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Pluralism, Democracy, and the ‘Empty Place of Power’: Using Lefort’s Political Theory to

Address the Problem of Tolerance

A Dissertation Presented

by

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Abstract of the Dissertation

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Though widely adopted since the European wars of religion in the 16th and 17th centuries, liberal solutions to the problem of tolerance continue to face difficulties over issues, such as abortion and religious freedom, where deeply held values and matters of governance intersect. In this dissertation I provide a new argument for political tolerance that is supported by a Lefortian conception of democratic political legitimacy.

In the first half of the dissertation I argue that two forms of liberalism, public reason liberalism and liberalism of conscience, fail to adequately address the difficulties posed by religious pluralism. In its Rawlsian form, the former cannot answer a reasonable theocrat’s demand for a right to participate in governance according to non-public reasons. While the latter approach avoids this difficulty by allowing for semi-sovereign religious communities within a liberal state, it cannot address intolerance that arises within such politicized religious communities.

In the third chapter I provide a prudential argument for the practice of political tolerance. Drawing on the works of Machiavelli, I argue that a tolerant pluralist state is better able to identify new political difficulties because it can draw upon the situated knowledge of diverse groups within its population. Insofar as each group depends on the success of the state for its own wellbeing, it is in the best interest of all to tolerate the others.

In the final chapter I supplement this prudential argument with a conception of political legitimacy, drawn from Claude Lefort’s work, that can be endorsed by those who are asked to tolerate one another in spite of deep moral differences. By holding empty the ‘symbolic place of power,’ modern democracy is able to sever the link between political legitimacy and a transcendent moral foundation. This breakage permits those who disagree about the source and meaning of political legitimacy to carry those disagreements into their political life, while demanding that all citizens be extended civil and political liberties. It has the added benefit of

granting flexibility in addressing the source of intolerance—permitting new grievances to be raised as new sources of intolerance arise.

Dedication Page

This dissertation is dedicated to the memory of Brendan Fyfe (1985-2010).

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Introduction: Toward a New Model of Political Tolerance

In March 2012 CNN broadcast an interview with Kirk Cameron, a former child actor whose celebrity had passed decades earlier, which by any reasonable expectations should have gone unnoticed by the broader culture.¹ In this interview Mr. Cameron, a late comer to evangelical Christianity, insisted that homosexuality is “unnatural, detrimental, and ultimately destructive to so many of the foundations of civilization.” The public reaction was so strong that within 24 hours Mr. Cameron was forced to publicly respond, defending his statement. What makes this relatively innocuous volley in the “culture wars” remarkable is that both sides defended their position by appealing to the ideal of tolerance. Those who objected to Cameron’s statements did not insist that they were factually incorrect, but rather that they were intolerant, and hence unfit to be broadcast publicly. Mr. Cameron responded by insisting that those who “preach tolerance” were themselves being intolerant of his right to “express moral views on social issues.” Both parties, insisting that tolerance is core American value, disagree entirely about what practices this value entails.

Such disputes over the meaning and reach of tolerance are a common occurrence in modern pluralist democracies, and the stakes are often higher than the reputation of a former television star. They frequently appear at the center of legislative debate, both local and national in scope.² In December of 2011 protests swept through Israel when members of what has been called an “ultra-orthodox sect” of Judaism spat on an eight year old girl as she walked to school

¹ Piers Morgan, Interview with Kirk Cameron. *Piers Morgan Tonight*, CNN. March 12, 2012.

² In the months leading up to the 2009 NYC mayoral election, a public bike lane was removed from a Hasidic neighborhood in Brooklyn. Residents of this neighborhood championed the removal as a step toward tolerance on the grounds that female bikers offended the modesty laws of the local community. Many of those who opposed the lane’s removal insisted that the modesty laws themselves were intolerant of women.

for dressing immodestly. One protester held up a sign reading “stop Israel from becoming Iran.”³ This sign clearly appealed to the image of Iran as an intolerant state. In France, where nearly 10% of the population is of Muslim faith, head scarves have been banned in state primary and secondary schools since 2004 and full-face veils were banned in any public place in 2011. In many US states there are “hate-crimes” laws that impose stiffer penalties on those crimes motivated by hate.

The fact that each side in these disputes insists on the intolerance of the other’s position illustrates both the centrality of the ideal of tolerance to modern democratic states and also the lack of clarity in how this concept is popularly understood. Yet the academic discussion of tolerance over the past half-century, including such works as : *Tolerance: an elusive virtue*, *The Difficulty of Tolerance*, and “Three (Apparent) Paradoxes of Toleration,” is far more successful in uncovering confusions in the concept more than rather than resolving them. Some speak of tolerance as a virtue while others of it as a practice. Some think it is necessarily an aspect of liberal thought⁴ while others insist that it is only compatible with a form of multiculturalism that many find illiberal.⁵ If we are to resolve the more pressing practical issues of tolerance, issues where the lives and well being of individuals are at stake and where legislation and the character of states are determined, we need a conception of tolerance this is first and foremost conceptually coherent.

³ Batsheva Sobelman, “Israel Town of Beit Shemesh in Front Line of a Religious Battle.” *Los Angeles Times*, December 25, 2011. http://latimesblogs.latimes.com/world_now/2011/12/israeli-beit-shemesh-religious-battle.html.

⁴ For example, see Bernard Williams’, “Tolerance, an impossible virtue?”

⁵ For example see Charles Taylor’s “The Politics of Recognition,” *Multiculturalism: Examining the Politics of Recognition*.

Rainer Forst has brought much needed clarity to this opaque concept in his recent work. He identifies four distinct historical conceptions of tolerance⁶, three paradoxes those attempting to understand this concept commonly confront, and three necessary components to any conception of tolerance.⁷ In order to bring to light the conceptual and practical difficulties facing any theorist of toleration, I will briefly survey Forst's work here—beginning with the three components, moving to the four conceptions, and ending with the three paradoxes.

Three Components of Tolerance

First among the three necessary components of a coherent conception of tolerance is the “objection component.” In order to qualify as an instance of tolerance there must be something about the tolerated to which the tolerator objects. Without some objection component the object of tolerance is not tolerated but rather affirmed or merely treated with indifference. As Bernard Williams has suggested, it may be true that religious diversity is accepted across Europe,⁸ but this is not clearly the result of any increase in tolerance among the peoples of Europe. The growing indifference toward matters of religion explains the decrease in religious violence and oppression just as well.

Furthermore, to qualify as tolerance, the tolerator must also find some reason to accept the objectionable aspect of the tolerated party. This “acceptance component” requires more than the tolerator's inability to interfere with the tolerated. There must be some reason for acceptance

⁶ Some theorists, Forst among them, distinguish toleration (the practice) from tolerance (the concept). I have not followed this distinction strictly for two reasons. First, because it is not followed by many who discuss the issues, treating it as a strict distinction creates a great deal of confusion. Furthermore, it renders the prose more cumbersome without significant benefit, given that the context of the discussion can be used to determine which sense is being employed.

⁷ Forst's work is most thoroughly explained in his *Toleration in Conflict: Past and Present*, which is currently in translation. One can find parts of this in: “Toleration, Justice and Reason”, “The Limits of Toleration”, and “Pierre Bayle's Reflexive Theory of Toleration”, and his entry on “Toleration” in *The Stanford Encyclopedia of Philosophy*.

⁸ Even this characterization is contestable. While it is true that intolerance among the various branches of Christianity is relatively non-existent, intolerance is a phrase often invoked in discussions about the place of Islam in Europe.

that trumps the reason for objection. The reasons in the objection and acceptance component need not be of the same type. For example, one may object to a religious creed as sinful while accepting the right of an individual to publicly state this creed on the epistemological grounds that religious confession is a matter of faith and cannot be rightfully compelled.

Finally, the concept of tolerance requires a “rejection component”—some means by which one can distinguish objectionable qualities that must be tolerated from those that need not be tolerated; that is, those that can be rejected ‘tolerantly.’ The rejection component is what distinguishes tolerance from a thoroughgoing relativism. A relativist position regarding religion, for example, is unable to reject practices ranging from forced female circumcision to suicide bombings as long as these are performed in the name of religious practice. Tolerance’s rejection component permits us to establish a limit to what toleration requires we accept.

Before discussing the four conceptions of tolerance and its three paradoxes I would like to highlight two additional points. First, tolerance is what Forst calls a “normatively dependent concept.” Tolerance provides structure and clarity to how we understand our obligations to those who differ from ourselves. The three components of tolerance help us to distinguish between those whom we are merely indifferent to from those whom we tolerate and between those whom we owe acceptance from those whom we do not. However, there is nothing about these three components on their own that justifies the limits they set. Rather, tolerance must draw upon other resources, be they pragmatic, religious, moral, epistemological or otherwise, for its justification and rationale. There is a significant difference between objecting to another person because of their beliefs and because of their race. The concept of tolerance alone cannot supply the resources by which we distinguish a legitimate from an illegitimate objection.

Second, these external resources can be diverse even within the same conception of tolerance. For example, a conception of religious tolerance may draw on religious resources for its objection component while appealing to epistemological or pragmatic justifications for its acceptance and rejection component. We find such diversity of reasons in Milton's argument for religious tolerance in the *Areopagitica*. While the objection component is clearly a religious one, Milton argues on epistemological grounds (*viz.* that religious belief is only of value when freely given) that we must accept religious diversity rather than compel others to convert. At this point it should be no wonder that conversations invoking tolerance are often clouded by a great deal of misunderstanding. The conception of tolerance not only admits of different limits but also of different justifications for the same limits. To help clarify some of these misunderstandings I now turn to those four conceptions of tolerance that Forst has identified as of major historical and philosophical significance.

Four Conceptions of Tolerance

We can see these three components more clearly if we look at how they are manifest in the four different conceptions of toleration that Forst has identified: the permission conception, the coexistence conception, the respect conception, and the esteem conception.

Permission Conception

The permission conception of toleration always involves “a relationship between an authority or majority and a dissenting, ‘different’ minority.”⁹ In this relationship the tolerator is a majority or an authority within the community.¹⁰ The majority tolerates the minority, including those aspects that it finds objectionable, on the condition that the tolerated accept the tolerator's

⁹ Forst, “The Limits of Toleration”, 315.

¹⁰ For ease of reading I will use majority and authority interchangeably throughout, though they are not always one and the same.

authoritative status. According to Forst, the permission conception of toleration has been the primary form that tolerance has been practiced historically. For example, the Umayyad caliphate was generally tolerant of Christian and Jewish communities as long as they abstained from evangelizing,¹¹ kept their houses of worship to a certain height, and paid an additional tax. Similarly the Edict of Nantes displayed a permission conception of toleration by the Catholic monarchy toward protestant Christians (within certain geographic areas).

One of the crucial aspects of the respect conception of toleration is that it is non-reciprocal. The minority are not in a position to tolerate the majority and thus have no input in setting the limits of tolerance. The objection component can take whatever form the authority wishes, and the acceptance component is often pragmatically justified. The minority are tolerated as long as they accept certain rules that suit the needs of the authority. Because of its authoritative status, the majority may stipulate any rejection component it wishes, and this component may quickly change, as it did when Louis XIV revoked the Edict of Nantes.

Coexistence Conception

The coexistence conception of toleration is similar to the permission conception insofar as it too depends on the social makeup or power structure of the community. Unlike the permission conception, in which there is a clear majority or authority, the community in which the co-existence conception of toleration is practiced is marked by a rough equality in power across those groups who object to one another. As a result, multiple parties contribute to working out the acceptance and rejection components, work which is an ongoing process. However, this conception shares with the permission conception a primarily pragmatic justification. We can see the coexistence conception at work in the principle established by The

¹¹ Albert Hourani, *History of the Arab Peoples*. This tradition was continued, though not without lengthy interruptions and significant modifications, through the Ottoman Empire. See Will Kymlicka's "Two Models of Pluralism and Tolerance."

Treaty of Augsburg, *Cuius regio, eius religio*. Here the objection component is given a religious justification, while the acceptance and rejection components are politically and pragmatically justified.

One striking feature of both the permission and coexistence conceptions of toleration is that they are tied to the social makeup of the community in which they are practiced. This renders both of these conceptions inherently unstable. As a community changes any pragmatic justification for toleration may vanish. Should a coexistence conception be justified only on pragmatic grounds, a shift in the population giving one group a majority could lead to an end of tolerance. Likewise the tolerated, should they become a majority, may dispute the terms of toleration. Aside from any moral reasons such conceptions of toleration are undesirable insofar as they are subject to and even invite political instability.¹² It was this inherent instability, at least in modern pluralist democracies, that led John Rawls to famously reject the coexistence conception of tolerance (a *modus vivendi*) in favor of the more stable form he sought in an “overlapping consensus.”¹³

This discussion highlights the second crucial criteria for a workable conception of toleration. No matter how conceptually compelling it may be, any conception of toleration that cannot operate in the complex and ever-changing world of politics will do nothing to address the very real problems of intolerance. I will return to some of the practical challenges facing a theory of tolerance will following the completion of this survey of Forst’s thought.

¹² In fact this conception often motivates those who have a slight advantage in the political calculus to commit horrific acts, for example ethnic cleansing, when the window of opportunity opens.

¹³ Rawls’ work will be discussed in greater detail in chapter 1.

Respect Conception

The remaining two conceptions of toleration, respect and esteem, avoid the problem of political instability insofar as they make no reference to the social makeup of the polity. The most frequently employed of these two is the *respect conception*, according to which the tolerator accepts the tolerated “as a moral-political equal in the sense that their common basic social life should be guided by norms that all parties can equally accept and that do not favor one specific culture or ‘ethnic community.’”¹⁴ As with the coexistence conception, the respect conception is reciprocal insofar as both parties are called to respect one another and are able to jointly set the terms of tolerance. While the objection component may differ for each group, there is agreement on both the acceptance and rejection component. For example, a person of faith may object to an atheist as a sinner, while the atheist may object to the practitioner as irrational. However, both agree that they will abstain from interfering with the practices and beliefs of one another on the grounds of political freedom of conscience (acceptance component) as long as the other is not violent toward the outside community (rejection component).

Within the respect conception of tolerance Forst distinguishes between the “formal equality” model and the “qualitative equality” model.¹⁵ The formal equality model invokes a strict distinction between the public and the private domain and restricts the demands of toleration to the latter. According to the formal equality model, one must tolerate the practices of others that satisfy both the objection and acceptance criteria but only as they are manifest in the private domain.¹⁶ These qualities that demand respect cannot serve as the basis for public policy

¹⁴ Forst, “A Critical Theory of Multicultural Toleration” in *Multiculturalism and Political Theory* pp. 295-6.

¹⁵ Forst, “Toleration, Justice and Reason”, 74-76.

¹⁶ This characterization has been disputed by several advocates of the formal equality model and will be discussed in greater detail in chapter one.

and may even be rejected in public if their acceptance were to require special treatment. Forst points to the French “secular republicanism”, their *laïcité*, as a clear example of the formal equality model of the respect conception. For this reason the formal equality model tends to favor those groups whose practices do not require public displays over those that do. For example, anti-polygamy laws are, according to this conception, not intolerant because marriage is a state recognized institution and there are only non-public arguments for its support.

The qualitative equality model seeks to address the biases of the formal equality model by ensuring that “persons respect each other as political equals with distinct ethical-cultural identities that must be tolerated as (a) especially important for a person and (b) providing good reasons for certain exceptions from or changes to existing legal and social structures, in order to promote material and not just formal equality.”¹⁷ Variations of this approach have been most prominently defended by Will Kymlicka as well as Lucas Swaine.¹⁸

A recent conflict in Brooklyn illustrates the difference between these two models quite well. The B110 bus-line serves a heavily Hasidic community. The line is operated by a private company, which pays a franchise fee to the City. While the route, timetable, and fare are set by the city, the bus-line was enforcing a gender segregation rule (something observed in public life in Hasidic communities). In October of 2011 a female journalism student wrote a story in which she described being asked to move to the back of the bus, sparking a public incident. In the end the bus line was forced to stop enforcing the gender segregation.¹⁹ Once again, arguments from both sides insisted that it was the other that was intolerant. The Hasidic community insisted that

¹⁷ Forst, “Toleration, Justice, and Reason”, 76.

¹⁸ I will discuss Swaine in greater detail in chapter two.

¹⁹ Mark Duell, “Bloomberg Outraged at Ultra-Orthodox Jewish Bus where Women are Told to Sit at the Back.” <http://www.dailymail.co.uk/news/article-2051399/Bloomberg-outraged-ultra-orthodox-Jewish-bus-women-told-sit-back.html>. A similar story that occurred in 1993 is discussed in *The Perversion of Autonomy* 63-65.

the busline, though public, was run by a private company and served a Hasidic community. By preventing them from providing a public-transit service that conforms to their religious rules in their community, the city was not tolerating their religious freedoms. Opponents of the busline, however, argued that those religious rules were themselves intolerant of women and had no place in public life. Both were invoking a respect conception of tolerance—the supporters of the gender-segregation employ a qualitative equality model and insist that the right to observe religious practices freely, while those opposed employ a formal equality model, insisting that women are due respect in the public sphere in the form of the same rights to free motion as men.

Esteem Conception

Finally, Forst identifies an *esteem conception* of toleration that occurs in some debates. According to this conception, while one may object to the beliefs or practices of the tolerated, they must still be held in positive ethical esteem as having some value. For example, there are theologians who argues that all judeo-christian faiths are of value. Those who adhere to such faiths are to be not only respected but positively valued on this account, while others are not.

By distinguishing among these four conception of toleration, Forst has given us a powerful tool with which to understand many of the arguments that appeal to toleration and to identify points of miscommunication that arise when different conceptions of the same concept are employed. Looking to our earlier example, we can now see that the objections to Kirk Cameron’s comments are grounded in an esteem or respect conception of toleration, while Mr. Cameron clearly employs a permission conception.

Identifying these differences may help avoid some of the confusion in public discussions, but it is of little use if we do not also have a means to determine which of these conceptions is appropriate in a given context. In order to settle on a conception of toleration that we can hold as

normative we must have some criteria for deciding among these conceptions. Forst helps us again in this regard by identifying what he calls the three paradoxes of tolerance. Using these, we can proceed to some extent by process of elimination. If any conception of toleration cannot address each of these three paradoxes, then we can dismiss it.

Three Paradoxes Within the Conception of Tolerance

The paradox of the tolerant racist

The paradox of the tolerant racist revolves around the rejection component. The 1980's and 1990's saw a dispute among philosophers over the scope of tolerance. Baroness Warnock insisted that the acceptance of *any* difference that one finds objectionable should be considered an act of toleration, while Peter Nicholson argued that it is inappropriate to find certain aspects (e.g. moral or religious differences) of another person objectionable in the first place. Refusing to act on such an inappropriate objection cannot rightfully be considered an act of tolerance. In one of the more humorous exchanges in this debate, Baroness Warnock claimed that the restricted scope of toleration employed by Peter Nicholson is:

considerably narrower than the normal idea. Often one would think oneself tolerant if one refrained from criticizing something that one disliked, hated or regarded with varying degrees of distaste. I am tolerant if one of my daughter's boy-friends wears sandals with his suits or a stock with his tweed coat, and I not only make no mention of this outrage, but actually express myself pleased when they announce their intention of getting married.²⁰

While the idea of a baroness being forced to tolerate the fashion faux pas of a future son-in-law might amuse the American sensibility, it points to a significant difficulty with the conception of tolerance as a virtue. John Horton draws this difficulty out by comparing the cases of religious tolerance and racism. There is a popular consensus that religious tolerance is

²⁰ Quoted in Horton, "Toleration as a Virtue" in *Toleration: An Elusive Virtue*, ed. David Heyd. pp 29-31.

desirable,²¹ whether it be for pragmatic reasons,²² epistemological reasons,²³ or even religious reasons.²⁴ Yet it seems counter-intuitive to label a racist virtuous simply because he refuses to act on his racist beliefs. As Horton puts it,

It is not tolerance toward different races that we generally wish to promote but the recognition of the intrinsic moral irrelevance of racial differences. [...] [I]n the case of racism, we believe the objection, and hence the motivation to interfere or prohibit, to be itself unreasonable or without merit, hence the question of acting on it should not even arise.²⁵

Were we to consider the racist who does not act on his desires tolerant, then one could become more virtuous simply by objecting to more people and practices.²⁶ It seems counterintuitive to call a person who moves to a Polish neighborhood and develops a deep hatred his neighbors more tolerant than he was without the hatred simply because he refrains from acting on it.

There have been a variety of different responses to this paradox. Thomas Scanlon argues that, while the continued existence of racist or otherwise “unreasonable prejudices” may be an imperfect solution, the adoption of a tolerant attitude by those holding such beliefs is certainly

²¹ The question of whether we should call it a virtue at all will be taken up in the third paradox.

²² For example, to refuse toleration is disruptive to the civil order, as the religious wars of Europe vividly demonstrated.

²³ For examples, Since one’s creed falls into the domain of faith rather than knowledge one has no legitimate grounds from which to be intolerant.

²⁴ As Milton argues in the *Areopagitica*, religious belief is only of value if it is freely given and not the product of coercion. Of course, as Forst notes in, “Pierre Bayle’s Reflexive Theory of Toleration,” Augustine responded to this objection when saying that we can force the mind to look on the truth so that it may see and then be compelled by its necessity. Perhaps less objectionably, Pascal insisted that one in doubt ought to go through the motions of being a Catholic until one was convinced of the truth of the creed.

²⁵ Horton, 1996, p.34.

²⁶ Horton, 1996, pp.34-5.

preferable to its lack. As such, he finds no significant objection to calling such people tolerant and praising this tolerance alongside efforts to modify the unreasonable beliefs.²⁷

Forst, on the other hand, concludes that toleration is only desirable when:

the reasons for objection [are] reasonable in a minimal sense; they cannot be generally shareable, of course, but they must also not rest on irrational prejudice and hatred. The racist, therefore, can neither exemplify the virtue of tolerance nor should he be asked to be tolerant; what is necessary is that he overcome his racist beliefs. This shows that there are cases in which tolerance is not the solution to intolerance.²⁸

Setting aside the difficulty of ridding people of irrational prejudices, Forst's solution faces a major difficulty. While Baroness Warstock's intolerant attitude toward her future son-in-law's attire is clearly an aesthetic matter and not "reasonable in a minimal sense," there are many cases where the division between what is reasonable in a minimal sense and what is not is far from obvious. To return to the case of religious tolerance, it is generally accepted that objections to the beliefs or behaviors of another on religious grounds are reasonable. Yet religions have often relied on clothing, ritual, and even body modification to identify their adherents both publicly and privately. Circumcision is considered a mark of a covenant with God, and as we have seen in certain communities, "modesty laws" govern acceptable attire. As we have already discussed, Israel faced a great deal of civil discord when members of what has been described as an "ultra-orthodox" sect of Judaism objected to an eight year old girl as she walked to school for not dressing in accord with what they take to be religious modesty requirements. Likewise, the controversy over the permissibility of various forms of religious attire in public has rocked

²⁷ Scanlon agrees that promoting 'tolerance' among racists is not the best situation, but insists it is worthwhile to persuade those, like the tolerant racist, who have "unreasonable prejudices" to adopt a tolerant attitude in light of those prejudices. See "The Difficulty of Tolerance" in *Toleration: an Elusive Virtue*.

²⁸ Frost R., 'Toleration', The Stanford Encyclopedia of Philosophy (Fall 2008 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/toleration/>.

France for decades. It is unclear how we might consistently distinguish what constitutes a ‘minimally reasonable’ objection and what does not.

The Paradox of Moral Tolerance

It was in response to the next paradox, the paradox of moral tolerance, that Bernard Williams called tolerance an “impossible virtue.”²⁹ This paradox is only an issue if we accept the restricted notion of tolerance that Forst (and others) take to be the appropriate response to the paradox of the tolerant racist. If we restrict the scope of tolerance to only those cases where there is a “reasonable” objection component, we risk demanding that people tolerate the intolerable.

In matters of religion, for instance [...], the need for toleration arises because one of the groups, at least, thinks that the other is blasphemously, disastrously, obscenely wrong. The members of one group may think that the members of the other group need to be helped toward the truth, or that third parties need to be protected against the bad opinions. Most important [...] they may think that the leaders or elders of the other group are keeping the young and perhaps the women from enlightenment and liberation. [...] Toleration, we may say, is required only for the intolerable.³⁰

This discussion brings up several difficult issues concerning tolerance. First, in many cases the intolerant party is not acting out of malice or hatred as is often alleged but in the perceived interest of the object of intolerance. Many actions widely considered to be hateful are motivated by (perhaps misguided) beneficence toward the recipient. For example, Marcus Bachmann, husband of 2012 republican primary front-runner, owns two counseling centers that offer therapy to “cure” people of homosexuality.³¹ The argument over whether coercive measures may be taken to cure beliefs dates back at least to Augustine, who argued that coercion

²⁹ Bernard Williams, “Toleration: an Impossible Virtue?” in *Toleration, an Elusive Virtue*.

³⁰ Williams, 18.

³¹ It is perhaps worthy of note that Dr. Robert Spitzer, the well respected psychiatrist who’s backing gave legitimacy to the notion of curing homosexuality has since withdrawn his support. See Benedict Carey’s “Psychiatry Giant Sorry for Backing Gay ‘Cure.’” *New York Times*. <http://www.nytimes.com/2012/05/19/health/dr-robert-l-spitzer-noted-psychiatrist-apologizes-for-study-on-gay-cure.html>.

can direct the eyes toward the truth even when it cannot bend the will.³² Given the long history of beneficent coercion, it is not clear what actions ought to be considered intolerant. Even if we do consider such actions intolerant, they are often said to be taken for the good not only of the object of intolerance but for the good of some third party, for example “society as a whole.” This was the implied premise in Kirk Cameron’s comments. When the intolerant party is acting from beneficence and on behalf of many third parties then many of the arguments for tolerance all flat.

Once again, there are several solutions to this difficulty in the literature. Williams himself proposes that we distinguish between tolerance as a virtue and tolerance as a political practice. For example, the wars of religion commonly cited as the precursor to a more tolerant Europe also coincided with a developing skepticism toward the matters of faith. In this skeptical light, religious differences no longer appear to be worth waging war over. This skepticism led to toleration as a matter of political *practice*, an extremely important development, but a practice motivated by indifference rather than tolerance.³³ Williams suggests that inculcating attitudes of indifference in the world’s population—rather than tolerant attitudes—may not only be the more prudent course of action but “the only solution to some religious disputes.”³⁴

Forst is not as quick to dismiss a moral justification for tolerance. He agrees with Williams that the esteem conception of tolerance demands too much in that the tolerator must positively value the tolerated, but insists that the respect conception can handle this difficulty. In response to the paradox of moral tolerance, he insists that, ‘the solution of this paradox therefore

³² Forst, “Pierre Bayle’s Reflexive Theory of Toleration.”

³³ Williams, 20.

³⁴ Williams, 21 He says later, “It may be that the best hope for toleration as a practice lies not so much in this virtue and its demand that one combine the pure spirit of toleration with one’s detestation of what has to be tolerated. Hope may lie rather in modernity itself and in its principle creation, international commercial society.” 26.

requires a distinction between various kinds of “moral reasons, some of which must be reasons of a higher order that ground and limit toleration.”³⁵ For example, a person of faith may object to the faith of another from the perspective of his faith, but he may also accept that person’s faith on the ground that faith in general is legitimate.

Paradox of Drawing the Limit

The final paradox applies to the rejection component of only the reciprocal conceptions of toleration. All reciprocal conceptions of toleration allow for the rejection of those who are not themselves tolerant. While ostensibly a clear way to set the limits for tolerance, this claim leads to a number of problems and confusions. We saw an example of just such a confusion in the case of the Hasidic bus. The Hasidic community insisted that the city was being intolerant of their religious beliefs while the city insisted that these beliefs and practices were themselves intolerant of women’s rights. The same confusion occurred in the situation between Kirk Cameron and gay rights activists.

Forst finds the resolution to this paradox in tolerance’s normative dependence. Recall that all of the components of tolerance rely on resources beyond the concept of tolerance itself for their justification. It is for this reason that the common formulation of the rejection component, “no tolerance for the intolerant,” fails. Rather, tolerance requires independent justification for the rejection component, a justification that can be agreed upon by all parties involved in the dispute. What has come to be called Mill’s “harm principle,” expresses just such a justification. According to Mill, “the only purpose for which power can be rightfully exercised

³⁵ Frost R., ‘Toleration’, The Stanford Encyclopedia of Philosophy (Fall 2008 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/toleration/>.

over any member of a civilized community, against his will, is to prevent harm to others.”³⁶ When placed within the context of tolerance, the right to be free from harm trumps the requirement that we accept the beliefs and practices of others. Since each party, presumably, claims a right to be free from harm at the hands of other parties, Mill’s harm principle can serve as the basis for a rejection component.

