to found a new legal-political order always latently or openly threatens to overturn existing orders.⁴²⁹ As Arendt writes, “Revolution on the one hand, and constitution and foundation on the other, are like correlative conjunctions.”⁴³⁰ Constituent power threatens constituted power—the institutional power of existing legal-political orders—precisely because it is the ability to constitute constituted power anew.

By locating constituent power in the French nation, Sieyès attempts to transform the nation into a revolutionary force capable of constituting a legitimate legal-political order in place of the

⁴²⁵ Sieyès, “What is the Third Estate?” in *Political Writings*, M. Sonenscher, ed. (Indianapolis: Hackett, 2003), 136.

⁴²⁶ “Constituent power” also sometimes refers to the *agent* that exercises constituent power, and “constituted power” sometimes refers to the legal-political order constituted by constituent power.

⁴²⁷ See Andreas Kalyvas, “Popular Sovereignty, Democracy and the Constituent Power” *Constellations* 12 (2005): 223, 226; A. Negri, *Insurgencies: Constituent Power and the Modern State*, M. Boscalagi, trans (Minneapolis: University of Minnesota Press, 1999); M. Louglin and N. Walker, eds. *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2007).

⁴²⁸ James Tully, “The Imperialism of Modern Constitutional Democracy,” in *Paradox of Constitutionalism*, 320. Constituent power is also latent in instances of absolutist or otherwise *unpopular* sovereignty, for example in a republican monarchy.

⁴²⁹ “We may understand the exercise of the constituent power as a constitutional revolution where political energies are transferred into legal institutions.” Ulrich Preuss, “The Exercise of Constituent Power in Central and Eastern Europe” in *Paradox of Constitutionalism*, 213. For a more radical view of constituent power’s revolutionary potential, see Negri, *Insurgencies*. Its importance to revolutionary thought notwithstanding, constituent power may also be exercised in the reconstitution, reauthorization, and perpetuation of an existing political order. For this reason, not only revolutionary manifestos, but also actual constitutions themselves, refer to the power of a constituent agent—usually “the people”—as a criterion of political legitimacy and a renewable source of political authorization. Moreover, like any revolutionary concept or ideal, the concept of political power can be powerfully appropriated and articulated by *counter-revolutionary* forces; it has no essential link to revolution.

⁴³⁰ Arendt, *On Revolution*, 117.

ancien régime. Writing toward the beginning of the French Revolution, he condemns the Estates General of 1789 for failing to represent or incorporate the unprivileged majority of the French nation. He argues that only the entire united nation—as opposed to any government or constitutional committee that merely represents a part of the nation—has the ability, right, and obligation to constitute a new and legitimate government. He writes, “If we lack a constitution, then a constitution must be made, and the Nation alone has the right to do so... The Nation is always the master of every reform to its constitution.”⁴³¹ In other words, it is the *nation itself* that must exercise constituent power.⁴³² Insofar as the nation *is* the people, Sieyès’s invocation of the national constituent power is an appeal to the basic premises of popular sovereignty.

It would appear that the initial exercise of constituent power, by which the nation gives itself a constituted, legal-political form, falls into the problem that confronts Rousseau’s people at the second stage of its self-constitution. Recall that, for Rousseau, an exercise of the general will is necessary for the associated people to fully constitute itself as Sovereign and State—but “how will a blind multitude, which often does not know what it wills,” be able to accomplish this?⁴³³ In his study of contemporary constituent power, Ulrich Preuss poses Rousseau’s dilemma as a problem for popular constitution in general:

How can it be explained that the unorganized, atomized, and hence impotent mass of individuals—in fact, the opposite of a ‘We’—is vested with the capacity to transform itself into an organized political entity? ...If the constitution is a device which empowers a multitude of individuals to act collectively and to develop the capacity of self-determination, how can the preconstitutional and un- and disorganized multitude arrogate the capacity of constituting themselves as a Self?⁴³⁴

This crucial problem expresses a version of the paradox of sovereignty, insofar as the multitude’s

⁴³¹ Sieyès, “Third Estate?,” 133, 141.

⁴³² *Ibid.*, 92-162. See especially 133-141.

⁴³³ Rousseau, *Social Contract*, 68.

⁴³⁴ Ulrich Preuss, “The Exercise of Constituent Power,” 213.

self-constitution depends upon acts of authorization and constitution that each require the other. However, Sieyès intends his concept of the nation to solve this problem. On his view, although the nation is by definition pre-constitutional, it is never a “blind multitude,” an atomistic aggregate of individuals, or association without a general will. Rather, the nation is always-already united, albeit in an unconstituted and pre-political sense, by the common will of its members.

According to Sieyès, even at its most disorganized, the nation is an association of individuals bound together by a shared aim: political constitution. This aim distinguishes the nation from a multitude; even before political constitution is accomplished, the nation possesses and knows its “natural, *common* will.”⁴³⁵ Importantly, there is no *political* mechanism of association: “If a nation had to wait for a *positive* mode of being in order to become a nation, it would simply never have had an existence. A nation is formed solely by *natural* law.”⁴³⁶ Because the nation is prior to any constitutional form, there is neither a regress of constitutors nor a circle of self-constitution here: “A nation is all that it can be simply by virtue of being what it is.”⁴³⁷ The nation’s natural, pre-constitutional, and pre-political unity enables it to give itself a political constitution in a way that a multitude’s disunity would prevent.

In this regard, the nation is a synthesis of Rousseau’s blind multitude and Lawgiver. Like the Lawgiver, the nation does not need to be constituted as a coherent whole, so it does not invoke the problem of the multitude’s self-constitution. However, unlike the Lawgiver, the nation is not fundamentally *other than* the individuals that it would constitute. ‘The nation’ is

⁴³⁵ Sieyès, “Third Estate,” 138. “In the first of these epochs, one can imagine a more or less substantial number of individuals seeking to unite. This fact alone makes them a nation. They have all the rights of a nation: it is simply a matter of exercising them” (Ibid.).

⁴³⁶ Ibid., 136-7.

⁴³⁷ Ibid. Cf. 138-9: “How can it be imagined that a constituted body can decide upon its constitution?... Even if the Nation had held regular sessions of the Estates-General, it would not be up to this constituted body to pronounce on a dispute affecting its own constitution. To do so would be a petition of principle or a vicious circle.”

the name of the latent people's natural unity, and although this unity is importantly *pre-constitutional*, it is not foreign to the constituted people in the way that the Lawgiver is.⁴³⁸ Nor is it distinct from the people in the way that Machiavelli's commanders and princes are. Thus, the nation's exercise of constituent power is not a foundational moment of heteronomy, and it avoids the problems of the Lawgiver's gift. Neither blind multitude nor foreign legislator, Sieyès's nation unites aspects of both to avoid the problems of each.

The nation can play this constituent role because it is essentially exterior to the entire realm of political organization and positive law. Sieyès writes:

The nation exists prior to everything; it is the origin of everything... *A nation never leaves the state of nature* and, amidst so many perils, it can never have too many possible ways of expressing its will... A nation is independent of all forms and, however it may will, it is enough for its will to be made known for all positive law to fall silent in its presence, because *it is the source and the supreme master of all positive law*.⁴³⁹

Although Sieyès identifies the nation with the politically excluded and unprivileged Third Estate, the nation's exteriority is not a contingent effect of the existing legal-political order. Rather, the nation is beyond *all* legal-political constitutions. From outside the realm of politics and positive law, the nation delegates a body of "extraordinary representatives" to serve as "a surrogate for the Nation in its *independence* from all constitutional forms."⁴⁴⁰ These representative convene a constitutional assembly and constitute a new government. In this way, constituent power engenders constituted power—the nation founds a government—without ever leaving the state of nature.

Sieyès is clear that the constituted power of the government continually depends upon the

⁴³⁸ As Tully writes, "'Constituent powers' refers to these powers in abstraction or separation from any specific form they take in order to be exercised. They take different forms in different constitutional forms (since the constitutional form *is* the form that the constitutional powers take)." Tully, "Imperialism," in *Paradox of Constitutionalism*, 320.

⁴³⁹ *Ibid*, 136-8, italics added.

⁴⁴⁰ *Ibid*, 139.

constituent power of the nation. He writes, “The body entrusted with the legislative power, or the exercise of the common will, exists only by way of the mode of being which the nation decided to give it. It is nothing without its constitutive forms; it acts, proceeds, or commands only by way of these forms.”⁴⁴¹ Whatever authority the constituted order enjoys, it does so because it serves the nation that constitutes it; “All parts of a government are answerable to and, in the last analysis, dependent upon the nation,” which remains “master of every reform to its constitution.”⁴⁴² Because constitution may be a matter of continual *reconstitution*, constituted power *continually* depends upon constituent power.

However, Sieyès is emphatic that the reverse is not true. The nation is not subject to the government that it constitutes, and constituent power never depends upon constituted power. Of course, the individual members of the nation are, as citizens, obligated by the positive law that is institutionalized in the government; *they* are subject to constituted power. The united nation itself, however, is not. Its “natural, *common* will,” remains “free and independent of all civil forms,” including those that it constitutes.⁴⁴³ Sieyès writes:

It would be ridiculous to suppose that the nation itself was bound by the formalities or the constitution to which it had subjected those it had mandated... Not only is a nation not subject to a constitution, it *cannot* and *should* not be... A nation cannot alienate or prohibit its right to will and, whatever its will might be, it cannot lose its right to change it as soon as its interests require it.⁴⁴⁴

Because it “never leaves the state of nature,” the nation remains radically exterior to the government that it constitutes.⁴⁴⁵ This ensures a unilateral relation of dependence: the constituted government is subject to and dependent upon the nation that constitutes it, but the nation itself is essentially and finally independent of what it constitutes.

⁴⁴¹ Ibid, 135. “Government can exercise real power only insofar as it is constitutional” (137).

⁴⁴² Ibid, 136, 141.

⁴⁴³ Ibid., 138, 137.

⁴⁴⁴ Ibid 136-7.

⁴⁴⁵ Ibid., 136.

By imagining the nation as naturally united and fully exterior to the political realm, Sieyès sidesteps another crucial problem of modern political thought. Readers of Rousseau rightly wonder where the Lawgiver's authority (and knowledge of good laws) originates, and some have identified a potential regress of authorization.⁴⁴⁶ Following Honig, I have interpreted Rousseau as intentionally constructing a circle rather than a regress: the Lawgiver is authorized by the people to which he would give law. This potential regress and circle of authorization are by no means exclusive to Rousseau. Rather, they haunt all acts of political founding or constitution wherein the authority to constitute is said to derive, not from an exterior source of absolute right, but from the will of the many, the ruled, or the people. As Arendt writes:

Those who get together to constitute a new government are themselves unconstitutional, that is they have no authority to do what they have set out to achieve. The vicious circle in legislating is present not in ordinary lawmaking, but in laying down the fundamental law, the law of the land or the constitution which, from then on, is supposed to incarnate the 'higher law' from which all laws ultimately derive their authority.⁴⁴⁷

In Sieyès's language, the government's constituted power derives its authority and legitimacy from the constitution that the nation gives to it. If the nation's own constituent power derived *its* authority and legitimacy from the constituted government, then the authority and legitimacy of *both* the nation and the government would be suspect. This would be a version of the paradox of sovereignty. If this circle is avoided, however, then what authorizes or legitimates the nation's

⁴⁴⁶ Bertram, *Rousseau*, 144.

⁴⁴⁷ Arendt, *On Revolution*, 175-6. Carol Gould has recently articulated a more specific version of this problem, which she calls "the constitutional circle." She writes, "Isn't there a circularity involved in the establishment of constitutional guarantees of rights by means of a consensual or democratic procedure that in turn presupposes some of the very rights to be institutionalized? For the very idea of consensus implies the free and equal status of those who entered into the agreement, and it is this freedom and equality that give consensus its authority. Without this free and equal agreement to accept as binding what is agreed upon, the consensus has no force and is merely verbal. Thus it would seem to presuppose the very rights that it would authorize." She also identifies a potential regress as a problematic alternative to this circle. Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2005), 39. See also her *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society* (Cambridge: Cambridge University Press, 1988), where she critiques Habermas using an early version of the constitutional circle (127).

constituent power in the first place? How can it be a source of authority and legitimacy if it itself is neither authorized nor legitimated?

Sieyès answers these questions by completely removing the nation from the political realm. The nation is unconstituted, unauthorized, and unlegitimated—but it is not the kind of thing that can or should be constituted, authorized, and legitimated. Rather, its united will simply *is* the source of authority and legitimacy, not because it has been invested with authority and legitimacy, but because it conforms to natural, rather than positive, law:

Its will is always legal. It is the law itself. Prior to the nation and above the nation there is only natural law... The national will... simply needs the reality of its existence to be legal. Every nation on earth has to be taken as if it is like an isolated individual outside all social ties or, as it is said, in a state of nature... Since they exist only in the natural order, their will needs only to have the *natural* character of a will to produce all its effects.⁴⁴⁸

The regress and circle of constitutive authority are avoided with an unauthorized authorizer; “It is the origin of all legality.”⁴⁴⁹ If the nation were a part of the political realm, then it would admit of, and require, the same kind of authorization that is required of the government. Since it remains in the state of nature, however, the nation’s constituent power is held to a different standard: morality and natural law.⁴⁵⁰ The nation’s naturally unified will is the product of “a legitimate association, one that is voluntary and free,” and it remains “pure and unmixed,” because it is completely outside the divisions and conflicting interests of the political realm.⁴⁵¹ The moral legitimacy of this collective will provides the basis of political authorization; its conformity to natural law provides the basis of positive law.

In short, Sieyès avoids familiar versions of the paradox of sovereignty by removing the

⁴⁴⁸ Sieyès, “Third Estate?,” 136-7.

⁴⁴⁹ Ibid., 137. As noted, Sieyès does not believe that the nation has to “prove” itself to anyone, since it is already the common will of the individuals that will be constituted into a legal-political order.

⁴⁵⁰ “In morality, nothing can stand in for simple and *natural* means.” Ibid., 133.

⁴⁵¹ Ibid., 137, 128.

constituent nation, itself a synthesis of Rousseau's multitude and Lawgiver, to a state of nature beyond the political realm. In her clear analysis, which my interpretation has closely followed, Arendt puts it well:

Sieyès... broke the vicious circle, and the *petitio principii* of which he spoke so eloquently, first by drawing his famous distinction between a *pouvoir constituant* and a *pouvoir constitué* and, second, by putting the *pouvoir constituant*, that is, the nation, into a perpetual 'state of nature'... Thus, he seemingly solved both problems, the problem of the legitimacy of the new power, the *pouvoir constitué*, whose authority could not be guaranteed by the Constituent Assembly, the *pouvoir constituant*, because the power of the Assembly itself was not constitutional and could never be constitutional because it was prior to the constitution itself; and the problem of the legality of the new laws which needed a 'source and supreme master', the 'higher law' from which to derive their validity. Both power and law were anchored in the nation, which itself remained outside and above all government and laws.⁴⁵²

This solution is entirely dependent upon the nation's complete exteriority to the political realm. *Because* the nation "never leaves the state of nature," it can be an ultimate source of positive law. *Because* it is unconstituted, but still united, it can exercise constituent power. Finally, *because* it remains separate from what it constitutes, it can be the constant moral arbiter of political constitutions, which it may reform at will.

The exteriority that Sieyès attributes to the nation is common in later theories of constituent power. As Lucien Jaume notes, "The idea of constituent power has... generally evoked a sense of the *exteriority* of the sovereign people in relation to their institutions."⁴⁵³ *Because* constituent power is understood as a "capacity or potentiality, prior to taking on a concrete form," which may always "establish itself *otherwise*" than any actually constituted government, it would appear to be essentially distinct from, and prior to, constituted power.⁴⁵⁴

⁴⁵² Arendt, *On Revolution*, 154.

⁴⁵³ Lucien Jaume, "Constituent Power in France: The Revolution and its Consequences" in *Paradox of Constitutionalism*, 67-8.

⁴⁵⁴ Tully, "Imperialism," in *Paradox of Constitutionalism*, 320; Christodoulidis, "Against Substitution: The Constitutional Thinking of Dissensus," in *Paradox of Constitutionalism*, 189.

By virtue of this exteriority, constituent power can be theorized as “a power absolutely free in scope,” whereas constituted power is necessarily “limited by the terms of the constitution” that constituent power generates and authorizes.⁴⁵⁵ If this is right, then Sieyès’s nation squares the circle of sovereign constitution in a way that Rousseau’s Lawgiver would, were it not itself dependent upon the subjects to whom it legislates. In that case, constituent power would manifest what I have denied throughout this chapter: sovereign imperiousness without sovereign indebtedness.⁴⁵⁶ The paradox of sovereignty would be dissolved.

However, Sieyès’s own writing suggests that the nation, and the constituent power it exercises, are not so external to the political realm after all. This becomes most evident when Sieyès attempts to explain the unconstituted or natural unity of the nation. Because the nation “never leaves the state of nature,” its composition must be achieved through natural means.⁴⁵⁷ There must be some natural principle of unity and differentiation, separate from the divisions of any particular constituted order, that gives the nation its pre-political composition. Otherwise, the nation cannot be a coherent collective agent—the agent of constituent power—prior to its political constitution as a collective subject. In other words, before it is constituted as a people, the nation is a voluntary association of individuals within the state of nature—but it must nevertheless be a *determinate* association. As discussed, if the nation were either an indeterminate mass of individuals, or a politically constituted collective subject, the theory of

⁴⁵⁵ Paolo Carrozza, “Constitutionalism’s Post-Modern Opening,” in *Paradox of Constitutionalism*, 174.

⁴⁵⁶ This is precisely what one contemporary philosopher identifies as the major significance of Sieyès’s legacy. Kalyvas writes: “For theories of the constituent power, therefore, the fundamental norms and rules (and institutions) have no other ground than the groundless instituting sovereign act. A true sovereign act always escapes subsumption under any rule or norm because, in fact, it constitutes their ultimate origin... In other words, the constituent act occurs outside a given constitutional horizon to radically redefine the very contours and content of that horizon.” Kalyvas, “Popular Sovereignty,” 228. For Kalyvas, who draws heavily upon Sieyès’s thought, the exteriority of constituent power ensures its independence from the institutions of constituted power, while its constitutive and revolutionary potential ensures its superiority to its creation. This is a divine image of sovereignty, secularized but still transcendent, and imperiousness without a trace indebtedness.