Practical Concerns

Our discussion thus far has uncovered many of the problems involved in identifying a conceptually clear notion of tolerance. We have also identified several features necessary to address these difficulties, identifying the objection, the acceptance and the rejection component, discovering the necessary external normative resources needed to ground these components, and to resolve the three paradoxes. Yet, if we are to address the difficulties with tolerance facing modern pluralist democracies, we need more than a conceptually coherent notion of tolerance. Any conception of tolerance that is to be more than a mere academic exercise must also respond to the practical constraints of the society in which it is practiced, one in which social changes occur with frequency. It must also not depend upon an unrealistic conception of human behavior. The conception of tolerance employed by public reason liberals, as we will see in the first chapter, relies too heavily on a moral duty of civility. This dependence is problematic not only because it is unrealistic to think that a majority of the population will abide by such rules when the stakes are high but also because it cannot be enforced by any political means

A practical conception of tolerance is one that all affected parties can endorse. Demonstrating that proponents of same sex marriage employ a qualitative-equality model of the respect conception of tolerance while their opponents employ a formal-equality model is of no

³⁶ John Stuart Mills’ “On Liberty.” In *On Liberty and Other Writings*. Edited by Stehan Collini. Cambridge Texts in the History of Political Thought. Cambridge: Cambridge University Press, 1988. Pp. 21–22.

use if the two cannot be brought into agreement over which is more appropriate. The criteria by which we decide which coherent conceptions of toleration to endorse must itself be accepted by all parties to the conflict, regardless of whether the objection is made from religious, ethical, racial, or other reasons.

Furthermore, unless the demands of a conceptually coherent tolerance are compatible with modern democratic institutions, that conception has little chance of gaining widespread adoption. For example, should an esteem conception of toleration be shown conceptually coherent, it remains unlikely that any practical steps could be taken to secure practices of tolerance based on this conception since they would abridge foundational rights such as freedom of conscience and of speech.

In order to address both of these concerns I will examine conceptions of tolerance that are tied to the need for political legitimacy. Such a political basis for grounding tolerance offers several advantages. Regardless of its form, the state already unites those living within it through the bonds of citizenship. Insofar as citizenship is not tied to religion, races, or economic status, it transcends the differences that commonly animate intolerance. By linking tolerance and legitimacy, we can be reasonably certain that tolerance will be compatible with modern democratic society not only in its current form, but also as it develops. Establishing tolerance on a civic foundation will ensure that the conception of toleration we endorse will be minimally acceptable to the population, and resilient against the inevitable social changes that occur over the normal course of a state's existence.

Program of Work

Chapter 1 – Public Reason Liberalism and the Problem of Tolerance

In Chapter One I examine the conception of tolerance supported by public reason liberalism along with and two different models of public reason liberalism that attempt to describe the appropriate practice of this conception of tolerance. I begin with Rawls' political liberalism, which I argue is not as tolerant of the faithful as it claims. I then examine Swaine's liberalism of conscience which, though successful in its attempt to address this particular shortcoming of Rawlsian tolerance, opens the door toward political intolerance within religious communities.

Each member of the family of public reason liberalisms aims to support a conception of tolerance that is justified by reference to the epistemic distinction between public and non-public reasons. Public reasons are those that any reasonable person ought to find persuasive. Rawls gives as examples of public reasons the truths of mathematics and of uncontroversial science. To give a currently relevant example, one can reasonably argue over the extent to which human activity has contributed to the steady increase in temperature over the globe across time but one cannot reasonably contest the fact that such a trend has occurred over the past decades. We have taken measurements that attest to the fact that it has.

Non-public reasons are those that a reasonable person may, but need not, find persuasive. They are typically used to answer questions, for example about the good life, that are 'beyond reason' to use Forst's apt phrase. Religion and philosophy are often directed at such questions. The non-public nature of the answers religion poses are often attested to by the emphasis on faith in many religions. While it is reasonable to accept the answers to such questions provided by

religions or philosophy on the basis of non-public reasons, one would be just as reasonable to reject them. In short, reason alone does not rule either way on the matter.

While each member of the family of public reason liberalism treats the matter differently to some extent, all take as central the claim that it is unjust to subject members of a political community to laws that they could reasonably reject. This central tenant of public reason liberalism is the key to understanding the conception of tolerance that public reason liberalism aims to support. The objection component of this conception of tolerance is grounded in non-public reasons. Insofar as it is reasonable for people to disagree on questions of great import, such as the nature of the good life, it is reasonable for people to object to others who do not share their answers to this question. The disagreements behind the iconoclast controversy in the Christian church are perfectly reasonable, even if the actions taken on the basis of these disagreements were not.

The acceptance and rejection components of this conception of tolerance are grounded in the *limits* of non-public reasons. Precisely because the questions to which non-public reasons speak are questions about which there can be reasonable disagreement, we have good reason to accept those to whom we object, at least in cases of such reasonable disagreement. Because we cannot settle the questions of the moral quality of homosexual loving relationships we have good reason to accept those who practice them and those who object to them. For this same reason we have good cause to reject those who are unwilling to accept the limits of the nonpublic reasons they accept. Those who are unwilling to accept the limited scope of non-public reason will be unwilling to accept the notion of a reasonable disagreement on certain very central matters. They will pursue political actions that unjustly and unreasonably limit the freedoms of others to reasonably disagree on matters that are beyond reason.

Different versions of public reason liberalism attempt to provide a political structure that enforces this conception of tolerance in different ways. Rawls pursues a strategy of limiting the reasons admissible in the public political forum, which includes the public justification for legal rulings, the rationale given by legislators and executives for their public acts and in public debates about political action, and in the justifications that candidates for election and their surrogates give for running for office or for pursuing the policies they will pursue in office. According to Rawls, non-public reasons are only admissible in the public political forum when they are to be redeemed with public reasons later on. This restriction is itself limited to only the public political forum. One is free to employ any reasons one would like in the various venues of what Rawls calls ‘the background culture,’ including private associations, television broadcasts, and other aspects of what generally goes under the name of civil society. In this way political liberalism attempts to accept the beliefs and actions of those who have reasonable disagreements, while rejecting those political actions that refuse to acknowledge the limits of non-public reason.

This approach fails, I argue, because it intolerantly prohibits a theocrat from participating in the activities of self-governance. That is, it does not provide an acceptable answer to the question “why should I not be able to govern myself according to reasons that I have a right to take as correct answers to extremely important questions.” It also fails to meet the acceptance component of its own conception of tolerance insofar as it does, in certain circumstances, reject those who accept the distinction between public and non-public reasons.

This objection is put most forcefully by Lucas Swaine who asks why these restrictions would be imposed upon religiously homogenous geographically enclosed communities, such as the Kiryal Joel community in New York. Swaine aims to address this objection while retaining

the conception of tolerance supported by public reason liberalism through what he calls a ‘liberalism of conscience,’ a modified form of public reason liberalism. In order to address the concerns of what Swaine calls reasonable theocrats he proposes to grant semi-sovereign status to geographically enclosed and religiously homogenous communities provided they meet certain requirements surrounding education, human rights, and civil liberties. Such communities are taken to meet Rawls’ standard of justice insofar as they do not impose laws based on non-public reasons except where those reasons are accepted by the entire community.

Chapter 2 – Intolerance in Politicized Religious Communities

In the second chapter I argue that Swaine’s liberalism of conscience opens the door to many forms of intolerance within religious communities by permitting religious institutions to play a central role in the political life of semi-autonomous communities within a liberal society. Drawing on the work of Max Weber I argue that, because churches offer a path to salvation while attempting to ensure both the material wellbeing of their members and the spread of their message they must reconcile tensions between the demands of worldly and spiritual success that other organizations can ignore. Among post-prophetic religious communities Weber distinguishes between sects, which are concerned exclusively with the preservation of their religious doctrine and the spiritual wellbeing of their members from churches, which also aim to spread their religious doctrine throughout society (and beyond).

In order to ensure the successful spread of its doctrine, a church must accommodate its teachings to the economic demands a society imposes on its members and those the church seeks to convert. As an extra-political entity, many churches are able to abstain from comment on the moral status of certain behaviors necessary to success in the ‘profane’ economic sphere. The distinction between a mundane political sphere and the spiritual concerns of the church enable

the religious institution to adapt and survive under different circumstances as a society develops and also creates a space of ambiguity in which members of the same faith who hold different interpretations of the prophetic doctrine can coexist.

The acceptance component of public reason liberalism's conception of tolerance would not apply within Swaine's semi-autonomous religious communities, and the objection component would likely serve as a rejection component as well. While this may be the intention of creating such communities, this change would have unintended consequences. A church given the political authority Swaine suggests would no longer be able to rely on a distinction between the spiritual and profane spheres in order to accommodate differences within its community. Beyond the minimal stipulations imposed by the liberal society the church would be responsible for ruling on the permissibility or prohibition of much of the activity within the semi-sovereign community it was previously able to ignore. By requiring religious organizations to act as the primary source for answers to (often minor) political questions, the semi-autonomous religious community is forced to provide a stricter and less tolerant interpretation of its prophetic doctrine.

Such strict interpretations of a religious doctrine encourage the development of reformers within the community who disagree with the church authority over the true meaning of the prophetic message, and who condemn all those who do not share their interpretation. Reform movements often develop into a particularly vicious form of intolerance because they give rise to a claim to speak exclusively for a single religious tradition. There can be no acceptance component within such communities, and any objection is grounds for rejection.

At the same time, the political authority Swain's communities grant to religious institutions provide an incentive for both reform movements and institutional authorities to discredit the other. While the co-existences of many different religions may be acceptable to a

liberal who sees natural theology as a matter of indifference or of private belief, the existence of a heretical group that speaks falsely in the name of the true religious is not as easily tolerated. While such reform groups may peacefully split off by insisting that they are the true members of the faith, as when the Puritans left Europe, when the consequences of such a departure involve the loss of significant political authority and material resources, conflicts over matters of orthodoxy more often lead to intolerance, as when Roger Williams was banished from the Massachusetts Bay Colony under the sedition and heresy act.

While the broader liberal society outside of these semi-autonomous religious communities is able to secure tolerance beyond what Rawlsian political liberalism has to offer, it is at the cost of increasing intolerance within religious communities within its boundaries.

Chapter 3—Machiavelli: A Prudentially Justified Republican Conception of Tolerance

In chapter three I develop a conception of “republican tolerance,” drawn largely from Machiavelli’s intervention in the republican tradition, as an alternative to public reason liberalism’s conception of tolerance. When cast as an issue of peaceful co-habitation and begrudging cooperation, the problem of political tolerance no longer appears to be a strictly modern difficulty. As far back as the 4th century B.C.E. Aristotle endorsed a constitution with a strong middle class because such a class can mitigate the poor’s envy of the wealthy and the wealthy’s contempt of the poor.³⁷ The republican tradition of political thought has long concerned itself with the difficulties that arise from the internal strife that mars a mixed constitution. These concerns can be traced back at least as far as Plato’s utopian thought experiment in *Republic*. If a republic grows complex enough to provide the luxuries its inhabitants demand, economic and social divisions will arise that must be reconciled. Republican theorists have typically developed a unifying theory of legitimacy that identifies each

³⁷ Aristotle, *Politics*, Book 4 Chapter 11.

division as in some way necessary or essential to the proper functioning of the republic of which it is a part.

Political events in Florence during the 15th and 16th centuries presented a number of challenges to the consensus of republican theory up to that point.³⁸ The Visconti domination of Italy, the French invasion of Italy that unseated the Medici, the rise and fall of both Savonarola and the Soderini Republic, and the return of the Medici to power challenged the claim of republican theory to satisfy the moral needs of a diverse population by subordinating these needs to the overall requirements of the republic for political success and stability.³⁹ These practical challenges undermined the universal validity claimed by republican theorists and forced them to confront the tensions between the requirements of political success and of political legitimacy.

In Chapter Three I discuss how Machiavelli dealt with the problem of reconciling the need for legitimacy in the eyes of a population characterized by social and economic diversity with the requirements for success of the state in the face of constantly changing political circumstances. In spite of his eponymous reputation, ‘Old Nic’⁴⁰ did not sacrifice all moral values on the altar of naked power politics. Rather, he insisted that most disputes among a diverse population arise from the differently situated perspectives each has on the needs and problems facing the state. The strength of republican governance, according to Machiavelli, lies in its ability to draw on the diversity of insights that this diversity of perspectives provides in order to address a constantly shifting set of political difficulties. A state governed exclusively by those who have only a single and partial perspective on the whole would be blind to the demands of new situations.

³⁸ J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*.

³⁹ Pocock, *The Machiavellian Moment*, Chapter 3, esp. p. 75-80.

⁴⁰ Markus Fischer, *Well-ordered License: On the Unity of Machiavelli's Thought*. (Lexington Books: 2000).

In making this argument, Machiavelli provides the foundation for a prudential justification for a republican conception tolerance. Republican tolerance grounds its objection component in the fact that a person's perspective on the needs and problems facing the state is inevitably conditioned by the problems of his or her social position. Consequently, different sectors of society will likely object to the political recommendations of others. The acceptance component is grounded in the benefit that each sector of society can provide to the state in the form of a new perspective on the difficulties facing the state at that time. The wealthy, who tend to have a better acquaintance with matters of finance may see oncoming fiscal difficulties earlier than the working class. At the same time, the working class experience the impact of rising inflation earlier than the wealthy and are able to identify the need to address underlying problems earlier than the wealthy would. Since each member of a society has a direct interest in the success of the state in which she lives, everyone has a reason to tolerate those who contribute to this success. The source of objection is itself the basis for acceptance—eliminating the conceptual asymmetry that marred public reason liberalism's conception of tolerance. Finally, the rejection component is also based on the stake each has in the success of the state. Those who act against the common good by attempting to limit the ability of the various sectors of society to identify and address the problems facing the state are rejected.

In addition to providing a prudential argument for tolerance, Machiavelli provides many suggestions for how a pluralist republic can ease the inevitable tensions that arise between the diverse and conflicting sectors of society. For example, he insists that conflicts should be conducted openly and in front of all sectors of society. This prevents the disputants from relying on the prejudices embedded in any one sector of society and directs the conversation to the common good. Second, he insists that accusations and debates focus on specific claims,

particularly those that can be verified. This further prevents the clouding of judgment by situated perspective. Finally, regular elections with the participation of all sectors of society ought to be conducted in order to keep the attention of all on the common good while also ‘venting the humors’ of animosity that develop between diverse sectors of society.

While Machiavelli provides a prudential justification for tolerance and suggests how political institutions can be designed in order to render pluralism politically fruitful and individually tolerable, he is unable to provide a conception of legitimacy that will enable a principled endorsement of these institutions. For that we will look to Lefort’s analysis of the political form of modern democracy in the final chapter.

Chapter 4 Tolerance and the Political Form of Modern Democratic Society

In light of the need to establish the legitimacy of a pluralist state in the eyes of those who have a conflicting views of both the problems facing the state and of the common good I turn to the work of phenomenologist and political philosopher Claude Lefort. In the final chapter I argue that Lefort’s investigation of the political form of modern democratic society provides the basis for a conception of ‘modern democratic tolerance’ that is superior to the conception of tolerance presented by public reason liberalism both in principle and in practice.

According to Lefort the political form of any society is grounded in a division between society as it is and society as it represents itself to itself. This division gives rise to a symbolic order around which the political experiences of its members are organized and understood along with a social imaginary comprised of the various discourses that its members use to speak about and understand their society, its place in the world and their place within it. These two political registers provide an interpretive frame that informs and constitutes the ‘real,’ their experiences of everyday life within a political society.

This phenomenological account of political experience explains many of the extremely intolerant responses to diversity. Many forms of intolerance are grounded in the destabilizing effects of encountering a rival articulation of the social imaginary, one that throws into doubt one's experience of society, its place in the world, and one's place within it. Modern democracy, according to Lefort, inoculates its members to this destabilization by eliminating the markers of certainty from society. By emptying the symbolic place of power and affirming the indeterminacy of the people who generate the popular will upon which political power is based the political form of modern society generates a 'real' political experience of uncertainty regarding society, its place in the world and one's place within it.

I argue that the political form of modern democratic society provides the basis for a conception of tolerance I call 'modern democratic tolerance.' The objection component of modern democratic tolerance is based on social divisions that characterize modern pluralist societies. Given the shifting conditions of modern societies, such divisions can be based on class, race, faith, or even sexual orientation. Each division may well object to the political beliefs and views of others based on their partial and situated perspective.

The acceptance component is grounded in the 'empty place of power' at the center of the symbolic order of modern democratic society. By emptying the place of power, modern democratic society prevents any social division from claiming a monopoly on political authority. Insofar as the people who generate the popular will are, as a whole, indeterminate, no political action based on such objections is permitted. That is, political actions that attempt to curb the indeterminacy of the people, even in small ways, are contrary to the legitimacy of modern democratic society. For this reason no abridgement of political or civil rights can be justified because they would introduce determinations into the image of the people and would seek to

populate the place of power, thus undermining the form of society as a whole. Finally, the rejection component is also grounded in the emptiness of the place of power and the indeterminacy of the people. Any attempt to introduce determinations into the figure of the people or content into the place of power is to be rejected as it undermines the legitimacy of the society as a whole.

I conclude by arguing that ‘modern democratic tolerance’ is superior to the conception of tolerance supported by public reason liberalism for three reasons. First, it is more tolerant than public reason liberalism’s conception of tolerance. Insofar as it permits the full participation in political processes of persons based on religious or other non-public reasons it is more tolerant than Rawlsian public reason liberalism or Swaine’s liberalism of conscience. Because public reason liberalism restricts participation in public political discourse to only those willing and able to speak in terms of public reason many who have deeply held beliefs based on non-public reasons are prohibited from participating in public political life. While Swaine permits religious communities semi-sovereign status, their members are still to restrict themselves to publicly justifiable claims when engaging in national politics and will be subject to whatever restriction are imposed upon political participation by the church that governs their semi-autonomous community at a more local level. Modern democratic tolerance, on the other hand, permits the participation of all for any reason within the political process while limiting the policies that can be enacted by the state. As Machiavelli pointed out, the most vicious forms of intolerance are more likely to be diffused when aired publicly than when permitted to ‘go underground’ where they can grow unchallenged.

Second, insofar as it grounds tolerance based upon any social division whatever, modern democratic tolerance is more flexible than both Rawlsian public reason liberalism and Swaine’s

liberalism of conscience, both of which restrict concerns of tolerance to issues of non-public reason (especially religious reasons in the case of the latter). Neither Swaine nor Rawls provides a venue to address, for example, forms of intolerance that are experienced within a society but that are justified by public reasons. For this reason, discriminatory labor practices or ‘social legislation’ that are backed by public reasons cannot be politically disputed except in the language of public reasons. Modern democratic tolerance, however, permits any social division that finds itself subject to discrimination to make a public case that its rights are being abridged. The right to make such a case is grounded in the civil and political rights guaranteed to all by indeterminacy of the place of power. In the case that real discrimination is experienced divisions within a modern democracy can fight for social rights that will enable them to fully exercise their civil and political rights. Additionally, but permitting each member of society to identify with the others as a rights-bearer fighting to preserve the right to self-governance from usurpation by the state, appeals to even those who may find one objectionable are more likely to resonate in a modern democratic society than a public reason liberalism.

Finally, modern democratic tolerance provides a more plausible picture of tolerance than public reason liberalism. Public reason liberalism requires of its citizens a duty to civility, including a requirement that they express their public political beliefs sincerely while also restricting the beliefs they express to only those that can be supported by public reasons. Such restrictions have a number of problems. They overestimate the capacity of individuals to distinguish public from non-public reasons and to translate beliefs they are justified by non-public reasons into ones that can be justified by public reasons. At the same time they underestimate the extent to which people are willing to ignore moral duties when matters of high interest, material or moral, are at stake. While such restrictions may be able to govern the

actions of Kant's society of devils who are perfectly reasonable, humans are unlikely to meet such a high requirements. Modern democratic tolerance, however, requires no such restraint. One is able to participate in the political process for whatever reasons one wants. The restrictions are not placed upon the participants, but upon state actions. The state is not able to abridge citizen's civil or political rights. By shifting the burden of the rejection component to state action rather than civil participation, the political form of modern democracy presents a more plausible means by which tolerance can be secured.

Chapter 1: Public Reason Liberalism and the Problem of Tolerance

Liberalism and the New Problem of Tolerance

In the late 20th century tolerance re-emerged as one of the central difficulties facing modern liberal democracies. Liberal democracies have long enjoyed a reputation for tolerance, but until relatively recently they operated according to what Forst has termed a “permission conception” of tolerance.⁴¹ Suffrage was restricted according to property, sex, and race requirements while (arguably) religious practices such as polygamy remain outlawed.⁴² The civil rights movements of the 20th century expanded suffrage and in doing so catalyzed a transition from a permission conception to a respect conception of tolerance. Rather than merely permission to remain a member of the state with lesser status, tolerance came to mean bearing a right to full participation in the political process. But the civil rights movements brought with them unexpected consequences. It is unnecessary to recite the many ways in which social differences were politicized in the so-called culture wars. What is worthy of note is that these disputes were often so far reaching that some began to doubt the legitimacy and even viability of a pluralist state.⁴³

Public reason liberalism is among the most promising responses to the challenges of pluralism. While there are many varieties of public reason liberalism—among which Rawls’ political liberalism and Habermas’ radical democracy are the most prominent—all share two

⁴¹ See the introduction to this work, as well as Forst’s *Tolerance in Conflict*, in press.

⁴² As an example of how these divisions served to bolster the permission conception of even religious tolerance, look to the history of women’s suffrage in the state of Utah. The federal government threatened to grant women the vote in order to intimidate the church into rejecting polygamy. When the state extended suffrage rights to women as a way to gain their support while demonstrating to the world their endorsement of polygamy the federal government passed the Edmunds-Tucker act in 1887 which disenfranchised women while disincorporation the Mormon church.

⁴³ Of course the 9/11 attacks and the tensions in Europe surrounding many Muslim immigrants have exacerbated such concerns. I do not address these developments here in order to emphasize that tolerance is a structural problem for modern liberal democracies rather than an occasional difficulty.

major commitments. First, each affirms a distinction between what can be called public and non-public reasons.⁴⁴ Public reason includes all and only those reasons that each person can reasonably be expected to accept. For example, all persons can be expected to accept basic mathematical reasoning. Suppose that a township has recently found itself with a budget surplus of \$10,000. The town's mayor appoints a committee to determine how this unexpected windfall should be spent. The committee in turn accepts proposals from the townspeople. It hears five proposals in all, each of which would cost \$5,000 to fund. During deliberations a committee member named Dave suggests that they simply fund all the proposals. A fellow committee member would be employing public reason were he to reject this suggestion by explaining that it would cost \$15,000 more than the committee has the authority to spend. While we cannot say for certain that all persons *will* accept such reasoning, we can say that all persons can be expected to accept it as a valid reason—that anyone who would not is unreasonable.⁴⁵

Non-public reasons are those that one cannot expect all persons to accept, though reasonable persons may accept them. For example, one might think that abortion ought to be prohibited because it is a mortal sin as explained by the Vatican. This is a non-public reason because it is a reason one can reasonably reject—in this case one based on a religious authority that cannot justify itself without appealing to the religious tradition from which it speaks. Non-public reasons include both secular and religious justifications that, while plausible, one might also reasonably reject. Returning to our example above, should the committee member reject Dave's proposal on the grounds that his church elders had revealed to him that the town will fall

⁴⁴ This is Rawls' language for the distinction. Habermas uses the terms post-metaphysical reason and metaphysical reason to refer to roughly the same distinction.

⁴⁵ This, of course, does not make it a fully persuasive argument. It may be that the town expects a \$15,000 windfall in the coming year, or that the projects, once funded, are expected to generate the additional revenue. Public reasons are just that—reasons and not arguments.

upon hard economic times should the committee authorize more than the allotted \$10,000 he would be employing non-public reason.

In short, public reason includes all those reasons that are sharable in spite of the diversity of beliefs that characterizes the electorate in modern liberal democracies. Non-public reason includes all those reasons that, though acceptable within certain contexts and traditions, are not sharable among all persons.⁴⁶ The precise content of public reason is fleshed out differently by different version of public reason liberalism. Rawls, for example restricts public reason to “presently accepted general beliefs”, “forms of reasoning found in common sense”, and “the methods and conclusions of science when these are not controversial.”⁴⁷ One might accept the distinction in general but object to the inclusion of common sense as it is prone to error, for example.

Each version of public reason liberalism is also committed to grounding the legitimacy of the state, or justifying some portion of state action and law, by public reasons alone. Again, different versions of public reason liberalism envision this commitment in different ways. Habermas, for example, insists on distinct sets of rules governing the justifications given by the state (including those running for office and agents of the state) and those given by everyday citizens.⁴⁸ A citizen in everyday life may employ whatever reasons she wishes regardless of context. Even voting from non-public reasons is considered acceptable. Justifications provided by the state, including those reasons given in policy debates and public hearings, are to be made

⁴⁶ One can also make claims backed by neither public nor non-public reasons but simply bad ones. If an architect recommends omitting a loadbearing beam on a building because of a mathematical error this would not be a non-public reason but simply a mistake.

⁴⁷ John Rawls, *Political Liberalism: expanded edition*, Columbia University Press, 2005. p. 224.

⁴⁸ Habermas, “Religion in the Public Sphere: Cognitive Presuppositions for the ‘Public Use of Reason’ by Religious and Secular Citizens,” in *Between Naturalism and Religion*, Polity Press, 2008. p. 114-147.

in public reason alone. Habermas even suggests that parliamentarians be authorized to strike from the public record non-public reasons that are given in public debates.

Rawls is at once more strict and more lenient in his rules governing the use of non-public reason. According to the ideal of public reason, all citizens are to vote only from public reasons. However, non-public reasons may be given by agents of the state under certain conditions, for example if the item up for discussion is neither a matter of basic justice nor a part of the constitutional essentials or if the non-public reason is eventually ‘redeemed’ with a public reason.

However elaborated, these two commitments are intended to establish the legitimacy of modern liberal democracy to a population characterized by a plurality of comprehensive moral, philosophical and religious doctrines of the good (comprehensive doctrines). This is the vision behind Rawls’ liberal principle of legitimacy—a principle affirmed by all forms of public reason liberalism:

Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.⁴⁹

This principle is intended to provide a more secure foundation for political tolerance than the *modus vivendi* that characterized relations between European states after the wars of religion and that increasingly threatens to re-emerge in late 20th century democracies. Advocates of public reason liberalism offer several arguments for why the liberal principle of legitimacy is able to provide a secure foundation for tolerance.

⁴⁹ *Political Liberalism*, 137. Habermas makes the broader claim that, “only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted,” in *Between Facts and Norm: Contributions to a Discourse Theory of Law and Democracy*, MIT Press, 1998. p. 110.

First, by limiting the justifications given for coercive state action (or some portion thereof) to only those that are acceptable to all persons, no group within the state will find itself subject to what it takes to be an entirely unjustifiable, inscrutable, or irrational law. For example, imagine a Muslim state with a small atheist minority. Such a state might enact a law requiring all businesses to observe intervals of prayer time throughout the day because such prayers are called for by Allah through his prophet Muhammad as recorded in the Qu'ran. Whether or not the inconvenience resulting from this law to atheist business owners is great, small, or even non-existent, the fact that they are forced to observe a law whose justification seems to be nothing but superstition will likely engender in them a feeling of alienation from the political community. By prohibiting such justifications, public reason liberalism claims to be able to eliminate this source of discord and alienation from the political community.

Additionally, adherents of any given comprehensive doctrine within a public reason liberalism will be protected from interference in their observation of that doctrine. They will be protected from interference by the state, because the state will be unable to identify such groups and their reasoning. Just as no law can be passed requiring the observation of any given comprehensive doctrine for non-public reasons, no law can be passed directly prohibiting the observation of such a doctrine for the simple reason that any such law would necessarily rely on non-public reasons in its justification. Such protection from the state is doubly important under a democracy because it also serves as a protection from partisans of other comprehensive doctrines who may seek to leverage state power toward their own ends.

None of this is intended to imply that public reason liberalism can accommodate *all* pluralism. It claims to accommodate only what Rawls calls a “reasonable pluralism” of comprehensive doctrines. The distinction between a reasonable and an unreasonable

comprehensive doctrine rests on the distinction between public and non-public reason. Recall that non-public reason includes all those reasons that, though plausible, require one to accept some justifications that are not universally sharable. All comprehensive doctrines of the good must accept some non-public reasons because the scope of public reason is not wide enough to justify any full comprehensive doctrine. A comprehensive doctrine that affirms this fact and that therefore affirms the reasonableness of other comprehensive doctrines (and hence of others who adopt such doctrines) is a reasonable comprehensive doctrine.

It is important to emphasize that this claim does not entail that all reasonable comprehensive doctrines are skeptical regarding what the true good is or that public reason requires such skepticism of its supporters. One can be committed to the *truth* of a comprehensive doctrine without at the same time being committed to the existence of a set of fully persuasive reasons that demonstrate this truth. The central role of faith in many religious traditions attests to this possibility. Public reason liberalism does not ask anyone to doubt the truth of his or her comprehensive doctrine, but only its rational demonstrability. This is important because it is only by avoiding skepticism that public reason liberalism is able to maintain its compatibility with freedom of conscience and its claim to provide legitimacy for a state that is marked by religious diversity. Should it require even implicit skepticism those who insist that public reason is merely another name for secular reason would be proven correct in their claim that public reason liberalism truly is a secular state masquerading as a pluralist state.

Public reason liberalism justifies its restriction of political discussions to those conducted according to public reason on the grounds that the right to follow a comprehensive doctrine has no public justification. It must either be granted to all equally or to none. Anyone claiming a right to follow a comprehensive doctrine must also extend the same right to others lest they be

subject to the charge of unreasonableness. In this way public reason liberalism employs a reciprocal conception of legitimacy. Rawls' insistence that public reason liberalism must 'prioritize the right over the good'—that all persons must endorse laws based only on those reasons that can be shared among them in spite of their moral, philosophical and religious differences—is based on this reciprocity.

Public Reason Liberalism's Conception of Tolerance

Before evaluating the claims of public reason liberalism to provide a more secure foundation for political tolerance in modern liberal democracies we ought to establish with greater precision what is meant by tolerance. Following Forst's analysis of the concept I will outline the objection, acceptance, and rejection components employed by models of tolerance based on public reason liberalism. I will also discuss how these components are differently applied in what has been called "the background culture," the broader society in which the political is but one dimension, and "the public political forum," the political dimension of society or some portion of it.⁵⁰ Although public reason liberals have yet to reach a consensus over how each of these components is to be applied and over how the boundary between the background culture and the public political forum is to be drawn, all forms of public reason liberalism adopt a conception roughly approximating this conception of tolerance.

Objection Component

We have seen that public reason is in one very important sense necessarily incomplete: it is unable to select between competing comprehensive doctrines. For this people must make use of non-public reasons. Since non-public reasons have only limited persuasive value it is to be expected that members of a free society will adopt a plurality of different comprehensive doctrines. Disagreements over which actions and beliefs are good and moral and which are base

⁵⁰ For the sake of consistency I am also using Rawl's terminology here as well.

and immoral are to be expected in such a society. It is these disagreements—those that arise between adherents of different reasonable comprehensive doctrines—that provide the basis for the objection component of public reason liberalism’s conception of tolerance.

Take dietary restrictions, for example. Islam permits the consumption of some but not all animals. It also provides a set of strict regulations governing the appropriate slaughter of those animals that can be eaten. Whether these rules are justified because they prevent unnecessary animal suffering, discourage certain animal born diseases, or for some other reason, they are very important to many Muslims. Some vegetarians find the slaughter and consumption of any animal to be a great moral wrong. Again, there are a diversity of reasons for this belief—some appeal to a conception of the dignity of all life while others believe that raising animals for consumption is environmentally irresponsible. Regardless of their reasons, such persons can and do reasonably object to the consumption of animals—including Halal practices. This objection can take many different forms. It might be a dispute over values, for example if the Muslim and the vegetarian disagree about the value of non-human life. It may also be a dispute over what respecting shared values requires—for example if both the Muslim and the vegetarian believe that all life is valuable but the Muslim believes that one can respect the dignity of animals by providing them with an appropriate death. This objection is reasonable because it is grounded in the non-public reasons of a comprehensive doctrine.

Settling a dispute that can take so many different forms would be an extremely difficult task. For this reason public reason liberalism employs a “method of avoidance” regarding such disputes. According to the model of tolerance employed by public reason liberalism, reasonable objections simply need not be resolved, least of all by political means. There are appropriate and inappropriate ways to express such objections. To the extent that these are reasonable

objections—objections grounded in a reasonable comprehensive doctrine which cannot be proven or disproven by appealing to public reason—they cannot be voiced in the public political forum. This is especially so when such discussions involve the use of state power. The topics over which such disputes arise are simply not topics appropriate for discussion in the public political forum. This is not to say that there will not be discussions in the public political forum that impact the legality of animal consumption within a state. The state will have public health related reasons for regulating the sanitation of farms and slaughterhouses, for example. However, discussions about the appropriate extent of regulation are to be conducted entirely according to public reason—questions of the moral status are prohibited.

Things are quite different in the background culture. It is entirely permissible for vegetarians to stage protests, create infomercials, conduct and broadcast interviews and even attempt to engage Muslims in conversations all with an intention of disabusing them of what are taken to be their misguided dietary choices. Although these restrictions support a respect conception of tolerance, such disputes need not even be conducted with an air of respect. To see this, let us revisit the comments Kirk Cameron made about homosexuality that we discussed in the introduction. Recall that Mr. Cameron called homosexuality “unnatural, detrimental, and ultimately destructive to so many of the foundations of civilization.” According to public reason liberalism, a “reasonable objection” to homosexual activities can be freely expressed in the background culture. The requirements for an objection to be reasonable are minimal—it must be supported by non public reasons that inform a reasonable comprehensive doctrine. Since Mr. Cameron’s comments were made in the background culture and since he argued from non-public reasons—his interpretation of divine commandments—he was well within his rights. Were he speaking on behalf of the state or in favor of state policy the same comments would not have

been permitted. Public reason liberalism, then, would have to agree with Mr. Cameron that it was not he, but those who attempted to silence his expression of his views, that were acting intolerantly.

Acceptance Component

The acceptance component is also based upon the distinction between public and non-public reason. Insofar as non-public reasons are considered appropriate means by which to guide one's decision to affirm a particular comprehensive doctrine, one must accept all reasonable comprehensive doctrines and their followers. While the objection component is grounded in those non-public reasons that one accepts, the acceptance component is grounded in the limits of non-public reason. To the extent that no non-public reasons can be expected to persuade all parties they provide no legitimate justification rejecting the claims of others. One must not coerce others based on reasons that they cannot be expected to find persuasive.

Returning to our previous example, the vegetarian is well within his right to object to the Muslim practice of slaughtering and consuming animals. However, he must also accept that the Muslim is not being unreasonable in her actions. Thus, while the vegetarian may voice his objection publicly, forcefully and repeatedly in the background culture, he may not attempt to prohibit the practice.

As with the objection component, public reason liberalism employs the same method of avoidance in the public political forum. The acceptability of particular practices or beliefs is simply not open for discussion except insofar as it can be discussed in terms of public reason. Interesting questions of motivation can be raised here. For example, the state of Mississippi recently passed a regulation requiring that anyone who performs abortions in the state also

possess the authority to admit patients into a local hospital.⁵¹ While this regulation is written as strictly a matter of public safety, the law outlaws abortions *de facto* in the state. Furthermore, the intention of those supporting this law, as expressed by the governor and several of the legislators who drafted it, was to find a legal means by which abortion could be eliminated in the state. Without raising the question of motivation, public reason liberalism would be forced to accept the bill. The only means by which a public reason liberal could argue against this bill would be to reject the language used to support it or the motivations of its supporters.⁵² Were the legislators less candid about their motivations, however, public reason liberalism would be forced to accept the bill. Thus one is forced to accept the reasonable practices of others because one cannot discuss those practices in the public political forum except in terms of public reason.

The acceptance component is designed to function as a safeguard for the free practice of religious or moral life within the state. By prohibiting discussions in the public political forum that appeal to non-public reasons, public reason liberalism intends to prevent state oppression of or interference with the pursuit of reasonable comprehensive doctrines by its citizens. This protection extends into the background culture insofar as laws may be passed preventing adherents of one comprehensive doctrine from actively prohibiting or otherwise interfering with the practice of another. However, the restrictions are loosened in the background culture because it is often an important part of one's comprehensive doctrine to attempt to persuade practitioners of another to convert.

⁵¹ Debbie Elliott, "Sole Abortion Clinic In Miss. Fights Law To Stay Open." *All Things Considered*. June 29, 2012. <http://www.npr.org/2012/06/29/155976574/sole-abortion-clinic-in-miss-fights-law-to-stay-open>.

⁵² Rawls includes a 'sincerity requirement' in his version of public reason, though he readily admits that this can only ever be a part of the ideal of public reason as it would be impossible to legislate. For recent efforts to elaborate precisely what such a requirement would entail see Micah Swartzman's *The Sincerity of Public Reason*, in the *Journal of Political Philosophy*, 19:375-398.

Rejection Component

Finally, the rejection component is also based upon the distinction between public and non-public reasons. Just as public reason liberalism requires its citizens to accept the rights of others to hold differing reasonable comprehensive doctrines it demands that they reject unreasonable comprehensive doctrines. An unreasonable comprehensive doctrine is any that does not accept the necessarily limited nature of the arguments for its truth. While a reasonable comprehensive doctrine will treat those who reject it as making a reasonable mistake, though one that may result in serious moral harm, the adherents of an unreasonable comprehensive doctrine will insist that non-believers are unreasonable and may even support coercive action in order to compel or encourage correct belief.

In putting this rejection component into practice public reason liberalism must skate a fine line. While it must prevent adherents of unreasonable comprehensive doctrines from forcing their views on others, it must not take measures that would undermine its commitment to freedom of conscience. In other words, it must permit belief but prevent the pernicious actions to which such beliefs may lead. Here too public reason liberalism applies different rules to the public political forum and to the background culture. Insofar as non-public reasons are prohibited in the public political forum, unreasonable comprehensive doctrines are *de facto* rejected from the political life of the state. This is because the crucial difference between reasonable and unreasonable comprehensive doctrines is that the latter refuse to recognize the distinction between public and non-public reason. Since reasonable comprehensive doctrines do recognize this distinction they will accept the restriction of permissible reasons in the public political forum. Furthermore, since reasonable comprehensive doctrines all affirm public reasons they will themselves be able to participate in the public political life of the state.

Unreasonable comprehensive doctrines, on the other hand, reject this restriction insofar as it would prohibit a state from pursuing what it takes to be the true right path.

Handling unreasonable comprehensive doctrines in the background culture is more difficult. The proscription of non-public reasons in the public political forum protects unreasonable as well as reasonable comprehensive doctrines. Since laws cannot be passed that directly target non-public reasons there is no way to distinguish between reasonable and unreasonable comprehensive doctrines in the public political forum. However, this does not give those who hold unreasonable comprehensive doctrines free reign to do as they will in the background culture. Insofar as their actions are subject to the same scrutiny and restrictions as all others, any action they pursue that is clearly detrimental to the public good or subject to legal regulation for other public reasons may be appropriately punished. Thus, while the state has no tools to eliminate the unreasonable beliefs of its citizens, it is able to prohibit actions motivated by such beliefs precisely when they would be unreasonable. In this way public reason liberalism is able to protect freedom of conscience while at the same time eliminating its most pernicious consequences.

For example, public reason liberalism has no means by which to prohibit a sect of Islam that encourages the pursuit of a holy jihad against the state. Likewise it has no tools by which it can suppress anarcho-libertarian writings against the state.⁵³ The state is, however, permitted to take measures against any such violent pursuit whether jihadic, anarchic, or simply irrational in motivation. Since any such measures would apply to all comprehensive doctrines they are not themselves a form of intolerance. That is, they do not single out any political group. By permitting the radical belief while prohibiting destructive actions motivated by that belief, public

⁵³ This is not entirely accurate. The liberal state has laws to prohibit any writing that, for example, incites public violence. To the extent that anarcho-libertarian writings do this, they can be suppressed, but the anarcho-libertarian quality of the writing is only incidental to the suppression.

reason liberalism may even encourage the development of non-violent interpretations of ‘jihad’—for example through public works and evangelism.⁵⁴

The Reasonable Theocrat as a Challenge to Public Reason Liberalism

We have outlined the justification for and intended scope of public reason liberalism’s conception of tolerance along with the means by which it seeks to enact this doctrine. I will now argue that public reason liberalism falls short of this goal by failing to extend acceptance to all reasonable comprehensive doctrines. Specifically, I will make the case that a reasonable person following a reasonable comprehensive doctrine and wishing to propose legislation based on non-public reasons will be prohibited from doing so by public reason liberalism. While this prohibition may not entail skepticism regarding comprehensive doctrines, it does prevent a reasonable citizen from participating as an equal in the political process. As such, it extends tolerance only to those reasonable comprehensive doctrines that affirm public reason as the only legitimate grounds for governance, perhaps a large but certainly not an exhaustive subset of reasonable comprehensive doctrines.

If the distinction between a reasonable and an unreasonable comprehensive doctrine can be maintained then the phrase “reasonable theocrat” ought, at least according to public reason liberalism, to be self-contradictory. While such persons might exist outside a modern pluralist state, they should not be possible in a modern democracy by virtue of their reasonableness. Recall that reasonable here means someone who accepts the distinction between public reason and non-public reason and who avers that no fully persuasive case can be made for the truth of any comprehensive doctrine by appealing to public reason alone. Consequently, a reasonable

⁵⁴ Since many devotees of the imagined sect of Islam will desire to remain Muslim while living a successful life within the broader society they may exert pressure to create such an ‘accommodationist’ interpretation of their religious beliefs. This and other relations between the institutions supporting a comprehensive doctrine and the broader culture in which they operate will be examined in greater detail in chapter 2.

person will not judge those who do not share her comprehensive doctrine to be unreasonable no matter how mistaken she feels they are in this regard.

By applying this ‘burden of judgment’ to her own position, a reasonable person will come to see the injustice in forcing others to act as though they believe in a comprehensive doctrine, at least according to public reason liberalism. She may object to their belief, but she will accept their right to hold it. Not only would it be unjust to attempt to legislate it out of existence, but it would set a dangerous precedent. Should state coercion be justifiable by non-public reasons, what is to prevent anyone who happens to possess political power from coercing anyone else for non-public reasons? This danger is exacerbated in a democracy. Should the group currently in the majority find itself in the minority later on, nothing would prevent it from being subject to laws just as unreasonable as those it imposed on others. If all parties agree to simply disallow non-public reasons in the political sphere, however, none need worry about being the target of such legislation.

As a result, all reasonable persons should come to endorse some form of public reason liberalism, at least within an already existing pluralist society. While the details may differ among the different theories of public reason liberalism, all will accept the demand that state power only be exercised where public reason can be mustered to support it. Rawls thinks that this inference is obvious. “What public reason asks is that citizens be able to explain their vote to one another in terms of a reasonable balance of public political values. [...] How could anyone complain? What would be the objection?”⁵⁵ If this is correct, then it should be obvious to any reasonable believer that a law justified exclusively by non-public belief would be inadmissible in a plural society.

⁵⁵*Political Liberalism*, 243-4.

It is by virtue of this and similar arguments that public reason liberals insist that they extend tolerance equally to all reasonable persons and not merely to other liberals. Should a reasonable theocrat be found—one who accepts the limited persuasiveness of non-public reasons yet still advocates legislation based on them—public reason liberalism would not be able to provide the tolerance it claims. The reasonable theocrat would be unable to provide her reasonable but non-public arguments for theocracy in the public political forum. She will be rejected as so many of her unreasonable counterparts.

Yet it is not difficult to show that a reasonable theocrat could exist. If we accept the claims of public reason liberals such as Rawls and Habermas when they insist that theirs is not a skeptical liberalism, then we must grant that some of the faithful are not only convinced of the truth of their beliefs, but also of their own certainty in this truth. They know they are correct even when they know that they have no public reason by which to persuade others. All that the reasonable believer must admit is that reason alone is not enough to persuade another to adopt her beliefs. While her conviction may come from non-public reasons, it cannot be discounted lest public reason liberalism be shown to be a skeptical doctrine. The non-public means by which a believer comes to this knowledge may range from divine revelation to introspection over the course of time.

This, of course, creates a number of difficulties as reasonable comprehensive doctrines will often be involved in irresolvable conflicts over the good. Public reason liberalism attempts to avoid these conflicts by eliminating from the public political forum any conversation that would directly involve the truth or falsehood of a comprehensive doctrine. While unable to provide arguments based on non-public reasons in the public political forum, the adherents of a given comprehensive doctrine are free to use this knowledge however they wish in the

background culture. In this way public reason liberalism's "method of avoidance" remains unskeptical.

Many theocrats are familiar with the lack of demonstrative proofs available for why others should share their beliefs. Pascal's *Pensées* contains numerous attempts to provide arguments for why the doubter ought to believe in spite of the fact that "the heart has its reasons, which reason does not know."⁵⁶ Among the more common of such arguments are those insisting that religious practice must precede full belief. By such arguments, skeptics are enjoined to simply go through the motions for a while—attend worship ceremonies, pray, and observe other such rituals—after which they will be rewarded with true belief. This rather simple argument is devastating to public reason liberalism's claim that it can extend tolerance to all reasonable theists.

Let us work through the reasoning with an example. Suppose an atheist named Alban meets Betty, a devout believer in Bomonianism, while they attend college. Bomonianism is a simple religion requiring little of its adherents while promising serenity in this life and happiness in the next. By the standards of public reason liberalism, Bomonianism is a reasonable comprehensive doctrine. In fact, one of its central tenets is that one cannot come to know the truth of Bomonianism by reason alone. Rather, one must spend one year observing its rituals, at which time the truth will be revealed. Followers of Bomonianism recognize that those who do not acknowledge its truth can be entirely rational. In fact, they would look upon anyone who claimed to know the truth of Bomonianism without having spent the requisite time in religious practice with suspicion.

⁵⁶Pascal *Pensées* #277. Perhaps his most famous argument for belief in the absence of demonstrative proof is found in sections 184-241 which have come to be known as Pascal's wager. William James has re-worked this demonstration in his famous essay "The Will to Believe."

At the end of their studies Alban is convinced that Betty is his soulmate. He proposes marriage and she happily agrees—with one condition. Alban must spend one year observing the rituals of Bomonianism. These are not onerous rituals and take up no more than five hours a week. At the end of this year Betty will marry Alban even if he has not been convinced. If the rituals do not work nothing will. Betty can accept this, knowing that Alban is simply acting rationally. Alban agrees to what he takes to be a fair condition and dutifully follows the practices of Bomonianism for the following year—all the while assuming he will cease at the end of the year. He maintains this skepticism until, on the final day of their agreement, he awakens a believer. He is happier than he has been on any day earlier in his life and Betty is pleased, though not surprised, to hear the good news. They are married within the month and live a contented life together for nearly a decade.

As time passes, however, Alban begins to grow troubled. There are few Bomonians in the country. Alban himself only met Betty by happenstance. Were it not for their chance meeting, he would not have encountered Bomonianism. Since Bomonianism is a reasonable comprehensive doctrine and Alban is a reasonable person he knows that he was quite reasonable prior to his conversion. In fact, if it weren't for his chance meeting of Betty he would remain a reasonable non-believer to this day. His life would be worse for it. Whenever he thinks of this he can't help but feel sadness for the many other reasonable people around him that have not had his good fortune. To Alban's mind each of these people is far worse off than necessary. What really bothers him, though, is that this misfortune is not any fault of their own. There is simply no way to come to realize the benefits of Bomonianism unless one has been exposed to the rituals for one year.

As time passes this troubling thought becomes increasingly unbearable for Alban. It seems a dreadful thing for people who are not only innocent, but upstanding, to be denied the serenity he knows. One day he decides to help his fellow citizens by running for local office. His platform is simple. The city will require all children to spend one year observing the Bomonian practices. This could be easily integrated into the curriculum of their public education with little to no disruption. As with his own agreement with Betty, if the practice does not result in a conversation there will be no negative consequences. Alban is convinced that this will not happen, of course, and that his neighbors will be as glad of the benefits of Bomonianism as he is.

It is at this point that we run into difficulties with public reason liberalism and tolerance. Alban is motivated almost exclusively by non-public reasons. Certainly he could provide public reasons for his stance, for example that a civic body unified under one faith would have less internal strife. However, these arguments, which are not what motivate his actions, would hardly be persuasive.⁵⁷ Alban is motivated for the good of his fellow citizens individually, not the collective wellbeing of the political body. Public reason liberalism, however, prohibits him from voicing his genuine reasons in the public political forum.

In Alban's case public reason liberalism is not as tolerant as it claims. Bomonianism is a reasonable comprehensive doctrine, at least according to the standards provided by public reason liberalism, and Alban is a reasonable follower. He fully acknowledges that there are no persuasive sharable reasons for its practice and that non-believers are perfectly reasonable in their non-belief. It is, in fact, just this situation that troubles him so much. He must provide his

⁵⁷ I mention these only because Rawls uses the possibility that one could also supply public reasons for activities one pursues out of non-public reasons to counter the argument that public reason liberalism prematurely forestalls the topics of conversation available in the public political forum. He appeals to the argument between Patrick Henry and Thomas Jefferson over prayer in public school—conducted over the benefits to the nation of a moral education—to demonstrate this point. This response does nothing to address the primary concern of the objection. See “The idea of Public Reason Revisited” in *Political Liberalism*, p 474-475.

fellow citizens with an opportunity to see the truth for themselves just because public reason alone cannot get them there.

We can put this objection somewhat differently. Public reason liberalism treats pluralism not only as a fact but also as a norm. Rawls insists that rival comprehensive doctrines will develop against a background of free institutions because of the limits of public reason. Since free institutions are accepted unquestionably as good, provisions for pluralism must be made. If one accepts this argument then the move to limit legislation based on public reasons and leaving questions outside the political sphere makes a great deal of sense. But it is just this claim that the theocrat is unwilling to make. Free institutions may be good, but they ought to be limited in light of a higher good if there are compelling non-public reasons.

Public reason liberalism, then, is intolerant of theocrats who quite reasonably wish to be able to advocate for imposing coercive legislation on a portion of the nation because of the limits of public reason rather than in spite of those limits. Non-public reasons are not beyond reason, only beyond public reason. Because non-public reasons can still function as reasons within an appropriate context, and because one can grant others access to that context, there can be no fully persuasive non-skeptical reason to prohibit the use of non-public reason in the public political forum. In short, there are no public reasons that can persuade a reasonable theocrat to confine public political discourse to only public reason.

Swaine's *Liberalism of Conscience*

Advocates of public reason liberalism face a dilemma: they can accept that their proposal is not quite as tolerant as they claim or they can attempt to modify public reason liberalism in order to accommodate "rational theocrats". The former is not an unreasonable stance. The public reason liberal may remain satisfied that such conflicts will be rare and insists that public

reason liberalism may be the best option in an imperfect world. Public reason liberalism may not be perfectly tolerant, but it is the best among imperfect alternatives.

Lucas Swaine rejects this option—insisting that “the value conflict between theocrats and liberals is a rationally soluble problem.”⁵⁸ In his *Liberalism of Conscience* he argues that theocrats “have good reason to reject fair terms of cooperation [...] as Rawls delineates them.”⁵⁹ Perhaps most straightforward among these reasons is that public reason liberals have failed to provide “an explanation based on good reasons for why government may apply its laws to theocrats given the deep disagreement that theocrats have with liberal values and government.”⁶⁰

Swaine aims to redress this failure by providing an argument for liberalism on strictly theological grounds—accepting modifications to the liberal constitution as necessary. He begins by arguing that theocrats are rationally committed to three liberties of conscience. He then attempts to build an argument for a theocratic commitment to a modified liberal state on the foundation of these three liberties. The modified liberal state grants semi-sovereign status to certain religious communities within its borders, permitting theocrats limited freedom to pass laws from religious reasons.

Three Liberties of Conscience

Swaine defines a theocrat as someone who is committed to the idea of “governance in which a strict, comprehensive, and religious conception of the good is prioritized.”⁶¹ For example, Alban is a theocrat in this minimal sense—his proposed legislation is motivated by a strict religious conception of the good. From this definition Swaine draws several consequences

⁵⁸ Lucas Swaine, *Liberalism of Conscience*, Columbia University Press, 2006. p. 23.

⁵⁹ *Liberalism of Conscience*, p. 22.

⁶⁰ *Liberalism of Conscience*, p. 19.

⁶¹ *Liberalism of Conscience*, 41.

that, taken together, imply the theocrat's rational commitment to three liberties of conscience. First, the theocrat must believe that it is possible for people to lead religiously "wayward" lives. If people could not there would be no need for governance according to religious strictures. We saw in the case of Alban that it can be reasonable to believe that people will lead a wayward life unless they are compelled to observe certain practices under some circumstances.

If it is both possible and undesirable for people to lead religiously wayward lives then the theocrat must also be committed to the belief that nearly all people are actually worse off than they can or should be. "All other things being equal, with the range and diversity of actual and possible religious doctrines available to persons, any particular theocrat has a very low likelihood of being committed to the right one."⁶² Those living wayward religious lives include anyone currently living under a liberal regime who would benefit from theocratic, including even the faithful who are "weak of flesh," i.e. those who share the theocrat's conception of the good but who find it difficult to live by it. The theocrat's concern for those unfortunates may take a form similar to Alban's worry about his fellow citizens.

At this point we can begin to see the difficulty in the theocrat's situation. The theocrat must be convinced of the truth of his doctrine (and the accuracy of his understanding of it) if he is to endorse a theocracy. However, he must be aware of the many dangers any theocratic government faces. It may be seized by a rival sect, or its leaders may fall into corruption. Suppose, for example, that Bomonianism was on the verge of becoming a state sponsored religion. The major holdouts were those worried that the proscribed worship rituals were too onerous. In order to alleviate this worry the Bomonian patriarch may take several ceremonies out of the cannon. A devout Bomonian theocrat in such a state would be even worse off than in a liberal state where she is free to worship the version of Bomonianism that she knows to be true.

⁶² *Liberalism of Conscience*, 43.

While liberalism sacrifices the assurance of a culture that can reinforce one's commitment to a righteous way of life, it is free from the dangers posed by a corrupt theocracy—one in which a theocrat would be forced to lead a wayward life (or become a martyr).

From these observations Swaine argues that the theocrat must be committed to three freedoms of conscience:

- Conscience must be free to reject lesser religious doctrines and conceptions of the good (the principle of rejection)
- Conscience must be free to accept the good (the principle of affirmation)
- Conscience must be free to distinguish between good and bad doctrines and conceptions of the good (the principle of distinction)⁶³

The first freedom is relatively uncontroversial for both the liberal and the theocrat. It is a narrow and straightforwardly liberal interpretation of the liberty of conscience, one encapsulated in the freedom from a state sponsored religion. The theocrat who wishes to reject the public values of liberalism and the non-public values of other comprehensive doctrines must insist upon this liberty.

The principle of affirmation is more often a source of conflict between liberals and theocrats. The theocrat will insist that “conscience must be free not just from the chains of false doctrine but also to accept and affirm the good.”⁶⁴ Liberals affirm this in principle, but will often reject what the theocrat takes to be direct consequences of it. For example, liberals often identify the principle of affirmation with the free assembly. Should the right to assemble and worship as one pleases not suffice, the liberal will claim the theocrat demands too much. Their freedom to worship is grounded in non-public reasons and they are only entitled to non-public benefits freedoms on such reasons. Many theocrats further insist that this principle at times requires the support of social institutions that affirm the faith of the theocrat, just because we can be “weak of

⁶³ *Liberalism of Conscience*, pp 61-64.

⁶⁴ *Liberalism of Conscience*, p. 50.

flesh.” They will claim that the principle of affirmation requires some form of social compulsion to keep them on the correct path.⁶⁵

Swaine adds to these concerns the principle of distinction, arguing that “without this freedom to distinguish before accepting or rejecting doctrines, there would be no way for conscience to pick out the holy from the unholy or the good from the bad, both of which are crucial to the theocrat.”⁶⁶ He provides two arguments for the inclusion of this principle. Insofar as a theocrat living in a liberal state argues against liberal doctrines of the good he is already employing this freedom. Second, and more interestingly, in setting up and maintaining a theocracy the theocrat must distinguish between true and false interpretations of her own doctrine as it is applied to political scenarios. Without this principle there would be no way for the theocrat to prevent corruption, intended or otherwise.

Quasi-Autonomy and the Liberty of Conscience

From these three commitments Swaine argues that a theocrat may rationally endorse theocratic governance, but *not* a theocratic state. That is, a theocrat may endorse the existence of a community that lives by strict religious laws, one that even enforces the observance of these laws, but she cannot endorse granting such a community full sovereignty. A fully sovereign theocratic community would infringe upon the three liberties of conscience that the theocrat relied on in arguing for a theocratic community in the first place. A liberal state that grants some religious communities within its borders enough autonomy to pass local laws informed by a widely adopted comprehensive doctrine in that community ought to be satisfactory to both a theocrat and a liberal. Swaine accordingly argues for a “liberalism of conscience” – that is, a

⁶⁵ Such arguments are quite old, dating back to at least Augustin’s letter of 416 to the Donatists, justifying such coercion by appealing to the biblical passage *Luke 14:23*.

⁶⁶ *Liberalism of Conscience*, p. 51.

liberal state that is required to grant semi-sovereign status to religious communities within its borders that meet certain criteria.

According to Swaine, “A semisovereign body has a significant measure of political or legal autonomy, with respect to some greater political order, but its sovereignty is not entire.”⁶⁷ Semi-sovereign bodies operating within a larger state are not without historical precedent. For example, the Ottoman Empire created a system of “Milletts,” one for each of the three major Judeo-Christian religions. Each millet could employ cannon law within its domain to resolve certain disputes.⁶⁸ Swaine also points to the relation between the U.S. government and various native American tribes as exemplifying many of the features of such communities and their relation to the state. According to Swaine, such bodies could be subject to minimal regulation by the liberal state—including certain human rights requirements, free exit requirements, and educational requirements. Beyond this minimal regulation they will be left to govern themselves according to laws justified by non-public reasons.

Because of this increased responsibility, only theocratic communities meeting certain preliminary criteria may qualify for “semi-sovereign” status. The religious community would have to be “virtually homogeneous in its religious affiliations and have ownership of the property in the area to be made semi-sovereign.”⁶⁹ The territory occupied by this community would need to be geographically distinct neighboring communities in order to accommodate for such things

⁶⁷ *Liberalism of Conscience*, p. 91.

⁶⁸ The Ottoman millet system has been held up as an example for multiculturalism in the past by Will Kymlicka in “Two Models of Pluralism and Tolerance,” in *Tolerance: An Elusive Virtue* ed. David Heyd. Princeton University Press, 1998. pp. 81-105.