⁴⁵⁷ Sieyès, “What is the Third Estate?,” 138.

constituent power would merely repeat a version of the regresses and circles that Sieyès attempts to avoid. Separate from any particular legal-political order, there must be some means of specifying *which* individuals make up the nation, and of differentiating this nation in particular from other nations, as well as from any individuals that it excludes.

This need for specification is political as well as theoretical, and satisfying it requires a statement of *who*, exactly, should contest the Estates-General and give itself a new constitution. Sieyès does not have in mind just any individuals anywhere, or every individual everywhere; he never hints that the revolutionary agent is any kind of universal subject. However, the composition of the revolutionary agent cannot simply be inherited from the existing political order. It cannot be *merely* an effect or artifact of the constituted order it would overturn.⁴⁵⁸ As Marx makes clear in his own theoretical and political writings, in order to identify (or manifest) a collective agent of revolution—even of bourgeois political revolution—some *criterion of commonality* is needed, and it cannot simply recapitulate the political differentiations that are essential to the existing order.

Sieyès recognizes this need and attempts to satisfy it in a way that, as I will argue later, is a prevalent modern strategy for negotiating the paradox of sovereignty. He writes, “Where is the Nation? Where it is. In the forty thousand parishes covering the whole *territory*, in all the inhabitants and all the contributors to the public establishment—that is where the Nation is to be found.”⁴⁵⁹ For Sieyès, *territory* provides the natural principle of unity and differentiation that defines the nation. The nation is a determinate collection of individuals that are united, prior to

⁴⁵⁸ For this reason, the nation cannot be simply identical to an existing political class. In a sense, the nation *is* the Third Estate, but not in its present state of “political nonentity,” which the existing legal-political order ensures (Ibid., 104). Rather, the Third Estate is “always identical to an *idea* of a nation” (Ibid., 101, emphasis added). The nation is the Third Estate once the latter has “become *something*,” i.e., once the Third Estate has gained political representation (Ibid.). Transforming the Third Estate into the national constituent power is the political task that Sieyès sets forth.

⁴⁵⁹ Ibid., 140, italics added.

any act of constitution, by their shared location within a common geographic area. It is *these* individuals who can and must give themselves a new constitution. The nation is *what* it is and *who* it is because of “*where* it is”—inscribed within the boundaries of a historically given territory.⁴⁶⁰

The territorial determination of the nation is a remarkable strategy for resolving the paradox of sovereignty, not because it is unique to Sieyès, but because it requires an obvious naturalization of the concept of territory. Territory is a political artifact through and through; it is created, altered, and invested with meaning through political contest and conquest. The boundaries of territory are the stakes of negotiations between sovereign states, rather than a given framework in which sovereignty is to be achieved.⁴⁶¹ In particular, there is no naturally existing territory that defines the French nation. There is only territory claimed by France for the French nation. This is not to deny that territorial boundaries have a determining effect on nationality. It is, however, to deny that territory is a pre-political framework within which a nation incubates prior to its constitution as a collective political subject of sovereign authority.

However, this is exactly how Sieyès treats territory. By locating the nation that never leaves the state of nature within a particular territory, Sieyès essentially *naturalizes* territory and the territorial composition of the nation. The unconstituted nation is defined by territorial boundaries that cannot be altered by any act of constituent or constituted power. Consequently, the “nation cannot decide not to be the nation it is or choose to be itself in only one particular way.”⁴⁶² Nor can the nation deny its “natural, *common* will,” which turns out to be the majority

⁴⁶⁰ Ibid.

⁴⁶¹ See Chapter 2, page 60-1. Nonetheless, territory is frequently *treated as* a given framework in which sovereignty or political self-determination can be achieved. This does not confirm Sieyès’s use of territory. Rather, it affirms that this particular use of territory is by no means unique to Sieyès. I explore the territoriality of modern sovereignty in Chapter 4.

⁴⁶² Sieyès, “Third Estate?,” 141.

opinion of the twenty-five or twenty-six million persons who, despite their different political statuses, all inhabit the same geographic area.⁴⁶³ For Sieyès, then, territory is the natural precondition of politics, rather than a political artifact; territory is a feature of the state of nature.

Because of this, territory can serve as a pre-political framework for political representation:

It ought to have been possible to make a territorial division able to produce an initial level of representation by means of the formation of circumscriptions, or *arrondissements*, made up [of] twenty to thirty parishes. These circumscriptions could, following the same plan, have been grouped together to form provinces, and these latter could then have send a number of genuinely extraordinary representatives to the capital with special powers to determine the constitution of the Estates-General.⁴⁶⁴

The boundaries of territory provide the pre-political frame in which politics can happen.

In the specific context of Sieyès's political theory, the naturalization of the nation's territorial composition ensures that constituent power—and the source of political legitimacy more generally—lies in neither a blind multitude nor a politically constituted people. Rather, constituent power is to be exercised by a coherent and determinant association, namely the collection of individuals occupying the particular territory over which the constituted order will exercise political authority. Without reference to the particular political statuses that may differentiate these individuals from one another, the boundaries of territory enable Sieyès to speak of these individuals as a collective agent of revolution whose unity is independent of the legal-political regime that it will revolutionize. In other words, territorial belonging provides a means of composing the collective but pre-constitutional constituent agent that, for Sieyès, serves as a pre-political source of political legitimacy.

More generally, territory provides a distinctly modern way of negotiating the paradox of sovereignty. The modern ideal of sovereignty is paradoxical insofar as the sovereign is

⁴⁶³ Ibid., 138, 142.

⁴⁶⁴ Ibid., 140.

understood to owe its authority to its constituted collective subject, and the collective subject is understood to owe its constitution to the authorized sovereign. In order for the paradox to be dissolved, *one* of these elements—the sovereign’s authority or the people’s constitution—must somehow be achieved without depending upon the achievement of the other. If external reservoirs of political authority, such as divine investiture and venerable tradition, are no longer effective except as means of garnering popular authorization, and if natural law insists upon the voluntary nature of political subjection, then what is needed is some way of identifying the people as a collective political agent *prior to* its constitution by sovereign authority. Dissolving the paradox requires some as-yet unconstituted *association* that can, through a Hobbesian, Lockean, or Rousseauian act of authorization, or some other founding act, institute the sovereign that will become the source of its own political constitution. Because territorial boundaries provide an apparently given and natural—or naturalizable—framework for the composition of this association, territory itself appears to provide an effective foundation or container for the cycle of authorization and constitution that is essential to modern sovereignty. In short, for modern thinkers who would trace sovereign authority back to ‘the people’, the people itself can be identified and located, prior to its political constitution, within the natural boundaries of a particular territory.⁴⁶⁵ This would appear to dissolve, or avoid, the paradox of sovereignty.

⁴⁶⁵ This strategy is also important to thinkers, such as Hobbes and Locke, who understand sovereignty to rest on an act of alienation or consent by individuals, rather than by a people as a whole. Territory can be made to specify, or assumed to specify, *which individuals* are the basis of sovereignty. As Bert Van Roermund writes, “Who are to be parties to the social contract cannot be decided in terms of the social contract.” Van Roermund, “Sovereignty: Popular and Unpopular” in *Sovereignty in Transition*, Neil Walker, ed. (Portland, OR: Hart Publishing, 2006), 40. For both Hobbes and Locke, individuals do not *act alone* when they alienate their natural rights, or give their consent, to the sovereign. Rather, they are part of a group, and it is interactions with the other members of the group that motivate each member to authorize the sovereign (in particular, it is the fear that the others inspire, although this is understood differently by Hobbes and Locke). In Hobbes, the relevant group is a “multitude” or “crowd,” which is a singular unity of diverse individuals: “Because crowd [*multitudo*] is a collective word, it is understood to signify more than one object, so that a crowd of men is the same as many men. Because the word is grammatically singular, it also signifies one thing, namely a crowd. Neither way of taking it implies that a crowd has one will given by nature, but that each man has his own will.” Hobbes, *On the Citizen*, R. Tuck and M. Silverthorne, eds. (Cambridge: Cambridge University Press, 1998), 76. For Locke, the relevant group is a family and property based natural

While Sieyès is not unique in turning to territory to locate the pre-political source of political authority, his thought is particularly illuminating because it explicitly affirms the paradox of sovereignty before invoking territory as a means of dissolving it. Like Machiavelli and Rousseau, Sieyès is aware that there is a “petition of principle or a vicious circle” in any theory of sovereignty in which the collective agent of authorization is itself constituted.⁴⁶⁶ To avoid the regresses and circles of the paradox, Sieyès grounds the unity of the collective agent of authorization in a given territorial framework, rather than in a political act of constitution. By naturalizing the territorial determination of the nation, Sieyès does explicitly what some other thinkers do implicitly: he nominates a particular, pre-constitutional version of ‘the people’ as an arbitrary starting point for politics and political theory.⁴⁶⁷ Nevertheless, his writing is unique insofar as it directly affirms that this kind of starting point is necessary to escape the paradox of sovereignty. This attempt to define the nation as a pre-political source of constitutive authority fails spectacularly, when Napoleon Bonaparte displaces the nation as the agent of constituent power. This failure, too, is illuminating.

If, as Sieyès insists, constituent power does not exist in the political sphere (if the “nation does not leave the state of nature”), then it must be given political presence and voice without sacrificing the independence and normative priority it enjoys by virtue of its supposed exteriority

society. In either case, unless the group consists of *all* the individuals within the state of nature, some criterion is needed for distinguishing which individuals, in relation to one another and to the exclusion of others, authorize the same sovereign. There are presumably different multitudes, crowds, and societies because there are multiple sovereigns. For both thinkers, territorial boundaries demarcate spheres of sovereignty and subjection *once the sovereign is authorized*, so it can be inferred that, within the state of nature, multitudes and natural societies are also contained within, and separated from their outsiders by, territorial boundaries. Making good on this inference, with thorough textual scholarship, is work that I must leave for another occasion.

⁴⁶⁶ Sieyès, “Third Estate?,” 139.

⁴⁶⁷ On the tendency of modern and contemporary political theorists to take a particular, determinate notion of the people for granted, see Margaret Canovan, Margaret Canovan, *Nationhood and Political Theory* (Brookfield, Vermont: Edward Elgar, 1996), especially Chapter 3, and Sofia Näsström, “Legitimacy of the People,” *Political Theory* 35:5 (2007): 624-658.

to the political.⁴⁶⁸ This is precisely the problem that Sieyès attempts to solve in his 1789 pamphlets with the innovation of extraordinary national representatives and again, in his 1799 draft of the Constitution of the Year VIII, with the proposal of the Great Elector. Both the extraordinary representatives and the Great Elector are intended to be the political vehicles of an already existing, pre-political constituent power that remains beyond the political realm.⁴⁶⁹

In his 1799 debates with Sieyès regarding the draft constitution, Napoleon Bonaparte vehemently rejected the idea of the Great Elector as a representative of the nation.⁴⁷⁰ The final version of the constitution eliminated the Elector and directly installed Bonaparte as First Consul, the highest executive position in the new government.⁴⁷¹ Less than three years later, through the Constitution of the Year X, Napoleon was made First Consul for life. This constitution, and the popular referendum proceeding it, effectively established Bonaparte as the acme of constituted power, even as it brought a close to the revolutionary career of French constituent power.

The referendum that installed Bonaparte as First Consul for life is explicit that his office depended upon the will of the people, which remained, at least rhetorically, the supreme agent of constituent power. The referendum reads:

The Consuls of the Republic... considering that the resolution of the First Consul is a striking homage paid to the sovereignty of the people; that the people, consulted on its most dear interests, should know no other limit than these interests themselves, adopt as follows: Article 1. The French people will be

⁴⁶⁸ Sieyès, "What is the Third Estate?," 138.

⁴⁶⁹ Michael Sonenscher, "Introduction" to Sieyès, *Political Writings*, xxvii, xxxi-iii.

⁴⁷⁰ Alphonse Bignon, *Sieyès, l'homme--le constituant* (Paris: Henri Becus, 1893), 193-4.

⁴⁷¹ Title IV, section 41 of The Constitution of the Year VIII describes the duties of First Consul: "The First Consul promulgates the laws; he appoints and dismisses at will the members of the Council of State, the ministers, the ambassadors and other foreign agents of high rank, the officers of the army and navy, the members of the local administrations, and the commissioners of the government before the tribunals. He appoints all criminal and civil judges other than the justices of the peace and the judges of cassation, without power to remove them." Online at http://www.napoleon-series.org/research/government/legislation/c_constitution8.html.

consulted on this question: ‘Will Napoleon Bonaparte become Consul for life?’⁴⁷²

Bonaparte himself paid homage to the unilateral dependence of constituted power on constituent power: “The first consideration of the Government shall be the interests of the People *from whom they derive all their powers*.”⁴⁷³ As in Sieyès’s political writings, the constituted power of the government depends, for its constitution and its authority, on the constituent power of the nation.

Nevertheless, a few months after being made First Consul for life, Bonaparte could intelligibly declare, from a position of supreme *constituted* power, “I am the *constituent* power.”⁴⁷⁴ This declaration is not mere rhetorical flourish. Nor does it contradict Bonaparte’s acknowledgement that his constituted power is dependent upon the nation’s constituent power. Rather, it signals Bonaparte’s role as the political constitutor of the French nation, which prior to Bonaparte’s ascension to power was politically “*Nothing*,” as Sieyès famously puts it.⁴⁷⁵ In assuming this role, Bonaparte displaces the nation as the constituent power. He owes his authority to the nation—and in particular, to the majority of the French population, which lives within the borders of France but has never been represented in the Estates General—but from Bonaparte’s perspective, the nation’s constituent career is over. It has done its job by installing him as First Consul. Now he will take on the role of constituent power, not in order to constitute another, higher form of government, but in order to give *the nation itself* the political form that it

⁴⁷² My translation: “Les Consuls de la République... Considérant que la résolution du Premier Consule est un hommage éclatant rendu à la souveraineté du peuple; que le peuple, consulté sur ses plus chers intérêts, ne doit connaître d’autre limite que ses intérêts mêmes; Arrêtent ce qui suit: Art. 1er. Le peuple français sera consulté sur cette question: « Napoléon Bonaparte sera-t-il Consul à vie? »” France Assemblée Nationale, *Archives parlementaires de 1787 à 1860: recueil complet des débats législatifs et politiques des chambres françaises*, vol. III (Paris: Librairie Administrative de Paul Dupont, 1864), 668.

⁴⁷³ “La marche du Gouvernement sera constamment dirigée dans l’intérêt du peuple, d’où dérivent tous les pouvoirs et pour qui travaillent tous les gens de bien.” Antoine Clarie Thibaudeau, *Mémoires Sur Le Consulat, 1799 à 1804* (Paris: Ponthieu et cie, 1827), 261, emphasis added.

⁴⁷⁴ Thibaudeau, *Mémoires*, 315, emphasis added.

⁴⁷⁵ Sieyès, “Third Estate?,” 94.

purportedly lacks: “My system is very simple. I believed that, in the circumstances, it was necessary to centralize power, and increase the authority of the government, *in order to constitute the nation*. I am the constituent power.”⁴⁷⁶ In substituting himself for the nation as the constituent power, Bonaparte reveals that the purportedly original and ultimate source of political authority is itself an artifact of political authority.

In his assumption of constituent power, Bonaparte takes advantage of the opportunity presented by Sieyès’s removal of the nation from civil society to the state of nature. It is precisely because the nation has been *depoliticized*—in the sense of its practical exclusion from political representation and its theoretical removal from the realm of politics altogether—that it is up for grabs and susceptible to any number of political forms that can be imposed upon it. If the nation had an existing political form—if, for example, it were a self-constituted *demos*, or even a heteronomously constituted collective subject of a sovereign—it would not escape the Rousseauian versions of the paradox of sovereignty. In that case, the nation would always carry with it an element of arbitrariness, insofar as its constitution would ultimately rest on a regress or circle of authorization and constitution.⁴⁷⁷ In an attempt to avoid this trace of political arbitrariness, however, Sieyès naturalizes the nation (and its territorial boundaries) and thereby renders the purportedly pre-political origin of political authority *thoroughly* arbitrary from the perspective of political contest. The pre-political nation that is “the origin of everything... the source and supreme master of all positive law” might as well be God, tradition, or heritage.⁴⁷⁸ Or Bonaparte. Bonaparte’s displacement of the nation from the position of constituent power—i.e.

⁴⁷⁶ “*Mon système est fort simple. J’ai cru que, dans les circonstances, il fallait centraliser le pouvoir, et accroître l’autorité du Gouvernement, afin de constituer la nation. C’est moi qui suis le pouvoir constituant.*” Thibaudeau, *Mémoires*, 315, emphasis added.

⁴⁷⁷ Alan Keenan argues that Rousseau’s paradoxes show that the identity of any democratic *demos* is always arbitrary in the last instance. See Keenan, *Democracy in Question* (Stanford: Stanford University Press, 2003), 41-54. I am arguing that this holds true for non-democratic sources of political authority as well, and I develop this argument more fully in Chapter 4.

⁴⁷⁸ Sieyès, “Third Estate?,” 136-8.

the source of authoritative political transformation—is enabled by Sieyès’s prior displacement of the nation from the political sphere.

In other words, Bonaparte’s particularly modern brand of autocracy, which claims the “natural, common will” of the nation as the source of its absolute authority, is made possible by a radical depoliticization of the source of popular authority.⁴⁷⁹ Bonaparte’s assumption of constituent power, and his literal (re)constitution of the French nation and its territory, reveal that the purportedly natural and pre-political nation was never an effective resolution of the paradox of sovereignty. Rather, the nation is one more effect in a series or cycle of effects that would have to become causes, to borrow Rousseau’s phrase.⁴⁸⁰ Sieyès’s political theory of constituent power does not dissolve the paradox of sovereignty after all, but displaces it to the ‘natural’ territorial boundaries of the nation.

The nation is not a naturally composed, pre-constitutional association that remains exterior to the political realm. Rather, the nation and the territory that contains it are political artifacts. They are politically constituted, and this draws the theory of constituent power back into the paradox of sovereignty. *Pace* Sieyès, there is no outside of politics, because the very act of naturalizing or rendering incontestable an ultimate source of political authority—god, nation, tradition, *ethnos*, etc—is itself a political act. There is no origin of authority (or constitution) that does not itself require authorization (or constitution). The paradox of sovereignty is inescapable because politics itself is inescapable: there is no unauthorized (or unconstituted) origin of authority (or constitution). This is a democratic thought, insofar as democracy

⁴⁷⁹ *Ibid.*, 138.