⁶⁹ *Liberalism of Conscience*, p. 94.

as municipal regulations. Finally, it would have to “provide a basic plan for its social institutions [to the state], showing the ability to take care of members’ basic needs and requirements.”⁷⁰

Swaine argues that, if designed properly, such a state will be able to address the concerns of the liberal and the theocrat alike. I will begin with the concerns of the theocrat. Recalling our example, suppose that Alban succeeded in passing his law for the entire state. Every child underwent one year of ritual practice and an overwhelming majority converted. While some remained unconvinced, Alban’s heart was at ease. He had given them the opportunity they would have lacked without his intervention and they remained reasonable in their disbelief. As the Bomonian generation aged its members were elected to public office where they eventually passed laws more favorable Bomonian practice. Commerce was restricted during Bomonian holy times and several new tax deductions were introduced. At some point they had all but declared it the official religion of the state.

Alban’s initial pleasure at this development quickly turned to horror, however, as he came to discover that most people, including those in government, misunderstood Bomonian theology. The tax break encouraged the valuation of profane material wealth while the state observed the lesser holy days and failed to acknowledge the ones of the highest import. Prayer times were even moved to accommodate the needs of the working population.

Alban knew that Bomonian prayers were most effective in the early morning. Their efficaciousness waned as the day passed until they were relatively useless at night. As far as Alban was concerned the state was Bomonian in name only. Eventually Alban was declared a heretic for insisting upon morning prayer. The privileges he had once been accorded were stripped away and he died in disgrace—knowing he left the nation even more corrupt than it had been as a liberal state.

⁷⁰ *Liberalism of Conscience*, p. 95.

Alban's tale illustrates one of Swaine's major arguments. The theocrat who insists that he understands the true doctrine well enough that he would wish it enforced through political means must insist on retaining his right to reject any state sponsored religion if it conflicts with his own understanding of its tenants. In a theocratic state such a rejection would not be possible. A liberal state that permits semi-sovereign theocratic communities is able to avoid these problems. A limited theocratic government can be created, but if any member judges it to be corrupt she is free to depart at any time.

While the problem of religious corruption is avoided under public reason liberalism, the theocrat's commitment to the principle of affirmation does not permit her to endorse such a state. As we have already seen, it is not uncommon for situations to arise in which the pursuit of the right doctrine requires religiously justified rules of conduct to be enforced for all in public life. The gender segregation sought by the Brooklyn Hasidic bus-line discussed in the introduction is a perfect example of this. Swaine's liberalism of conscience is an attempt to avoid the dilemma of state sponsored religion that undermines the principle of rejection while also avoiding liberal "neutrality" that undermines the principle of affirmation.

The benefit of Swaine's proposal over public reason liberalism is that it permits the full use of non-public reasons in the political sphere without violating Rawls' liberal principle of legitimacy – the stipulation that all members of the state ought to be able to accept the rationale for the laws to which they are subject. Those who wish to be governed by certain religious rules may enter one of these semi-sovereign communities (or establish their own should no such community suiting their conviction exist). At the same time, those who find such rules to be lamentable are free to leave at any time and find another country or to live under the system of public reason liberalism that governs the state outside of these communities.

Let us turn now to the liberal concerns with granting semi-sovereignty to religious communities. In addition to granting only certain communities semi-sovereign status, Swain also insists that these communities meet certain educational and human rights requirements. He only provides a framework for addressing the problem of tolerance in a plural liberal state. Accordingly, he does not provide much detail about how these two requirements would be met. Other than the prohibition of “extreme practices such as child sacrifice,”⁷¹ the only human right Swaine insists that each community grant its members is the right to freely exit from the community at any time. This requirement goes a long way toward assuaging many of the liberal concerns over the potential threat to individual autonomy posed by semi-sovereign religious communities. At the same time, such a requirement should not pose difficulty for *reasonable* theocrats as they readily accept that it would be reasonable to not affirm what they take to be the correct religious doctrine. We can provisionally assume that the theocrat will agree to this requirement.

Swaine goes into greater detail about the educational stipulations imposed upon the semi-sovereign communities, though even here he prefers to provide suggestions to requirements. He insists that “theocratic communities would need to include requirements for basic literacy, mathematical competence, and civic knowledge,” including “the nature of their rights and how the liberal polity’s institutions support them.”⁷² These requirements set a baseline for supporting a genuine right to exit. Beyond these minimal rights Swaine suggests teaching “the importance of institutions securing citizens’ liberties at the federal level, such as constitutional protections for freedoms of speech and associations.”⁷³ Such instruction will help children growing up in

⁷¹ *Liberalism of Conscience*, p. 95.

⁷² *Liberalism of Conscience*, p. 96.

theocratic communities to understand the somewhat complex justification for living within a religious community that is subordinate to a secular state while avoiding the sense of alienation to which theocrats living under public reason liberalism would be subject. Members of the theocratic community will be able to endorse the liberal state because of their religious beliefs rather than in spite of them.

Swaine also suggests that theocratic communities teach children “about the values of toleration and respect for people outside their territories.”⁷⁴ This respect need not be grounded in the existence of good reasons for others holding their own values—a claim that can be construed as implying skepticism if it is extended to other religious communities. Rather “principles of conscience themselves give cause to respect the fact that others can come to their beliefs conscientiously and thoughtfully, maintaining their convictions with integrity”⁷⁵ in spite of the grave error they may be committing.

Accepting provisionally that a liberalism of conscience as outlined by Swaine could be constructed in such a way that both the liberal and the theocrat would not only accept but affirm the state as legitimate, let us examine whether or not Swaine’s proposal can support the same conception of tolerance as public reason liberals propose. Public reason liberalism accommodated objections based on non-public reasons that were a part of one’s comprehensive doctrine, permitting them to be voiced in the background culture but not the public political forum. This causes problems insofar as certain reasonable theocrats may wish to voice objections to policies in the public political forum which they cannot—alienating them from the political process. They may also be subject to harmful accusations in public of the sort levied by

⁷³ *Liberalism of Conscience*, p. 96.

⁷⁴ *Liberalism of Conscience*, p. 96.

⁷⁵ *Liberalism of Conscience*, p. 97.

Mr. Cameron against homosexuals. Swaine's liberalism of conscience draws the same limits—permitting objections based on non-public reasons that are a part of a comprehensive doctrine—but avoids many of the problems found in public reason liberalism's implementation. One may employ non-public reasons within the limited local political forum—an arena with enough political scope to address the reasonable concerns of the theocrat.

Public reason liberalism required acceptance of those against whom one could bring only non-publicly grounded objections. This acceptance component was implemented by prohibiting laws based on non-public reasons—laws which would unduly burden any member of the community who did not accept the relevant comprehensive doctrine. Here again Swaine's liberalism of conscience reflects the same conception of tolerance. The three liberties of conscience adopted by the reasonable theocrat demand that she accept those who come to different conclusions regarding questions of the good if they do so by exercising the same liberties of conscience that the theocrat reserves for herself. Rather than enforcing this requirement by prohibiting all legislation based on non-public reason potentially alienating reasonable theocrats, Swaine's liberalism of conscience merely reduces the scope over whom legislation supported by non-public reason can apply by permitting the creation of semisovereign religious communities.

Finally, public reason liberalism rejected unreasonable comprehensive doctrines by prohibiting arguments based on such doctrines in the public political forum (along with all arguments from comprehensive doctrines) and actions in the background culture that are proscribed by the normal laws of the nation. Here too the liberalism of conscience draws the same limit—rejecting unreasonable comprehensive doctrines—but it does so by limiting the autonomy granted to semi-sovereign communities. The human rights and educational

requirements imposed upon semi-sovereign communities ensure that only reasonable comprehensive doctrines are welcome within the liberal state. This accomplishes the same goal, while permitting the reasonable theocrat to fully participate in the political process rather than restricting his participation as does public reason liberalism.

Conclusion

While a bit more complicated to implement, Swaine's solution to the problem of tolerance between groups holding different comprehensive doctrines of the good appears to resolve many of the problems with public reason liberalism. It adopts the same conception of tolerance as public reason liberalism, but it does not require the religious theocrat to prioritize the right over the good when the two come clearly into conflict. It is able to manage this without succumbing to the problems of "tyrannical majorities" by establishing a limited relation between religious and political authority

However, by creating semiautonomous religious communities, it also enables conditions for intolerance within a religious tradition that are largely absent from public reason liberalism of the sort Rawls describes. As Rawls frequently notes, the separation between church and state is designed as much to protect religion from politics as politics from religion. In the next chapter I will discuss how granting religious institutions political authority often creates conditions that promote intolerance.

Chapter 2: Intolerance in Politicized Religious Communities

Introduction

Lucas Swaine tries to provide a path toward a tolerant liberalism that can be affirmed by theocrats and liberals alike. He claims that his ‘liberalism of conscience’ is more tolerant than public reason liberalism because it offers reasonable theocrats the possibility of living in semi-autonomous religious communities where they will be permitted to enact local laws based on shared nonpublic reasons. This arrangement ought to be acceptable to liberals because the limited scope of the laws will ensure that they will not be subject to what they take to be the illegitimate use of political power.

Swaine relies on two tacit assumptions throughout his argument. First, he treats religious communities as largely homogenous in their understanding of the religion and static in their beliefs over time. This assumption allows Swaine to treat intolerance as occurring *between* different religious communities or between a religious group and non-religious members of the same society. If only he could prevent intolerance between communities the problem would be solved. Second, he shares with public reason liberals a highly cognitive understanding of religion. That is, he treats religion primarily as an affirmation of certain non-public beliefs. Because of this he treats all the intolerance-promoting disputes between “reasonable” religious organizations as having some root in these beliefs.

These two assumptions blind him to forms of intolerance that develop and are practiced *within* religious communities as well as to forms of intolerance motivated by the “worldly” concerns of a religious institution. These are striking oversights as some of the most iconic and vicious examples of religious intolerance are those practiced within the same religious community—for example the ‘excesses’ of the Spanish inquisition—and those motivated by the

sorts of religious-political entanglements that are found in the Middle East.

In this chapter I will describe forms of religious intolerance that develop from a dynamic that arises when a religious institution assumes the tasks of ensuring the worldly and the spiritual wellbeing of its members. Because Swaine is concerned only with a narrow form of intolerance his liberalism of conscience provides no means by which this dynamic and the intolerance it promotes can be addressed. Were it pursued it would likely generate a great deal of intolerance within the religious communities.

My description of the dynamic leading to religious intolerance follows Max Weber's study of religion. I begin with his treatment of the early development of ethical religious life from magical religious practices. This development coincides with the transition from instrumental- to value-rationality as the guiding light for religious action. Salvation from worldly suffering is sought by transforming oneself so as to be pleasing to the powerful deity rather than by bending the divine will to one's own designs. In this early form of religious life we see the development of spiritual success—piety—as coincident with worldly success—salvation from suffering.

When the aims of spiritual and worldly success diverge, when piety does not bring freedom from suffering, it is possible for a charismatic prophet to form a new religious community. The prophet may seek to distinguish spiritual from worldly success—promising salvation beyond this life—or he may seek to return the religion to its appropriate path—one that will ensure both worldly and spiritual success. Regardless of his teachings, if the religious community is to survive the prophet's death it will be forced to prioritize either the preservation of his teaching in its purity, a teaching which may not be conducive to the worldly success of its followers, or the spread of his teaching and the success of the organization in the world.

Those who prioritize the preservation of the prophetic teaching will develop a sect⁷⁶—an organization that fits nicely with Swaine’s liberalism of conscience. Those who prioritize the spread of the teaching, however, will develop a church. Because a church aims to spread its message across the globe, it will be forced to ensure its members can attain both spiritual and worldly success. Since the conditions for worldly and spiritual success often diverge, however, it will be forced to either compromise the prophetic doctrine to some extent—accommodating it to the realities of the society in which it is practiced, or to exercise enough influence over the society to ensure that its members are able to attain success. Both of these strategies, accommodating and dominating, sow the seeds of a form of intolerance that Swaine’s liberalism of conscience is unable to address.

I will end with a brief discussion of modern Iranian history. I will show that this history illustrates the dynamic of religious intolerance that I describe in this chapter. The Shah forces the “church” to pursue an accommodating strategy, one that is intolerant of many of the practices pursued by the faithful who reject such accommodation. When the worldly success provided by this accommodation fails to materialize those who were not tolerated by the accommodationist practice pursued a strategy of state domination—in the name of religious purity—that has been extremely intolerant of division within the religious community as well as toward those outside the community.

From Magical Practice to Ethical Religion: the Development of Spiritual Success.

Many misunderstandings about religion and about religious intolerance result from an inadequate grasp of religious rationality. Liberal attempts to accommodate the faithful often treat religion as a fundamentally cognitive affair. The difficulties that religious communities pose to liberalism are taken to arise from the fact that religious persons hold some beliefs that are

⁷⁶ Throughout I employ the meaning for ‘sect’ and ‘church’ Weber employs in *Economy and Society*.

not shared by others. These religious beliefs share a unique epistemic status—they are neither demonstrably true nor demonstrably false. They are rationally acceptable but non-public beliefs—acceptable because they cannot be argued against, and non-public because they cannot be argued for. Religious belief is not considered irrational, then, but non-rational. In Forst's words it is "beyond reason."⁷⁷ The values and practices based upon religious beliefs thus have no claim over those who do not share the faith. It is not surprising, then, when liberals argue that religious reasons ought not to be used in establishing law, except possibly within homogenous religious communities where the same non-rational beliefs are universally shared (and even there with a number of caveats).⁷⁸

Following Max Weber's work, I will argue that many religious beliefs and practices are not as far beyond reason as liberals claim. Rather they mark the culmination of an attempt to reconcile the spiritual and the worldly needs of the religious community. Given the changing nature of social norms and the unchanging nature of a prophetic doctrine, such attempts are not always possible, and intolerance is often the result of such breakdowns. This form of intolerance, which typically occurs within the same religious tradition, simply cannot be addressed by treating religion as a non-public affair. Although intolerance was not a direct focus of Weber's work, we can find in his *Sociology of Religion* a discussion of many social factors that motivate religious intolerance.

The Instrumental Origins of Religious Rationality

Weber begins his *Sociology of Religion* by reconstructing the development of ethical

⁷⁷ Forst, "Tolerance, Justice and Reason" in C. McKinnon and D. Castiglione (eds.), *The culture of toleration in diverse societies*, Manchester: Manchester University Press, pp. 71-85.

⁷⁸ See Swaine's *Liberalism on Conscience* or my discussion in the previous chapter.

religions from magical practices.⁷⁹ One of the key insights Weber provides in this account is how religions developed value rationality from instrumental rationality. Understanding this development helps explain the apparent non-public character of religious rationality.

According to Weber, the earliest forms of religion were magical practices directed toward ensuring the success of its practitioners in whatever worldly endeavors they pursued. The religious authority, at the time traveling ‘magicians,’⁸⁰ claimed the ability to manipulate the will of powerful divine beings who could influence events in the world by means of magical practice, including sacrifices, prayer, and other rituals.⁸¹ In this form religion was a strictly instrumentally rational affair.⁸² One hoping to win a war would perform the appropriate ritual to persuade or manipulate the appropriate divinity. One desiring a good harvest would perform a different ritual to a different deity. The desired end was always determined by the person engaging in the religious ritual. The divine was treated as little more than an instrument whose will was to be bent through the appropriate magic.

The leaders of these early religions were, of course, often ineffective. Depending on the client, the magician faced grave consequences when she failed. Religious belief persisted in spite of these frequent failures by appealing to one of several explanations. The religious rites

⁷⁹ Weber’s *Economy and Society (ES)*, of which the *Sociology of Religion* is a part, is notoriously complicated. A number of disagreements over the proper order of this work and disputes over proper translation add a layer of complexity to Weber’s already notoriously difficult style. As an exegetical principle, following Stephen Kalberg, I take Weber’s work as a whole, and will at times refer to other texts in order to clarify the intent of this work.

⁸⁰ Weber, *ES* 309-403 & 439-442.

⁸¹ Henceforth I will use the term divine to indicate whatever deity, deities, or other supernatural powers postulated by a religion. We need not here discuss how the belief in divinity was first hit upon. According to Weber all people share a fundamental desire to understand the world as meaningful. This desire is manifest in two related anxieties. First, when people suffer they wish to understand the meaning of and reason for their suffering. Second, those who do not suffer need to feel as though they deserve their good fortune. The belief in sentient divinities who control or influence events in the world is able to satisfy these desire. *ES*, 407-420.

⁸² *ES*, 399-403.

may have been performed improperly; the practitioner may have been a charlatan; there may have been a quarrel among different deities. At some point it was suggested that a divinity powerful enough to control events in the world must be too powerful to be manipulated by lesser beings. This belief radically transformed religion wherever it took root. Rather than being treated as a tool for the attainment of human ends, a divinity this powerful needed to be supplicated and obeyed lest it direct its wrath at the believer.⁸³

The role of the religious leader was transformed by this new conception of divinity. The magician who claimed to control the world by forcing divine intervention was replaced by the priest who could interpret the divine will and instruct the believer in how to avoid angering it.

This religious development was commonly paired with another. According to Weber, under certain conditions (most commonly the demand to ‘rationalize’ society as it became urbanized and increased in complexity) the idea of a specifically ethical divinity developed. Law and punishment were the province of this particular divinity.⁸⁴ The ethical divinity required neither sacrifice nor the observance of any rituals, but rather that all actions accord with certain values which, together, constituted an “ethical order” that it was charged with protecting. This ‘ethical order’ most often coincided with social norms conducive to living in the society where it was worshipped. For example, if the ethical god protected the guest-host relationship, then one must observe certain sacred rules of hospitality in order to avoid eliciting the its wrath.

These developments precipitated a major transformation of religion and religious rationality. Under the magical religions, the ends of religious practice were selected by whomever employed the religious leader. Under the ethical religion the worldly ends were set not by the religious practitioner but by the divinity. The faithful would pursue peace or war not

⁸³ *ES*, 427-429.

⁸⁴ *ES*, 429-433.

because they desired it but because the divinity required it.

It is important not to confuse this transition from instrumental- to value-rationality with a renunciation of practical rationality. This transformation was enabled by the development of the ideas of sin—disfavor in the eyes of an ethical divinity, and salvation—the deliverance from suffering by the deity, and piety—self-conduct in accord with the divine command as a means of attaining salvation.⁸⁵ Religious practitioners under the new system were still employing practical reason—however they pursued the end of salvation by acting in accord with divine values rather than by pursuing their own ends as expediently as possible. In effect instrumental rationality simply took a detour through the divine.

The pursuit of salvation, then, is an intrinsically rational action. Worldly ends are selected according to a set of values the believer has accepted from a source beyond herself. Furthermore, “[t]he sacred values, differing among themselves, are by no means only, nor even preferably, to be interpreted as ‘other-worldly’ [...] At first the sacred values of the primitive as well as of the cultured [...] religions were quite solid goods of this world.”⁸⁶ The end sought could be a good harvest if the ethical divinity controlled such things. Value rationality was simply taken to be the most effective way to avoid suffering. Since the ethical divinity typically developed in the context of a society itself becoming ‘rationalized’ the demands of the ethical deity were typically conducive toward worldly success. Difficulties that arise when the conditions required for worldly success—i.e. economic and social well being—are incompatible with the requirements of spiritual success, were largely absent in early ethical religions. Thus, the development of the idea of a powerful ethical divinity enabled a distinction between worldly and spiritual success. At the same time, the conditions under which this development arose

⁸⁵ *ES*, 437-439.

⁸⁶ Weber, “The Social Psychology of World Religion,” In *From Max Weber*, 277.

ensured that it was a distinction without a difference.

Prophetic Religion and the Split between Worldly and Spiritual Success

This transformation of religious rationality brought with it institutional transformations as well. Since early ethical religions typically promoted ‘pro-social’ behavior, the priests of early ethical religions were often allied with and even supported by the government. This close relationship between the religious and political leaders created the conditions for the development of prophetic religions. Whereas the magicians assumed full blame for the failure of a divinity to produce the desired outcome, the wellbeing of a society could no longer be viewed as a sign of the corruption of a single person. Rather, it was a sign of the corruption of the entire priesthood and possibly society more generally. If a good harvest did not come then the whole community must have been forsaken by the ethical divinity. Those among the population who take the misfortune of society as a sign of divine disfavor may then be inclined to follow a reforming prophet who claims true knowledge of the divine will.

As a religious leader, the prophet differs from the magician or the priest in important ways. Weber characterizes the prophet as “a purely individual bearer of charisma, who by virtue of his mission proclaims a religious doctrine of divine commandment.”⁸⁷ His authority to announce the doctrine is “based on personal revelation and charisma.”⁸⁸ He does not accept money for his prophecy because he is “an instrument for the proclamation of a god and his will, be this a concrete command or an abstract norm.”⁸⁹ Finally, “prophetic revelation involves for both the prophet himself and for his followers [...] a unified view of the world derived from a

⁸⁷ *ES*, 439.

⁸⁸ *ES*, 440.

⁸⁹ *ES*, 447.

consciously integrated meaningful attitude toward life.”⁹⁰ In other words, the prophetic revelation announces the world as a meaningful whole, the understanding of which permits one to learn the conditions of piety and hence salvation. Unlike the early ethical order these prophetic attributes are independent of the norms of the society in which the prophet and his followers find themselves. Since the prophet is concerned exclusively with salvation from suffering, the “whole conception [of the world as a meaningful whole] is dominated, not by logical consistency, but by practical valuation.”⁹¹ The purpose of announcing the revelation, then, is not primarily to understand the world or to control the world, but rather to “organize practical behavior into a way of life (*Lebensführung*)”⁹² that will secure salvation from suffering.

Prophetic religions typically mark the first complete break between worldly and spiritual success. Because of his direct access to the divine order, the prophet is never a servant to a tradition (and is often a threat to it). We are familiar, for example, with the image of Jesus casting money lenders out of the temple or Guatama Buddha renouncing his wealth and political power. While such actions may not bring worldly success, they are fully rational. The salvation that piety promises is simply no longer an escape from material misfortune in this life. It may take the form of an afterlife of hedonic pleasure or a spiritual repose in this life that blunts the suffering involved in material misfortune.

Given the divergence between the prophetic view of the world and the norms of the society in which it is announced, the actions of the faithful will often appear less than rational to

⁹⁰ *ES*, 450.

⁹¹ *ES*, 450.

⁹² *ES*, 451, translation modified.

the uninitiated.⁹³ Since the rationality of the religious practitioner is directed toward an ethical order that is not shared by the larger community in which she resides there is no guarantee that the rational action of the believer is even compatible with the rational actions of the rest of the community. That is, the conditions for spiritual success (salvation) and for worldly success (material well being and social position) are not only distinct, they may diverge. Where these two conflict one must choose between spiritual and worldly success. To illustrate with an extreme example, a religion that requires discharging 100% of earned income to the poor would be at odds with a state that demanded 5% of all income in taxes. The follower of such a religion must choose between worldly and spiritual success—there is no third option.

Once religious value-rationality is freed from the need to ensure salvation from material misfortune it tends to resist accommodating social change.⁹⁴ Value rational action “is determined by a conscious belief in the value for its own sake of some ethical, aesthetic, religious, or other form of behavior, *independently of its prospects of success.*”⁹⁵ The intrinsic worth of any given action is determined by reference to the divine order and not to the changing social world.

Examples of such value-rational actions range from the returning of a wallet found on the ground to its owner because it is “the right thing to do” to suicidal-terrorist attacks done out of a duty to God. Such action “always involves ‘commands’ or ‘demands’ which, in the actor’s

⁹³ To give a well-known example, the Protestant economic ethic (a part of the condition of piety according to some protestant ways of life) appears irrational to the economic traditionalist. This is merely because the prophetic revelation of the values which constitute the world as a meaningful whole remains unknown to the economic traditionalist.

⁹⁴ Stephen Kalberg, “Max Weber's Types of Rationality: Cornerstones for the Analysis of Rationalization Processes in History,” in *American Journal of Sociology*, 85:5, 1164-1169.

⁹⁵ *ES*, 25, emphasis added.

opinion, are binding on him,”⁹⁶ whether those commands are imposed by the sanctity of property rights or the ideal of surrender before Allah. These actions are always guided by a “clearly self-conscious formulation of the ultimate values governing that action,” rather than the value of the successful outcome of the act.⁹⁷

It is worth noting here that the commonly accepted social norms and the values of ethical religions tend to diverge from one another over time. Religions make sense of their followers’ fortunes—both good and ill—by appealing to a divinity more powerful than fortune that protects an ethical order, and order that is unaffected by the vicissitudes of fortune. The religion’s legitimacy is thus dependent upon its ability to maintain that its ethical norms are unchanging. Social norms, on the other hand, typically change in order to accommodate economic, political, or even technological developments. Even those religions whose ethical norms are initially compatible with broader social norms tend to have a more difficulty ensuring that their followers find worldly success along with spiritual success over time.

Post-Prophetic Religions: Managing the Tension between Worldly and Spiritual Success

Any conflict between the conditions for spiritual and worldly success will “[produce] a strong tension in man’s inner life as well as in his external relationship to the world.”⁹⁸ Prophetic cults are able to manage the tension through the prophet’s overwhelming charisma. Should the religious organization he develops outlive him its surviving members will require some means that do not rely on his charisma by which to deal with this tension. The form this transition from a prophetic cult to a post-prophetic religious institution takes will have a

⁹⁶ *ES*, 25.

⁹⁷ On this see Olivier Roy’s *Holy Ignorance* and *Globalized Islam* where he makes a point of showing that what is truly animating many acts of terrorism is not a political goal but a personal relation to Allah.

⁹⁸ *ES*, 451.

significant impact on the likelihood that the religion will promote tolerance or intolerance.

Unless it is prepared for, the death of a prophet will precipitate a major crisis in the prophetic cult. Its members, used to consulting the prophet directly when faced with religious difficulties, have no way of determining how to interpret the message in light of new circumstances, let alone how to preserve it and pass down from generation to generation. “Apart from those who continuously participate in the prophetic cult of a god or possibly a narrow circle having a permanent interest in it, all that we have at this stage are drifting laymen, or if one is permitted to use metaphorically a modern political designation, ‘floating voters.’”⁹⁹ In order to ensure that the cult—both the prophetic message and the community that surrounds it—outlives the charismatic prophet, an institutional apparatus must be developed for the maintenance and elaboration of the prophetic message.

In establishing this institution the religious community must prioritize one of two broad goals—the preservation of the prophetic teaching in its purity or the spread of this message across the world. Since the conditions for worldly and spiritual success often diverge, these two aims are likely to be at odds with one another to some extent. This is simply because it is more difficult to make popular a message that will ensure negative material consequences if accepted. Compromises to the purity of the prophetic doctrine may be required to ensure both the stability of the community and its success in the world. For example, the Catholic Church frequently adapted and modified pagan holidays and adopted local deities as saints in order to present itself as more acceptable to different populations. Depending on which of these goals the remaining members prioritize, the cult will develop into either a sect or a church.

The primary distinctions between a church and a sect are: 1) a sect is indifferent to worldly concerns while a church is not and 2) a church is typically universal in scope (it insists

⁹⁹ *ES*, 453-454.

that its teachings apply to all persons), while a sect is not. Perhaps counter-intuitively, of the two types of organization, the church is far more likely to give rise to religious intolerance. The reason for this, as we will see, is that its broad scope demands that it reconcile the conditions for worldly and spiritual success for its followers. The sect, which is uninterested in the worldly success of its members, can avoid this difficulty entirely.

Sect—Preserving the Prophetic Teaching in its Purity

Sects are voluntary associations of those who above all else seek to live according to the prophetic teaching in its purity, and who claim the ability to do so on the grounds of their demonstrated religious qualification. Two related features distinguish a sect from other religious communities. First, the sect is “an association of persons with full religious qualifications.”¹⁰⁰ That is, the sect is made up of only those members who meet certain criteria for membership. Because of the high priority placed on the purity of the doctrine sects are exclusive groups. They may at first be only the immediate followers of the prophet and their family.

Their members do not attempt to bring others into the fold, and indeed guard their boundaries, often looking upon those who seek to gain entry with suspicion. The sect is concerned that new members might corrupt the doctrine. Admitting those who are unqualified into the religious community threatens to dilute the message and taint the other members of the community—who are bound together for the primary purpose of mutually reinforcing the practice of the value rationalized way of life. Only those willing and able to live according with the strict way of life taught by the prophet, regardless of practical consequences, are admitted.

Second, the sect “requires the free consensus of its members.”¹⁰¹ Because it is concerned primarily with the preservation of the prophetic doctrine in its purity, any dissenting member is

¹⁰⁰ *ES*, 1204.

¹⁰¹ *ES*, 1204.

free to leave at anytime. Sect members care neither to force their belief on others nor to reconcile their beliefs with those of a dissenter. They are each confident in their own religious qualifications and those of the other sect members.¹⁰²

These traits bring with them several important consequences. Since the sect is concerned with the veracity of the message rather than its lasting effect on the world, it is not subject to any pressure to ensure its members' worldly success. For example, the American Shakers not only renounced worldly ambition but maintained celibacy, practically ensuring the deterioration of the sect over time. Furthermore, since each of the members is religiously qualified, there is no need to organize its members hierarchically as does a church (as we will see below).

Given its self-imposed limits on size and its indifference to matters of worldly success, “the sect is a specifically antipolitical or at least apolitical group.”¹⁰³ According to Weber, the only conditions under which a sect will instigate political trouble if its freedom to worship is compromised. As a voluntary community demanding high religious qualifications, a sect regards the practice of forced coercion as “senseless if not diabolical.”¹⁰⁴ According to Weber, as an apolitical group within a larger political structure, the “pure sect must advocate ‘tolerance,’” in the form of a legally enforced “freedom of conscience.”¹⁰⁵ Given the direct relationship a sect member has with his religion, the only political position advocated by the sect is “an inalienable personal right of the governed as against any power, whether political, hierocratic or patriarchal.”¹⁰⁶

¹⁰² In many cases they watch over others to look for signs of failing. See Weber's “protestant sects” essay.

¹⁰³ *ES*, 1208-1209.

¹⁰⁴ *ES*, 1208.

¹⁰⁵ *ES*, 1208.

¹⁰⁶ *ES*, 1209.

Any religious organization fitting this description would thrive under Swaine’s liberalism of conscience. In fact, Swaine’s semi-sovereign communities were designed in part to suit such groups, which have been ill served by liberalism in the past.¹⁰⁷ However, the immutability of the religious way of life insisted upon by a sect also creates difficulties for religious organizations. One of the consequences of the intransigence of a value-rationalized way of life is that it can fall “out of step” with the social world. In other words, since communities that adhere to value-rationalized ways of life do not accommodate themselves to changing circumstances their success in the world is often a matter of happenstance. Benedictine and Franciscan monks were, for a time, quite financially successful (as are the Amish today, whose population and means are increasing so rapidly that many have been forced to migrate westward).¹⁰⁸ As society has changed their unchanging behavior has ceased yielding such wealth. On the other hand, countless sects such as the American Shakers have all but died out because their practices were not well suited for the success of the group under the social circumstances in which they found themselves. For this reason many post-prophetic religious communities may prioritize spreading the message over preserving it in its purity.

Church—Ensuring the Successful Propagation of the Prophetic Message

The post-prophetic religious community that prioritizes spreading the prophetic message over preserving its purity will establish a church. This goal brings with it difficulties that a sect does not confront. As the church expands into new social territory (new classes within the same society or new societies altogether) it must find a way to adapt its message to new scenarios. This may not at first appear to be a difficult task. It can be seen as merely as an application of

¹⁰⁷ Though given their apolitical bent it is unclear whether they would accept this authority. Swaine, *Liberalism of Conscience* 12-20.

¹⁰⁸ Jeff Martin, “Amish Population Growing, Heading West.” *USA Today*. September 14, 2010. http://www.usatoday.com/news/religion/2010-09-14-amish-population_N.htm.

the teachings of the prophet to scenarios he had not himself encountered, one that draws its legitimacy from the prophetic doctrine itself. Yet the work necessary to determine the appropriate application of the teaching in new scenarios is interpretive work. As such it opens the door to some epistemologically permissible variety of interpretation in the development of the religious doctrine.¹⁰⁹ The extant religious community must provide some justification for the interpretation it chooses, one that cannot appeal to the authority of the prophet. The famous dispute between Peter and Paul over whether to eat with the gentiles is but one of many examples of this sort of work and the dangers that come with it.

The potential for competing interpretations of the prophet's message introduces an added complexity to the task of preserving the legitimacy of religious traditions. At the same time there are countless external pressures on the church to interpret a doctrine in one or another way. For example, the priesthood must determine the extent to which it is appropriate to modify any part of the message, even its form, in order to ensure its worldly success. Suppose a prophet frequently expressed himself in parables. Drawing on certain tenants of the society in which he spoke, one parable may have portrayed a cow in an unflattering light. Should an evangelical priest seeking converts in a society that considered cows to be holy animals modify the parable to accommodate for the reverence in which cows are held? Such a tact may win adherents, but at the cost of permitting a heterodox belief to persist alongside orthodoxy. In answering such questions the priesthood must balance concerns with the successful spread of the word and with preserving the legitimacy of the tradition.

There are additional strains placed on the way that the priesthood interprets the prophetic message. The demands of preserving and spreading the prophetic message requires a staff of

¹⁰⁹ Interestingly, Islam takes this into account and several branches recognize and permit *ijtihad* or interpretation. All branches forbid the pursuit of anything that will divide the Muslim community.

people working full time who are thus unable to support themselves. “[I]f only for purely economic considerations,” then, the followers of the prophet “endeavor to create a congregation whereby the personal following of the cult will assume the form of a permanent organization and become a community with fixed rights and duties. Such a transformation [...] is the normal process by which the doctrine of the prophet enters into everyday life, as the function of a permanent institution.”¹¹⁰ The split between the priesthood and the laity is in fact a threefold split. Each is distinguished by religious qualification, economic situation, and in its relation to the greater society. Yet the way of life practiced by both must find legitimacy in the same prophetic message. This increases the pressure on the priesthood to ensure the compatibility of the religious doctrine with other economic and cultural institutions—a pressure that is absent in a sect. Since the conditions for obtaining material wealth depend on circumstance, a church must be able to support many different ways of life over time. That is, the priesthood must develop the original prophetic doctrine in such a way that it can reconcile the requirements for worldly success which change with society and those for prophetic legitimacy which remain static over time.

The priesthood does not have unencumbered freedom to legitimate any lifestyle it finds convenient. It must provide some means of distinguishing the saved from the damned, for example through restrictions on diet or activity. Furthermore, it must ensure an attractive enough doctrine of salvation that they can compete in the “religious market.”¹¹¹ While the prophet was able to attract devoted followers through his charisma, the priesthood, who lack this charismatic authority, must fight against “indifference, which they profoundly hate, and against the danger that the zeal of the membership would stagnate,” which place their members in danger of

¹¹⁰ *ES*, 454.

¹¹¹ Roy, *Holy Ignorance*.

conversion to a rival religion.

For these reasons the priesthood must legitimate a way of life that is not strictly value-rationalized but that can accommodate the society in which the congregation lives. This often results in the development and interpretation of a religious doctrine in such a way that it caters to the needs of that stratum of society that will be its “social carrier.”¹¹² This approach is not without its costs. It runs the risk of signifying corruption, as well as drawing the church into unintended political positions. For example, the Catholic Church was forced to accept some forms of usury as it became accepted by the wealthier classes in modern Europe.¹¹³

Before discussing these strategies and their consequences for religious intolerance let us see where we stand in relation to Swaine’s Liberalism of Conscience. While Swaine does not distinguish theocrats by the type of institution to which they belong, he does distinguish between retiring and ambitious theocrats. Retiring theocrats:

withdraw from everyday affairs; they are reluctant to participate in political or other public matters, working to live instead in small communities where they may practice their religion in seclusion.¹¹⁴

Ambitious theocrats, conversely:

Are enthusiastic participants in public life, engaging in public discourse and political affairs with a view to supplanting liberal institutions with stricter laws and regulations drawn from their religious conceptions of the good.¹¹⁵

¹¹² Weber has an expansive list of the ways in which this has been the case. For example see his explanation of the role of Confucianism and the rise of the ‘literati’ in China, and that of Hinduism and the Brahman in India in *From Max Weber* pp.396-442.

¹¹³ *ES*, 562-563& 587-588.

¹¹⁴ Swaine, *Liberalism of Conscience*, 9.

¹¹⁵ Swain, *Liberalism of Conscience*, 9.

While Swaine abstains from explaining why retiring theocrats and ambitious theocrats differ, it seems clear that the retiring theocrat has an analog in Weber's sect-member.¹¹⁶ Swaine's liberalism of conscience is designed in many ways to address the concerns of retiring theocrats, whom he thinks have been treated quite badly by liberalism in the past.¹¹⁷ While he is correct in this assessment, and while his proposals would almost certainly help ensure the proper treatment of retiring theocrats, it is also the case that retiring theocrats are not the source of intolerance within liberal societies.

When Swaine addresses the difficulties posed by ambitious theocrats he is far less convincing. He speaks of "giving them reasons to affirm liberalism," "engaging in their social networks," and ultimately "changing their identity".¹¹⁸ In the end, it is clear that his entire strategy hinges upon convincing ambitious theocrats to become retiring theocrats. As is typical of liberals who treat religion primarily as a set of non-public beliefs, he never questions the motivation behind the ambitious theocrats' ambition.¹¹⁹

We can begin to identify some of the factors that could motivate a distinction between ambitious and retiring theocrats in Weber's description of the development of the church out of a prophetic cult. We already looked at Weber's discussion of how sect members would take a 'retiring' stance toward political matters. We can also already begin to glimpse some of the factors motivating ambitious theocrats in the development of a church. The prioritization of spreading the worldly message could lead to a desire to influence the state in a number of

¹¹⁶ Note that, while Swaine does not discuss the institutional structure of retiring theocrats he does characterize the communities they live in as small.

¹¹⁷ Swaine, *Liberalism of Conscience*, 12-15.

¹¹⁸ Swaine, *Liberalism of Conscience*, 133-145.

¹¹⁹ Public reason liberals like Rawls tend to avoid the topic, while liberals who do often treat it as a matter of the 'intensity' of their beliefs, as does e.g. Bernard Williams in "Tolerance: An Impossible Virtue?" in *Tolerance: an Elusive Virtue* ed. David Heyd, Princeton University Press, 1996. pp 18-27.

different ways. Yet this alone is not enough to explain why a church would be driven to intolerance. We will be unable to understand this motivation without looking at the strategies a church employs in its attempt to reconcile the needs for worldly and spiritual success of its members. After examining this we will see that Swaine's liberalism of conscience is ill equipped to address this problem and that no amount of discussion will likely convert the ambitious theocrat.

Sources of Intolerance within a Church

Many different phrases have been used to capture the relationship—at times antagonistic, at times cooperative—that a church can have with the society in which it resides. According to social scientist Olivier Roy, who has studied the relation of religion and secular culture in the Middle East for decades, “[e]ach time there has been a question of the relation between religion and culture, prefixes have been added to the word “culture””: to *deculturate*, *acculturate*, *inculturate*, *exculturate*.”¹²⁰ These terms can be broken into two broad and fundamentally opposed approaches that a church can take in relation to society: accommodating and dominating. A church may seek to accommodate itself to those social and political structures with which it must interact, tailoring the interpretation of its doctrine to these structures when this is required for the worldly success of its congregation. Such an approach provides greater likelihood of economic viability but runs the risk of provoking a reform movement within the church among those who feel that the church has lost its way (e.g. the Donatists). On the other hand it may seek to control and influence political institutions in order to ensure that its

¹²⁰Roy, *Holy Ignorance*, 33. The quote continues: Religion deculturates when it attempts to eradicate paganism (conquering Christianity in America, orthodox Islam on the Indian subcontinent); it acculturates when it adapts to the mainstream culture (the Jews of the *Haskala* (Enlightenment), Christianity and Islam in India); it inculturates when it tries to establish itself at the center of a given culture (the theologians of Latin America's “indigenous” Christianity), and it excultuates when it thinks of itself as standing back from a mainstream culture of which it was a part, but which suddenly or gradually took a negative, “pagan” or irreligious—and therefore destructive—aspect (Catholic and evangelical reaction to the close of the twentieth century, the Tablighi Jamaat movement within Islam).

members' opportunities to attain worldly success are not diminished on account of their religion affiliation. This is a significant motivation behind Swaine's ambitious theocrats and when it is met with success it tends to promote a rigid and uncompromising interpretation of the prophetic doctrine. Both approaches run the risk of provoking intolerance.

Reformation within an Accommodating Church

There are several ways that a church can accommodate itself to the society in which it functions. The most extreme approach of accommodating the worldly needs of the congregation is acculturation, a process by which a church will renounce aspects of its practice as they clash with society while adopting aspects of that society in their place. An extreme version of acculturation can be seen in the *Haskalah*, or Jewish enlightenment, which led to a more or less 'secular' Jewish culture in the 19th century. A less extreme approach, inculturation, was defined by Pope John Paul II as "the intimate transformation of authentic cultural values through their integration in Christianity and the integration of Christianity in the various human cultures."¹²¹ With both of these approaches the church accepts or endorses many aspects of the culture that have no basis in the prophetic teaching but with which members of the congregation must regularly interact. This can be done through a program of self-modification (e.g. dropping or reinterpreting practices or scripture) or by forging a synthesis whereby the aspects of the culture are re-interpreted as relating to or embodying the universal message of the church as, for

¹²¹The list of qualifications that follows this as the passage goes on shows the degree to which the danger to the church posed by even this transformation-accommodation approach are understood. "The process is thus a profound and all-embracing one, which involves the Christian message and also the Church's reflection and practice. But at the same time it is a difficult process, for *it must in no way compromise the distinctiveness and integrity of the Christian faith*. Through inculturation the Church makes the Gospel incarnate in different cultures and at the same time introduces peoples, together with their cultures, into her own community. She transmits to them her own values, at the same time taking the good elements that already exist in them and renewing them from within ... Groups which have been evangelized will thus provide the elements for a "translation" of the gospel message, keeping in mind the positive elements acquired down the centuries from Christianity's contact with different cultures and *not forgetting the dangers of alterations which have sometimes occurred*. Quoted in Roy, *Holy Ignorance*, 63. Emphasis added.

example, when the Catholic Church would ‘adopt’ local deities as saints in its early expansion through Europe. The main feature of an accommodating church is that it seeks to accommodate its teachings to the society in which its congregation must make a living. These approaches are taken because they tend to provide a relatively risk-free way of ensuring that members of the church have at least a relatively average likelihood of meeting worldly success. The church then uses whatever tools remain to it in order to ensure spiritual success. This helps assure the church’s continued economic stability, as the congregation will have adequate means to contribute to the church itself.

Accommodation can take many forms. For example, Weber’s discussion of the development of the Catholic approach to usury exemplifies an accommodationist approach. When the majority of Christians were economically vulnerable citizens of Rome usury was strictly forbidden. As Christianity spread to the upper strata and as economic forces turned toward capitalism this prohibition was relaxed. Aquinas even suggests at one point that under certain conditions usury can be a virtuous thing insofar as it gives opportunity to those who might not otherwise find it.¹²² In addition to providing for the worldly success of its laity accommodating approaches also demonstrate to those outside of the church that activities performed broadly within the society are not rejected by the church. This helps prevent the broad discrimination that sometimes befalls religious communities and hinders their ability to ensure the worldly success of their members.

As a rule, such approaches tend to promote tolerance between the church and the broader society. Since the priesthood seeks to ensure its own economic stability, the wellbeing of its congregation, and the longevity of its message, it aims to minimize conflict between religion and

¹²² Interestingly enough, a similar dynamic exists within Islam. However, the religious restrictions that remained in place in these loans lead to a disproportionate amount of speculative investment, causing an economic collapse in the Arab world in the 1970’s. Roy, *Failure of Political Islam*.

society. Inculturating churches often seek to explain themselves as providing the source of legitimacy for those institutions. A prime example of this is when Pope Leo III crowned Charlemagne, demonstrating that the church at once accepted the monarchy as a legitimate political institution, while at the same time claiming itself as the source of that legitimacy.¹²³

However, any successful relation of church and society brings many opportunities for reformist reactions (e.g. Donatism, Anabaptism, etc.) to develop within the church. Any movement of toward accommodating a heterogeneous society, even one that is entirely justified by reference to the prophetic revelation, can be construed as an illegitimate concession by the church to a profane society. Such alleged concerns are often portrayed as symptomatic of corruption. If this sentiment is broad enough within a church it can be used by a reforming prophet. The coming of a new reforming prophet is a constant threat to the priesthood of any religious tradition that compromises with society.¹²⁴ One should not forget that the origin of Christianity is a cult surrounding a Jew condemning his own, the dominant, religion for its corruption. Calls for reform have plagued the Catholic Church from the fight between Peter and Paul over whether to eat with the Gentiles to the current push back by Pope Benedict against Vatican II. The reformer is motivated by a desire to ensure the purity of the prophetic message—a purity that is threatened by the concessions the priesthood may make to the social world. The reforming impulse is rooted in the ineliminable tension between doctrinal purity and worldly success.

It is important to realize that calls for reform often have nothing to do with whether or not the message of the church has, in fact, been corrupted. The pristine source to which reformers

¹²³Howard, *Primacy of the Political*, 140-141.

¹²⁴ *ES*, 439-441.

hearken back often never existed.¹²⁵ Paradoxically, reform is often promoted by the inadequate compromise of a church with its society. A church that has unsuccessfully accommodated itself to society—one that cannot secure worldly success for the bulk of its congregation—provides a platform for a reformer who insists that the church has been forsaken by God for having strayed from the message (e.g. the Jewish prophets or contemporary Islamists). The salient factor in reform movements is that the church has developed a relationship with the dominant culture, one that can be seen as a source of corruption.¹²⁶

Reform movements provide our first glimpse into the sources of intra-traditional intolerance. Because they originate in the condemnation of a corrupt church, reform movements not only affirm a narrow way of life as legitimate, they claim a unique right to speak in the name of a particular religious tradition, denying the legitimacy of others who claim this religious affiliation. That is, their intolerance is directed not toward those outside the church but toward those who claim religious authority while espousing what the reformer takes to be heretical beliefs. Many agents in the protestant reformation not only claimed that Catholics were living in sin, but that the pope had corrupted the doctrine of Christianity.¹²⁷

Here we can again make use of Forst's analysis of tolerance. Recall that the concept of tolerance implies two limits—that between the affirmed and the acceptable as well as that between the acceptable and the intolerable. The reforming prophet claims that the barrier between the acceptable and the intolerable is marked not only by the behavior but also its

¹²⁵ Roy, *Holy Ignorance*.

¹²⁶ The extreme case of this is what Roy calls neo-fundamentalism—a reform movement that seeks to ‘deculturate’ itself in order that it become compatible with all cultures and corrupted by none. There are means by which churches can mollify calls for purification, but such approaches are fraught with risk. (e.g. monastic orders—who are always at odds with the priesthood).

¹²⁷ Similar claims by a number of Muslims about how both Jews and Christians had corrupted the teachings of the Bible led to the declaration of Islam as Christian heresy rather than its own religion in 13th century Europe.

justification. An otherwise acceptable wrong behavior can be intolerable if it is done in the name of the right religion. The action itself is not the source of its intolerability, but rather the assertion of religious legitimacy. The implicit claim, the source of intolerance, is not that a certain way of life is legitimate while another way of life is not, but that there is a limit on the ways of life that can be legitimated under a certain religious tradition.

Such intra-traditional disputes need not lead to intolerance. The recent ordination of a gay bishop caused a schism within the Episcopal Church that did not provoke violence.¹²⁸ The stakes are raised, however, where a state grants certain privileges to a religious tradition. In a situation such as Swaine's liberalism of conscience where those who speak rightfully for a religious tradition are permitted to regulate public life, the claims made by a reforming prophet threaten the ability of the priesthood to forge a balance between its congregation's needs for spiritual and for worldly success.

This intra-traditional intolerance is entirely overlooked by Swaine. At the most extreme, both the reform movement and the church may call on the state to withhold recognition from what they take to be a heretical group. Swaine's liberalism of conscience appears to have no resources to treat such disputes were they to erupt within semi-autonomous theocratic communities other than simply disbanding a community that no longer meets the requirements for semi-autonomy such as religious homogeneity across a geographical location. This approach would not satisfy Swaine's reasonable theocrat. The state does not permit true liberty of conscience if it 'disincorporates' the semi-autonomous church for what amounts to a theological dispute. Yet if it refuses to act, then it grants privileges to some groups but not others, thus entering tacitly into theological debates. If the state attempts to recognize both, it will not be

¹²⁸ Laurie Goodstein, "Episcopal Split as Conservatives Form New Group," *New York Times*, December 3, 2008. <http://www.nytimes.com/2008/12/04/us/04episcopal.html>.

able to grant to both the contested authority over the religious tradition. For example, the state would be forced to either reclaim any land owned by the community, or tacitly sanction one group over the other by giving them the land right.

Here we can begin to see the limits of the sort of political solution to intolerance posed by Lucas Swaine. Swaine urges the acceptance of semi-autonomous theocratic communities within larger political institutions, provided that they meet certain liberal requirements (that are justified on theological grounds) such as a respect for human rights, a right to exit, and certain educational requirements.¹²⁹ While such an approach seeks to ensure that there is no case of intolerance between religious traditions by assuring the free practice of religion among the willing, it fails to recognize the role political power plays in internal church politics. This is because, as with advocates of public reason liberalism, Swaine treats religions predominantly as a matter of belief and conviction. Intolerance is seen as a problem to be solved through reasoning about these convictions and beliefs. He fails to recognize the two often competing imperatives that drive a church—the need to meet its members spiritual need and the need to ensure their worldly success. This failure leads him to neglect the fact that intra-religious struggles over political resources are often causes of internal intolerance.

Dominationism

Rather than accommodating society and risk provoking a reforming prophet, a church may take a dominating approach to society from the outset. Both dominating and accommodating approaches are attempts by the church to manage its relation to society in order to ensure the worldly success of its members. A church pursuing a dominating approach will attempt to maintain the purity of its own prophetic doctrine while influencing society in order to ensure its members are rewarded, or at least not penalized, for their religious affiliation.

¹²⁹ Swaine, *Liberalism of Conscience* 90-110.

Dominating approaches are quite common, currently practiced by the religious right in the United States and Orthodox Jews in Israel. While public reason liberalism is ill equipped to address churches pursuing such an approach, Swaine's liberalism of conscience claims to offer a compromise that such churches should find acceptable. Though they cannot control all society, they will be granted broad authority to govern semi-autonomous communities within the state.¹³⁰ In theory, this should permit them enough control to reconcile the competing imperatives to ensure both the worldly and spiritual success of their members. Here too Swaine's failure to examine the causes of religious intolerance led him to overlook problems that result from granting a religious institution political authority.

First, dominating approaches still run the risk of enabling a reforming prophet. While there is less risk that a dominating church will be accused of having compromised the prophetic doctrine, wherever the church has a codified relationship with political authority a reforming prophet will always be able to claim corruption. The church will remain open to the possibility that it will not be able to meet its members' needs because of events entirely beyond its control—for example droughts, wars or diseases. This failure can be claimed by a reforming prophet as a sign of divine disfavor.¹³¹

Churches pursuing a dominating approach also open themselves to a unique source of intolerance. Because religious institutions will be granted a great deal of political authority in Swaine's semi-sovereign communities, they will be forced to rule on the permissibility of a number of practices that they might otherwise pass over with little comment. This power imbues every political debate with theological implications. Political necessity would force the

¹³⁰ Among the examples which inspired this approach he identifies the village of Kiryas Joel in New York, Old Order Ahmish settlements, and Mormon polygamist communities. *Liberalism of Conscience*, 74.

¹³¹ Pat Robertson famously blamed the destruction of Hurricane Katrina on the acceptance of homosexuality within the United States.

priesthood to give answers to questions that may not be answered on theological grounds, for example those within the Catholic Church today over the permissibility of abortion in circumstances of rape or incest or the permissibility of gay marriage. Whatever resolution is adopted will divide the congregation. There is far less room for dissent within the church when the church must rule on the legal permissibility within the community of certain actions.

Churches lacking political authority can treat political questions as mere academic debates because they haven't the authority to address the situation. Once granted this authority they will have to rule on the permissibility of a number of borderline cases—cases that may split the congregation. Granting a religious organization encourages the crystallization of the religious doctrine into a set of particular rules.

Intra-Traditional Intolerance and Liberalism of Conscience

In constructing his liberalism of conscience, Swaine neglects forms of intolerance practiced within religious traditions. Such intolerance is exemplified by the burning of heretics by the Catholic Church and the wars of religion that have inspired so much liberal work on tolerance. In spite of the fact that the Protestant church had separated from the Catholic Church, both claimed Christian legitimacy while denouncing the other in its name. This extends even to the relation between Christians and Muslims. During early encounters between these faiths Islam was declared to be a Christian heresy rather than a separate religion.¹³²

The establishment of any formal relationship between church and state exacerbates the tension between worldly and spiritual success that often promotes intra-traditional intolerance. By granting a religious institution political authority Swaine's liberalism of conscience promotes a movement of crystallization and fragmentation within the tradition that increases the odds of

¹³² Saint John of Damascus declared Islam to be a Christian heresy in the final chapter of his *Concerning Heresy*, a designation that would be used for centuries to justify a harsher treatment for Muslims than those of other faiths. See Daniel Sahas, *John of Damascus on Islam: the "Heresy of the Ishmaelites,"* Brill Academic Publishers, 1972.

internal conflict between the groups that develop. This dynamic may begin with an accommodating church that promotes a reforming movement when it no longer satisfies either the spiritual or worldly needs of its members. It may also begin with a dominating church that promotes factionalization and is subject to accusations of corruption. Both of the approaches often initiate a dynamic of reform and intolerance that continues within a religious tradition indefinitely.

By accepting political authority from the state, the church opens the doors to accusations of corruption that will promote intolerance over circumstances that it cannot control. By recognizing the legitimacy of any among these doctrinal disputants the state hinders the church's ability to deal with such divisions. Once the state has recognized a religious tradition, its actions will sanction one or the other of these factions as having the right to speak in the name of the tradition—even if the state attempts to remain neutral on doctrinal matters. Once a faction within the religious community claims the *exclusive* right to speak for a tradition state recognition cannot be neutral.

Iranian Revolution as Exemplary of the Dynamic of Intolerance

I will now illustrate the dynamic of intolerance that arises when religious institutions are granted political authority through a brief discussion of modern Iranian history. Here a nominally religious state (the official religion of Iran prior to the '79 revolution was Islam and non-Muslims were prohibited from holding cabinet posts) in which the dominant religion (Twelver Shi'ism) practiced accommodation was transformed, by a radicalized clergy, into a state dominated by a rigid interpretation of Islam. The demands of governing, however, split the religious community further, ultimately leading to internal intolerance, (while at the same time

intolerance of non-Shi'a faiths rose). Though the conditions are not identical to those proposed by Swaine, many of the salient features are shared.

This is not a causal analysis. It should not be taken as a complete explanation of intolerance in Modern Iran. My claim is merely that granting religious institutions political authority tends to create conditions that enable and even encourage intolerance.¹³³

I am in no way arguing that the politicization of Shi'ism caused religious intolerance in Iran. It existed there to some extent far earlier. Nor am I claiming that religion is the sole cause of intolerance in Iran. Rather, I claim that the types of intolerance practiced by Iran are typical of the types of intolerance one would expect to develop where religious institutions are granted political authority.

Brief Overview of Modern Iranian History

The "late" history of Iran can be divided into three periods: the pre-constitutional period (1501-1925), the constitutional-dynastic period (1925-1979), and the Islamic Republic (1979-present).¹³⁴

Two significant political-theological developments occurred during the pre-constitutional period (which spanned four dynasties: the Safavid, the Afsharid, the Zand, and the Qajar). The Safavid, as a means of assuring their legitimacy and of uniting the state that would become modern Iran, successfully established Shi'ism as the official religion of Iran.¹³⁵ The form of

¹³³ Introducing a single example opens me to the charge of historical cherry-picking. I have tried to counter this to some extent by alluding to numerous historical examples throughout this chapter. However, it may be useful to at least explain the criteria by which I chose this example. I wanted to restrict myself to events in the latter half of the 20th century (but not so late that historians and political scientists more qualified to discuss them than myself had the opportunity to do so) in order to show that these concepts have relevance today. I also wanted to find an example in the Islamic world because much of the religious intolerance we find today is between the unfortunately and asymmetrically labeled "islam and the west." Finally, Iran was one of the few successful attempts at creating an islamist state.

¹³⁴ Ervand Abrahamian, *A History of Modern Iran*.

Shi'ism adopted by the Safavids was in many ways similar to Sunni Islam—helping the Safavids to promote peaceful relations between neighboring states.¹³⁶

The fall of the Safavid dynasty ended this period of religious-political cooperation. Many among the Shi'a clergy considered the rulers of the latter dynastic period (the Zands and the Qajars) to lack religious legitimacy and moved to extra-Iranian sites of religious importance for Shi'ism (for example Najaf and Karbala in neighboring Iraq).¹³⁷

During this period a theological debate erupted over the right to *ijtihad* (translated as interpretation or innovation, depending largely upon whether the theologian thinks it legitimate or illegitimate). While Islam traditionally recognizes the necessity of interpretation and grants this right to certain religiously qualified persons, twelver Shi'ism had considered this right closed since the disappearance of the twelfth imam. The Iranian clergy in exile began to claim a right to *ijtihad* among the clergy (specifically, the high ulamas) in the imam's absence. They eventually won the debate, breaking with their Sunni neighbors over the issue. As a result, Shi'ism became predominantly associated with Iran (in spite of the fact that many of its holy sites are not in the modern Iranian nation), laying the groundwork for modern Iranian clerical authority.

This last point warrants some emphasis. It has been argued that Islam does not have a clergy in the same way the Judaism or Christianity does. While this is correct for most forms of Islam, twelver Shi'ism is an exception. “The nineteenth century saw the establishment of an

¹³⁵ Roy, *Failure of Political Islam*, 168-170. Specifically, they established “twelver shi'ism” which awaits the return of the 12th Imam (Muhammad al-Mahdi) who is alive today but in hiding and will return at some point. As with a religious tradition, a branch of the tradition (such as shi'ism within Islam) becomes broad enough that there are divisions within it. Note that the split between Sunnism and Shi'ism, and the divisions within Shi'ism often revolved around politicized religious disputes. Once a sub-set within a legitimating tradition is established, it can have the broad appeal of a religious tradition or be further crystallized into numerous ways of life that are at odds with one another within that subset.