⁴⁸⁰ “Instead of initiating, the collectivity is initiated by a constituent power. If the exercise of constituent power signals the self-constitution of political community, then first and foremost it is the objective form of the genitive: the constitution *of* a collective self [“rather than by a self”]... The exercise of constituent power cannot be directly attributed to a collective because constituent power effectively creates this collective.” Hans Lindahl, “The Paradox of Constituent Power. The Ambiguous Self-Constitution of the European Union,” *Ratio Juris* 20 no. 4 (2007), 495-6, 503.

institutionalizes the political constitution of the ultimate source of political authority, the *demos*.⁴⁸¹ However, as I will show in the next chapter, the inescapability of politics is not unique to democracy. It is, rather, a condition of political authority itself, and it is writ large in the paradox of sovereignty that I have described in this and the previous chapters. For now, the inescapability of politics can be seen in Sieyès's failed attempt to locate constituent power in the state of nature, and thereby render it the pre-political and incontestably authoritative origin of political constitution. Moreover, as the fate of constituent power during the last phases of the French Revolution illustrates, democracy is not the *only* form of politics that acknowledges the paradox of sovereignty by affirming the absence of any natural, pre-political, and completely incontestable source of supreme and independent political authority.

Like Sieyès's theory of constitute power, Bonaparte's political practice also fails to effectively resolve the paradox of sovereignty. This is not because Bonaparte's is an autocratic political practice, but because the paradox cannot be fully resolved through *any* kind of political practice. Practical negotiations of the paradox will assume more or less autocratic and democratic forms, but autocracy and democracy both invoke, rather than resolve, the paradox of sovereignty. In the next chapter, I examine democratic practices that engage, but do not dissolve, the paradox. For now, it is important to note that even though Bonaparte displaces the nation as the constituent power (and thereby reveals the purportedly ultimate source of political authority to be a political and contingent, rather than natural and necessary, agent of authorization), he himself is no beginning or end of politics. Instead, his executive office is

⁴⁸¹ Democratic theorists in general acknowledge the political constitution and contestability of the *demos* that is the source of democratic authority and legitimacy. Genuinely radical democrats insist that the constitution of the *demos* is political and contestable 'all the way down'. Less radical and non-radical democrats implicitly or explicitly identify either an incontestable core version of the *demos*, or a value to be realized, or procedure to be respected, that constrains the *demos* no matter how it is constituted. See David Miller's helpful distinction between "R-democrats" and "L-democrats" in "Democracy's Domain," *Philosophy and Public Affairs* 37 no. 3 (2009): 201-228. I discuss these topics in more detail in Chapter 4.

thoroughly political—perhaps even *extra*-political, in a way that resembles the sovereigns of Bodin, Hobbes, Schmitt, and Agamben—and it is ultimately indebted, for its authority, to the nation that Bonaparte constitutes anew. Even the autocratic sovereign is authorized by the collective subject that it constitutes. In Bonaparte's assumption of constituent power, the Rousseauian paradoxes of *popular* sovereignty, which Sieyès hoped to dissolve in the name of democratic transformation, return in an *absolutist* but no less paradoxical form.

This confirms what I have already shown by bringing together Machiavelli's aporias of founding and Rousseau's paradoxes of self-constitution. The paradox of sovereignty is not exclusive to either absolutist or popular sovereignty. Rather, it manifests tendencies of both types and, moreover, suggests a continuity between them. In Machiavelli's thought, this continuity is suggested by the form-giving prince's indebtedness to the people he would constitute; in Rousseau's thought, it is suggested by the Lawgiver's imperiousness over the multitude. Their different philosophical engagements with the paradoxical interrelation of constitution and authorization suggest, respectively, a popular tendency latent in absolutist republicanism and an absolutist tendency in popular republicanism. These tendencies are ambivalently paired in the paradoxical ideal of sovereignty as supreme, independent, and (self-) bounded political authority that constitutes, as its subject, the collective agent of its own authorization.

Sieyès's failure to remove the source of political authority and constitution from political contest demonstrates that there is no outside of political contest. The very act of naturalizing or rendering incontestable an 'ultimate' source of political authority—god, nation, tradition, *ethnos*, etc—is itself a contestable political act. This is what Bonaparte's reconstitution of the French nation illustrates: there is no unauthorized and unconstituted origin of authority and constitution,

so there is no way out of sovereignty's circle of constitution and authorization. Although in this context, the interminability sovereignty's paradox is revealed by the institution of popular *dictatorship*, the idea that there is no ultimately pre-political source of political authority is in fact a basic tenet of *democratic* theory. Democracy institutionalizes, rather than denies, the political constitution of the ultimate source of political authority, the *demos*. In doing so, democracy institutionalizes the circular interdependence of constitution and authorization that is a fundamental characteristic of modern sovereignty. In the next chapter, I will examine the paradoxes that arise from the way that democracies institutionalize contest over the source of democratic authority, and argue that these paradoxes are, in fact, a species of the more general paradox of sovereignty.

CHAPTER IV

DEMOCRATIC PARADOXES AND THE PARADOX OF SOVEREIGNTY

In the previous chapter, I examined the political thought of Machiavelli, Rousseau, and Sieyès in order to show that the paradox of sovereignty is specific to neither absolutist nor popular forms of sovereignty, and that in fact the paradox suggests a continuity between these forms. On one hand, even absolutist forms of sovereignty manifest a popular tendency and democratic potential in the way that the sovereign depends, for its authority, upon the collective subject that it constitutes. On the other hand, even popular forms of sovereignty manifest an absolutist tendency and autocratic potential in the way that the sovereign constitutes, as its collective subject, the agent of its own authorization. These opposed tendencies and political potentials are ambivalently brought together, in a conflictual continuity, within the modern ideal of sovereignty as a kind of imperious and indebted authority that paradoxically engenders its own source of authorization. This continuity is equally evident in Marx's democratic answer to Hegel's ideal of absolute sovereignty and in Bonaparte's autocratic answer to Sieyès's ideal of popular sovereignty.

In instances of popular sovereignty, the absolutist moment is not mitigated by the fact that the sovereign and subject are (ideally) the same collective agent. Rather, the heteronomy illustrated by Rousseau's lawgiver will haunt even the most democratic forms of popular self-constitution, because the exercise of popular constituent authority always exceeds or calls into question its popular authorization. Whereas Machiavelli's form-giving founders are faced with the task of constituting a people via the "power and virtue" that only comes from a constituted

people itself, the ‘founding fathers’ of a democracy are faced with the task of overcoming a democratic deficit that necessarily characterizes the original constitution of a *demos*. As Arendt puts it, “Those who get together to constitute a new government are themselves unconstitutional.”⁴⁸² Democracy continually and self-consciously renegotiates this deficit because it explicitly institutionalizes what Machiavelli implies about republicanism in general, namely that the aporias of foundation are present, not only at the beginning of a polity, but in its everyday maintenance. “Self-governance implies self-constitution,” as Seyla Benhabib writes, and ongoing acts of self-constitution reiterate the paradox of sovereignty for as long as self-government continues.⁴⁸³

In recent democratic theory, the paradox I have traced through the work of Machiavelli and Rousseau, Sieyes and Bonaparte, and Hegel and Marx, appears as a paradox of democratic constitution. This paradox expresses the surprising fact that no *demos* can constitute itself democratically, or with full democratic legitimacy, because any act of democratic self-constitution (or reconstitution) results in a democratic deficit. In this chapter, I turn to political-philosophical responses to this particularly democratic paradox in order to illuminate the political stakes of the paradox of sovereignty.

In part I, I examine Frederick Whelan’s, Seyla Benhabib’s, and Carol Gould’s different but related articulations of the paradox of democratic constitution. I then argue that this paradox is a species of the more fundamental paradox of sovereignty. This enables me to show, in part II, that the paradox of sovereignty cannot be resolved by any act of political closure, or by any appeal to purportedly pre-political sources of authority and constitution. Like the paradox of democracy, the paradox of sovereignty is insoluble, and it reveals, not an inevitable deficit of

⁴⁸² Hannah Arendt, *On Revolution* (New York: Penguin Books, 1977), 175.

⁴⁸³ Seyla Benhabib, *Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004), 19.

democratic legitimacy, but an ever present deficit of constitutive authority. Because sovereign authority paradoxically constitutes its own source of authorization, the acts of inclusion, exclusion, and differentiation by which a sovereign constitutes its collective subject always remain incompletely authorized and perpetually contestable.

Part I: The Paradox of Democratic Constitution

The circular logic that characterizes the modern ideal of sovereignty is especially apparent in a democracy, where ideally the people continually constitutes itself as both collective sovereign and collective subject.⁴⁸⁴ The people-as-sovereign constitutes the people-as-subject, not only in an original moment of founding, but through the myriad and mundane acts of inclusion, exclusion, differentiation, subjection, and self-legislation by which the boundaries of the sovereign's jurisdiction are established, policed, and maintained by its agents. For these constitutive acts to be democratically legitimate, the people-as-subject must continually

⁴⁸⁴ In actual democracies, the people-as-sovereign is not identical with the people-as-subject, insofar as many members of the collective subject do not participate in the exercise of sovereign authority. On one hand, this is because the collective subject will contain non-citizen members, such as resident aliens or non-status refugees. These members are not enfranchised to participate in democratic decision making practices or the operations of government, even though they are subject to those decisions and operations. On the other hand, even many enfranchised citizens also do not participate in democratic decision making or government. Consequently, in even a robust democracy, the collective sovereign and the collective subject will not be substantively identical. This should not give the impression, however, that the individuals excluded from a *demos*'s self-government (but who are nonetheless subject to the acts of differentiation by which the *demos* constitutes itself) are without political agency. For an important study of the political agency of non-status refugees and other non-citizen members, see Peter Nyers, "Taking Rights, Mediating Wrongs: Disagreements over the Political Agency of Non-status Refugees" in *The Politics of Protection*, ed. Jef Huysmans et. al. (London: Routledge, 2006), 48-67. Importantly for the purposes of this dissertation, while Nyers emphasizes the ways that sovereign authority may be *challenged* by non-citizen members of a polity, non-citizen members may also recognize as authoritative—that is, *authorize*—the sovereign. See, for instance, Bonnie Honig, *Democracy and the Foreigner* (Princeton: Princeton University Press, 2001), 75, 93-4. The authorization of the sovereign by its collective subject is not limited to the institutions of citizenship. Rather, the sovereign's internally supreme authority rests on recognition by a collective subject that includes non-citizens, and even the non-enfranchised members of that collective subject may participate, in very different ways, in the authorization (or deauthorization) of the sovereign. In a democracy, this means that even though the people-as-subject is never truly identical with the people-as-sovereign, the authority of the latter rests on authorization by the former, and the means of authorization extend beyond the institutions of democratic participation restricted to enfranchised citizens.

authorize the people-as-sovereign, which it does through myriad and mundane acts of recognition, as well as institutionalized acts of authorization, such as voting. Democratic sovereignty, then, is a matter of the people's continual self-constitution and self-authorization. Both of these self-reflexive acts are mediated by the institutions of democratic government.⁴⁸⁵

In a democracy, the tension between sovereign imperiousness and indebtedness is marked by an apparent deficiency of democratic legitimacy when it comes to the constitution of the democratic people. The democratic people, the *demos*, cannot constitute itself democratically, or according to democratically legitimated means, because a democratic (or democratically legitimated) procedure for constitution presupposes the very *demos* that it would engender. As democratic theorists have famously pointed out, there is a vicious circle or infinite regress here.⁴⁸⁶ This circle or regress, which I will call 'the paradox of democratic constitution' in order to maintain consistency across its various articulations, goes to the heart of democratic legitimacy. It affects not only the original founding, but also the normal, everyday functioning of democratic self-government. Bonnie Honig puts the point well:

Every day, after all, new citizens are born, others immigrate into established regimes, still others mature into adulthood... Every day the traces of the traumas of the founding generation are discernable in the actions of their heirs. Every day, democracies resocialize, recapture, or reinterpellate citizens into their political institutions and culture in ways those citizens do not freely will, nor could they. Every day, in sum, new citizens are received by established regimes, and every

⁴⁸⁵ Through the institutions of government, the people not only legitimates, but actively participates in the authoring of laws, policies, and procedures that determine the extent of its sovereign authority and, correlatively, constitute (itself as) its own collective subject.

⁴⁸⁶ See, for instance, Arendt, *On Revolution*, 175-6; Robert Dahl, *After the Revolution? Authority in a Good Society* (New Haven: Yale University Press, 1970), 46; Frederick Whelan, "Prologue: Democratic Theory and the Boundary Problem," in *Nomos 25: Liberal Democracy*, J. Pennock and J. Chapman, eds. (New York: New York University Press, 1983), 13-47; William Connolly, *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995), 139; Chantal Mouffe, *The Democratic Paradox* (London: Verso 2000); Benhabib, *Rights of Others*, 455, 206, and *Another Cosmopolitanism* (Oxford: Oxford University Press, 2006), 33-5, 167; Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004), 39-41, 174-5; Martin Loughlin and Neil Walker, eds. *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2007); Sofia Näsström, "The Legitimacy of the People," *Political Theory* 35, no. 5 (2007): 624-658; Arash Abizadeh, "Democratic Theory and Border Coercion," *Political Theory* 36, no. 1 (2008): 37-65; Bonnie Honig, *Emergency Politics* (Princeton: Princeton University Press, 2009), 12-39.

day established citizens are reinterpellated into the laws, norms, and expectations of their regimes such that the paradox of politics is replayed rather than overcome in time.⁴⁸⁷

The paradox of democratic constitution continually troubles, not only the democratic people's ability to constitute itself democratically, but also the very identity of the people that would constitute itself. The work of Frederick Whelan, Seyla Benhabib, and Carol Gould makes this clear.

Frederick Whelan's "boundary problem" is a classic statement of the paradox of democratic constitution.⁴⁸⁸ According to Whelan, democratic theory presupposes a constituted people or *demos*, the constitution of which cannot be evaluated according to democratic theory's own criteria of political legitimacy. All types of democratic theory, in Whelan's estimation, evaluate the legitimacy of political decisions on the basis of whether or not the people can be said to participate (in a variety of possible ways) in collective decision-making. But this general criterion for democratic legitimacy presupposes the existence of an already constituted people.⁴⁸⁹ Consequently, the criterion cannot be brought to bear on questions concerning the constitution of the people in the first place—at least not without introducing "a regression from which no procedural escape is possible."⁴⁹⁰ The *demos* cannot be constituted democratically.⁴⁹¹

For Whelan, this is a *boundary* problem because "the establishment of political boundaries," is essential to "the formation of a group of people sharing a common political

⁴⁸⁷ Honig, *Emergency Politics*, 15.

⁴⁸⁸ Whelan, "Democratic Theory and the Boundary Problem," 13-47.

⁴⁸⁹ *Ibid.*, 13-15.

⁴⁹⁰ *Ibid.*, 19. Later, Whelan writes, "We would need to make a prior decision regarding who are entitled to participate in arriving at a solution—and this prior question is frequently just as controversial as the substantive question, and procedurally insoluble" (*Ibid.*, 22).

⁴⁹¹ Whelan's argument "is not intended to discredit democratic theory, but only to establish some of its limitations" in the hope of "moderating some of the sometimes excessive claims that are made in its name" (16, 40). Robert Dahl reaches a similar conclusion: "We cannot solve the problem of the proper scope and domain of democratic units from within democratic theory." Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), 207. This does not mean that the problem is insoluble *beyond* democratic theory and democratic procedures.

identity upon which democracy can be erected.”⁴⁹² As in Chapter 2 above, the relevant boundaries need not be territorial, and the “common political identity” that they inscribe need not be a shared sense of self in any ‘thick’ sense. What is crucial is that boundaries constitute a political group—the people or *demos* of democracy—by differentiating between its members and non-members. Whelan writes:

The problem is one of defining or bounding not geographical units but the membership of the democratic body, or citizenry... The question of boundaries is essentially the question of defining eligibility for membership in the community: democracy refers to self-government by a people, and so a *people* or political “self” must be bounded or set apart from other peoples.⁴⁹³

Boundaries constitute the individuals they inscribe as the collective people that, in a democracy, governs itself. The determination of these boundaries presents an “insoluble” problem for democratic theory because “democracy, which is a method for group decision-making or self-governance, cannot be brought to bear on the logically prior matter of the constitution of the group itself.”⁴⁹⁴ Consequently, democratic theory and practice cannot legitimate the highly political acts of inclusion and exclusion upon which they rest.

These unlegitimated acts are not limited to the initial formation of a polity. Because the people is not constituted through a single, initial instance of boundary-setting, its boundaries are not only momentarily problematic. Rather, the bounded constitution of the people is a source of “continuing controversy and conflict,” because that constitution is continually presupposed and invoked by everyday acts of democratic decision-making. Whelan writes:

Whatever form a democracy takes, collectively binding decisions are made, laws and policies are enacted, and these things are done for and in one way or another by a particular group or *people* that is set apart—and *bound* together—for the

⁴⁹² Ibid., 16.

⁴⁹³ Ibid., 13, 14, 21.

⁴⁹⁴ Ibid., 16, 40.

purposes of self-government from other people or peoples, who are correspondingly excluded.⁴⁹⁵

Although Whelan admits that “a historically given solution” may be necessary to make democracy “practicable,” the problem traverses history insofar as the historical solution will continue to be “determinative of the substantive questions that follow.”⁴⁹⁶ In other words, the moral arbitrariness of any undemocratic act of boundary-setting—which, according to Whelan, is the only kind of boundary-setting there is—will continue to haunt the bounded people’s democratic decisions.⁴⁹⁷

In her recent work, Seyla Benhabib articulates a similar version of the paradox of democratic constitution. Like Whelan, she identifies a deficit of democratic legitimation in the ways that democracies continually reconstitute the self-governing *demos*.⁴⁹⁸ She writes: “Every act of self-legislation is also an act of self-constitution. ‘We, the people’ who agree to bind ourselves by these laws, are also defining ourselves as a “we” in the very act of self-legislation.”⁴⁹⁹ This ongoing process of collective self-constitution depends upon operations of differentiation, inclusion, and exclusion that are legitimated by democratic decision-making processes. These processes necessarily involve *only* those persons who are already inscribed within the *demos*. According to Benhabib, “There is a circularity here: the franchised citizens decide on who the ‘people’ are who are entitled to rule themselves, but the definition of being a

⁴⁹⁵ Ibid., 15.

⁴⁹⁶ Ibid., 16, 22.