¹³⁶ Abrahamian, *A History of Modern Iran*, 16-22.

¹³⁷ Roy, *Failure of Political Islam*, 170-171.

internal hierarchy within the clergy, ratified by co-optation, as a function of the level and prestige of one's diploma."¹³⁸ This, "hierarchized, and centralized clergy, [marks] a considerable innovation with respect to Sunnism."¹³⁹ This institutional transformation that made twelver Shi'ism sociologically more similar to a church, with its strong distinction between the priesthood and the laity, than its other Islamic counterparts. With a more unified and hierarchically organized clergy, twelver Shi'ism was less able to tolerate differences in religious interpretation than it had been in the past.

Constitutional Reform and the Pahlavi Dynasty

A number of factors contributed to the ouster of the Qajar dynasty, including an economic collapse, the incursion of foreign powers, the urbanization of the population and increased education rates.¹⁴⁰ The Qajar dynasty ended in a constitutional revolution—one that established Shi'ism—now transformed with a modern clergy—as a source of legitimacy within Iran.

Shi'ism was declared to be Iran's official religion. Only Shi'i Muslims were to hold cabinet positions. The executive could ban "heretical" books, "anti-religious" associations, and "pernicious ideas." The judiciary was divided into state and religious courts with the clergy retaining the authority to implement the shari'a in the latter. The legislature was not permitted to pass laws that conflicted with the shari'a. To ensure compliance, the National Assembly was to elect senior clerics to a Guardian Council whose wole task would be to vet all legislation. This council was to function until Judgement Day and the reappearance of the Mahdi. Such a Guardian Council, however, was not convened until after the 1979 Revolution.¹⁴¹

The short-lived constitutional period was a time of civil war and political turmoil that ended with the rise of the Pahlavi dynasty with the elevation of Reza Khan to Shah, who claimed to rule

¹³⁸ Roy, *Failure*, 171.

¹³⁹ Roy, *Failure* 168.

¹⁴⁰ Abrahamian, *A History of Modern Iran*. 34-62. It is worth observing that political legitimacy can be threatened as much by religious reformation in the face of such events as religious legitimacy.

¹⁴¹ Abrahamian, 48.

with a divine mandate. The period of the Pahlavi dynasty is often described as one of secularization. For example, early in his reign Reza Shah enforced a new secular dress code (exceptions were made for the clergy) for both men and women.¹⁴² Furthermore,

[t]he state also exerted influence over organized religion. [...T]he theology college in Tehran University and the nearby Sepahsalar Mosque – the latter supervised by a government-appointed imam jum-eh—examined candidates to determine who could teach religion and thus have the authority to wear clerical clothes. In other words, the state for the first time determined who was a member of the ulama.¹⁴³

This description is, at best, an oversimplification. Reza Shah also “invited popular preachers to broadcast sermons on the national radio station,” “banned the advocacy of any ideas smacking of “atheism” and “materialism,” and “exempted theology students from conscription.”¹⁴⁴ As Abrahamian points out, the Shah’s claimed visions from God and divine mandate are not secular words. “It has often been said that the Shah eventually fell because he was too secular for his religious people. If so, one would have to drastically redefine the term secular.”¹⁴⁵

We can better understand the action of the Shah by recalling the tension between spiritual and worldly success that we have been discussing in this chapter. As one claiming to rule with a divine mandate, the Shah was subject to much the same pressures as the clergy of a church. He sought to secure the worldly success of his people by bringing prosperity to the nation while also ensuring their spiritual salvation as well. Consequently, he was forced into the very bind we discussed earlier—how to ‘interpret’ the religion in a way that would ensure both the spiritual and worldly success of its members.

¹⁴² Abrahamian 83-84.

¹⁴³ Abrahamian 85.

¹⁴⁴ Abrahamian 86.

¹⁴⁵ Abrihamian 153.

The clergy were sharply divided on his policies. On the one hand, many supported the reforms publicly and continued to teach at Tehran and serve at Sepahsalar. On the other hand, many, especially those at Qom, Masad, Najaf, and other sites outside of Iran rejected his reforms. Much like a reforming prophet, the Shah posed a very real challenge to the institutional foundation of the authority of the clergy. Worldly concerns for their own position, or for the institutional basis for maintaining religious legitimacy, are just as likely to have animated the ‘conservative’ clergy in their opposition to the Shah as concerns over the legitimacy of his reforms.

Without getting side tracked into a detailed discussion of Iranian political history from 1925-1979 we can identify two relevant developments in this period. First, the clergy was divided over the appropriate relation of the church to the state. Many notable clergymen fully supported the Shah, whether for political reasons, theological reasons, or a mix of both. At the same time many notable clergymen disapproved of his changes but opted to remain silent on political matters.¹⁴⁶ Finally, many voiced strong objections to his reforms—again for either religious reasons, political reasons, or a mix of the two.

This period also saw a widening gap between the standard of living of the wealthy and the poor in Iran. By 1973-74 the top 10% of the country accounted for 38% of urban household expenditures, while the bottom 10% accounted for 1.3% of the same total. Although this was strictly a worldly development—largely a product of the Shah’s son’s adoption of supply-side economic model for state expansion—it created the conditions for dissenting clergymen to claim the need for a religious, and with it a political, reform.

The religious developments in Iran from 1925-1979 are typical of an accomodating church (expansion of women’s rights, relaxation of the dress code, permitting state intervention

¹⁴⁶ Roy, Failure “Nothing in Shiite thought, however, predisposes the clergy to play a contestant political role.” 168.

into the appointment of clergy and banning of books). Just as typically, a backlash developed among some segment of the clergy, but one that was largely ignored while church-members were able to attain worldly success along with spiritual well-being. When circumstances changed, however, and many of the faithful were no longer having their worldly needs met, the dissidents were able to take the opportunity to seize power.

Islamic Republic

There were two main religious progenitors of the 1979 revolution—Ali Shariati (who died in 1977) and Ruhollah Khomeini. The latter is better known given the political role he played, but it is worth mentioning the rhetoric of Shariati which shows that the development of internal intolerance as a response to religious accommodationism. Shariati was a social scientist educated in France who excelled in bringing intellectual developments in the West to bear upon Islam. In doing this, his arguments took on the cast of internal intolerance.

Shariati did not shy away from denouncing the conservative and apolitical ulama. He accused them of using religion as a mass “opiate”; [...] collaborating with both the ruling class and the bazaar petty bourgeoisie; [and] replacing the Red Shi’ism of the Imams with the Black Shi’ism of the Safavid dynasty [in which Shi’ism was merely a tool for political legitimacy]. He draws a sharp contrast between Islam of the *mojtaheds* (clerical leaders) and Islam of the *mojaheds* (religious fighters).¹⁴⁷

Khomeini, the other intellectual leader of what would become the Islamic Republic, targeted his speeches toward the clergy itself. He developed a doctrine of *velayat-e faquh*, (jurist’s guardianship) which claims that the state ought to be governed by religious leaders until the return of the twelfth imam.¹⁴⁸ According to Roy, “Khomeini never favored the clergy as an

¹⁴⁷ Abrahamian, 145. Shariati is quoted in that text as saying “It is necessary to explain what we mean by Islam. By it we mean the Islam of Abu Zarr; not that of the caliphs; the Islam of justice and proper leadership, not that of the rulers, the aristocrats an the upper class; the Islam of freedom, progress and consciousness; not that of slavery, captivity and passivity [...].”

¹⁴⁸ Abrahamian, 149-149. See also Roy, *Failure*, 173 “Since there is a supreme religious authority in Shiism, this authority should hold supreme state power. Thus the exercise of power should fall to the supreme clerical authority.”

institution: on the contrary, he sought the support of the Islamists and the *hujjat al-islam*, younger clergy of lower rank, rather than that of the high clergy.”¹⁴⁹ In this, he clearly drew a part of the fractured Shi’a community in a dominating direction.

These provocative claims, which resulted from the attempt by a religious organization to exercise political power, split the clergy. “[T]he *vilayat-I faqih* thesis was rejected by almost the entire dozen grand ayatollahs living in 1981: they either openly opposed Khomeini [...] or they maintained a discreet distance, refusing official posers.”¹⁵⁰ The only grand ayatollah who accepted it, Muntazari, was at the time Khomeini’s designated successor. He was later rejected for disputing some of Khomeini’s political choices on the grounds that they compromised Islamic legitimacy.¹⁵¹ At the same time that the clergy was split, Khomeini’s rhetoric and actions emphasized the universalism of his brand of Shi’ism. He had himself declared Imam of the Muslim Umma, a title “never before bestowed on a living person.”¹⁵²

Although Roy’s analysis does not focus on intolerance at all, his discussion of this dynamic in revolutionary Iran echos the dynamic of intolerance we have seen as rising from the tension between ensuring spiritual and worldly success for a church’s members.

Yet a schism appeared when ideologization found itself in contradiction with the *sharia*. For most of the members of the clergy, Islamization had to take precedence over revolutionary logic [or in our terms, doctrinal purity had to take precedence over worldly success], which meant, for instance, that private property took precedence over state control, respect of the private home over police investigations, repudiation over divorce proceedings, and so on. For the radicals, on the contrary, revolutionary logic was more important than legalism, even the legalism imposed by the shari’a.¹⁵³

¹⁴⁹ Roy, 173.

¹⁵⁰ Roy, 173.

¹⁵¹ After Muntazari and Khomeni and the constitution was amended to permit the supreme leader to be held by a person of lesser religious credentials.

¹⁵² Abrahamian 164.

¹⁵³ Roy 175-176.

Roy's explanation of the source of the intolerant division within the Shi'a clergy in the wake of the '79 revolution mirrors our claim that the alliance between the state and the church forces the church to rule on specific situations that will inevitably create tensions within the church—tensions that make intolerance far more likely.

Again, this is not the claim that religion caused intolerance. If anything, it is a claim that state pressures 'infested' religion causing intolerance. Tactics such as ballot approvals, political purges of the clergy, and the trials the Bah'ai all played a role in disputes over religious legitimacy. Although the Islamist revolution never claimed to be tolerant (and so an investigation of the continued practice of inter-faith intolerance in Iran would be irrelevant to our argument), it did increase intra-faith intolerance in the ways that are intelligible given our analysis of church-state relations, but that are entirely neglected in the discussions of tolerance by Swaine.¹⁵⁴

Conclusion

We have now examined difficulties facing religious tolerance in both public reason liberalism and in Swaine's liberalism of conscience. In Chapter One we saw that liberal legitimacy based on a principle of public reason—however this principle is constructed—will be intolerant of reasonable theocrats.

In the second chapter we looked at the sources of intolerant practices within a single religious tradition. I argued that the source of much intra-traditional intolerance can be found in

¹⁵⁴ Such a claim answers the communitarian claim that legitimacy ought to come from a single cohesive tradition. Even when this occurs, if the community is as large as a modern state, intolerance will not be eliminated—and indeed the stakes will be higher as each portion of the community claims to speak in the name of the religious tradition even when they disagree. The bizarre fascination of the Tea Party with the constitution provides a secular analog in contemporary America. They portray and even understand their political partisanship as patriotism and in so doing demonize anyone who disagrees with their political positions. This is possible because they identify their partisan stances with the foundational and legitimating text of the nation while at the same time giving a highly restricted and strong interpretation of a text that can support many differing positions.

the difficult task a church has in reconciling the need to ensure its members' worldly success—necessary to spreading the prophetic message, and the need to ensure its members' spiritual success—requiring it to preserve the prophetic message. I argued that religious institutions are not necessarily intolerant, pointing to the affinity between sects and tolerance. However, any relationship whereby the state grants political authority to the church exacerbates this tension and encourages intra-traditional intolerance. Intra-traditional intolerance may arise between those who claim legitimacy according to the same tradition while practicing incompatible ways of life or between those who seek to be recognized as the sole mouthpiece of the tradition.

Yet we need not conclude that intolerance is a sad but ineliminable fact of political life. Both the projects of public reason liberalism and of a liberalism of conscience share certain structural features that lead them to encounter similar problems. Both seek a single abstract, source of political legitimacy in reason.¹⁵⁵ By insisting on a single source of legitimacy—one that can legitimate diverse and even incompatible ways of life—for immanent institutions one ensures that there is a passageway through which intolerance can creep into any political institution. A state which appeals to a single abstract source of legitimacy will be unable to justify the adoption of one among the possible courses of action compatible with that source of legitimacy. It faces the very same problems with intolerance that we saw religious traditions confront when they are granted political authority.

This problem—the need to reconcile the universal claim of legitimacy with the particularity that goes into making political choices—was at the heart of what Pocock calls “the Florentine republican tradition.”¹⁵⁶ In the third chapter I will discuss how this tradition takes up

¹⁵⁵ Swaine ultimately limits the sovereignty of his semi-autonomous communities on the grounds that reason dictates that a liberal structure is best.

¹⁵⁶ J. G. A. Pocock, *The Machiavellian Moment*.

this problem. I will focus specifically on the work of Machiavelli, who seeks to make a virtue out of the vice of factionalism. Following Lefort, we will see that Machiavelli, rather than opting for a wholly immanent form of legitimacy which leads to equally intolerant consequences, seeks to find a middle ground for legitimacy. If legitimacy is based on the results of a recurring contest, between legitimate divisions within a society, then certain restrictions on the use of political power can be put into place that will forestall intolerance.

In my final chapter I will argue that such a form of legitimacy also provides a practicable justification for tolerance. It is a justification that enables the political cooperation of those who hold incompatible comprehensive doctrines while still permitting their mutual contempt, disapproval, or other such judgments demanded by these comprehensive doctrines.

Chapter 3: Machiavelli: A Prudentially Justified Republican Conception of Tolerance

“We have now to inquire what is the best constitution for most states, and the best life for most men, neither assuming a standard of virtue which is above ordinary persons, nor an education which is exceptionally favored by nature and circumstances, nor yet an ideal state which is an aspiration only, but having regard to the life in which the majority are able to share, and to the form of government which states in general can attain” Aristotle, *Politics* 1295A25-31¹⁵⁷

“But because I want to write what will be useful to anyone who understands, it seems to me better to concentrate on what really happens rather than on theories or speculations. For many have imagined republics and principalities that have never been seen or known to exist. However, how men live is so different from how they should live that a ruler who does not do what is generally done, but persists in doing what ought to be done, will undermine his power rather than maintain it.”

Machiavelli *The Prince* chapter 15¹⁵⁸

Introduction

Our attempt to find an adequate justification for political tolerance has reached an impasse. Public reason liberalism does not extend tolerance fully to reasonable theocrats. It rejects their reasonable request to govern themselves according to those non-public reasons they collectively find persuasive. Swain’s *Liberalism of Conscience* accommodates such persons by permitting them to live in semi-autonomous communities operating under a larger liberal framework. However, he fails to address forms of intolerance that may develop within religious communities and that are encouraged by granting religious communities political power.

There may be prudence in Bernard Williams’ suggestion that our efforts would be better spent seeking the political practice of tolerance rather than seeking to justify it as a moral virtue. Even if we accept this, we need not endorse Williams’ cynical suggestion that the best hope for tolerance lies in “international commercial society” and the “increase of indifference” toward

¹⁵⁷ All quotations of Aristotle’s *Politics* are taken from the Benjamin Jowett translation in *The Basic Works of Aristotle 13th edition*. ed. Richard McKeon. (Random House, 1941). References are made to the Bekker number.

¹⁵⁸ All quotations from Machiavelli’s *The Prince* will be taken from the Russell Price translation in *Machiavelli: The Prince (Cambridge Texts in the History of Political Thought)* ed. Quentin Skinner & Russell Price. (Cambridge University Press, 1988). Given the short length of the chapters give reference to merely the chapter and not the page number.

non-consumer values it promises.¹⁵⁹ Recent examples such as the fusion of values and politics in the Islamist movements of the last century¹⁶⁰ and the actions of Christian terrorists¹⁶¹ show any endorsement of interest driven liberalism as a vehicle for addressing intolerance seem little more than a provincial hope. Furthermore, the “indifference” to value conflicts that neo-liberalism brings inevitably extends to political matters more generally and increases opportunities for corruption and abuse.¹⁶² Rather than asking how we can encourage groups to respect those whose values, beliefs, and practices are seen as disturbing, corrupting, idiotic, or otherwise “wrong,” we might ask how to facilitate the living together of groups who do *not* respect one another’s moral convictions. It may yet be possible to establish a political practice of tolerance that permits those who accept as legitimate the political rights of others to retain a genuine commitment to their own values and to the contempt for those who do not share those values that such a commitment entails.

When cast as an issue of peaceful co-habitation and begrudging cooperation, the problem of political tolerance no longer appears to be strictly a modern difficulty. Aristotle endorsed a constitution with a substantial middle class primarily because only a middle class can mitigate the envy the poor have for the wealthy and the contempt the wealthy have for the poor.¹⁶³ The

¹⁵⁹ Bernard Williams, “Tolerance: an Impossible Virtue?” in *Tolerance: an Elusive Virtue* ed. David Heyd. (Princeton University Press, 1996). pp. 18-27.

¹⁶⁰ About which See Olivier Roy’s insightful *The Failure of Political Islam* trans. Carol Volk (Harvard University Press, 1994).

¹⁶¹ Both the anti-abortion variety in the United States and, more recently, the violence in Norway at the hands of Anders Behring Breivik. About the latter see “Norway Mass Killer Gets the Maximum: 21 Years,” in *The New York Times* August 25, 2012. <http://www.nytimes.com/2012/08/25/world/europe/anders-behring-breivik-murder-trial.html>.

¹⁶² See Nancy Rosenblum’s *On the Side of Angels: An Appreciation of Parties and Partisanship*. (Princeton University Press, 2008), where she argues for partisanship insofar as it leads to engaged participants in the political process who help prevent corruption.

¹⁶³ Aristotle, *Politics*, Book 4, Chapter 11.

republican tradition of political thought, to which Aristotle contributed, has long concerned itself with difficulties that arise from the internal strife that mars a mixed constitution. These concerns can be traced back at least as far as the utopian thought experiment performed in Plato's *Republic*.

In this chapter I will mine the republican tradition for a prudential argument for political tolerance. According to J. G. A. Pocock, one of the most fecund periods in this tradition centers around Florence during the 15th and 16th centuries.¹⁶⁴ During this time the medieval categories of political thought inherited by this tradition became increasingly unable to cope with the rapidly changing political circumstances of the Italian city-states.¹⁶⁵ Events such as the Visconti domination of Italy, the French invasion that unseated the Medici, the rise and fall of both Savonarola and the Soderini republic, and the return of the Medici to power challenged the claim that a mixed constitution can satisfy the moral and material needs of a diverse population that is willing to subordinate their conception of virtue to the overall requirements of the republic for success.¹⁶⁶ These practical challenges threaten the claim to universal validity forwarded by earlier republican theorists. I will argue in this chapter that these challenges are a manifestation of the political form of the tension between worldly and spiritual success that face a politicized church, as we saw in the previous chapter.

I will discuss how Machiavelli, Florence's most famous (and infamous) political thinker, addressed the need to manage this tension in the face of changing political circumstances. In

¹⁶⁴ J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*. (Princeton University Press, 1975).

¹⁶⁵ Pocock, *The Machiavellian Moment*, Chapter 1, esp. pp. 19-30.

¹⁶⁶ Pocock, *The Machiavellian Moment*, Chapter 3, esp. pp. 75-80.

spite of his eponymous reputation, ‘Old Nic’¹⁶⁷ did not sacrifice all moral values on the altar of naked power politics. Republican thought had always grounded moral values in the needs of the republic. Machiavelli simply drew out the implications of the unresolvable nature of the tension between legitimacy and success within the political sphere. In doing this he laid the foundation for a prudential justification of political tolerance.

According to Machiavelli a person’s values are typically conditioned by the problems of his or her social position.¹⁶⁸ Since the political circumstances in which a state finds itself can change at any time, a state must have at its disposal a range of different values that enable the identification of and response to the diverse challenges it must face. A state can best maintain these resources by fostering a robust pluralism along with institutions that enable public “tumults”—accusation and argument about what constitutes the common good, who has acted

¹⁶⁷ On Machiavelli’s name and influence see Sebastian de Grazia’s fantastic biography *Machiavelli in Hell* (Princeton University Press, 1989).

¹⁶⁸ One of the primary reasons for the multiplicity of competing interpretations of Machiavelli’s thought is that he writes as one giving advice to political actors. He is not primarily concerned with providing a theoretical justification for his advice, but rather with providing specific recommendations that are persuasive enough that this advice will be followed (about which see Leo Strauss, *Thoughts on Machiavelli*. (The University of Chicago Press, 1978) pp. 131-134). Consequently, one must rely on conjecture to some extent when describing any of the underlying theoretical claims that support his arguments. To the extent possible, I will confine any engagement with secondary Machiavelli scholarship to the footnotes, since the primary aim of this chapter is to identify certain advantages his thought offers in addressing the problems that arise from pluralist states and only secondarily to provide an interpretation of Machiavelli. In this case, evidence that Machiavelli holds the above position can be found in:

1. The dedicatory letter of *The Prince*, where he claims that one cannot know the people except from the position of the prince, nor know the prince except from the position of the people. Here he makes clear that knowing either group involves understanding their motivations, and consequently their behaviors. To the extent that motivations involve values, then, it is clear that values are tied to social position.
2. His *Discourses on Livy*, Book 3, Chapter 9, where he claims that people will not alter their conduct even as circumstances change as a result of having been conditioned by their past experiences (a point we will discuss in detail in this chapter). All references to *The Discourses* will be given in the form *Discourses*, Book, Chapter. All quotations are from Niccolo Machiavelli, *Discourses on Livy* trans. Harvey Mansfield & Nathan Tarcov. (The University of Chicago Press, 1996).
3. Throughout his work insofar as he ties his distinction between the few (those who seek to oppress) and the many (those seeking not to be ruled) to the social distinction exemplified by that between the Plebians and the Patricians in Rome. While he certainly acknowledges that there are exceptions—those born in low places who are motivated by the desires and values of higher social classes, for example—the fact that the default stratification of these “humors” largely coincides with class stratification is a strong indication that Machiavelli thinks values are significantly conditioned by class.

against it, and who is best suited to lead at a given moment—between the diverse groups within the state. Such institutions, if they can be used to direct the energy of its citizens toward the common good rather than self-interest, will help ensure that the appropriate response to the problems of a given political situation will be found and acted upon.

While this argument may appear cynical insofar as it prioritizes the end of the state over the values of its citizens,¹⁶⁹ it also offers positive reasons for suffering the existence of groups whose values one finds objectionable. Any genuinely successful justification for political tolerance must appeal to more than the ‘better nature’ of those whom it seeks to convince, since it is often the nature of this better nature that is in conflict. If we subordinate the good of the individual to the good of the state then an argument can be made for accepting the views of those we object to on the grounds that their presence is good for the state, and therefore indirectly good for ourselves. We need only reject those views that are detrimental to the success of the state.

While Machiavelli’s work provides the basis for a prudential justification for tolerance by suggesting certain functions that political institutions must serve within a state in order to render pluralism politically fruitful and individually tolerable, he is unable to provide any conception of legitimacy that can cement a principled endorsement of these institutions among the population. For that I will look to Lefort’s work on democratic theory in the final chapter.

¹⁶⁹ I use the term ‘citizen’ here and throughout in a loose manner to identify those who participate in activities necessary for the good of the whole and who are directly impacted by the fortunes of the political body. The normative question of who is rightfully a citizen, though interesting, is beyond the scope of this work. In this I follow Aristotle who characterized citizens as all who have the right to participate in deliberative and judicial offices (1275b 18-21).

A Brief Note on Interpretation and Modern Machiavelli Scholarship

Machiavelli's work has given rise to so many volumes of interpretation that one can quickly become lost in the woods of secondary literature.¹⁷⁰ Francis Bacon took Machiavelli to be a brilliant anti-utopian realist,¹⁷¹ while Spinoza and Rousseau insisted that *The Prince* is a cautionary satire on the dangers of monarchy and that the *Discourses* reveal the author's true sentiment. Wolin emphasizes Machiavelli's liberation of political thought from the shackles of moral theory through the discovery of an economy of violence.¹⁷² Gilbert, conversely, takes Machiavelli's *Prince* to be a rhetorically exceptional exemplar of the Mirror of the Prince genre, but not an especially novel one in terms of its conclusions.¹⁷³

I draw attention to this situation only to emphasize that the aim of this chapter is not primarily interpretive. I turn to his contested thought because he treated quite extensively the political difficulties that arise from the tension between the values that motivate political action and the constraints that political circumstances impose on those actions. His attempts to resolve this tension, a tension that often motivates intolerance, makes a virtue of what had taken to be the "vice" of what we now call pluralism. To the extent that I do offer an interpretation of

¹⁷⁰ It has long since been standard practice to begin any interpretive work on Machiavelli with an acknowledgement that there is already such an expanse of literature on the Florentine that a newly published interpretation is almost certainly neither new nor warranted. For an excellent survey of the standard array interpretations as of 1975 see Isaiah Berlin's essay on Machiavelli in the NYRB <http://www.nybooks.com/articles/archives/1971/nov/04/a-special-supplement-the-question-of-machiavelli/?page=1>. The only major addition to this survey is the Cambridge School's inclusion of Machiavelli in the republican tradition (see Pocock's *The Machiavellian Moment*, as well as a number of Quentin Skinner's works, e.g. *The Foundations of Modern Political Thought Vol. 1: The Renaissance* (Cambridge University Press, 1978). For a more detailed survey of the history of Machiavelli interpretation that also includes a discussion of several European analyses see Claude Lefort's *Le Travail de l'Oeuvre: Machiavel*. Unfortunately, much of this material has been left out of the recent translation of this work by Michael B. Smith *Machiavelli in the Making* (Northwestern University Press, 2012).

¹⁷¹ Vincenzo Luciani, "Bacon and Machiavelli," *Italica* 24, 1947. pp. 26-40.

¹⁷² Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought (Expanded Edition)* (Princeton University Press, 2004) pp. 195-213. This is one of a several interpretations that trace the foundation of political science to Machiavelli.

¹⁷³ Allan Gilbert, *Machiavelli's Prince and its Forerunners: The Prince as a Typical book de regimine principum* (Duke University Press, 1938).

Machiavelli's work as a whole it is guided by this concern rather than an attempt to provide a definitive presentation of Machiavelli's intention as an author.¹⁷⁴ While I will readily draw upon the insights of Pocock, Skinner, Strauss, Mansfield, Lefort and others throughout this chapter, I will also resist the temptation to enter the hermeneutic fray that would otherwise threaten to crush this dissertation under the enormous quantity scholarship that it has produced. While Machiavelli certainly is not dealing with the difficulties of modern intolerance, his having lived under rapidly changing circumstances provided him with valuable insight into this difficulty.¹⁷⁵

That said, to appreciate the conceptual and practical problems with which Machiavelli was working and where he made interestingly novel suggestions, it will be useful to acquaint ourselves with his predecessors in the republican tradition.¹⁷⁶ The antecedents to Florentine republican thought can be traced from Plato, through Aristotle, to Polybius. Plato first identified the inevitability of division in any society of sufficient complexity. He then suggests that, while different classes in society will require different virtues if the whole is to function well, these differences can be reconciled under a single vision of the good. Aristotle identifies several problems with Plato's proposal, including those relating to the practical constraints facing any

¹⁷⁴ Of course, this is not to say that I will actively distort his meaning for the convenience of the argument, but only that I do not employ a specific hermeneutical method to distinguish, say, true sentiment from sarcasm or mistake from an intentional misstatement intended to indicate an esoteric message.

¹⁷⁵ Here, in passing, I cite a justification recently given for a similar treatment of Rousseau by Frederick Neuhauser: "I am guided less by the aim of presenting a historically accurate picture of the views Rousseau actually held than by the aim of reconstructing from his texts a position that we, two-and-a-half centuries later, can recognize as the philosophically interesting and promising core of his thought." (*Rousseau's Theodicy of Self-Love: Evil, Rationality, and the Drive for Recognition* (Oxford University Press, 2010) p. 25.

¹⁷⁶ This will also serve to fill in some of the arguments that are merely assumed in Machiavelli's writing. This approach runs afoul of neither the Cambridge School's thesis insofar as the humanism of Machiavelli's day paid a great deal of attention to the classics nor Strauss' "great books" approach in which Machiavelli took his interlocutors to be the great intellectual minds of the canonical tradition. A notable absence in my presentation of the precursors of Machiavelli's thought is Cicero, whom he is clearly in dialogue with in *The Prince*. For a discussion of the relation between Machiavelli's work and that of Cicero I direct the reader to Quentin Skinner's and *Visions of Politics, Volume II: Renaissance Virtue* (Cambridge University Press, 2002) and also to Terence Irwin's *The Development of Ethics Vol. 1: From Socrates to the Reformation* (Oxford University Press, 2007) ..725-743, which convincingly makes the point, *contra* Mansfield, that Machiavelli's critique of moralism is neither directed strictly at Christianity nor a valorization of pagan virtue.

attempt to establish an ideal society. By drawing attention to the tension between the conditions necessary for political legitimacy and those necessary for political success Aristotle initiated a long tradition of what I call republican pessimism. Finally, Polybius directs our attention to the problems posed to republican theory by the possibility that two states, each of which adopt the best constitution, might be forced into combat by their circumstances. In response to this problem—exemplified for him by the meeting of Carthage and Rome—he develops a conception of “natural” political decline and corruption that Machiavelli sought to overcome.

Republican Thought before Machiavelli

Plato’s Republic

An introduction to republican political thought most properly begins with the work that gives this tradition its name—Plato’s *Republic*. This work is the first to treat systematically the difficulties posed to moral theory by the constraints of political necessity. Plato gives an explicitly political justification for the practice of moral virtues such as courage, wisdom and moderation while justice is construed as the political virtue *par excellence*.

This dialogue begins with an examination of various predominantly ‘moral’ accounts of justice. Cephalus suggests that justice is paying one’s debts while Polemarchus claims that it is giving to each what is due.¹⁷⁷ These two proposals treat justice as a virtue primarily governing the interaction of two people and clearly make unexamined assumptions about the context in which these interactions occur. Cephalus says nothing about the greater social context that permits indebtedness (though he does express gratitude that he is able to repay his debts, at least winking at the notion that justice so defined is not attainable for all) while Polemarchus says nothing about what factors determine who our friends and enemies are. Thrasymachus draws the

¹⁷⁷ Plato, *Republic*, 331c-d & 334b. Reference to Plato’s work will be given in Stephanus pagination. Quotations will be taken from the Allan Bloom translation in *The Republic of Plato 2nd ed.* (Basic Books, 1968).

attention of the conversation to the greater context by famously insisting that justice is nothing more than “the interest of the stronger.”¹⁷⁸ While this cynical definition of justice may be distasteful, it is difficult to reject when one views claims about justice from a political rather than a moral context. After all, if justice is doing good to friends and harm to enemies, is it not the politicians who declare which states we are at war with and which are our allies?

The ‘Machiavellian’ implication of Thrasymachus’ claim is clear: one ought to take a cynical stance toward matters of justice. It is good to appear just and to pay appropriate lip service to the virtues in public, but one would be foolish to govern oneself virtuously when one can avoid doing so with impunity. After an unconvincing refutation of Thrasymachus’ position by Socrates, Glaucon and Adamentus strengthen his claim by describing a morally upside-down world in which ‘nice guys finish last’ and ‘only the strong survive,’ through the myth of Gyges—a person for whom success and virtue are utterly severed. The two ask Socrates to explain why one ought to act virtuously in such a world. For the remainder of the dialogue Socrates goes to great length to demonstrate that the demands of worldly success and those of moral success and political legitimacy cannot be so easily disentangled. He proposes that the group “create a city in speech,” which will permit them to observe justice as it comes into being. In doing this he seeks to show that acting contrary to virtue necessarily entails harming the city in which one lives, and in so doing indirectly inflicting harm upon oneself.

The first decision confronting the imaginative founders is whether the city they are creating is dedicated to serving the needs or the desires of the population. While Socrates makes clear his preference for the former, in which all citizens would be artisans and roughly equal in how they serve the common good, Glaucon rejects this “city of pigs” in favor of the luxurious

¹⁷⁸ Plato, *Republic*, 338c.

city.¹⁷⁹ In this move Plato establishes the ground for dividing a city into different classes based on the different functions each performs. He then focuses on difficulties that arise from this ‘proto-pluralism’—i.e. the diversity of moral viewpoints that can be reconciled but only from the perspective of the city’s founders.¹⁸⁰ When considering the needs of a luxurious city, Socrates identifies wage laborers, tradesmen, artisans, entertainers, and military personnel as the minimally necessary occupations within such a city.¹⁸¹ He divides these occupations into two classes—the auxiliaries (military class) and the laborers (artisan class) and later establishes a third: the guardians or philosopher kings (ruling class). Each class has its own virtue determined by the role it plays within the republic. In ruling the city the guardians make important decisions about complex matters that require wisdom. The auxiliaries protect the city from danger and hence require courage. The working class must create enough goods for all while consuming only their part, and so must practice moderation. In short, Plato subordinates the virtue of the individual to the needs of the city. This subordination is appropriate because the city itself is founded at least in part on the mutual need of the individuals.

The subordination of individual virtue to political necessity also makes the implicit claim that, at least in complex cities, the full gamut of virtues cannot be reconciled within the city and practiced by each individual. This implication is drawn out when Socrates denies to each the practice of all the virtues in political life. The requisite personality to exercise courage is weak against the temptations of luxury. The auxiliaries are thus to be denied the opportunity to

¹⁷⁹ Plato, *Republic*, 372d.

¹⁸⁰ I call this a ‘proto-pluralism’ rather than a full pluralism for two reasons. First, as said above, the diversity of moral perspectives can, according to Plato, be reconciled from the perspective of the city’s founders. Second, because it is, at first glance, only a pluralism of classes and not of religions or values. These two sorts of pluralism cannot be so easily separated. One’s social position plays a significant role in determining the values that one adopts and how one seeks their best interest. See also Weber’s *Sociology of Religion* in which he argues that the values a religion adopts conform to the needs of the class that will become its primary ‘social carrier.’

¹⁸¹ 369a-374d.

practice moderation because the risk that they will fail is too great. They must live in public housing and be given honors—a reward compatible with the virtue of courage—but denied private property. This poses a serious problem. The courageous soldier may see the population living with personal comforts and take them to be ungrateful for his sacrifice. Here we begin to see the political counterpart to the tension between worldly and spiritual success that a church must manage.¹⁸² Similarly, the artisan may see the public honors of the soldier and think that he, in generating wealth for the city, is equally deserving of such honors. The internal distinctions within the city can turn into internal division and pit the different parts of a city against one another. Since each class plays a vital role, serious internal conflict is potentially disastrous for all. Plato seeks to keep this inter-class envy in check through certain measures that appear “Machiavellian”—such as the noble lie—and appeals to the virtue of justice as the solution. Justice is just whatever will bring these disparate groups into harmony. It is worth quoting the dialogue at length on this point.

Socrates: ‘That rule we set down at the beginning as to what must be done in everything when we were founding the city—this, or a certain form of it, is, in my opinion, justice. Surely we set down and often said, if you remember, that each one must practice one of the functions in the city, that one for which his nature made him naturally most fit.’

Glaucou: ‘Yes, we were saying that.’

S: ‘And further, that justice is the minding of one’s own business and not being a busybody, this we have both heard from many others and have often said ourselves.’

G: ‘Yes, we have.’

S: ‘Well, then, my friend,’ I said, ‘this—the practice of minding one’s own business—when it comes into being in a certain way, is probably justice. Do you know how I infer this?’

G: ‘No,’ he said, ‘tell me.’

S: ‘In my opinion,’ I said, ‘after having considered moderation, courage, and prudence, this is what’s left over in the city; it provided the power by which all these others came into being; and, once having come into being, it provides them with preservation as long

¹⁸² It is worth noting that political institutions typically prioritize worldly success over moral success. A religious organization can choose to neglect the worldly success of its membership and focus exclusively on their spiritual success (and in so doing become a sect) or it may try to balance the two and risk internal tensions and calls for reform. Conversely a political organization can choose to neglect the moral needs of its population and focus exclusively on worldly success, though not without a cost of its own, as we will see.

as it's in the city. And yet we were saying that justice would be what's left over from the three if we found them.¹⁸³

Here we see that, in a sense, the problem of tolerance is the fundamental problem of republican thought. Any political society of sufficient complexity will require specializations that give each sector of society a partial—and hence distorted—perspective on the whole. The differences between these perspectives have moral implications. It is because the artisan sees her own labor, day in and day out, but does not see the training that the auxiliaries undergo even during peace time that she is able to think them boastful. These distortions lead to internal division within the republic—divisions that threaten the peaceful coexistence of all and hence the common good and, indirectly, the individual good of each. While Socrates appears sanguine about the possibility of reconciling these divisions through justice, which is described as a preservative that keeps the virtue of each class strong, his subsequent account of the cyclical decline of a city from monarchy to anarchy indicates that he has doubts.

We can now state clearly the main aim of republican thought. The true republic is that political form which is capable of bringing into harmony the differences among its citizens that inevitably characterize a complex society and that might otherwise lead to internal conflict. It is a society that enables each, by subordinating his good to the common good (by loving his city more than himself), to attain both moral excellence (by practicing the particular virtue appropriate to his class) and material wellbeing (by assuring the success of a city in which he has a place). Justice can be understood as appropriate tolerance—appropriate because it tolerates those differences necessary within a complex society but rejects those that are harmful to it (e.g. the poets whom Socrates exiles from the imagined city¹⁸⁴).

¹⁸³ Plato, *Republic*, 433a-c.

¹⁸⁴ Plato, *Republic*, 606a – 607d.

Recalling Forst’s analysis of the concept, we can specify republican tolerance as having the following components. The objection component will be grounded in the different socially-situated virtues practiced by members of the different classes. Artisans, for example, may find the auxiliaries boastful in their clamoring for public honors. In a properly ordered republic, these objections will be overcome by an acceptance component grounded in the good of the state. To the extent that the artisans know that the auxiliaries are necessary for the wellbeing of the state they will accept the latter’s boastfulness however distasteful they find it. Finally, the rejection component is also grounded in the good of the state. Among those groups found objectionable, those that do not perform a necessary function in the state and whose activities are detrimental to the state, will be rejected.¹⁸⁵

Aristotle’s Objections and the Foundation of Republican Pessimism

Aristotle’s political theory can be seen in part as making explicit the pessimism found implicitly in Plato’s *Republic*. The key to understanding this pessimism is found not in his *Politics*, but in its relation to the *Nicomachean Ethics*—Aristotle’s treatise on virtue and happiness. This book is presented by Aristotle not as a distinct work, but a preamble to the *Politics*.¹⁸⁶ Aristotle agrees with Plato in claiming that individuals are not self-sufficient and

¹⁸⁵ It is worth noting here how this republican conception of virtue differs from the conception employed by the liberal accounts we have examined thus far. Public reason liberalism instituted a break between what we might call “public virtues” (e.g. civility) and “non-public virtues” (e.g. courage). The latter were treated as a part of the ‘background culture’ or ‘civil society’ and systematically avoided in political theory. Swaine’s *Liberalism of Conscience* similarly relegates any discussion of virtue that does not fit into “public political discourse” to the background culture or, where it is less compatible with public reason, to semi-autonomous communities. Republican thought, conversely, ties all discussion of the virtues to political discussion, even subordinating virtue to political necessity.

¹⁸⁶ Indeed, the end of the *Nicomachean Ethics* could just as easily be read as the introduction to the *Politics*. “Now our predecessors have left the subject of legislation to us unexamined; it is perhaps best, therefore, that we should ourselves study it, and in general study the question of the constitution, in order to complete to the best of our ability our philosophy of human nature. First, then, if anything has been said well in detail by earlier thinkers, let us try to review it; then in the light of the constitutions we have collected let us study what sorts of influence preserve and destroy states, and what sorts preserve or destroy the particular kinds of constitution, and to what causes it is due that some are well and others ill administered. When these have been studied we shall perhaps be more likely to see

thus in finding the foundation of political society in mutual need. However, disagreeing with a point made by Socrates, Aristotle insists that a constitution whose primary aim is the satisfaction of that need is inadequate.¹⁸⁷ Rather, the state ought to provide the conditions necessary for happiness and flourishing.

When several villages are united in a single complete community, large enough to be nearly or quite self-sufficing, the state comes into existence, originating in the bare needs of life, and continuing in existence for the sake of a good life.¹⁸⁸

Aristotle agrees with Glaucon in his rejection of Socrates' city of pigs as serving "mere life," but he does not find the good life in luxuries but in the free practice of virtue. For this reason Aristotle must determine what virtue consists in prior to evaluating what constitution is best suited for this purpose.

This method of proceeding differs from Plato's in one important respect—by placing virtue at the center of his thought, Aristotle insists that we cannot simply assume that the good of the individual and that of society can be reconciled. The individual moral good cannot be simply derived from the need of the city or assumed to be compatible with that need. Rather, the

with a comprehensive view, which constitution is best, and how each must be ordered, and what laws and customs it must use, if it is to be at its best. Let us make a beginning of our discussion." Book 10 chapter 9. 1181b 12-24 W. D. Ross translation.

¹⁸⁷ Socrates: "Now, the true city is in my opinion the one we just described—a healthy city, as it were. But, if you want to, let's look at a feverish city, too." *Republic*, 372e.

¹⁸⁸ 1252B28-30 According to Aristotle, a state directed only at satisfying the material needs of its population is not only inadequate to the nature of a state, but it is impracticable as well. "Socrates says that a state is made up of four sorts of people who are absolutely necessary; these are a weaver, a husbandman, a shoemaker, and a builder; afterwards, finding that they are not enough, he adds a smith and again a herdsman, to look after the necessary animals; then a merchant, and then a retail trader. All these together form the complement of the first state, as if a state were established merely to supply the necessities of life, rather than for the sake of the good, or stood equally in need of shoemakers and of husbandmen. But he does not admit into the state a military class until the country has increased in size, and is beginning to encroach on its neighbors' land, whereupon they go to war. Yet even among his four original citizens, of whatever be the number of those whom he associates in the state, there must be someone who will dispense justice and determine what is just. [...] the higher parts of the states, that is to say, the warrior class, the class engaged in the administration of justice, and that engaged in deliberation, which is the special business of political common sense—these are more essential to the state than the parts which minister to the necessities of life. The higher as well as the lower elements are to be equally considered parts of the state, and if so, the military element at any rate must be included." 1291A12-33.

individual moral good and the moral demands placed on the citizen are independent and must be reconciled through the adoption of a proper constitution. This leads Aristotle to ask if the virtue of the good person is identical with that of the good citizen. If it is found that these two cannot be reconciled then republican theory faces insurmountable difficulties.¹⁸⁹

The virtues of the good citizen are dictated entirely by the needs of the state, as we saw in Plato's *Republic* where he sought temperance for the artisans and courage for the auxiliaries according to the need of the city. This consideration leads Aristotle to conclude that some constitutions may not be conducive to individual virtue.

The virtue of the citizen must therefore be relative to the constitution of which he is a member. If, then, there are many forms of government, it is evident that there is not one single virtue of the good citizen which is perfect virtue. But we say that the good man is he who has one single virtue which is perfect virtue. Hence it is evident that the good citizen need not of necessity possess the virtue which makes him a good man.¹⁹⁰ This is the primary aim animating Aristotle's examination of those constitutions which have actually existed (such as those found in Sparta and Carthage) and those which have been postulated (such as Plato's *Republic*)—to determine which constitution permits the virtue of the citizen to be identical with the virtue the good man.

Aristotle's investigation yields a taxonomy of constitutions divided by outward form and inner ideal. Outwardly there are three types of constitutions: the rule of one (Monarchy or Tyranny), the rule of the few (aristocracy or oligarchy), and the rule of all ('polity' or democracy). Each of these outward forms is determined by a particular ideal of justice. The rule of all seeks to embody a pure ("arithmetic") equality by distributing political authority to all. The rule of the few seeks to embody a relative or proportional ("geometric") equality by

¹⁸⁹ Aristotle's work thus allows us to flesh out the parallel between the religious tension between worldly and spiritual success and its political counterpart. Just as the church cannot always ensure the material wellbeing of its congregation if it insists too strongly on a 'pure' interpretation of the prophetic doctrine, the city cannot always ensure the moral well-being of its citizens if it insists too strongly on the most properly ordered constitution.

¹⁹⁰ 1276b30-35.

distributing political authority to only those deserving it. The rule of one is nothing other than a limiting case of proportional equality, where the absolute best is granted absolute rule. When the outward form of the constitution is severed from the ideal of justice toward which it aims it becomes corrupt (or “deviant”). The three proper constitutional forms (monarchy, aristocracy, and ‘polity’) allot political authority according to the appropriate ideal of justice, while the corrupt forms (tyranny, oligarchy, and democracy) do not. Thus, for example, when one lacking in virtue obtains power in a constitution with a single head, the state is a tyranny rather than a kingship.

According to Aristotle, aristocracy is the absolute best constitutional form and the perfect state would be an aristocratic one. Since only a few are capable of attaining complete virtue, they would be able to fully exercise that virtue by ruling and being ruled by one another. Those lacking in virtue would come closer to it by submitting themselves to the rule of the best among them. This constitution, then, can reconcile the diversity of virtues among the citizens as they actually are rather than imposing virtues according to the needs of the city. Thus, for Aristotle, “the virtue of the good man is necessarily the same as the virtue of the *citizen of the perfect state*.”¹⁹¹

However, there are rarely an adequate number of virtuous people to lead an aristocracy, and those lacking in virtue rarely assent to being ruled by their betters. Furthermore, it is not an easy task to identify the most virtuous. Often those who have met with the most material success are simply assumed to be the most virtuous on the mistaken assumption that virtue begins success. An oligarchy—the most common corruption of aristocracy—is founded on just this mistake and restricts membership in the ruling class not to those who demonstrate complete virtue but to those who have attained a certain level of wealth. Although aristocracy is the

¹⁹¹ 1288A 38-39 emphasis added.

absolute best constitution, Aristotle is forced to admit that it is prone to corruption and not attainable for all. The recognition that knowledge of the best constitutional form is not sufficient for creating a state incarnating that form is the root of Aristotle's pessimistic republicanism.

Having identified the unqualified best constitution he moves on to the second aim of *Politics*:

[T]o inquire what is the best constitution for most states, and the best life for most men, neither assuming a standard of virtue which is above ordinary persons, nor an education which is exceptionally favored by nature and circumstances, nor yet an ideal state which is an aspiration only, but having regard to the life in which the majority are able to share, and to the form of government which states in general can attain.¹⁹²

In this Aristotle abandons an exclusive concern with philosophical legitimacy in order to accommodate political necessity. Success in this second endeavor will take the form of political stability, or a prevention of political corruption. This stability, if it can provide an adequate life for most and the opportunity to practice virtue to some, is an acceptable alternative to the best constitution and far better than a constitution that only provides "mere life" to its citizens.

The two primary forces that contribute to the decline and failure of the republic are ambition (those seeking a share of political authority they do not warrant) and an inability to recognize virtue. The former is a common malady of the poor who seek for themselves a measure of political power regardless of their virtue or aptitude (in the name of proportional equality). The wealthy, on the other hand, demonstrate the latter vice insofar as they are unable to recognize the superior (or even equal) virtue of others and seek political power for themselves alone. These two vices threaten the stability of every state by motivating unqualified persons to usurp power for themselves. In light of this, the best form of constitution most states can seek is mixed, one that allots some political authority to the wealthy, some to the people, and that

¹⁹² 1295A25-31.

reserves some for the virtuous. Such a constitution, which Aristotle calls a “polity,” was found in Sparta and Carthage, both of which Aristotle praised.

This sacrifice of some measure of legitimacy to the demands of success is not without its own political dangers. The success of a polity depends to a large extent on its maintaining the proper balance between its various parts. However, “a state has many parts, of which some may often grow imperceptibly.”¹⁹³ There are many ways in which this can happen—some the result of intentional ambition and others the result of simple changing political circumstances.¹⁹⁴ As a preventive measure only, Aristotle recommends that mixed constitutions adopt provisions that ensure they have a large middle class, for:

[T]here only can the government ever be stable where the middle class exceeds one or both of the others, and in that case there will be no fear that the rich will unite with the poor against the rulers. For neither of them will ever be willing to serve the other, and if they look for some form of government more suitable to both, they will find none better than this, for the rich and the poor will never consent to rule in turn, because they mistrust one another. The arbiter is always the one trusted, and he who is in the middle is an arbiter. The more perfect the admixture of the political elements, the more lasting will be the constitution. Many even of those who desire to form aristocratic governments make a mistake, not only in giving too much power to the rich, but in attempting to overreach the people.¹⁹⁵

Additionally, dangers threaten from outside of the state:

It is said that the legislator ought to have his eye directed to two points—the people and the country. But neighboring countries also must not be forgotten by him, firstly because the state for which he legislates is to have a political and not an isolated life. For a state must have such a military force as will be serviceable against her neighbors, and not merely useful at home. Even if the life of action is not admitted to be the best, either for

¹⁹³ 1302b40-1303a1.

¹⁹⁴ cf. Aristotle’s discussion of Solon 1273b27-1274a22. Solon did supply Athens with a mixed constitution by granting certain powers to the population. Solon’s constitution worked well until the people’s opinion of themselves rose as a result of their contribution to Athenian naval power. This self-importance, due primarily to historical accident led, led the people to reject prudent policies that were not to their liking, and the outsized growth of the democratic element in the Athenian constitution which eventually led to the city’s downfall.

¹⁹⁵ 1296b35-1297a12.

individuals or state, still a city should be formidable to enemies whether invading or retreating.”¹⁹⁶

The adoption of a mixed polity, then, is no small sacrifice to the demands of political success. A great deal in the way of legitimacy must be sacrificed in order to ensure a bare minimum of stability, or protection against changes in fortune. But, the further from the absolute best constitution we stray, the less assurance we have that the constitutional form we adopt is compatible with the virtuous life. To put the same concern in the Weberian language we have become more familiar with, the more the constitutional form sacrifices legitimacy for the sake of worldly success the less assurance we have that someone who acts according to the appropriate political virtues will be able to attain worldly success or will accept the state as legitimate. Any compromise between success and legitimacy at the political level places a demand on the individual to compromise spiritual for worldly success. Just as this compromise can promote internal divisions within the church, so too it risks creating divisions within the state.

We can now provide a full statement of Aristotle’s republican pessimism. According to Aristotle, an aristocracy is the only form of governance in which the virtue of the good person and the good citizen are the same, and hence the only form of government in which all citizens are able to practice full virtue. However, aristocracies are also unstable. If a state seeks to ensure a minimal level of stability it must share political authority among various classes, all of whom think they deserve political authority but few of whom actually do. Such a state cannot provide an opportunity for all to practice virtue nor ensure total stability.

It is not a great leap to re-cast this pessimism as a problem of tolerance. Each part of the state thinks it has an appropriate grasp on what is best for the state. This may be so convinced because they are actually virtuous or because they are unable to recognize virtue and mistake it

¹⁹⁶ 1265A 18-28.

for wealth or some other measure of success. As a consequence each division of the state wishes to see its own eminence. A polity flourishes only when each of its divisions keep one another in check and prevent the usurpation of any one group—even the group most qualified to actually rule. In other words, a polity is only stable while its citizens are tolerant. Once one segment of society gains preeminence the process of decline begins. Each division within the state, then, must accept the legitimacy of shared rule with other portions of the state.

It is worth noting, as a final observation, that the relation of virtues in this form of mixed constitution differs significantly from the harmony proposed in Plato's *Republic*. According to Plato, each of the virtues was partial but complete, and each was made whole through its relation with the others in justice. Whether or not Aristotle thinks such an arrangement makes sense,¹⁹⁷ he does not think it practicable because one cannot assume the virtue of the majority of a population. Absent that, the differing views of the common good within the republic will be incompatible with one another. The desire for either an arithmetic or geometric distribution of political power cannot be reconciled even by a mythical founder. By accepting the irreconcilability of the diverse groups, Aristotle throws into question the ability of a republican conception of tolerance to distinguish between its acceptance component and its rejection component. If the city accepts some who do not contribute to the common good, on what basis would it reject any? Aristotle's mixed constitution is thus not a mixture of those who display a

¹⁹⁷ His often puzzling rejection of the "unity" sought in Plato's *Republic* on the grounds that it would eliminate the state's self-sufficiency seems to indicate that he thought it was not. "Hence it is evident that a city is not by nature one in that sense which some persons affirm; and that what is said to be the greatest good of cities is in reality their destruction; but surely the good of things must be that which preserves them. Again, in another point of view, this extreme unification of the state is clearly not good; for a family is more self-sufficient than an individual, and a city than a family, and a city only comes into being when the community is large enough to be self-sufficing. If then self-sufficiency is to be desired, the lesser degree of unity is more desirable than the greater"1261B7-15. cf also, 1261A17-29.

complete but partial virtue, but simply of those who display differently incomplete virtue.¹⁹⁸ The relation of class is not complimentary but rather a relation of balance and check—each ensuring that the other is unable to usurp political authority. Such a form permits most to exercise the greatest extent of virtue that they are able, but it does not reconcile them to one another or grant the harmony that Platonic justice involves.

Polybius: Socially Conditioned Virtue, a Historian’s View of Fortune, and the Natural Decline of Republics

Though a Greek, Polybius shared little in common with his republican predecessors. He lived two centuries after Aristotle, during a time when Rome—where he spent much of his adult life—dominated Greece. More important, he was an historian rather than a philosopher, and thus concerned himself more with how things political came to be, how they are, and with questions of expedience than with how things ought to be and questions of legitimacy. Yet he provided three contributions to republican theory that will aid our approach Machiavelli’s work: An historian’s conception of fortune (in which it cannot be appealed to as a cause), the development of a theory of ‘natural’ decline with which he explained Carthage’s defeat at the hands of Rome (and on which he based his accurate prediction of Rome’s eventual decline), and an account, made almost in passing, of the social origins of the virtues.

In Polybius’ most celebrated work, a 40 book history of Rome’s rise to the level of a world super-power, the author postpones a discussion of the Roman constitution until the 6th book—interrupting the historical narrative just before a description of the events of the second Punic War. His description of the constitution of Rome is not itself particularly novel—Rome was an exemplar of an Aristotelian polity, striking the right balance of monarchic, aristocratic, and democratic elements as was Sparta before it—which prompts the question, why put off for

¹⁹⁸ And, of course, the few who are actually virtuous.

so long a standard description? There are two answers to this question, both with implications for our study of Machiavelli.

Polybius postpones his discussion of Rome's constitution in part to emphasize the path Rome took in developing it. By way of introducing this path, Polybius provides a reconstruction of the origin of political society and its likely development. The tale of political development is substantially unoriginal, roughly following Plato's cyclical description from monarchy through aristocracy, democracy, and tyranny back to monarchy again. Polybius' contribution lies in his explanation of the transition from pre-political society to political society proper.

Agreeing with Plato and Aristotle, Polybius claims that political society arises from mutual need, but he places special emphasis on the long period of dependence that comes at the onset of human life. Polybius does not jump from people's obvious mutual need to a fully fleshed out political system. In order for this transition to occur he insists that people must develop a sense of right from which a notion of political legitimacy can grow. Aristotle finds these ideals in his teleological theory, while Plato extrapolates them from the ideal of a perfectly functioning city—neither of which Polybius permits in his historian's explanation of pre-political humanity. Polybius' first contribution to republican theory is the supposition that the virtues are not only social, but are what we would today call socially constructed—that is, developed as a response to certain social circumstances.¹⁹⁹ To illustrate what we mean let us look to Polybius' account of the development of justice.

The activity of raising a child to maturity involves a great deal of sacrificed on the part of its parents. Once a child has reached maturity it may express gratitude for this sacrifice or it may be ungrateful. Outside of society such an expression of gratitude or its lack would have little

¹⁹⁹ In Polybius' case this does not have the relativist implications one might seek to draw insofar as he finds those circumstances to be universal, grounded, as they are, in the biological development of the species.

significance. When groups of people live together, however, those who observed the efforts of the parents on behalf of a child will find its ingratitude displeasing and offensive. As they imagine themselves in a similar situation they come to resent the ungrateful child. According to Polybius, “[f]rom all this there arises in everyone a notion of the meaning and theory of duty, which is the beginning and end of justice.”²⁰⁰

A similar account is given for the development of social honors, reprobation, and all the distinctions of status that develop in a society. Once in place, these notions of propriety permit the transition from pre-political society to a monarchy. The important implication here is that both the virtues and the political structures of human society are not abstract ideals toward which we aim, according to Polybius, but are solutions and reactions to specific (if universal) problems that develop from human sociality.

Polybius’ conception of virtue, then, is something of a hybrid between Plato’s and Aristotle’s. While Plato grounded virtue in one’s contributions to a city Aristotle gives it an independent status. There is a ‘good person’ apart from a good citizen for Aristotle while there is not for Plato. Polybius, following Plato, grounds virtue in a social context but, following Aristotle, gives it a status independent of the particular constitution. Conflicts between just this sort of virtue are similar to those we find in modern pluralist states. Specifically, modern states cannot appeal to either a universally shared conception of human nature or a universal ideal of political justice to adjudicate disputes.

Returning to the first reason why Polybius places his description of the Roman constitution so late in his histories. As mentioned above, Polybius thinks there is a “natural” cycle of regime change. As a certain constitution is in place for a period of time new problems

²⁰⁰ Polybius, *The Histories of Polybius* Book 6. Accessed from http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Polybius/6*.html.

will develop to which a different regime will be the natural answer. The “best of all constitutions,” then is not to be found in any of these particular moments along the cycle, but rather in a fusion of the best parts of each so as to lift the state out of the natural cycle of rise and decline. This constitution, in essence an Aristotelian polity, was shared by a number of states: Sparta, Carthage, and the subject of Polybius’ *Histories*, Rome. Sparta was lucky insofar as its legendary legislator, Lycurgus, “through a process of reasoning,” gained insight into the natural process of regime change and provided Sparta the best constitution at its foundation. Rome, however, was founded as a monarchy and only attained its exemplary constitution through “the discipline of many struggles and troubles, and always by choosing the best by the light of the experience gained in disaster,”²⁰¹ recapitulating the development of individual virtue as a response to the demands of social situations at the political-institutional level. This notion of personal and political virtue as an adaptation to the realities of a given situation will become a centerpiece of Machiavelli’s thought, as we will soon see.