⁴⁹⁷ That is, its moral arbitrariness from the point of view of democratic theory, in which, according to Whelan, “democracy is usually offered as the exclusively legitimate method of making binding decisions for a collectivity” (Ibid., 22). Whelan suggests that a “historically given solution” to the boundary problem may be “justifiable or not, by some theory other than democratic theory” (16). It is the “justifiable or not” character of historically contingent ‘solutions’ to the paradox of democratic constitution that I mean to signal with the phrase “moral arbitrariness,” which was helpfully suggested by Alison Jagger in an early discussion of these ideas at the Pacific APA.

⁴⁹⁸ Despite their similarities, Benhabib makes no reference to Whelan, and does not seem to draw upon his work.

⁴⁹⁹ Benhabib, *Another Cosmopolitanism*, 33. “Defining the identity of the democratic people is an ongoing process of constitutional self-creation.” Benhabib, *Rights of Others*, 21.

franchised citizen is being part of the people.”⁵⁰⁰ Because the franchised members of the people exercise an *exclusive* right to differentiate between members and non-members of the people, their acts of differentiation significantly affect others who are not consulted by democratic decision making processes; “Those whose rights to inclusion or exclusion from the *demos* are being decided upon will not themselves be the ones to decide upon these rules.”⁵⁰¹ Consequently, there is a deficit of democratic legitimacy regarding the acts that differentiate between members and non-members of the people and, by extension, the self-constitution of the democratic people itself.

This deficit is problematic from the standpoint of any theory of democratic political legitimation (such as Benhabib’s own combination of discourse ethics and deliberative democratic theory) that holds that democratic deliberation should involve all persons affected by the issues or questions being deliberated.⁵⁰² Benhabib writes:

Because the discourse theory of ethics articulates a universalist moral standpoint, it cannot limit the scope of the *moral conversation* only to those who reside within nationally recognized boundaries... The principle of discourse ethics... demands that all those whose interests are affected by a policy, a norm, and their consequences have a say in their articulation as equals in a practical discourse.⁵⁰³

Because the boundary-setting required by democratic self-constitution necessarily affects outsiders—including foreigners, aliens, potential citizens, and the disenfranchised—who do not have an equal say in deliberations concerning boundaries, democratic self-constitution runs afoul of the universalist principles of discourse ethics.⁵⁰⁴ “Democracies cannot choose the boundaries

⁵⁰⁰ Benhabib, *Another Cosmopolitanism*, 167.

⁵⁰¹ Benhabib, *Rights of Others*, 206.

⁵⁰² See Benhabib, *Rights of Others*, 12-15, 112, and *Another Cosmopolitanism*, 17-20, 32-6.

⁵⁰³ Benhabib, *Another Cosmopolitanism*, 18, and *Rights of Others*, 112.

⁵⁰⁴ The potential universality of this version of the all-affected principle shows that discourse ethics is not by itself a politics, but a frame for the contest of particularities essential to political deliberation.

of their own membership democratically,” because the *demos* that can decide on matters of constitution will always be too exclusive for genuinely democratic decision-making.⁵⁰⁵

According to Benhabib, this paradox is insoluble within the institutional structures of particular democracies. However, once democratic self-constitution is understood as an ongoing process that affects non-members as well as members, the acts of boundary-setting and differentiation necessary for democratic self-constitution can be opened to continual negotiation, revision, and contest through what Benhabib calls “democratic iteration.”⁵⁰⁶ The practice of democratic iteration, which I examine in more detail below, helps to reduce the democratic deficit inherent in the self-constitution of the *demos* by continually contesting the acts of closure that make democracy possible.⁵⁰⁷ However, so long as the legal determination of democracy’s borders ultimately rests with the members of the bounded people itself, the deficit cannot be fully eliminated. The paradox of democratic constitution “can never be fully resolved for democracies,” not even by dynamic and inclusive democratic practices.⁵⁰⁸

Carol Gould also recognizes the paradox of democratic constitution, which she views as a potential obstacle to the development of democratic communities between and beyond the boundaries of existing nation-states. In an era characterized by increasing economic, political, social, and environmental interdependence, individuals and communities everywhere are increasingly affected by social issues and political decisions that originate beyond their own states. In order to preserve and extend the freedom of all persons—but especially those whose

⁵⁰⁵ Ibid., 35.

⁵⁰⁶ “While the paradox that those who are not members of the *demos* will remain affected by its decisions of inclusion and exclusion can never be completely eliminated, its effects can be mitigated through reflexive acts of democratic iteration by the people who critically examines and alters its own practices of exclusion. We can render the distinctions between ‘citizens’ and ‘aliens’, ‘us’ and ‘them’, fluid and negotiable through democratic iterations.” Benhabib, *Rights of Others*, 21.

⁵⁰⁷ Benhabib, *Another Cosmopolitanism*, 68.

⁵⁰⁸ Benhabib, *Rights of Others*, 47. See also Benhabib, *Another Cosmopolitanism*, 35.

human and civil rights are most threatened—Gould articulates a model of democracy in which even distant persons might realize their “equal positive freedom” in relation to one another.⁵⁰⁹

Like the borders of nation-states, the scope of potentially transnational democratic deliberation cannot be determined democratically. Gould writes:

Democracy normatively understood entails a conception of the *demos*, or the collectivity that has the right to participate in democratic decision making, and this is a difficult issue for global democratic theory. Indeed, it gives rise to one of the many paradoxes of democracy, inasmuch as the issue of who gets to make democratic decisions—the scope of the *demos*—cannot itself be settled democratically without an infinite regress.⁵¹⁰

Like Whelan and Benhabib, Gould understands the paradox of democratic constitution as a decisive obstacle to any straightforwardly democratic procedure for determining the boundaries of democracy: “It would thus seem that issues of membership in a *demos* (or citizenship)... require an appeal to concepts beyond those of self-determination or self-rule per se.”⁵¹¹ In response to this obstacle, Gould articulates two principles for determining the scope of democracy according to democratic norms, if not democratic procedure.⁵¹² These are the common activities criterion and a restricted version of the “all-affected” principle that tracks impact on human rights.⁵¹³ I will examine these two principles below. For now, it is important to note that although Gould proposes them as means to realize the more fundamental norm that democracy itself serves, namely equal positive freedom, the principles are intended to mitigate

⁵⁰⁹ Gould, *Globalizing Democracy*, 34-7, and “Structuring Global Democracy: Political Communities, Universal Human Rights, and Transnational Representation,” *Metaphilosophy* 40, no. 1 (2009): 28.

⁵¹⁰ Gould, *Globalizing Democracy*, 174. Earlier in *Globalizing Democracy*, Gould refers to a “constitutional circle” that loosely resembles the vicious circle described by Arendt in her remarks on constituent power (Arendt, *On Revolution*, 175-6). The constitutional circle is a different expression of the same circular logic that underlies the paradox of democratic constitution: whatever acts are necessary to make democracy possible, they cannot themselves be democratic without invoking a regress or vicious circle. Gould briefly examines this circular logic in *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society* (Cambridge: Cambridge University Press, 1988), which contains the kernel of her later articulation of the constitutional circle (127, 224-5).

⁵¹¹ Gould, *Globalizing Democracy*, 175.

⁵¹² Omar Dahbour takes up a similar strategy in “Borders, Consent, and Democracy,” *Journal of Social Philosophy* 36, no. 2 (2005): 255-272.

⁵¹³ Gould, *Globalizing Democracy*, 174-8, 210-2, and “Structuring Global Democracy,” 28-31.

the undemocratic effects of the paradox of democratic constitution without actually dissolving the paradox itself.⁵¹⁴ For Gould as for Whelan and Benhabib, democratic constitution can *never* be fully legitimated according to strictly democratic procedure.

The paradox of democratic constitution might be read as a regress problem. On this interpretation, the legitimate constitution of a *demos* requires and presupposes some already existing and legitimately constituted *demos*, which can use a democratic decision-procedure to decide upon the boundaries of the new *demos*. This regress is potentially infinite.⁵¹⁵ Every legitimately constituted *demos* presupposes a prior, legitimately constituted *demos*, and if any *demos* is not legitimately constituted (the very first one, for example), then the legitimacy of all subsequent *demos* is jeopardized.

However, this reading of the paradox does not illuminate the deeper problem, which takes the form of a vicious circle rather than a regress. Democracy requires and presupposes, not merely the legitimate constitution of the *demos* by just any other *demos*, but the legitimate constitution of the *demos* by *itself*. As Gould puts it, “Democracy itself has to be self-determined rather than other-determined or imposed.”⁵¹⁶ An act of democratic constitution can never be democratic ‘all the way down’, not because this requires *an* existing *demos* and democratic procedure, but because it requires *the very demos* that is to be constituted. This is the meaning of the democratic deficit that attends democratic constitution: genuinely democratic constitution is

⁵¹⁴ Gould, *Globalizing Democracy*, 34-7, 174-5.

⁵¹⁵ Abizadeh implicitly interprets Whelan’s boundary problem as a regress when he proposes to solve it by appealing to a global meta-*demos* consisting of all persons. Abizadeh, “Democratic Theory,” 37-65. Issues of impracticality aside, Abizadeh’s solution fails because the problem is a vicious circle, not a regress, so it cannot be solved by appealing to a prior or wider *demos*. Even though Abizadeh does not solve the problem according to its own terms, his proposed solution is an important complement to Benhabib’s and Gould’s responses to the paradoxes of democratic constitution. Like them, he appeals to normatively democratic criteria for democratic inclusion, rather than strictly defined democratic decision procedures (because the *demos* deciding is not the *demos* being decided for).

⁵¹⁶ Gould, “Self-Determination Beyond Sovereignty: Relating Transnational Democracy to Local Autonomy,” *Journal of Social Philosophy* 37, no. 1 (2006): 52. In its original context, this remark does not invoke a vicious circle because it refers to an already determined collective self defined by the common activity of its members. See below, page 213-4.

self-constitution, which requires authorization, not from some other collective self, but from the *constituted* collective self. Democratic constitution is never democratic enough, because the source of democratic legitimacy lags behind the constitutive act that requires it. This does not mean, of course, that democracies are impossible to constitute, or that actually constituted and self-constituting democracies are not genuine democracies. Rather, it simply confirms what Whelan, Benhabib, and Gould all claim: democracy is not self-legitimizing.

This deeper interpretation of the paradox illuminates the connection between the paradox of democratic constitution and the paradox of sovereignty. The circle that prevents genuinely democratic self-constitution is a specific version of the circle that characterizes any sovereign's constitution of its collective subject. *Every* sovereign depends, for its constitutive authority, not upon *just any* collective subject, but upon the collective subject that it constitutes via its authority. In instances of democratic constitution or reconstitution, the people-as-sovereign constitutes the people-as-subject, but the legitimacy of the constitutive act depends upon, not some prior version of the people, or some other democratic people, or even some more expansive notion of the people, but upon the people-as-subject itself.⁵¹⁷ The democratic deficit that inevitably results is *one particular expression* of the indebtedness that characterizes *every* sovereign's constitution of its own collective subject. The paradox of democratic constitution, then, is a species of the paradox of sovereignty.

⁵¹⁷ This is why, in *Democracy and the Foreigner* (Princeton: Princeton University Press, 2001), Honig notes that it is newly arriving and naturalizing immigrants that legitimate the democratic state by enacting the fantasy of freely chosen, consensual membership (75, 93-4). Legitimacy comes from the new *demos as it is being formed*, in and after the acts of differentiation, inclusion, and exclusion that form it, rather than from the *demos* prior to such acts. This means that the acts themselves are imperfectly legitimated at the moment of their performance; the act of democratic constitution exceeds the legitimacy that comes from the constitution itself. This may be interpreted in terms of an act of founding violence that is repeated throughout the life of a democratic regime, or an exceptional situation that escapes the rule of law. However, it may also be interpreted as a falling-short of legitimation (or authorization) that presents an opportunity for political innovation, renewal, and contest. This is the interpretation that I, following Honig and others, take below.

Democracy makes sovereign indebtedness especially visible, because it upholds an explicitly institutionalized norm that goes unsatisfied in the act of constitution: democratically legitimate self-government, which implies legitimate *self*-constitution. In undemocratic instances of sovereignty, there is a similar norm, although one that is not usually so explicitly institutionalized: authority.⁵¹⁸ As I argued in Chapter 1, authority cannot be exercised without the authorization of the subjects over which it is exercised. As I argued in the brief interlude between Chapters 2 and 3, *sovereign* authority, in order to be internally supreme and externally independent, must be authorized by the *collective* subject over which it is exercised, and which it constitutes. In the same way that a *demos* cannot be constituted in a way that is fully democratic, because doing so would presuppose the constituted *demos*, an undemocratic sovereign's collective subject cannot be constituted in a way that is fully authoritative—that is, in the way characteristic of sovereignty—because doing so would presuppose the constituted collective subject. In both cases, the circular logic is the same: the act of constitution's "effect would have to become the cause."⁵¹⁹ The circular logic that characterizes democracy is thus not exclusive to democracy. Rather, it lies at the heart of the modern ideal of sovereignty itself, insofar as internally supreme, externally independent, and (self-)bounded political authority must, in order to be supreme, independent, self-bounding, *and authoritative*, constitute, as its collective subject, its own source of authorization.

In fact, democracy can be described as the institutionalization of the interminability of the paradox of sovereignty. In an ideally democratic polity, the ultimate source of authority—the *demos*—is always open to contestation, (re)constitution, and (re)authorization. Contest over the

⁵¹⁸ See above, page 2. In fact, it may be that in some cases, the effective exercise of sovereignty depends upon *not* explicitly institutionalizing (or even actively obscuring) the authority relation that binds the sovereign and its collective subject, insofar as that relation entails the sovereign's indebtedness to its subject.

⁵¹⁹ Jean-Jacques Rousseau, *On the Social Contract* (Cambridge: Cambridge University Press, 1997), 71.

constitution of the *demos* is part of the normal functioning, rather than the exceptional breakdown, of democratic activity: “Self-governance implies self-constitution.”⁵²⁰ Some democratic theories and practices deny that there is an ultimate source of authority or constitution beyond contestation. From the perspective of a thoroughly democratic politics, there is no natural and indisputable font of political legitimacy and no essential and immutable version of the people.

The absence of any original or final source of incontestable authority may be a truism of democracy, but it is an unexpected truth of sovereignty. Sovereignty does not present itself as fundamentally contestable; it appears as an *end* or *resolution*, rather than a site, of political contest. One interpretation of sovereignty’s paradoxical structure would seem to vindicate this appearance. Sovereign authority can be read as *so* imperious that, in constituting its own collective subject, the sovereign essentially *authorizes itself* by literally bringing into existence the basis of its own authority. In this closed circle, the sovereign would seem to be *always-already* authorized, or at least always able to secure its own authorization, because it alone is uniquely capable of manufacturing the collective agent that, in a modern world characterized by an absence of external reservoirs of authority, is the only viable source of sovereign authority. On this interpretation of the paradox, sovereignty is the *end* or *conclusion* of politics.

Critical attention to the paradox of democratic constitution suggests against this reading of sovereignty’s paradox. In a way analogous to the deficit that characterizes democratic self-constitution, the sovereign cannot authoritatively constitute its source of authorization, the people, because doing so presupposes the authorization of the people that is yet to be constituted. On this alternative reading, sovereign authority is *so* indebted that the sovereign constantly has to continually constitute the collective subject that it needs for its authority—and this need presents

⁵²⁰ Benhabib, *Rights of Others*, 19.

an opportunity for challenging sovereign authority. In *this* closed circle, the sovereign is always *under-authorized*, at least with regard to its constitutive acts, because the source of its constitutive authority always appears too late.⁵²¹ The sovereign's constitution of its own collective subject is not an *end* to politics, but a site of, and occasion for, political contest.

To Whelan, Benhabib, and Gould, the practical and logical inability of a *demos* to determine its boundaries and constitute itself through democratic means suggests a *limit* to democracy's self-legitimation. There is something in democracy's conditions of possibility that necessarily escapes democratic procedures of legitimation, such that the constitution and legitimation of any particular *demos* is always indeterminately or incompletely achieved by democratic procedure. Alan Keenan puts the point well: "The closures necessary to the people's identity and rule, then, in a paradox typical of democratic self-rule, mean that the people never in fact completely closes in on itself, never reaches completion or achievement."⁵²² Insofar as democratic legitimacy requires a constituted *demos*, legitimacy lags behind constitution. This means that the act of constitution, as well as its outcome—the constituted *demos*—is never fully legitimated or finally accomplished.

The same holds true for sovereignty itself, even in its undemocratic forms, because of the paradoxical interrelation of constitution and authorization that is characteristic of sovereignty. In the same way that the circular logic of democratic (self-)legitimation and (self-)constitution entails that democracy is never fully self-legitimated, the circular logic of sovereign

⁵²¹ William Connolly expresses this well, in a formulation that has significantly influenced my thinking: "Sovereignty always occurs after the moment it claims to occupy. The paradox of politics/sovereignty resides in this temporal gap between act and the consent that enables it. And this temporal gap contains an element of arbitrariness that cannot be eliminated from political life." Connolly, *Ethos of Pluralization*, 139. For Connolly, the paradox of sovereignty is primarily this temporal gap, which can be overcome in time. On my interpretation of sovereignty's paradox, which follows Honig's criticisms of Connolly (but *pace* Honig, locates the paradox in sovereignty rather than only in democracy), the circular structure of authorization and constitution is practically and theoretically insoluble. See Honig, *Emergency Politics*, Chapter 1. I also do not conflate the authorization of sovereignty with consent, as Connolly appears to in the passage above.

⁵²² Keenan, *Democracy in Question* (Stanford: Stanford University Press, 2003), 11.

authorization and constitution entails that sovereignty is never fully self-authorized. This is the surprising lesson that the paradox of democratic constitution suggests for the paradox of sovereignty: It is *because* a sovereign constitutes the basis of its own authority—its collective subject—that the constitutive authority of the sovereign, and the constitution of its subject, always remain politically contestable, indeterminate, and incomplete. Sovereignty is a particular kind of political authority that constitutes ‘the people’ over which it rules, but ‘the people’ is never fully and finally constituted by sovereign authority.

Part II: Closure and Contest

The necessary incompleteness of the sovereign’s authority and the subject’s constitution presents an ambiguous opportunity for politically negotiating the paradox of sovereignty. On one hand, the circular interrelation of authority and constitution may invite, or even require, an unauthorized, unlegitimated, and potentially violent act of constitution to initially define the collective subject that can be the source of sovereign authority. In other words, the chicken-or-egg structure of sovereignty may require that the constitution of the people be, at least initially, posited, decided, or otherwise determined by historically contingent and potentially arbitrary means, rather than rather through an exercise of authority.⁵²³ On the other hand, the paradoxical interdependence of authorization and constitution may invite, or even require, perpetual contest over *any* act of constitution that defines the sovereign’s collective subject. If no sovereign act of constitution can be fully authorized, then the outcome of every such act—the constitution of the any sovereign’s collective subject—is open to political contest.

⁵²³ See above, page 180, note 497.

In other words, the paradox of sovereignty may be negotiated through accepting historically contingent acts of political closure or through ongoing political contest. Both of these strategies have been explored as potential responses to the paradox of democratic constitution. In the remainder of this chapter, I will examine each approach to the democratic form of the paradox in order to clarify the political stakes of the paradox of sovereignty more generally. I will argue that the first strategy—the strategy of political closure—has been essential to modern and contemporary practices of sovereignty. Put more boldly, the paradox of sovereignty has historically been suppressed, in actual political practice, by unauthorized determinations of ‘the people’ that, when taken for granted, constrain possibilities for any deeply democratic form of popular self-determination. Turning to the second strategy—the strategy of continual contest—I will loosely follow the work of Benhabib and Gould to suggest how the paradox of sovereignty might be acknowledged, rather than suppressed, in ways that may enable, rather than disable, democratic self-determination.

Closure

Like the paradox of democratic constitution, the paradox of sovereignty expresses a circular interdependence of authorization and constitution that cannot be interrupted, initiated, or ended through any final or complete act of constitution or authorization. This does not mean, however, that sovereign authorization and constitution are impossible. It means, rather, that sovereign constitutive authority is not authoritative ‘all the way down’ and, consequently, the constitution of the sovereign’s collective subject is never authoritatively accomplished. The constitution of the people must ultimately rest on something other than an act of sovereign constitutive authority.

With regard to democratic versions of the paradox of sovereignty, the implication is that democracy rests on undemocratic foundations. If democratic self-constitution can never be fully democratically legitimated, then democratic procedure taken by itself lacks the normative resources for ruling out any historically contingent acts of closure that differentiate members from non-members. Furthermore, democracy seems to initially *require* an unlegitimated act of closure in order to originally establish the *demos* necessary for future democratic legitimation. This appears to be the lesson that Whelan draws from his exploration of democracy's boundary problem. He writes:

It may be that democracy is practicable only when a historically given solution of this issue (justifiable or not, by some theory other than democratic theory) is acceptable... It appears that our only choices are to abide by the arbitrary verdicts of history or war, or to appeal on an *ad hoc* basis to other principles, none of which commands general respect.⁵²⁴

Whelan concludes by noting the boundary problem reveals “one of the limits of the applicability of democracy,” which suggests that “historically given” and “*ad hoc*” solutions do most, if not all, of the work of determining the boundaries of actual democracies.⁵²⁵ This will come as no surprise to political historians, and of course Whelan is not alone in noting the undemocratic and morally arbitrary foundations of democracies.⁵²⁶

⁵²⁴ Whelan, “Democratic Theory and the Boundary Problem,” 16, 40. Whelan notes that a given solution to the problem, no matter how arbitrary, should be “acceptable,” if not “justifiable.” The problem becomes all the more difficult when we ask: *Who* must accept a particular solution to the paradox?

⁵²⁵ *Ibid.*, 42. Gould mentions the idea of using this kind of “historical view” as an undemocratic criterion for democratic inclusion: “Yet another citizenship-based approach could stress instead that it is simply a matter of being situated together with others within boundaries, where these may be historically given or even arbitrary, that gives rise to rights to participate.” Gould, *Globalizing Democracy*, 175. She rejects this strategy by proposing her own two principles for democratic inclusion.

⁵²⁶ Habermas, for instance, writes: “In the real world, who gains the power to define the boundaries of a political community is settled by historical chance and the actual course of events—normally, by the arbitrary outcomes of wars or civil wars. It is a theoretical mistake with grave practical consequences, one dating back to the nineteenth century, to assume that this question can also be answered in normative terms with reference to a right to national self-determination.” Jürgen Habermas, “The European Nation-State: On the Past and Future of Sovereignty and Citizenship” in *Inclusion of the Other: Studies in Political Theory*, C. Ciaron and P. de Greiff, eds. (Cambridge: MIT Press, 2000), 115.

What is surprising, however, is that the historical contingency at the core of democratic politics is frequently built into the foundations of normative democratic theory. In her own exploration of the paradox of democratic constitution, Sophia Näsström argues that John Rawls, Michael Walzer, Rogers M. Smith, Jürgen Habermas, Benhabib, and others problematically accept historical acts of political closure as the starting points, rather than sites or occasions, of normative inquiry.⁵²⁷ In some cases, contrary to Näsström’s claims, this decision is merely a matter of these theorists ensuring that their normative work makes contact with the ‘real world’ of political practice.⁵²⁸ In other cases, however, Näsström convincingly argues that normative theorizing concedes too much to the morally arbitrary vicissitudes of history by accepting historical determinations of the people as frameworks for, rather than occasions for, theoretical inquiry. The most general point, however, is that in normative democratic theory as well as in actual democratic practice, the paradox of democratic constitution is frequently ‘dissolved’ or ignored by accepting or presupposing historically contingent and democratically illegitimated acts of political closure.

When this point is appropriated for an analysis of the paradox of *sovereignty*, we can see that, in both theory and practice, the boundaries of *territory* provide the historically contingent means of political closure that determines—without authoritatively constituting—the collective subject over which sovereignty is exercised. The paradox of sovereignty can be ‘dissolved’ by inscribing the limits of sovereign authority, and correlatively the constitutive boundaries of the people, within the apparently given boundaries of a particular territory. However, when the

⁵²⁷ Näsström, “Legitimacy of the People,” 624-658. For similar arguments, see Margaret Canovan, *Nationhood and Political Theory* (Brookfield, Vermont: Edward Elgar, 1996) and Keenan, *Democracy in Question*.

⁵²⁸ Näsström’s specific criticisms of Habermas and Benhabib, for example, are overstated. Given a world of historical injustices, theorizing “a retroactive process of legitimacy” is not the same as removing questions of constitutional legitimacy from normative inquiry (or political engagement). Näsström, “Legitimacy of the People,” 632. Nor is it the same as denying “the gap in the constitution of the people,” which, as I have shown, Benhabib takes seriously (*Ibid.*, 631). Nonetheless, Näsström’s overall argument is generally instructive, and some of her criticisms inform my examination of Benhabib’s work below.

people itself appears as a consequence of geography, rather than as both a cause and an effect of a particular political relation, the circular logic of constitution and authorization is grounded, not in some external reservoir of sovereign authority, but in an apparently pre-political frame, or container, for the constitution of the collective subject. When this kind of “historically given” or “*ad hoc*” solution to the paradox of sovereignty is most effective, it suppresses the paradox altogether, although without finally dissolving it, as I argue below.⁵²⁹ The modern ideal of sovereignty does not generally *appear* paradoxical, because its territorial framework is generally taken for granted.

In Chapter 2, I argued that sovereignty must necessarily be bounded, but that its boundaries need not be territorial. There is no logically or conceptually necessary connection between the boundaries of sovereign authority and the boundaries of territory, although there is a strong historical connection between them. This historical connection is based on a functional relation in which territory—or, more accurately, *territoriality*, as “a powerful geographic strategy to control people and things by controlling area”—facilitates the realization of the modern ideal of sovereignty.⁵³⁰ Although it is beyond the scope of this dissertation to provide a detailed analysis of the historical and functional relations between sovereignty and territory, I will sketch the outlines of such an analysis in order to show how territoriality facilitates the unauthorized

⁵²⁹ Whelan, “Democratic Theory and the Boundary Problem,” 42.

⁵³⁰ Robert Sack, *Human Territoriality* (Cambridge: Cambridge University Press, 1986), 5. Recently, Avery Kolers has drawn upon Sack’s widely influential work to define territoriality as “a strategy of bounding and controlling, and thereby making, geographic places” by regulating “the flows of people across the border and within the place itself.” Kolers, *Land, Conflict, and Justice: A Political Theory of Territory* (Cambridge: Cambridge University Press, 2009), 4. See also John Agnew, *Globalization and Sovereignty* (New York: Rowman and Littlefield, 2009), 29: “*Territoriality* is the strategic use of territory to attain organizational goals.” The emphasis of geographers on territorial “strategies” can be misleading. Territoriality involves conscious orientations to territory, but, as Sack notes, the particular effects and tendencies of territorial strategies need not be intended by territorial actors. Sack, *Human Territoriality*, 31. More generally, territoriality functions like a generalized ‘social logic’ or ‘rules of the game’ that governs the practical and perceptual organization of power, persons, and space.

acts of political closure that perform—but do not actually achieve—the resolution of sovereignty’s paradox.

The modern link between sovereignty and territory is frequently associated with the 1648 Treaties of Westphalia, although, of course, geographically organized authority predates the treaties. Nonetheless, the treaties formalize a distinct “sovereign territorial ideal” that emerged out of the decline of medieval systems of authority, and was later embodied in the development of modern European states.⁵³¹ Whereas medieval systems of authority were characterized by translocal rule over *persons*—in particular, networks of personal loyalty or unbounded communities of followers—the Westphalian ideal of sovereignty can be characterized as localized rule over geographic *space*, and, in particular, over exclusive, “self-enclosed territorial domains.”⁵³² Although there have always been competitors and exceptions to the territorial ideal of sovereignty, today the hegemony of territorial sovereignty has been so thoroughly achieved—partly through political aspiration, and partly through imperial, colonial, and capitalist imposition—that proponents and critics of sovereignty alike tend to associate the political ideal of sovereignty with its territorial mode of realization.⁵³³

The transition from unbounded medieval authority to bounded modern sovereignty was, with regard to subjects, a transition from a life of multiple, overlapping, and competing political obligations and allegiances to a life in which one source of political obligation and allegiance

⁵³¹ Alexander Murphy, “The Sovereign State System as a Political-Territorial Ideal: Historical and Contemporary Considerations” in *State Sovereignty as a Social Construct*, T. Biersterker and C. Weber, eds. (Cambridge: Cambridge University Press, 1996), 82. See also Joseph Strayer, *On the Medieval Origins of the Modern State* (Princeton: Princeton University Press, 1970); Hendrick Spruyt, *The Sovereign State and Its Competitors* (Princeton: Princeton University Press, 1996); James Caporaso, “Changes in the Westphalian Order: Territory, Public Authority and Sovereignty,” *International Studies Review* 2, no. 2 (2000): 1-28; Daniel Philpott, *Revolutions in Sovereignty* (Princeton: Princeton University Press, 2001), especially Chapters 3, 5, 6; Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2006), especially Chapter 2.

⁵³² Neil Brenner, “Beyond State-centrism? Space, Territoriality, and Geographical Scale in Globalization Studies,” *Theory and Society* 28, no. 1 (1999): 45.

⁵³³ John Agnew convincingly argues that debates concerning globalization *versus* sovereignty have strengthened the assumption that sovereignty is necessarily territorial. See Agnew, *Globalization and Sovereignty*, especially Chapters 1 and 2.

could make an intelligible claim to trump all others.⁵³⁴ Territoriality, as a strategy of controlling people by controlling bounded geographic space, was instrumental to this transition. Three functions of territoriality in particular have been crucial to suppressing the paradox of sovereignty.

First, territoriality mediates authority and subjection by providing a visible, imaginable, and easily determinable framework for secular, impersonal, and abstract forms of political authority.⁵³⁵ Saskia Sassen details the importance of these effects to the development of modern sovereignty. She writes:

The national territorial state became the final locus of authority rather than a monarch's divinity, a lord's nobility, or the claims of religious bodies. It repositioned the meaning of membership toward a territorial collectivity derived from a complex abstract authority that could not be reduced to a divine king or "superior caste" of the nobility.⁵³⁶

Once political authority and subjection are localized to a particular territory, the territory *itself*—rather than personal allegiance, fidelity to a set of beliefs, or identification with the interests of particular rulers—can become the relevant framework for command and obedience.⁵³⁷ This, in turn, facilitates the removal of the basis of sovereign authority from contest, insofar as the sovereign's exercise of constitutive authority, and its indebtedness to the constituted subject, are presented as separate relations between the sovereign and the territory, and the territory and the subjects. On one hand, the territory appears as the entity over which the sovereign rightfully rules: "Territory is so important to political governance in part because it provides a locus for the exercise of political authority over a range of interests and initiatives... It allows political claims

⁵³⁴ See Chapter 2, pages 64-6, above.

⁵³⁵ Sack, *Human Territoriality*, 32-3, 38; Sassen, *Territory, Authority, Rights*, 72, 80-1.

⁵³⁶ Sassen, *Territory, Authority, Rights*, 80.

⁵³⁷ John Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organization* 47, no. 1 (1993): 151.

to be operationalized—they become claims over the regulation of space.⁵³⁸ On the other hand, the territory also becomes the entity in which subjects locate their common allegiance and obligation: “Effective territories were units where *decision space*, the writ of effective legislation, shared the same boundaries with *identity space*, the extended turf that claimed citizens’ loyalties... [and] to which ordinary men and women tended to ascribe their most meaningful public loyalties.”⁵³⁹ In this way, territoriality mediates the authority’s prerogative to command and the subject’s obligation to obey by introducing a material body—the territory—as the site of authority and subjection.⁵⁴⁰ This material body provides a particular, concrete localization within which supreme and independent authority can be exercised universally and abstractly, through legal-political apparatuses rather than through direct rule over particular persons, groups, and communities.⁵⁴¹

Second, territoriality objectifies the jurisdiction of authority.⁵⁴² Geographer Jean Gottman writes, “As the concept of a corporate national sovereignty gradually replaced the personal prerogatives of the individual sovereign, territorial delimitation acquired much more significance: it fixed limits to the spatial extent of sovereignty and outlined the size and location

⁵³⁸ Murphy, “The Sovereign State System,” 110; Charles Maier, “Transformations of Territoriality: 1600-2000” in *Transnationale Geschichte: Themen, Tendenzen und Theorien*. Edited by G. Budde, et al. (Göttingen: Vandenhoeck & Ruprecht, 2006), 36.

⁵³⁹ Maier, “Transformations of Territoriality,” 35, 48.

⁵⁴⁰ As Claude Lefort writes, “The image of the immortal body of the king is grafted onto that of the territorial state... A whole segment of the history of beliefs remains hidden if we ignore how transcendence was transferred into the frontiers of worldly space.” Lefort, *Democracy and Political Theory*. D. Macey, trans. (Cambridge: Polity Press, 1988.), 269. See also Ernst Kantorowicz, *The King’s Two Bodies* (Princeton: Princeton University Press, 1997).

⁵⁴¹ The territorial body of modern sovereignty is concrete enough to provide the visibility and tangibility that Walzer indicates when he writes, “The state is invisible; it must be personified before it can be seen, symbolized before it can be loved, imagined before it can be conceived.” Michael Walzer, “On the Role of Symbolism in Political Thought,” *Political Science Quarterly*, 82, no. 2 (1967): 193. At the same time, the territorial body is abstract enough to preserve some of the impersonal and universal character of ecclesiastical and imperial systems of authority. Thus, the territorial localization of sovereignty splits the difference between the personal networks of feudal authority and the universal systems of ecclesiastical and imperial rule that were declining in the late medieval period.

⁵⁴² “Territoriality provides a means of *reifying* power.” Sack, *Human Territoriality*, 32.

of it.”⁵⁴³ This does not mean that territories *themselves* limit the exercise of sovereignty, although there may indeed be practical geographic constraints to the exercise of sovereign authority. Rather, sovereigns can, in relation to their subjects and to one another, map the jurisdiction of their own authority onto specific territories. This geographic delimitation of sovereignty objectifies the limits of sovereign authority such that they appear, not as the variable outcomes of (internal) interactions of authorization and subjection and (external) negotiations, through which sovereigns continually bound themselves, but as political resources which must be brought under sovereign authority.

Territoriality delimits sovereign authority, but sovereign authority is not undermined or eroded by territoriality. Rather, territorial bounding facilitates sovereignty, insofar as the borders of a territory provide a means of marking, knowing, and enforcing the limits, and so also the extent, of supreme and independent authority. The coherence of sovereignty’s boundedness allows for coherent regulation of the flow of people and things into and out of the scope of political authority, and enables authorities to coherently organize the relations between actors within that scope. Thus, the territorial organization of sovereignty enables a rationalization of authorization and subjection generally, and legality in particular, that were impossible under medieval systems of authority. For this reason, Max Weber identifies territoriality as “an essentially defining feature” of the modern state.⁵⁴⁴ Moreover, territorial boundaries provide physical sites where potentially competing spheres of sovereignty can be differentiated and negotiated. Territory gives states something to fight over in negotiations of independence, and it

⁵⁴³ Jean Gottman, *The Significance of Territory*, 49. Caporaso writes, “Territoriality is also used to denote a principle of political organization that delimits the spatial scope of public authority. In this usage, the reach of public political authority is coterminous with the physical boundaries of the state, that is, with its geographic borders... Territoriality links politics as authoritative rule with the geographical reach of this rule.” Caporaso, “Changes in the Westphalian Order,” 7.

⁵⁴⁴ Weber, “Politics as a Vocation” in *The Vocation Lectures*, D. Owen and T. Strong, eds (Indianapolis: Hackett, 2004), 33.

provides clear markers for violations of non-interference norms. This, in turn, enables the rationalization of the modern interstate system and the development of a coherent body of international law.⁵⁴⁵ Taken together, these effects suggest that the territorial delimitation of sovereign authority, far from undermining that authority, in fact makes it more effective with respect to the internal and external aspects that territoriality helps to differentiate.

Third, and most importantly for this dissertation, territoriality provides a coherent means of grouping the subjects of sovereign authority and differentiating this group from political actors who are not subject to the sovereign. This is a corollary of the previous function. The boundaries of sovereign authority are, correlatively, the limits of subjection to that authority, and when the boundaries of sovereignty are effectively mapped onto territory, subjection to sovereignty is determined, with some determinate exceptions, by location within a geographic area, rather than through an immediate negotiation of sovereign command and obedience.⁵⁴⁶ An individual is a subject of the king, or a member of “We the people,” by virtue of a *fact* concerning birth, residency, or location in a particular geographic area. In his study of the origins of the modern state, Hendrik Spruyt expresses this well:

The modern state defines the human collectivity in a completely novel way. It defines individuals by spatial markers, regardless of kin, tribal affiliation, or

⁵⁴⁵ This is not to say that the territorial limits of sovereign authority are always, or even frequently, respected within that system. See Steven Krasner’s *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999) for a catalogue of instances in which state authority reaches beyond territorial boundaries. For a note of caution about Krasner’s analyses, see page 97, above.

⁵⁴⁶ In his historical analysis of international relations, Ruggie emphasizes that the territorial organization of subjection is essential to modern sovereignty: “The distinctive feature of the modern system of rule is that it has differentiated its subject collectively into territorially defined, fixed and mutually exclusive enclaves of legitimate dominion.” Ruggie, “Territoriality and Beyond,” 151. Territorial criteria for subjection are also essential to Weber’s definition of the modern state, and political community more broadly. In *Economy and Society*, he writes: “The term political community’ shall apply to a community whose social action is aimed at subordinating to orderly domination by the participants a ‘territory’ and the conduct of the persons within it, through readiness to resort to physical force, including normally force of arms. *The territory must at any time be in some way determinable, but it need not be constant or definitely limited. The persons are those who are in the territory either permanently or temporarily.*” Weber, *Economy and Society: An Outline of Interpretive Sociology*, G. Roth and C. Wittich, eds. (Berkeley: University of California Press, 1978), II:901, italics added.

religious beliefs. Individuals are in a sense amorphous and undifferentiated entities who are given an identity *simply by their location in a particular area*.⁵⁴⁷

Of course, territories *themselves* do not subject subjects. Rather, territoriality provides coherent criteria for subjection, and these criteria play a double role. First, the control and bounding of territorial space designates *which* actors are subject to a particular sovereign (i.e., the one whose authority is coextensive with the territory).⁵⁴⁸ Second, and less directly, the control and bounding of territorial space designates *whether* a particular actor is subject to a particular sovereign.⁵⁴⁹ In this regard, territoriality does not justify subjection to sovereign authority, but it clarifies when an actor is subject to that authority. According to the modern territorial ideal of sovereignty, an actor is generally subject to a particular sovereign when he or she is within the territorial domain of the sovereign's authority.⁵⁵⁰

The territorial boundaries of sovereignty do not merely differentiate between individual subjects and non-subjects. They also provide criteria for defining the collective subject of sovereignty. As discussed in Chapter 2, to be included within a sphere of sovereign authority is to be constituted, along with all other subjects, as the collective subject of sovereignty. This is not the constitution of a collective identity in any 'thick' sense, but it is the constitution of a determinate collective subject, in which individual members are united by their common subjection and differentiated, individually and as a group, from political actors that are not

⁵⁴⁷ Spruyt, *The Sovereign State*, 35, italics added.

⁵⁴⁸ "Territoriality is... a principle that defines the set of people over whom the holder of sovereignty rules. They are to be identified, territoriality says, by virtue of their location within borders." Philpot, *Revolutions in Sovereignty*, 17.

⁵⁴⁹ Philpot implies that territoriality is not a criteria of moral justification, but a criteria of jurisdiction: "The question to which territoriality provides the answer is, By virtue of what quality are citizens subject to their governing authority?... It is by virtue of their residence in a state, one demarcated by boundaries, by lines drawn in the sand, or through the woods, or along a river, or at the extent of a general's conquest" (Ibid.)

⁵⁵⁰ For example, one must follow local laws, and can be arrested for violating them, when travelling in a foreign country. There are, of course, exceptions and complications to this, as there are for all aspects of the modern ideal of sovereignty. Importantly, however, the most obvious complicating examples (exceptional cases of extradition or diplomatic immunity) do not motivate against the prevalence of territorial sovereignty per se, unless the legal systems involved are truly transnational.

subject to the same sovereign.⁵⁵¹ In a territorialized system of sovereignty, geographic borders designate which actors make up the sovereign's collective subject. The collective subject is composed of all actors—again, with determinate exceptions—within the territorial boundaries of sovereign authority. As a corollary to the second function, it can be said that territoriality objectifies the composition of the collective subject of sovereignty such that it appears, not as an outcome of a dynamic political relation of authorization and subjection, but as a political resource that makes sovereign authority possible.

In short, territoriality facilitates the achievement of modern sovereignty by providing a mediating framework for the exercise of sovereign authority, objectifying its jurisdiction, and objectifying the collective subject of that authority. Territory itself does not perform these functions; rather, appearances to the contrary notwithstanding, not territory but political agents perform them. In particular, *sovereigns* perform these functions, by bounding their own authority and constituting their own collective subjects. Nonetheless, territoriality—as a strategy for controlling people by defining and controlling space—enables sovereign acts of self-bounding and constitution to *appear* as facts of geography, rather than as the effects, and causes, of particular relations between sovereigns and their subjects. When sovereignty is understood as a form of political authority that is necessarily exercised within, and circumscribed by, territorial boundaries, then the constitution of the collective subject by the sovereign is masked as a pre-political consequence of geography. In this way, territoriality facilitates the unauthorized acts of political closure that seem to provide a way out of the circular interrelation of authorization and constitution that comprises the paradox of sovereignty. Territoriality *displaces* the political

⁵⁵¹ There is evidence, however, that territorial criteria for subjection *do*, in fact, structure thicker political identities such as nationality, as well as particular ideologies, habits and ways of life. As Charles Maier puts it, “Territorial organization in its own right—including the nature of frontiers—helps to shape what we term political identity.” Maier, “Being There: Place, Identity, and Territory” in *Identities, Affiliations and Allegiances*, S. Benhabib, et al., eds. (Cambridge: Cambridge University Press, 2007), 80.

relationship of authority and subjection onto geographic features of the social world, and this makes the differentiation between members and non-members of the collective subject appear as simply one aspect of *the way the world is*, rather than as an instance of sovereign decision overstepping or outpacing its authorization.⁵⁵²

Sack identifies this kind of displacement as an essential function of territorial strategies of authority and power in general: “Territoriality can be used to *displace* attention from the relationship between the controller and the controlled to the territory.”⁵⁵³ Much earlier, Rousseau hints at this displacement when he links “public territory” to sovereignty in the first book of *On The Social Contract*. He writes, “Present-day monarchs... shrewdly call themselves Kings of France, of Spain, of England, etc. By thus holding the land, they are quite sure of holding its inhabitants.”⁵⁵⁴ Foucault makes a similar claim concerning early modern forms of sovereignty: “Sovereignty is not exercised on things, but first of all on a territory *and consequently* on the subjects who inhabit it.”⁵⁵⁵ By transferring the composition of the sovereign’s collective subject onto what appears as the pre-political givenness or facticity of territory, the territorial ideal of modern sovereignty presents the people as *given* by social *facts*, geographical features, or historical outcomes, rather than *constituted* by political *acts* that, necessarily lacking authorization by the collective subject itself, would be continually open to contest. Because the people appears to exist as a collective subject separate from the exercise of sovereign authority, the circles of the paradox of sovereignty appear to end, innocuously, in the determination of the people by virtue of its location within territorial boundaries.

⁵⁵² This displacement need not be an *intentional* strategy of particular sovereigns. See page 193, note 530 above.

⁵⁵³ Sack, *Human Territoriality*, 33. Similarly, “Territoriality provides a means of *reifying* power” (Ibid 32).

⁵⁵⁴ Rousseau, *On the Social Contract*, 56.

⁵⁵⁵ Michel Foucault, *Security, Territory, Population: Lectures at the College de France 1977—1978*, M. Senellart, ed. (New York: Palgrave Macmillan, 2009), 96, italics added.

One historical example is particularly fitting for illuminating the way that territory has been *treated as* a pre-political or given frame for nominating the collective subject of sovereignty, prior to its constitution by sovereign authority, so as to dissolve or suppress the paradox of sovereignty. During twentieth century struggles for decolonization, collective political self-determination became increasingly recognized as a basic human right and an expedient means for political liberation. The articulation of this right in international law, however, immediately raised questions concerning which *selves* could be self-determining. Ivor Jennings expresses the main difficulty succinctly and stingingly, raising the spectre of indeterminacy that haunts all instances of sovereign constitution: “The doctrine of self-determination... seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who are the people.”⁵⁵⁶ In point of fact, this prior decision was made in international law, primarily by the colonial powers themselves, and codified in the United Nations Charter. As James Crawford summarizes, without a trace of irony: “International law recognizes the principle of self-determination. It is, however, not a right applicable to just any group of people desiring political independence or self-government... It applies as a matter of right *only after the unit of self-determination has been determined.*”⁵⁵⁷ He then summarizes the accepted criteria for determining, as Jennings puts it, ‘*who are the people*’ that are eligible for collective self determination:

The units to which the principle applies are those *territories* established and recognized as separate political units; in particular...

- (a) trust and mandated territories, and territories treated as non-self-governing under Chapter XI of the Charter;
- (b) States...;

⁵⁵⁶ Ivor Jennings, *The Approach to Self-Government*, cited in Dahbour, “Borders, Consent, Democracy,” 255.

⁵⁵⁷ Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), 127, emphasis added.

(c) other territories forming distinct political-geographical areas whose inhabitants are arbitrarily excluded from any share in government... with the result that the territory becomes in effect... non-self-governing; and (d) any other territories or situations to which self-determination is applied by the parties as an appropriate solution.⁵⁵⁸

In short, the post-colonial peoples eligible for self-determination were territorially defined, and the members of a particular people were identified by their location within the geographic borders that circumscribed the people.⁵⁵⁹ Although political self determination was frequently understood to be *national* self-determination, the nations in question were themselves understood to be circumscribed within, and defined by, territorial boundaries. Jennings's riddle concerning the determination of the self-determining people was thus apparently solved, and with it the paradox of sovereignty, by the kind of "historically given solution" that Whelan expects in his discussion of the paradox of democratic constitution.⁵⁶⁰

However, this example reveals the limitations of such a solution in much the same way that Sieyès's thought revealed the limitations of positing a natural and pre-political end to the paradox of sovereignty. Although the two cases are not identical, insofar as the territorial determination of the people is not purported to place the people's constitution beyond the realm of politics altogether, the cases are similar, insofar as what is taken to be the foundation of the sovereign interrelation of authority and constitution is, in fact, a product of this interrelation. In the post-colonial case, the initial territorial determination of the self-determining people was decided upon, facilitated, and enforced largely by the colonial powers themselves. Moreover, the relevant territorial boundaries were for the most part artifacts of colonial administration, and

⁵⁵⁸ Ibid., emphasis added.

⁵⁵⁹ "'People' in this context did not imply the existence of a collective consciousness or solidarity; in the eyes of those who adopted the declaration, a 'people' was simply the population who happened to find themselves within a given set of boundaries, and 'nation-building' was supposed to follow independence, not precede it." Margaret Canovan, *The People* (Malden, MA: Polity, 2005), 42.

⁵⁶⁰ Whelan, "Democratic Theory and the Boundary Problem," 16.

therefore legacies of precisely *the political opposite* of self-determination. Although these boundaries were presented as morally arbitrary but historically given *starting points* for the acts of authorization and constitution that are essential to sovereignty, they were, in fact, products of previous (and in many cases, ongoing) exercises of constituent authority by foreign sovereigns.

Practically, this has contributed to the difficulty of many post-colonial states in achieving or successfully challenging the standards of democracy, sovereignty, and state effectiveness advocated and imposed by former colonial powers.⁵⁶¹ On a more theoretical but not unrelated level, the exercise of foreign sovereign authority *over* and *through* the intended foundations of domestic sovereignty means that the paradox of sovereignty, far from being resolved by the territorial definition of the self-determining people, has instead been more deeply entrenched. As in the case of Sieyès's nation, the territorial starting points of post-colonial sovereignty, which are supposed to answer Jennings's riddle by interrupting the circles of sovereignty's paradox, are not apolitical deposits of history, but are in fact political through and through. The territorial definition of the post-colonial people is not a transcendent framework that needs no authorization; rather, it has merely gone unauthorized.

Territory is a political artifact, as well as a medium, of the interactions of authorization and constitution that are essential to sovereignty; in Rousseau's terms, territory is both sovereignty's cause and its effect.⁵⁶² The boundaries of territory are no more historically fixed, incontestable, or apolitical than the constitution of the people itself. Rather than existing as a framework *for* politics, these boundaries are constructed *through* politics, through the same kind

⁵⁶¹ Siba N'Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans* (Minneapolis: University of Minnesota Press, 1996), Chapters 1, 2 and 6; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), Chapters 4 and 5; Agnew, *Sovereignty and Globalization*, 109-110.

⁵⁶² Drawing on the work of Jens Bartelson, I defend a similar claim in Chapter 2. See page 70, above.

of political acts, relations, and negotiations that constitute the people itself.⁵⁶³ There is no *prima facie* reason why the marking of territorial boundaries should be treated as more foundational than any other sovereign act of constitution.

Because the territorial determination of the people does not remove the people's constitution from the circular interaction of authorization and constitution marked by the paradox of sovereignty, it does not make possible either the full authorization of the sovereign, or the settled constitution of the collective subject. Consequently, it does not resolve the paradox. Rather, the territorial determination of the people merely displaces the political interactions that are essential to sovereignty onto the territorial limits of authority and subjection themselves, which inherit, rather than resolve, the indeterminacy, incompleteness, and contestability of sovereign authority and popular constitution. More generally, the invocation of any purportedly pre-political source of authority or constitution is itself a political act that cannot guarantee its own authorization. Hence, the appeal to historically contingent closure reiterates, rather than resolves, the paradox of sovereignty.

Contest

The discussion of Sieyès's nation in Chapter 3, together with the above discussion of territory, suggest that positing any contingent origin, end, or interruption of sovereignty's circle of authorization and constitution is itself a political act in need of authorization. This is true even and especially when proposed 'solutions' to the paradox of sovereignty masquerade as precepts

⁵⁶³ On the political nature of territory in general, see Gottman, *The Significance of Territory*; Sack, *Human Territory*; Agnew, *Sovereignty and Globalization*; Kolers, *Land, Conflict, and Justice*. As Carol Pateman has recently shown regarding the doctrine of *terra nullius*, a denial or forgetting of territory's political origins facilitated the development modern sovereign states and European colonialism, as well as theories of sovereignty from Vittoria to Grotius, Hobbes, and Locke. See Pateman, "The Settler Contract," in Pateman and Mills, *Contract and Domination* (Malden, MA: Polity Press, 2007), 35-78. See also Mary Butterfield, "Terra Nullius and Epistemic Injustice" (unpublished paper on file with the author).

of natural law (as in the case of Sieyès's nation) or pre-political facts about the world (as when territory is treated as a given frame for, rather than also an effect of, sovereignty). Any theoretical or practical attempt to dissolve the paradox with an act of political closure simply reiterates the paradox insofar as it demands, rather than ends, further political contest over the bases of authority and constitution that it invokes. In light of this, we need to consider the possibility that negotiating the paradox of sovereignty requires more political contest, rather than less.

If sovereign authority is never fully authorized because its collective subject is never finally constituted, and vice versa, and if no assumed, posited, or purported source of authority or constitution is sufficient to remedy this, then we may be justified in reinterpreting the paradox of sovereignty in a new way. Rather than viewing the paradox as something that obstructs the actualization of an ideal of fully achieved, unambiguous, and unarbitrary authority and constitution, we can view that ideal itself—the ideal of sovereignty as the achieved *end* or *resolution* of political contest—as something that obstructs or obscures the possibilities for authorization and constitution *otherwise* that are continually called forth by the paradox. From this perspective, the problem is not that the paradox of sovereignty prevents us from ever realizing the modern ideal of self-bounded, self-constituted, and self-authorized sovereignty. Rather, the problem is that the pursuit of this impossible ideal prevents us from acknowledging that what the paradox reveals—namely the interminability of sovereign bounding, constituting, and authorizing—is itself a site of political possibility.

Something like this perspective is adopted by Benhabib, Gould, Keenan, Näsström, and others in response to the paradox of democratic constitution. For these theorists, the proper response to the paradox is not to seek its resolution or dissolution, but to make it an opportunity

for democratically contesting, from beyond the scope and procedures of particular constituted democracies, the acts of unification and differentiation through which democratic constitution occurs. Näsström's remarks are generally illustrative:

Contrary to what is assumed by many liberal and deliberative theorists of legitimacy, the gap in the constitution of the people is therefore not a problem. It is *productive*, a generative device that helps to foster ever new claims for legitimacy... A fully legitimate people is indeed impossible to achieve, but therein resides its power. The criteria of legitimacy make the people into a site of perpetual contestation. They guarantee that the claims of a legitimate people do not come to a standstill.⁵⁶⁴

On this view, the indeterminacy or incompleteness of the democratic people's self-legitimation and self-constitution is not a *failure* of democracy, but a condition of its ongoing possibility. The task is not to eliminate the paradox of democratic constitution, but to find normatively democratic means by which to continually address the democratic deficit entailed by the paradox.

Of the thinkers who take up this task, the work of Benhabib and Gould offers the clearest lessons for engaging, not only the paradox of democratic constitution, but also the more foundational paradox of sovereignty. For both of these thinkers, the paradoxical nature of democratic self-constitution signals an occasion to rethink, resituate, and repoliticize the borders of democracy in ways that would begin to close the democratic deficit entailed by the paradox. After reviewing their proposals for democratizing the constitution of political communities beyond what is possible according to strictly defined democratic procedures, I will clarify the extent to which these proposals repoliticize the historically contingent and apparently apolitical act of closure performed by the modern state's functional linkage of territory and sovereignty.

On a purely theoretical level, Benhabib's project of democratic iteration can be read as a way to negotiate the paradox entailed by *any* act of democratic self-constitution. However, she

⁵⁶⁴ Näsström, "Legitimacy of the People," 626, 644.

clearly situates her project as a response to contemporary transformations in the relations between sovereignty, subjection, and community that have traditionally characterized the modern state. In particular, Benhabib identifies a “crisis of territoriality,” in which the territorial borders of the state no longer adequately mark boundaries of political agency, obligation, identity, or membership.⁵⁶⁵ She writes, “The unitary model, which combined continuous residency upon a given territory with a shared national identity, the enjoyment of political rights, and subjection to a common administrative jurisdiction, is coming apart.”⁵⁶⁶ Benhabib does not explicitly theorize the role that territory has played in apparently resolving—or rendering invisible—the paradoxes of democratic constitution and sovereignty. However, she clearly views the contemporary disaggregation of territoriality from important state functions, and from political community more generally, as necessitating a reconsideration of the limits of democratic self-constitution.

For Benhabib, neither the paradox itself, nor the contemporary crisis of territoriality, requires completely opening or fully resituating the boundaries of existing democracies.⁵⁶⁷ Nor does Benhabib advocate abandoning territoriality as a medium of democracy’s boundedness. On her view, “The *demos*, as the popular sovereign, must assert control over a specific territorial domain... It is incoherent to envisage the constitutional government of a people without some form of territorial sovereignty.”⁵⁶⁸ Rather than redrawing existing boundaries or constituting altogether new forms of democratic community, Benhabib argues that the boundaries of existing democracies should be rendered increasingly “porous.”⁵⁶⁹ This can be accomplished, she argues, through “reflexive acts of self-constitution, whereby the boundaries of the *demos* can be readjusted” in light of continual democratic deliberation and contest both within and beyond the

⁵⁶⁵ Benhabib, *Rights of Others*, 4.

⁵⁶⁶ *Ibid.*, 146.

⁵⁶⁷ *Ibid.*, 221.

⁵⁶⁸ *Ibid.*, 48, 78.

⁵⁶⁹ *Ibid.*, 221.

boundaries of particular democracies.⁵⁷⁰ This is the political practice that Benhabib calls democratic iteration.

Democratic iterations are jurisgenerative processes “of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and political institutions, as well as in the associations of civil society.”⁵⁷¹ Through these processes, democratic peoples reappropriate and reinterpret the universal norms or guiding principles upon which democracy is founded (i.e. equality, freedom, protection of human rights, etc.) and “reiterate these principles and incorporate them into democratic will-formation processes through argument, contestation, revision, and rejection.”⁵⁷² Through democratic iterations, in other words, democracy’s “context-transcending” or universal norms are continually mediated with the particular wills of actual democratic communities.⁵⁷³

Processes of democratic iteration are not limited to the deliberative institutions of particular democracies.⁵⁷⁴ Rather, they also take place in the “‘weak’ publics of civil society associations and the media,” and may involve participants and voices that are normally excluded by the formal boundaries of particular polities.⁵⁷⁵ Although processes of iteration do not themselves have the legally-binding force of institutionalized democratic deliberation, particular democracies can be pressured to respond to, if not directly institutionalize, any context-transcending consensus generated by these dynamic and inclusive democratic exchanges.⁵⁷⁶

⁵⁷⁰ Ibid., 48.

⁵⁷¹ Ibid., 179.

⁵⁷² Benhabib, *Another Cosmopolitanism*, 49.

⁵⁷³ Benhabib, *Rights of Others*, 19.

⁵⁷⁴ Ibid., 179-181, and *Another Cosmopolitanism*, 71-2.

⁵⁷⁵ Benhabib, *Rights of Others*, 179.; cf. 180-1, 197, 211-2, 216-221; *Another Cosmopolitanism*, 71-2.

⁵⁷⁶ Although Benhabib is clear that the universal norms articulated by transnational discourses should often trump the “ultimate and arbitrary authority” of local sovereignty, she construes most of the pressure to adopt democratic norms as coming, most immediately, from *within* particular democracies, where activists and

Consequently, processes of democratic iteration provide normatively, if not procedurally, democratic means of continually contesting and influencing the acts of differentiation by which particular democratic peoples bound and constitute themselves.

The practice of democratic iteration is not meant to *resolve* or *eliminate* the paradox of democratic constitution. Although the forms of closure required by democracy can be renegotiated by citizens and foreigners alike, it is ultimately up to the citizens themselves (i.e. the popular sovereign) to designate where and how their democracy bounds itself. The paradox persists because the renegotiation of boundaries and the reconstitution of the democratic people necessarily fall short of the universality embedded in democratic norms.⁵⁷⁷ The acts of differentiation and closure that, for Benhabib, make democracy possible will always retain a trace of historical contingency or moral arbitrariness.⁵⁷⁸ However, the undemocratic impacts of this arbitrariness can be progressively (but never finally) minimized through the continual mediation of democratic particularity with the universal and context-transcending norms that underlie democracy itself. Although no democratic practice can eliminate democracy's essential "disjunction between the universalist content of its constitutional commitments and the paradoxes of democratic closure," democratic iteration can continually repair this disjunction in favor of democracy's universalist aspects.⁵⁷⁹

policymakers have been influenced by, or participated in, wider democratic iterations. *Another Cosmopolitanism*, 24. Cf. 51-62; *Rights of Others*, 176-201, 219-220.

⁵⁷⁷ "We, the people,' is an inherently fraught formula, containing in its very articulation the constitutive dilemmas of respect for universal human rights and nationally circumscribed sovereignty claims... Precisely because democracies enact laws that are supposed to bind those who legitimately authorize them, the scope of democratic legitimacy cannot extend beyond the *demos* which has circumscribed itself as a people... While the scope of the authority of the laws can be reflexively altered, it is inconceivable that democratic legitimacy can be sustained without some clear demarcation of those in the name of whom the laws have been enacted from those upon whom the laws are not binding." *Rights of Others*, 178, 218, 220.

⁵⁷⁸ Benhabib, *Another Cosmopolitanism*, 20, 35.

⁵⁷⁹ Benhabib, *Rights of Others*, 20.

Whereas Benhabib seeks to preserve the territorial boundaries of existing national democracies but open them up through transnational democratic negotiation, Gould seeks to articulate democratic means for determining the scope of new, transnational and trans-regional democratic spheres. “The activity of globalizing,” she writes, “calls for new intersociative democratic relationships to develop along with the growth of transborder interdependence, not limited to those close to us or to political societies as such.”⁵⁸⁰ Theorizing the general contours of globalized democracy is, as Gould unhesitatingly admits, a forward-looking and deeply normative project that goes “beyond a current or short-term perspective, in which nation-states are clearly the predominant players.”⁵⁸¹ Like Benhabib, Gould attempts to find a normatively democratic response to the paradox of democratic constitution. Unlike Benhabib, however, she ultimately affirms the politically contestable contingency at the heart of democratic self-constitution and, in so doing, affirms the insolubility of the paradox of sovereignty.⁵⁸²

Although Gould’s project is more radically democratic than Benhabib’s, it is not more utopian.⁵⁸³ Gould’s proposals are based in, and seek to respond to, the deepening and widening interdependence that characterizes contemporary social, political, environmental, and technological relations, and they do not look far beyond already existing political capacities. While the prospect of transnational and trans-regional democracy may appear farfetched to a

⁵⁸⁰ Gould, *Globalizing Democracy*, 3. Gould does not ignore the importance of territoriality and local place-making, and she does not suggest that her principles enable democracy to *transcend* territory. She writes, “The conception proposed here of democratic self-determination cannot completely replace the range of issues concerning the connection of self-determination to territory.” Gould, “Self-Determination Beyond Sovereignty: Relating Transnational Democracy to Local Autonomy,” *Journal of Social Philosophy*, vol. 37, no. 2 (2006): 51. Her work on transnational democracy differs significantly from the cosmopolitanism of Benhabib insofar as it denies any essential or politically fundamental link between territoriality and political participation or membership. See Benhabib, *Rights of Others*, 218-221.

⁵⁸¹ Gould, “Structuring Global Democracy,” 27.

⁵⁸² Generally speaking, whereas Benhabib advocates a movement toward ever more inclusive democracy in the name of transcendent and universal ideals, Gould advocates the democratization of contingent solidarity and cooperation in the name of situated and particularized forms of freedom and self-determination.

⁵⁸³ See *Ibid.*, 29, where Gould characterizes her common activities criterion as a proposal “for radical democracy, endorsing a requirement for it in a range of associations and communities beyond those currently recognized (where this is admittedly a highly normative and distant possibility).”

political imagination dominated by “territorially defined, fixed and mutually exclusive enclaves of legitimate dominion,” the territorial nation-state has never been an uncontested mode of political organization.⁵⁸⁴ Rather, alternative configurations of political community, authority, and subjection have persisted throughout the development of the state, from the Hanseatic League and Iroquois Confederacy to late-modern empires and contemporary federations of political and economic power.⁵⁸⁵ Competitors to the territorially-based state, however, have generally not been conducive to democratic self-determination. Seen from this perspective, Gould’s project is a matter of democratizing transnational and trans-regional political capacities that have long existed and are currently evolving, rather than inventing new modes of political organization from scratch.⁵⁸⁶

Gould’s two principles—the common activities criterion and the modified all-affected principle—are intended to specify the scope of participation and representation in a plurality of overlapping and potentially transnational *demoi*. On Gould’s view, democracy and justice are both grounded in a basic norm of “equal positive freedom,” understood as “prima facie equal rights to the conditions of freedom as self-transformative activity, whether individual or collective.”⁵⁸⁷ The realization of equal positive freedom requires individual self-determination and, by extension, equal opportunities for codetermination in all collective activities.

Codetermination, in turn,

requires *democracy* as the equal right to participate in decision making concerning the common activities in which individuals are engaged. For

⁵⁸⁴ Ruggie, “Territoriality and Beyond,” 151.

⁵⁸⁵ Agnew, *Sovereignty and Globalization*, 27, 88-91. See also Spruyt, *Sovereign State, passim*; Benno Teschke, *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations* (London: Verso, 2003); Hannes Lacher, *Beyond Globalization: Capitalism, Territoriality and the International Relations of Modernity* (London: Routledge, 2006).

⁵⁸⁶ See Sassen, *Territory, Authority, Rights*, especially Chapters 6-8. Gould’s work on transnational political participation could very fruitfully complement Sassen’s analyses.

⁵⁸⁷ Gould, “Structuring Global Democracy,” 28. Gould’s notion of equal positive freedom contains, rather than rules out, a basic commitment to negative freedom. See *Globalizing Democracy*, 34.

engaging in such common activities is itself one of the main conditions for individuals' self-development, the opportunity for which requires that they be self-determining in this activity.⁵⁸⁸

The realization of equal positive freedom through democratic codetermination of collective activities would entail “a radical increase in opportunities for democratic participation” extending far beyond typical liberal-democratic institutions.⁵⁸⁹ Because individuals participate in a variety of collectively transformative activities at once, opportunities for democratic participation are likely to overlap, compete with one another, and potentially enrich one another.⁵⁹⁰

The common activities criterion, which is the core of Gould's proposal for defining the scope of democratic participation, simply formalizes these considerations. She writes, “The democratic principle requires equal rights of participation in decisions concerning the *common activities* in which people engage, where such common or joint activities are understood to be defined by shared goals and practices.”⁵⁹¹ Because joint activity is not limited by state borders, ethnic commonality, territorial integrity, or the scope of public institutions, the common activities criterion will specify democratic spheres that neither look nor function like the *demos* of existing nation-states.

Although the common activities criterion presents collective self-determination as a feature of democracy itself, it does not rely upon the paradoxical notion of a democratically self-determining *demos*.⁵⁹² Gould writes:

It is unlikely that we can see the initial formation of this collectivity itself as subject to democratic choice without entering an infinite regress... My view of

⁵⁸⁸ Gould, *Globalizing Democracy*, 35.

⁵⁸⁹ *Ibid.*, 47.

⁵⁹⁰ Gould, “Structuring Global Democracy,” 29.

⁵⁹¹ *Ibid.*, 28. More simply: “Wherever people are engaged in common activities defined by shared aims, there is a requirement for rights of democratic participation”. Gould, *Globalizing Democracy*, 208.

⁵⁹² Gould, “Self-Determination,” 48-50, and *Globalizing Democracy*, 174-5.

common activities does not see them as for the most part formed through democratic constitution but rather as contexts relevant for democratic decision that are given through the range of activities in which people cooperate to realize shared goals. While, in my view, it is desirable that these be voluntarily constituted to the extent possible, this does not entail the circularity that would be involved in regarding these contexts as themselves democratically constituted.⁵⁹³

The common activities criterion is a normatively, but not procedurally, democratic criterion. It formalizes the basic democratic norms of self-determination and self-government (in the sense of equal participation in collective transformative activity), but it does not specify that a collective ‘self’ must be constituted through democratic procedures like majority-rule voting. Indeed, Gould importantly acknowledges that individuals do not always voluntarily participate in common activities: “Some of these shared contexts, particularly those associated with cultures, involve appropriation of traditions and histories that are *initially given to us* rather than created *de novo*.”⁵⁹⁴ Although we may be born or thrust into some common activities and, therefore, to some potential spheres of democratic decision-making, we make these activities and spheres *our own* through equally participating in their performance and transformation.

Gould’s second principle, a modification of the general “all-affected” principle of democracy, extends the sphere of democratic decision-making beyond those directly involved in common activities defined by shared practices and goals. Although she recognizes the need to “open the institutions of global governance (or indeed even the decisions of traditional political communities) to input from people increasingly affected by their decisions,” Gould rejects the unqualified all-affected principle as “hopelessly vague” when it comes to global networks of interdependence.⁵⁹⁵ In its place, she proposes the following: “When people at a distance are impacted in regard to their possibilities for fulfilling their basic human rights because of the

⁵⁹³ Gould, “Self-Determination,” 49-50.

⁵⁹⁴ *Ibid.*, 50, emphasis added.

⁵⁹⁵ Gould, “Structuring Global Democracy,” 30.

decisions of those institutions of global governance, they have rights of input into those decisions.”⁵⁹⁶ Following Gould’s own simplification, this can be called the “importantly affected” principle, where it is understood that the principle primarily tracks impact on human rights, the enjoyment of which is necessary for the realization of equal positive freedom.⁵⁹⁷

Although Gould’s two principles are meant to facilitate political organization that would challenge the monopoly of nation-states over democratic decision-making and self-determination, they do not appear, at first glance, to inspire the kind of ongoing contest advocated by Näsström and others. In fact, they may appear to perform the same kind of historically contingent act of closure that territoriality has provided throughout the development of the modern, sovereign nation-state. *Some* initial pre-political determination of ‘the people’ seems necessary to begin the interactions of authorization and constitution that are essential to sovereignty; if not a historically given determination based on territorial location, why not a non-geographic determination based on common activities and impacted human rights?

The reason why Gould’s two principles cannot be made to function like territorial criteria for subjection and membership is that the two principles cannot be even apparently depoliticized. The common activity criterion and the importantly affected principle are self-evidently political through and through. First, common activity involves “shared goals and practices,” and can be generally defined as “activity in which a number of individuals join together to effect a given end... It essentially involves the cooperation and coordination of many individuals in the realization of their joint projects or purposes.”⁵⁹⁸ The core criterion for constituting a democratic community, then, is itself a matter of collective organization. Gould insists that this organization

⁵⁹⁶ Ibid., 31. See also *Globalizing Democracy*, 210-216.

⁵⁹⁷ Gould, *Globalizing Democracy*, 212. See “Self-Determination,” 54, and “Structuring Global Democracy,” 31.

⁵⁹⁸ Gould, “Structuring Global Democracy,” 28, and *Globalizing Democracy*, 175.

need not occur through a democratic procedure (and should not, if the paradox of democratic constitution is to be minimized), but even still, the collective action problems involved in cooperating and coordinating—and even in identifying and defining a common activity in the first place—build contest and negotiation directly into the basic criterion for democratic inclusion.⁵⁹⁹ Even when shared contexts, such as traditions and histories, “are initially given to us” such that we *find ourselves* in a shared activity, this is not the same as finding ourselves in a particular territory, because the activity in which we engage is more immediately ours to appropriate, if not transform.⁶⁰⁰ The common activity criterion, in short, immediately reflects the organized agency of the political actors that it designates, and thereby incorporates the activity of collective self-organization into the basic criteria for democratic inclusion.⁶⁰¹

The importantly affected principle, on the other hand, does not so strongly emphasize active political self-organization. Whereas the common activity criterion focuses on the agency of the individuals it designates, the importantly affected principle designates persons who are *affected by* that agency.⁶⁰² Nonetheless, the principle does not simply reduce these individuals to the passive objects of others’ political action. Gould writes, “Some participation is required in the sense that people need to be consulted in regard to their understanding of their basic needs and interests and key projects; *they are the ones to give expression and shape to understanding*

⁵⁹⁹ Gould, *Globalizing Democracy*, 176, an “Self-Determination,” 49-50.

⁶⁰⁰ This is not to say that traditions and histories present themselves as self-evidently transformable, or to say that territory is independent of human agency. Rather, territory simply poses more convincingly as a *fact about the world* than any shared activity that is genuinely *ours*, in the sense of expressive of *our* goals, practices, and purposes.

⁶⁰¹ Gould explains that “the motivation for this emphasis on spheres of common activity is to place weight, in a somewhat Aristotelian fashion, on the active rather than passive side of social life, and also to provide a very general and preexisting criterion not deriving from democratic decision itself.” Gould, *Globalizing Democracy*, 176. The emphasis on the *active* side of social life is what keeps the common activity criterion from threatening to become a “very general and pre-existing criterion” that, like territorial belonging, nationality, functions by *picking out* the members of a political community.

⁶⁰² This is one of the virtues of Gould’s two principles: they bring together, within the same decision-making body, the individuals engaging in shared projects and the individuals affected by those projects.

these.⁶⁰³ Negative impact on human rights does not simply announce itself, especially in translocal and global contexts, and the articulation of human rights violations is itself a highly political, contentious, and possibly dangerous expression of political agency. Although Gould notes that a system of representation will be necessary to successfully articulate needs, interests, projects, and human rights impact at the transnational level, she intends such a system to be a medium, rather than a replacement, for the agency of represented individuals.⁶⁰⁴ Ultimately, then, the importantly affected principle also tracks the agency of the individuals it designates. It too, builds political activity into the basic criteria for democratic inclusion.

Together, Gould's two principles designate the scope of potentially transnational democratic spheres, not by picking out a feature of the social world (such as territory or affectedness) and nominating it as the dividing line between members and non-members, but by highlighting the connections among the political activities (in particular, the self-organization and self-representation) of persons who may not share regional proximity, national identity, cultural heritage, or any other traditional criteria of collective political belonging. This not only makes the boundaries of democratic spheres politically contestable, but also construes them as the self-evident institutionalization of political contest. For Benhabib, a democratic negotiation of the paradox of democratic constitution requires politicizing the borders of democracy through "public argument, deliberation, and exchange" in the name of universal ideals.⁶⁰⁵ For Gould, on the other hand, the borders of democracy *simply are* manifestations of argument, deliberation, and exchange in the name of particular lived experience, insofar as these political interactions are necessary for the collective cooperation and coordination tracked by the first principle and the articulations of rights, interests, and needs tracked by the second.

⁶⁰³ Gould, "Structuring Global Democracy," 35, emphasis added.

⁶⁰⁴ Ibid.

⁶⁰⁵ Benhabib, *Rights of Others*, 179.

Gould's principles do not require democratic decision-making in the determination of a *demos*, but they do formalize a democratic norm of equal participation in common activity, and they are intended to realize the more foundational norm of equal positive freedom. Because of all this, they provide a normatively, if not procedurally, democratic means for determining the boundaries of democracy. This is not, strictly speaking, a resolution of the paradox of democratic constitution, but it introduces important democratic commitments to guide and constrain the constitution of particular democratic institutions.

However, while Gould has provided a democratic and politically constestatory means by which to circumvent the paradox of democratic constitution, she has not provided a means by which to escape the more foundational paradox of sovereignty. On the contrary, she ultimately *affirms* the paradoxical interrelation of constitution and authorization that is essential to sovereignty, insofar as she fully politicizes the constitution of the *demos* that is the source of political authority. For Gould, the decision-making body that is the source of binding law is self-evidently constituted through the political activity—cooperation, coordination, representation—of its members. There is nothing apolitical or pre-political about the identification of common activity and the articulation of adversely impacted human rights, and there is nothing apolitical or pre-political about a polity constituted on the bases of these political acts. Democracy, for Gould, does not begin with a particular composition of 'the people' that is *given* by some historically contingent but apparently pre-political act of closure. Rather, democracy is the process by which 'the people' gives itself a composition—continually constitutes itself by continually closing itself—through contestable and potentially conflictual political activity. Whereas Benhabib's cosmopolitanism attempts to progressively minimize the contingency that underlies democratic self-constitution, Gould's principles highlight that contingency and

politicize it further, democratizing it in the name of particular, rather than universal, forms of freedom.

Democracy is a political means of coping with irreducible contingency, and the boundaries of democracy are determined by what can be and has been negotiated politically, rather than by whatever falls outside or resists political negotiation. In this regard, Gould's implicit response to the paradox of sovereignty is almost exactly the opposite of Sieyès's disastrous attempt to dissolve it. Whereas for Sieyès, political constitution and authority are ultimately grounded in the "natural, *common* will" of a group of individuals beyond the political realm, for Gould political constitution and authority are continually grounded (never ultimately) in the artificially common will—that is, the negotiated and coordinated "shared goals and projects"—of a group of individuals within the political realm.⁶⁰⁶ Rather than beginning democratic inclusion at a starting point that is apparently removed from political contest, Gould begins democracy at political contest itself.

Gould's response to the paradox of democratic constitution offers a lesson for responding to the paradox of sovereignty. As discussed, that more foundational paradox cannot be dissolved by a historically contingent act of political closure—even and especially one that is presented as an apolitical criterion of inclusion. Rather, the paradox of sovereignty can only be negotiated through *more* political contest, rather than less. Sovereignty, because of its paradoxical nature, is an invitation to contest. Even when it appears incontestable—especially when it appears incontestable—it is a site, rather than an end, of politics.

⁶⁰⁶ Gould, "Structuring Global Democracy," 28.

CONCLUSION

In this dissertation, I have identified and elaborated a paradox inherent in the modern ideal of sovereignty as supreme, independent, and bounded political authority. In doing so, I have not argued that sovereign states are impossible fictions; nor have I argued that sovereignty is an incoherent concept with no referent. Rather, I have shown that the paradox marks a political tension within one of the most influential norms of modern politics. In this brief conclusion, I will indicate how attention to the paradox of sovereignty might reorient contemporary debates concerning the purported eclipse of modern sovereignty or the retreat of the sovereign state. Although my remarks here are intended to bring closure to the preceding discussion, a full elaboration and defense of these new claims will have to await another occasion.

The paradox of sovereignty expresses a conjunction of conflicting political ideals rather than a conjunction of contradictory propositions. On one hand, sovereignty is idealized as a form of political authority that, as both a condition and an expression of its internal supremacy and external independence, determines the limits of its own jurisdiction and constitutes its own collective subject. The sovereign authoritatively constitutes the people. This ideal of the imperious sovereign—which appears in the work of modern thinkers as diverse as Bodin, Hobbes, Rousseau, and Hegel—is evident in the everyday activities by which political communities police their own boundaries and differentiate between members and non-members, or citizens, subjects, and aliens. On the other hand, sovereignty is idealized as a form of political authority that, like any other form of authority, can only be exercised with the authorization of its subject. The sovereign depends upon the people for its authority. This ideal of the indebted

sovereign—which appears in the work of not only Locke and Marx, but also Machiavelli and others who greatly emphasize the imperious aspect of sovereign authority—is evident in the procedures, rituals, and practices by which the agents of sovereignty are authorized in the name of the people. These opposed idealizations do not cancel one another out. Rather, modern sovereignty is idealized as *simultaneously* imperious and indebted. Paradoxically, the sovereign authoritatively constitutes the people that is the collective agent of its own authorization.

This circular interrelation of constitution and authorization prevents both the constitution of the people, and the authorization of the sovereign, from ever being fully or finally achieved. It is because the sovereign authoritatively constitutes the basis of its own authority that both its authority and the people's constitution remain indeterminate, incomplete, and politically up for grabs. Because there is no incontestable source of sovereign authority, the sovereign may always be reauthorized, deauthorized, or differently authorized by its collective subject. Because there is no incontestable source of popular constitution, the people may always be reconstituted, unconstituted, or differently constituted by the sovereign. Sovereignty, like authority more generally, is a dynamic, negotiable, and contestable political relation. This truth is not limited to democracies, which explicitly institutionalize political contest over sources of authority and constitution. Rather, anywhere that sovereign authority constitutes the people over which it is exercised, both the authority of the sovereign, and the constitution of the people, are occasions for—rather than resolutions of—political contestation.

Attention to the paradox of sovereignty reveals that sovereignty is not a characteristic, property, or quality of certain political communities, but a mode through which political communities are made and continually remade. Sovereign authority requires boundaries between 'us' and 'them', and it creates these boundaries itself, by limiting its own jurisdiction,

bounding its subjects, and constituting the collective subject that authorizes it. In this way, sovereign and subject come into being together, *qua* sovereign and subject, not prior to sovereignty but through it. Balibar expresses this clearly, in a passage referred to earlier: “In reality it is precisely the correlation between inside and outside that makes sovereignty what it is (and, above all, that constitutes a ‘political community’ submitted to a sovereign authority and in some sense ‘created’ by it, or creating itself through the institution of sovereignty).”⁶⁰⁷ Balibar’s ambivalence gestures to the paradoxical circularity that is essential to sovereignty. Sovereign authority does indeed constitute its own collective subject, but insofar as that authority emanates from the very subject that it constitutes, it is equally accurate to say, with Marx and against Hegel, that the collective subject of sovereignty—the people—constitutes itself through the institution of the sovereign. Although the modern ideal of sovereignty supports both of these interpretations, actual political relations do not usually reflect both of them equally.

The preceding chapter suggests a qualification to Balibar’s otherwise accurate portrayal of modern sovereignty. The constitution of the political community, together with the correlation between inside and outside that is both the condition and effect of sovereign authority, must be continually established if they are to endure. Sovereign authority is a mode by which collective subjects are constituted (or by which collective subjects constitute themselves), but sovereign authority never finally constitutes its collective subject. Rather than settling or affirming the constitution of the people, sovereignty calls that constitution into question at the same time that it enacts it, insofar as the act of sovereign constitution always exceeds or outpaces its authorization. Sovereignty is indeed a mode by which political communities are constituted (or constitute themselves) through acts of boundary drawing, inclusion, exclusion, and differentiation. However, the continual constitution of the political community through

⁶⁰⁷ Étienne Balibar, *We, the People of Europe?* (Princeton: Princeton University Press, 2004), 158.

sovereign authority also continually undermines the possibility of any final or settled constitution of the community. The achievement and exercise of sovereignty is an occasion for contest over the constitution of a political community, rather than an end or conclusion of such contest.

This interpretation of modern sovereignty is in some ways contrary to appearances. Very often, sovereignty is claimed or announced in order *to end* or *to prevent* contest, rather than to invite more. This is the case, for example, when a seceding or decolonizing people declares itself sovereign, or an established state invokes its sovereign right to non-interference, or actors within civil society or a government reject foreign influences, goods, or persons in the name of local sovereignty. In such cases, where the invocation of sovereignty is meant to trump negotiation and stop political contest, sovereignty is portrayed as a characteristic, property, prerogative, or achievement of an *already existing*, constituted, identified, recognized or assumed political community: *We*, the people, declare ourselves sovereign; you cannot make us do that because *we* are a sovereign state; we reject this (or you) in order to preserve *our* sovereignty. There would appear to be a community *prior to* or *behind* the invocation of sovereignty, which achieves, enjoys, and protects *its* sovereignty.

This appearance conceals what the paradox of sovereignty reveals: that sovereignty is an ideal of active and ongoing political constitution and authorization, a mode of people-making rather than a property of particular peoples. This concealment has long been accomplished by the kind of contingent political closure that I discussed, in the previous chapter, as one possibility for politically negotiating sovereignty's paradox. When the members of the people are nominated by an apparently natural, empirically given, or pre-political criterion for unification and differentiation, the circular interrelation of constitution and authorization that is essential to

sovereignty disappears, and the people appears to be prior to, and separate from, the exercise of sovereign authority that in fact constitutes it.

Throughout the history of modern sovereignty, the boundaries of territory have played this role. Behind theoretical articulations of sovereignty from Machiavelli to Benhabib, and underlying practical articulations of sovereignty from the centralization of Capetian authority in thirteenth and fourteenth century France to the identification of self-determining nations during twentieth century decolonization, territory has served as a “substrate” of the people over which sovereignty is to be exercised.⁶⁰⁸ “Territoriality is... a principle that defines the set of people over whom the holder of sovereignty rules. They are to be identified, territoriality says, by virtue of their location within borders.”⁶⁰⁹ When the members of the people are defined by reference to territory, and territory is assumed to be prior to sovereignty—as it is in the “sovereign territorial ideal” that construes sovereignty as exercised “first of all on a territory and consequently on the subjects who inhabit it”—then the people appears to preexist the sovereign authority to which it is subject.⁶¹⁰ In other words, the territorially defined people appears as something that may be brought *under* sovereign authority, or exercise sovereignty *over* itself, rather than as something that is constituted *by and through* the exercise of sovereign authority.

It is this traditional link between territory and sovereignty, rather than sovereignty itself, that is most threatened by the contemporary forms of globalization and transnationalization that purportedly herald the “anachronism” of state sovereignty, the “passing” of the “Westphalian

⁶⁰⁸ Concerning the relation of nationality to the paradox of *democratic* constitution, Benhabib writes: “According to this view, analytically, even if not historically, the political community of fate, or the nation, precedes the democratic people and constitutes the substrate of the democratic state.” *Another Cosmopolitanism* (Oxford: Oxford University Press, 2006), 167. My claim is that territory—and the territorially defined nation—has performed a similar role vis-à-vis the *sovereign* state and the paradox of sovereignty more generally.

⁶⁰⁹ Daniel Philpott, *Revolutions in Sovereignty* (Princeton: Princeton University Press, 2001), 17.

⁶¹⁰ Alexander Murphy, “The Sovereign State System as a Political-Territorial Ideal: Historical and Contemporary Considerations” in *State Sovereignty as a Social Construct*, T. Biersterker and C. Weber, eds. (Cambridge: Cambridge University Press, 1996), 82; Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977–1978*, M. Senellart, ed. (New York: Palgrave Macmillan, 2009), 96.

moment,” or the “end of the nation-state.”⁶¹¹ Territory has long provided the frame in which the modern ideal of sovereignty might be realized, not by nominating a *space* over which authority can be exerted, but by nominating the *persons* among whom a particular kind of authority relation can be established. Even if territory is increasingly unable to frame and facilitate sovereignty in this way, this does not by itself entail the eclipse of modern sovereignty or the retreat of the sovereign state. Rather, sovereignty—as internally supreme, externally independent, self-bounding authority that constitutes its own subject—may persist beyond the “territorially defined, fixed, and mutually exclusive enclaves” in which it has usually been exercised.⁶¹² Indeed, some theorists have argued that we are currently witnessing precisely that: not a dissolution of modern sovereignty, but a deterritorialization (or reterritorialization) of sovereignty, through which supreme, independent, and self-bounding political authority is becoming increasingly disconnected from its traditional territorial boundaries.⁶¹³

The preceding discussion of the paradox of sovereignty can shed light on the stakes of this transformation. Throughout the history of modern politics, ‘sovereignty’ has named an ideal of political authority that appears incontestable both within and beyond its jurisdiction. This appearance relies upon a denial or suppression of sovereignty’s paradoxical nature, which has

⁶¹¹ Ingeborg Maus, “From Nation-State to Global State, or the Decline of Democracy,” *Constellations* 13, no. 4 (2006), 465; Yale Ferguson and Richard Mansbach, *Remapping Global Politics: History’s Revenge and Future Shock* (Cambridge: Cambridge University Press, 2004), 1; Jean-Marie Guehenno, *The End of the Nation-State* (Minneapolis: University of Minnesota Press, 2000), *passim*. The uniqueness, details, meanings, and consequences of contemporary globalization are widely debated. For overviews of these debates, see David Held and Anthony McGrew, *The Global Transformations Reader* (Malden, MA: Polity Press, 2004) and *Globalization/Anti-Globalization* (Malden, MA: Polity Press, 2008); John Agnew, *Sovereignty and Globalization* (New York: Rowman and Littlefield, 2009).

⁶¹² John Ruggie, “Territoriality and Beyond: Problematizing Modernity in International Relations,” *International Organization* 47, no. 1 (1993): 151.

⁶¹³ This type of argument is made in Ruggie, “Territoriality and Beyond;” Neil Brenner, “Beyond State-centrism? Space, Territoriality, and Geographical Scale in Globalization Studies,” *Theory and Society* 28, no. 1 (1999): 45; Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2006); Agnew, *Sovereignty and Globalization*. A conception of deterritorialized sovereignty—albeit not one I share exactly—is the core of Michael Hart and Antonio Negri’s *Empire* (Cambridge: Harvard University Press, 2000).

been in turn facilitated by the territorial borders that designate the collective subject of sovereignty prior to its constitution through sovereign authority. If sovereignty is to continue to play the roles that it has throughout the history of modern politics, then new boundaries will have to replace territorial borders as the apparently natural, given, apolitical, or de-politicized frame within which sovereignty might be realized.

Recent political theory and practice have suggested non-territorial criteria of political belonging that could do precisely this work. For example, modified versions of democracy's "all-affected" principle might treat affectedness as an empirically determinable variable, rather than a politically contestable claim, and thereby generate apparently pre-political boundaries within which sovereignty—and possibly democracy—might be achieved.⁶¹⁴ Perhaps even more illustrative is the concept of "community of fate," which has sometimes replaced territorial nationality as an apparently pre-political criterion for differentiating between the members and non-members of political communities.⁶¹⁵ Although both of these potential frames of sovereignty are self-evidently non-territorial, they function like territory by placing the determination of the collective subject of sovereignty beyond political contest and, more precisely, beyond the interrelated acts of constitution and authorization that comprise the politics and paradox of sovereignty. In this way, empirical variants of the all-affected principle and emerging notions of community of fate facilitate the kind of unauthorized closure discussed in Chapter 4. In doing so, for better or worse, they enable the preservation of modern forms of sovereignty *beyond* modern sovereignty's territorial frame.

⁶¹⁴ For a proposal of this kind, see David Held, *Democracy and the Global Order* (Stanford: Stanford University Press, 1995), Chapter 10, especially pages 233-8. But see also 237, fn. 6, where Held notes that tests of affectedness ("extensiveness") will be contentious.

⁶¹⁵ Communities of fate are critically discussed in Seyla Benhabib, *Rights of Others* (Cambridge: Cambridge University Press, 2004), 204-7, 211, and *Another Cosmopolitanism* (Oxford: Oxford University Press, 2006), 63-9, 167-9; Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004), 170.

The previous discussion, and attention to the paradox of sovereignty more generally, suggest an alternative orientation to the present or potential deterritorialization of sovereign authority. Absent a convincingly de-politicized frame to nominate the collective subject of sovereign authority prior to its constitution, the paradox of sovereignty becomes apparent. “Sovereignty only reigns over what it is capable of interiorizing,” but unless there is already some given or pre-political version of the people, sovereign acts of interiorization are always under-authorized—i.e., are always in some sense *less than* sovereign—insofar as the collective agent of authorization must be produced through the very acts that stand in need of authorization.⁶¹⁶ As Bonnie Honig, Sophia Näsström, Seyla Benhabib, and Carol Gould differently recognize, this kind of deficit can be politically productive, insofar as the imperfect authority of the sovereign and the incomplete constitution of the people afford opportunities for contesting and challenging the acts of interiorization, exteriorization, and boundary drawing that are both the cause and effect of sovereign authority and the constitution of the people.

A politics that affirms the paradox of sovereignty, rather than suppressing it through an historically contingent act of political closure, might call attention to the discrepancy between, on one hand, the ideal of sovereignty as supreme and independent authority that constitutes its own collective subject and, on the other hand, the necessarily deficient authorization of every sovereign act of constitution. At a general and abstract level, this kind of politics would not seek to find new natural, empirical, or apolitical frames in which sovereignty might be realized, but would call attention to the politically contestable nature of all such frames, including deterritorialized and de-politicized communities of empirically identified (rather than politically articulated) affected interests or common fates. At a more concrete level, such a politics would call attention to the necessarily under-authorized quality of particular acts of sovereign

⁶¹⁶ Giles Deleuze and Felix Guatarri, *A Thousand Plateaus* (London: Continuum, 2004), 397.

constitution, such as those operations of inclusion and exclusion, or interiorization and exteriorization, which occur, not only at the territorial borders of sovereign states, but anywhere that the subjects of sovereignty are differentiated from non-subjects. Finally, a politics that affirms the paradox of sovereignty would not merely look forward to globalization or transnationalization as the end, eclipse, or retreat of modern sovereignty. Rather, such a politics would seek global or transnational resources for making good on the subversive potential that has always been latent in even the most conservative conceptions of modern sovereignty, namely that the sovereign state of exception—the moment when sovereign rule exceeds normal authorization in order to act ‘beyond the law’, as it necessarily does in every act of sovereign constitution—is not a moment of incontestable authority, but a moment when sovereign authority is at its most contestable.

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