The second reason that Polybius places his discussion of Rome’s constitution at the eve of the second Punic War is the fact that both Carthage and Rome shared the same formal constitutional structure. If the adoption of this constitution is offered as an explanation for the preeminence of each state, then some additional explanation must be given for why Rome emerged from their confrontation as the victor. Polybius was not satisfied with the use of good fortune as an explanation traditionally made by eminent historians such as Herodotus and Thucydides. Fortune, according to Polybius, is only a factor from the perspective of the

²⁰¹ Polybius, *The Histories of Polybius* Book 6. Accessed from http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Polybius/6*.html.

historical agent who cannot fully know the circumstances in which she acts.²⁰² The historian, who has the benefit of hindsight, is responsible for uncovering the full and true causes of events.

In order to explain the triumph of one republic over another without appealing to fortune Polybius posits a theory of republican corruption that appears as a process of natural decline. States, like people, have a regular life cycle that begins weak, grows in strength, peaks, and then steadily declines. With the republican form of government, which has the longest life cycle, its own greatness is the cause of its downfall. As it attains worldly success its citizens grow accustomed to luxury. They come to depend upon a certain level of comfort that they are unable to sacrifice it when circumstances demand. Carthage had, according to Polybius, already “passed its prime,” so to speak, at the time of the Punic Wars. At this time Rome was just reaching the height of its power. This claim brought with it the implication, which Polybius did not shy from drawing out, that Rome too would eventually fall into corruption and decline. The accuracy (and audacity at the time) of this prediction brought much attention to Polybius’ work over the years.

The fatalistic character of this claim poses significant difficulties to republican theory—though these were problems that, as a historian, Polybius did not trouble himself with. Recall that the polity is not the absolute best constitutional form, but only the best constitutional form that can provide political stability and material success. The compromise to ‘spiritual success’ that such a constitution asks is predicated upon its ability to provide a minimal level of stability and worldly success. If an individual is to subordinate his material and moral wellbeing to the success of the state then he will likely seek assurances that the state can make good on its promise to supply these. If Polybius is right in his diagnosis, then no such assurances can be

²⁰² In my brief summary of Polybius’ understanding of fortune I follow Lisa I. Hau’s “*Tyché* in Polybios: Narrative Answers to a Philosophical Question,” in *Histos* 5, 2011 pp. 183-207.

made, even with extreme vigilance against what Aristotle called “imperceptible revolution.” While Aristotle’s polity may well be the most stable of all constitutional forms, if that stability is necessarily a temporary one then the high cost to the individual of entry into this political system no longer appears justified. Recall that in a polity one is asked to share political power with those whom one finds at worst detestable and corrupt and at best political inferior and unworthy of exercising political rule.

Machiavelli confronted a republican tradition in just this state of pessimism. In its Platonic origins the republican state was supposed to harmonize and reconcile the diverse political virtues of each class in order to ensure the moral and material wellbeing of all. Aristotle cast doubt on the republic’s ability to satisfy the moral needs of all its members without throwing their material needs into danger. His preferred constitution offers the best of all available alternatives in an imperfect world insofar as it promised moral fulfillment to most of those who were able to attain a high level of virtue along with political stability and a chance at material fulfillment for those of lesser virtue. This gain is not without its own cost. The prudential sharing of power among the virtuous, the wealthy, and the many lacks the philosophical legitimacy of a state governed by those who know best how to govern. Polybius casts even this compromise into doubt by insisting that it is not only possible but inevitable that, at some point, such a political system will decline and no longer offer even the material benefits by which it is justified. This republican pessimism casts into doubt the viability of the republican conception of tolerance discussed above. The reason for accepting those whom one finds objectionable is their importance to the success of the state.²⁰³ In the absence of any contribution to the

²⁰³ Though it would take us too far into the thicket of the history of political theory, one of the consequences of this pessimism was that political humanism—a school of political thought that emphasized the importance of moral virtue to political leadership—was of increasing importance during renaissance Italy. Machiavelli’s work is clearly

wellbeing of the state there is no obligation to tolerate. If the state is unable to ensure the material wellbeing of its population, if it is certain to fail eventually, then there is no lasting reason to tolerate anyone whom one finds objectionable, at least not on more than a temporary basis. It is for a resolution to this difficulty that we turn to Machiavelli.

Machiavelli's Transformation of Republican Theory

We are now well enough acquainted with republican theory to understand some of Machiavelli's more notorious pronouncements as a response to developments within this tradition. Within the tradition, it is generally agreed that the origins of political society can be found in mutual need, but the organization of that society is determined primarily by the requirement for stability and success. Success—the ability to provide adequate material goods and security to the public—demands the development of a plurality of classes with clashing conceptions of virtue and of what is best for the state. For example, members of the military class must cultivate a warlike second nature while members of the merchant class must acquire a calculating second nature.²⁰⁴ As the city provides different rewards and incentives to cultivate the appropriate second natures of each of its classes the population will develop what we might call different 'moral needs.' For example, honors and distinctions will be given to those who risk their lives or perform other great services to the city.

in dialogue with both. For more on Machiavelli's relationship to the humanist tradition see Gilbert's *Prince and its Forerunners*.

²⁰⁴ The notion of individuals having a first and second nature was readily available in Florence at this time, and was even employed by Savonarola in his eschatological vision of Florence (See Pocock, 104-113). Machiavelli's presupposition that conditions affected character is evident at the outset of the *Discourses* in his discussion of the relative merits of founding a republic in an abundant or a harsh region (D 1.1). Machiavelli insists that harsh circumstances are to be preferred for the effect they have on man's second nature, but that these conditions can be replicated by harsh laws in abundant places. He invokes this notion again when he insists that, "as good customs have need of laws to maintain themselves, so laws have need of good customs so as to be observed." D1.18 and additionally in D 1.28, where he discusses the differing degrees of suspicion displayed in a city as a consequence of the different relations among the divisions of a city.

The differentiation of “moral convictions” within the city provides an occasion for disputes over differing views of the common good to develop, a well ordered constitution aims to amply recognize and reward the appropriate virtue of each class, ensuring that both the material and the socially differentiated moral needs of its citizens are met. This development places both the material and the moral wellbeing of each in a position of dependence on the success of the city. Pocock puts this nicely when he states that:

The [republican] theory was bought at a high price; it imposed high demands and high risks. The polity must be a perfect partnership of all citizens and values since, if it was less, a part would be ruling in the name of the whole, subjecting particular goods to its own particular goods. [...] In embracing the civic ideals, therefore, the humanist staked his future as a moral person on the political health of his city. He must in a totally non-cynical sense accept the adage that one should love one’s country more than one’s soul; there was a sense in which the future of his soul depended on it, for once justice [...] was identified with the distributive justice of the polis, salvation became in some degree social, in some degree dependent upon others.²⁰⁵

Such a move places the renaissance Italian political humanist—who typically prioritizes morality over success—in a peculiar position.²⁰⁶ This is because the requirements for the political success of a republic are not identical with those of its political legitimacy. In other words, the moral wellbeing of the citizens of a republic may depend on their accepting political rule that lacks any normative claim to legitimacy.

During Machiavelli’s lifetime the consequences of this ‘moral compromise’ became increasingly more difficult to miss. As Pocock notes,

a long recognized crux of civic humanist thought—the particularity of the republic, its finite extent in space and time, and its consequent non-identity with the laws governing its environment—was brought into high relief by the terror of history after 1494, as Italy became increasingly dominated by non-Italian powers and both Florence and Venice seemed to have lost control over their external relations. If the republic attained serenity

²⁰⁵ Pocock, *Machiavellian Moment*, p. 75.

²⁰⁶ For a broad overview of the humanist milieu in Florence during Machiavelli’s lifetime see Pocock, 55-66. For a more specific account of renaissance humanism that emphasizes its prioritization of moral over prudential concerns even in the domain of politics see Gilbert’s *Machiavelli’s Prince and its Forerunners*.

internally [i.e. was able to manage relations between its conflicting population], might it not lose it if it remained prey to Fortune externally?²⁰⁷

Mutual tolerance among the diverse classes within the city is only justified by the interest each has in the success of the city—a success that increasingly appeared unstable. In light of the political volatility of the times a political theorist could not justify dissuading citizens in a republic from erupting into the sort of internal factional violence of the sort that so disrupted Florentine political life from the 13th century onward.²⁰⁸

Regardless of whether contemporary readers take Machiavelli as a partisan for or critic of republican theory²⁰⁹ many of his political insights (not to mention his caustic wit) are grounded in a recognition of the moral contradiction in which his humanist counterparts were caught. The humanist insists that citizens subordinate their moral convictions to the success of the state while at the same time proscribing behavior essential to the state's success.²¹⁰ If the political decline of a mixed constitution cannot be prevented then the recommendation of republican theorists contributes to the creation of the morally upside down world that Glaucon and Ademantus

²⁰⁷ Pocock, 116

²⁰⁸ Machiavelli's own *Florentine Histories* provides an excellent account of the destruction wrought on Florence by the divisive conflict between the Guelphs and the Ghiblins.

²⁰⁹ The standard reading of the "Cambridge School," that Machiavelli is a republican, is well represented in the works of Philip Pettit, Quentin Skinner, and J.G.A Pocock. McCormick presents a critique of this view and an alternative reading in his *Machiavellian Democracy* (Cambridge University Press, 2011). esp. pp.141-169. The fixation on such divisions and on static political institutions in general displays a lack of appreciation for Machiavelli's commitment to creating new institutions in response to new political circumstances. In this sense, as I will show, to argue over whether or not Machivelli is more appropriately a republican or a democrat misses his most interesting insights.

²¹⁰ It is for this reason that I reject the standard Straussian line that Machiavelli is a "teacher of evil" (*Thoughts on Machiavelli*, 9). The bite of Machiavelli's critique of the humanists is not that their recommendations make for bad policy advice but rather that the very moral qualities they seek to instill are undermined by any insistence on their absolute observance. While he presents a generally unconvincing "refutation" of Machiavelli, Terence Irwin does a fine job of drawing out the moral presuppositions of Machiavelli's rejection of the absolute observance of moral rules by a Prince in *The Development of Ethics: A Historical and Critical Study; Volume I: From Socrates to the Reformation*.

presented to Socrates as a means of pressuring him into justifying the pursuit of virtue for its own sake.

Machiavelli's ingenious resolution to this difficulty is to replace the humanist concept of virtue—an unchangeable expression of the moral good—with his own concept of *virtù*—which is subordinate to the demands of political necessity.²¹¹ If an individual's moral good is dependent on collective political success, then any acceptable account of *virtù* must be context sensitive—it must be able to accommodate the demands of the moment even if they are morally objectionable when considered abstractly. *Virtù*, then, is whatever will lead to the success of the state when its existence is under serious threat.

The remainder of this chapter will develop more thoroughly Machiavelli's notion of *virtù* as a response to the difficulties posed to republican theory by its inability to ensure success in the face of the dangers posed by changing fortune. We will see that an adequate political expression of *virtù* requires a host of disparate and irreconcilable moral dispositions among the population that will enable a city to identify and respond appropriately to the demands of changing fortune. This is important because Machiavelli adopts a Polybian view of fortune as something that cannot be anticipated by the historical actor, but also as a non-arbitrary force that can be understood by the historian.²¹² A state with institutions that can turn the diverse perspectives of its citizens to its advantage can succeed even if its citizens are unable to give an accurate account

²¹¹ For the sake of clarity I will refer to the traditional conception of virtue by 'virtue' and Machavelli's modified conception as '*virtu*.' As an aside—much of Machiavelli's ill repute comes from his allegedly counseling princes to guide their actions only by what is most expedient. This is a clear misreading. Machiavelli does not speak of expedience but rather of necessity. He consistently insists that it is best to be good, but that one should only do so to the extent that one can without undermining the material basis for virtue in the first place—the success of the city.

²¹² There is an important difference in their views that will come up later, but to anticipate, Machiavelli believes that the agent cannot understand fortune not because he does not have enough information but because his understanding of the political landscape is determined by his social situation and by his past successes or failures. One suited quite well to one particular circumstance will not necessarily thrive if thrust into new circumstances.

of why they were successful. This need for diversity within a state provides an excellent justification for political tolerance.

Sparta, Venice, and the False Promise of Republican Stability

Machiavelli's first aim in the *Discourses* is to demonstrate the political instability of those republics such as Sparta and Venice, held up as paragons of virtue by the humanists, that enjoyed long periods of peace. To do this he distinguishes between those republics that were founded all at once by a single legislator and those that arrived at a republican constitution through a series of adjustments over time and the occasional establishment of "new modes and orders."²¹³ Sparta and Venice are held up as paragons of the former while Rome is the representative example of the latter. He then recites the common opinion that Rome relied far more on good fortune to see it through its "dangerous tumults" while praising its "quiet" Spartan and Venetian counterparts.²¹⁴ This leads him to try to explain how Sparta and Venice were able to avoid the domestic turmoil that so negatively affected Rome. He concludes, in both cases, that their institutional form did not permit interference in governance by any but a small ruling class. In the case of Sparta, the cause was a small population and an imposed "equality of poverty" across the various classes that discouraged the broader population from envy and ambition.²¹⁵ Venice, on the other hand, restricted citizenship in the city to descendants of the founding families and employed mercenary troops in war so as not to depend upon or become indebted to its non-citizen population. By restricting political power to a small and relatively homogenous ruling class these states were able to avoid the domestic turmoil that beset their more pluralist counterpart.

²¹³ *Discourses* Book 1, Chapter 2.

²¹⁴ *Discourses* Book 1, Chapter 2.

²¹⁵ *Discourses* Book 1, Chapter 6.

On Machiavelli's analysis, both of these strategies leave the states dangerously exposed to external threats. While Sparta's military was able to attain dominance over other small regional powers, its small size and inability to expand—qualities necessary to maintain internal stability—left it unable to defend itself from larger foreign threats. Since Venice depended on mercenaries its prospects in the face of a protracted war were similarly dim. In both cases the very same institutions that preserved the internal stability of these states left them precariously vulnerable to attack from external enemies. Machiavelli then notes that it is precisely in the arena of foreign combat that Rome excelled.

This observation leads Machiavelli to reevaluate the common opinion that the Roman model was inferior to its Spartan and Venetian counterparts. In a chapter titled "Whether a state could have been ordered in Rome that would have taken away the enmities between the people and the senate," Machiavelli replaces the superficial categorization of states by the circumstances of their founding with more meaningful distinction between "quiet states" that are free from internal division (such as Sparta and Venice) and those that suffer through internal turmoil (as did Rome). Paradoxically, he argues, it is the 'quiet states' that are most dependent upon fortune. He concludes that the founder of a republic can only ensure internal stability by risking weakness against external threats. Rome's greater ability against foreign threats was a result of its internal political strife. While a state that is able to avoid the dangers of external war is indeed fortunate, one ought not consider a state well ordered that is so dependent on good fortune. In light of this discovery, Machiavelli completely reverses his original appraisal (the common view) of the relative worth of the quiet and the tumultuous republic:

It was necessary for the legislators of Rome to do one of two things if they wished Rome to stay quiet like the above-mentioned republics: either not employ the plebs in war, as did the Venetians, or not open the way to foreigners, as did the Spartans. They did both which gave the plebs strength and increase and infinite opportunities for tumult. But if

the Roman state had come to be quieter, this inconvenience would have followed: that it would also have been weaker because it cut off the way by which it could come to the greatness it achieved.²¹⁶

He makes the same point more forcefully later on in the discourses when he insists that:

It is impossible for a republic to succeed in staying quiet and enjoying its freedom and little borders. For if it will not molest others, it will be molested, and from being molested will arise the wish and the necessity to acquire; and if it does not have an enemy outside, it will find one at home, as it appears necessarily happens to all great cities.²¹⁷

No state is in control of its external circumstances. The “quiet republic” with its weakness against external threats now appears to be at least as dependent upon good fortune as Rome. Sparta and Venice were blessed by a long life only because they did not face such dangers for extraordinarily long periods of time. Though Venice had enjoyed a widely celebrated and long lived period of peace at the time Machiavelli wrote, were the tides of war ever to wash upon its shore (and recent events in Italian history gave every reason to assume they would do just this) this peace would be lost along with Venetian independence. In short, Machiavelli argues that even those republican states that are free from domestic turmoil cannot make good on their promise to provide their citizens with material success.

Conversely, Rome’s fortune was tested time and again in internal matters and it always made the right decision. This observation redirects Machiavelli’s line of inquiry. Whereas Rome was commonly derided for the volatility of its internal politics, Machiavelli now asks how it was that Rome was able to meet with such remarkably good fortune time and again. How was Rome able to consistently make the ‘right decision’ in the midst of internal strife? We will see that Machiavelli ultimately finds the cause of this good fortune in its robust pluralism and in the tumultuous nature of its domestic politics. To understand this claim, however, it will first be useful to examine his conception of *virtù* and of fortune. Rome’s fortune was tested time and

²¹⁶ *Discourses* Book 1, Chapter 6.

²¹⁷ *Discourses* Book 2, Chapter 19.

again in internal matters and it always made the right decision. The next question Machiavelli asks is how it was that Rome was able to meet with such remarkably good fortune time and again. How was Rome was able to consistently make the ‘right decision’ in the midst of internal strife and also to provide an alternate explanation of why the Roman Republic declined into imperial corruption? Machiavelli attributes this good fortune to the very domestic strife so commonly decried in Roman politics.

From Fortune to Fortuna

The remainder of the Discourses can be read as an extended answer to the question of how Rome was able to consistently meet good fortune—and how a republic can be so ordered to share the same good fortune. In answering this question, Machiavelli transformed the received notions of fortune and virtue. To properly understand the benefit Machiavelli finds in tumults we must acquaint ourselves with Machiavelli’s conception of *fortuna*²¹⁸ and *virtù*.

The dominant view of fortune in Machiavelli’s time was taken from Boethius. Boethius was a Roman Consul who fell upon hard times for unjust political reasons. While awaiting execution in prison he wrote the *Consolation of Philosophy*, a largely stoic work teaching that fortune bestows favor upon people arbitrarily, and that all worldly good are ephemeral. Boethius counsils his readers to take a resigned stance to changing fortune and find consolation in the unchanging truths of philosophy.

To this fatalistic view Machiavelli opposes a Polybian response. Recall that Polybius employed two different perspectives on fortune. Fortune is an inscrutable force that governs the circumstances of our lives from the perspective of the individual agent. From the historian’s

²¹⁸ The scholarly treatments of Machiavelli’s conception of fortune alone are numerous and I touch only upon the surface of his use of this term. For example, Pocock draws anti-Christian implications from Machiavelli’s call to act against fortune rather than accept its fate as Boethius had cautioned. For a modern feminist reading of the role of fortune in Machiavelli see Hannah Pitkin’s *Fortune is a Woman* (University of Chicago Press, 1999).

point of view, however, fortune is simply a name for the set of circumstances that influence the outcome of a given action or event. Fortune is never a cause except through an individual's ignorance of these circumstances. Machiavelli accepts the role of fortune in the lives of individuals whose understanding of their own circumstances is always limited by their social situation. However, he seeks to give some of the advantage of the historian's more global view to the political state as a whole. That is, he aims to explain how a state can be ordered so that its fortune will not suffer along with the individual's when her luck turns bad. A well ordered state could accomplish this by always empowering whomever fortune favors—that is, whomever is able to meet the challenges of the current circumstances.

Agreeing with Polybius that individuals were ill equipped to judge changes in the circumstances in which they act, Machiavelli claims that they are therefore unable to adjust their own behavior to them. He explains that, when one has acted in a certain way and met only success, one will see no cause to alter one's mode of conduct, even if the conditions that enabled that success no longer obtain. This poses significant problems for the allocation of political authority. For example, if a successful ruler is enabled to remain at the helm too long he will likely crash the ship of state, or at least steer it into more choppy waters as circumstances change without his realizing it. Recall that Machiavelli is giving advice not to individuals, but to the founders of a political society who can order the relations of individuals. While *Fortuna* may hold sway over the lives of individuals, a city is not a single individual but a collection of many. According to Machiavelli, a well-ordered state could ensure that those ascendant on the wheel of fortune are also ascendant in the place of power in a polity. Machiavelli cites Romulus and Numa as paradigmatic exemplars of rulers each suited to the difficulty facing the state at a given

time.²¹⁹ He rejects the humanist claim that a single set of rules ought to govern the conduct of a ‘good ruler’ and in so doing rejects the idea of an absolutely good ruler entirely. He identifies the best ruler with whomever is best suited for a particular situation. Since individuals can do very little to alter their disposition in order to adjust to changing circumstances²²⁰ a successful state must be able to replace those who exercise political authority as needed in a turbulent time.

If a state is able to effectively replace its rulers as its fortunes change with those more adequately suited to the problems of the day, then it will be able to navigate fortunes changing whims relatively unscathed. It is precisely this ability to shift rulers that leads Machiavelli to favor republics over principalities:

A republic has greater life and has good fortune longer than a principality, for it can accommodate itself better than one prince can to the diversity of times through the diversity of the citizens that are in it.²²¹

Virtue v. Virtù

This brings us to Machiavelli’s transformation of the traditional conception of virtue. To understand what Machiavelli means by *virtù* it will be helpful to contrast his use of the term with the Aristotelian conception of virtue—specifically its connection with *phronesis*. Recall that, according to Aristotle, the virtue of anything is determined by its function. When it performs this function well it acts virtuously (if it is capable of performing its function well, it possesses virtue). A dulled knife lacks the virtue that a sharp knife possesses.²²² Since the function of a human is to act, right action (action performed “to the right extent, at the right time, with the

²¹⁹ See *Discourses* Book 1, Chapters 9-11 on the respective merits of Romulus and Numa.

²²⁰ *Discourses* Book 3, Chapter 9.

²²¹ *Discourses* Book 3, Chapter 9.

²²² Except, of course, in the case of spreading knives, butter knives, and others not intended for cutting.

right motive, and in the right way”²²³) is virtuous. A requisite of virtue, then, is knowing what the right way to act is—something far more complex than it might at first seem.²²⁴ For this reason book six of Aristotle’s *Nicomachean Ethics* is dedicated to a taxonomy of different kinds of knowledge, and the virtues appropriate to each. In all he isolates five different sorts of knowledge: *Techne* (craft) whose objects are constructible things, *Episteme* (science), whose objects are things that do not change (natural laws, mathematics); *Nous* (understanding) whose objects are first principles; *Sophia* (wisdom) which is a combination of *nous* and *episteme*—an understanding of how the first principles relate to the unchanging things; and finally *phronesis* (prudence/judgment) whose object is right action. It is this last sort of knowledge that interests us.

According to Aristotle *phronesis* is “[a] state of grasping truth, involving reason, and concerned with action about human goods.”²²⁵ One must be able to identify good ends, deliberate about what will bring about those ends, and in doing this, to know the appropriate action in a particular situation. Lest this be confused with mere instrumental reason, Aristotle is quick to distinguish “cleverness” from *phronesis* on the grounds that the former is indifferent as to the appropriateness of inappropriateness of its end while the latter aims at only truly good ends. For example, one may adopt as an end the acquisition of limitless wealth.²²⁶ This end can be pursued effectively as it frequently is on Wall Street or ineffectively as it is in Atlantic City.

²²³ Aristotle, *Nicomachean Ethics* 1109A27-28.

²²⁴ This is only half true. Aristotle distinguishes what he calls “natural virtue” from “full virtue.” The former can be acquired through habit and practiced without self understanding. The latter, however, requires that one not only do the right thing, but know that one is doing the right thing. This permits Aristotle to say that the young child who returns a wallet he finds on the ground because he is told to (rather than because he know it is the right thing to do) does act virtuously, but that it is not as full a virtue as were he to return it for the right reason. The action is outwardly the same in both cases, but the internal difference reflects a difference of character.

²²⁵ *Nicomachean Ethics* 1140b20-23.

²²⁶ Aristotle clearly rejects the appropriateness of this end. See *Politics* 1256b39-1258A18.

While its effective pursuit does demonstrate some worldly knowledge that its ineffective pursuit lacks, it is only cleverness and not *phronesis* because the pursuit of endless wealth acquisition is never an appropriate end. We might call an action *phronetic* that aims at spiritual success but that is executed in a way that will harm one's own material standing. For example, the virtue of generosity becomes the vice of wastefulness if one gives away one's wealth to the point of impoverishing oneself.

Herein lies the crucial difference between Aristotle and Machiavelli. In a universe informed by Aristotle's metaphysics there is a highest good that reconciles all lower goods.²²⁷ While there are unfortunate accidents and malicious individuals, the fluid and context sensitive nature of virtue guided by *phronesis* ensures that one can attain happiness through the practice of virtue in spite of these obstacles, though it may be difficult. Its difficulty in part depends upon whether one lives in a state that rewards virtuous behavior. The potential impossibility of reconciling the demands of spiritual and worldly success individually go largely unaddressed in Aristotle's work.²²⁸ Machiavelli's writing is guided by the assumption that these two demands cannot be reconciled because our view of virtue is situated and partial just as is our view of fortune.²²⁹

²²⁷ *Politics* 1.1 1251B40-1252A7. The aim of the state is to enable, to the greatest extent possible, all to attain the highest degree of virtue and to reconcile the virtues of each in actuality. Aristotle's pessimism about the prospects for an actual aristocracy, along with his discussion of the necessity of slaves (who will never attain a meaningful level of human virtue) for a well functioning city, indicate some underlying doubts about his political prescriptions.

²²⁸ The best actual constitution is an imperfect polity because most people are not virtuous. It remains the best among imperfect states because it affords the unvirtuous material benefits while still permitting the virtuous to act rightfully. In other words, he is pessimistic about the possibility of a state that can accommodate virtuous citizens, not about the possibility of there are people who are themselves virtuous.

²²⁹ While it is commonly assumed that Machiavelli rejected Aristotle's conception of the human good—an assumption on which Leo Strauss places a great deal of emphasis as the central novelty in Machiavelli's contribution to the history of philosophy and political thought (See *Natural Right and History* n.22 p. 60-61 and throughout his *Thoughts on Machavelli*)—it is still merely an assumption. Machiavelli never explicitly claims that there is no true virtue, but only that legislators must take into account how people actually act rather than how they ought to act (*The Prince*, 15). Insofar as he is writing books of political advice to potential rulers rather than treatises on virtue this

This is most clearly manifest in Machiavelli's view of the divided city—his insistence that the rival conceptions of virtue by different groups (made clear by their desires and fears) within society are incompatible. Machiavelli insists that in every city there exists a division between the few “who want only to oppress” and the many who seek “only to avoid being oppressed.”²³⁰ While these two ‘humors’ are fundamentally at odds with one another, nowhere does Machiavelli insist that one is superior to the other. Machiavelli is not presenting a bifurcated conception of human nature or forwarding a claim about the corrosive effects of wealth on moral character; rather he is claiming that one's disposition, including one's conception of both individual and common good, is informed by one's social and political situation.²³¹ For this reason the division between the “two humors” has a social anchor. The wealthy, brought up as they are to think they are better than most, view those who do not have their ambition as slothful and lazy, desiring only to be left alone. The many, brought up to see themselves as contributing most of the work upon which the republic depends, view the few as greedy and ambitious. It is just because our conception of virtue is so embedded in the social circumstances in which we operate that “this may be said of men generally: they are ungrateful, fickle, feigners and dissemblers, avoiders of danger, [and] eager for gain.”²³² Each views all those who do not share his or her own conception of virtue as vicious.

advice does not differ significantly from Aristotle's endorsement of a polity over an aristocracy on prudential grounds. Since the conditions under which we are seeking a justification for political tolerance are those of pluralism I will treat this assumption as correct, though I leave the question of Machiavelli's true relation to a moral theory of human virtue to those more qualified than I.

²³⁰ *Prince*, 9. This distinction is ubiquitous in Machiavelli's work.

²³¹ We see this further in the fact that Machiavelli will, on occasion, include a third social division if the political situation he is describing warrants. See his discussion of the role of the Soldiers in late imperial Rome in *Prince*, 19. In other words, Machiavelli does not assume that there is an essential distinction among all people between ‘the few’ and ‘the many,’ but only that societies of the sort he is interested in generate this distinction.

²³² *Prince*, 17.

This conception of a situated understanding of virtue is pervasive throughout Machiavelli's writing.²³³ This is a novel development of the earlier Platonic claim that one's function in society is determinative of one's virtue. Machiavelli agrees with Plato that these divisions are essential to the wellbeing of the city, but he does not think that they each provide some portion of virtue that can be reconciled through a unified view of justice. However, to anticipate an argument to be made later, the conflict between these two classes can contribute to the overall good of the city insofar as it is necessary to bring together the partial views of those within the state to get a complete picture of what the political circumstances of the moment are, and hence of what is required at any given time.

If virtue is determined entirely by reference to one's social position then it is difficult to see what could unify the concept—which is in danger of shattering into private or class interest. In order to maintain the coherence of virtue as a concept, Machiavelli replaces the reference to a unified vision of the good of a human being with a unified view of what is necessary for the city to thrive in light of the constantly changing political circumstances. Machiavelli's *virtù* is not that which serves to promote individual happiness; *virtù* is simply that which is in the best interest of the city in whatever circumstance *fortuna* has thrown at it. For example, the harsh fratricide of Romulus and Brutus' cold filicide were acts of *virtù*, but only because they were necessary given the dangers facing the state *at that particular moment*. In a different situation Romulus' ambition would have been justly condemned, as is clear from Machiavelli's condemnation of Manlius Capitolinus who sought the downfall of fellow patrician Furius

²³³ See, for example, the dedicatory letter to the prince in which he writes that "For those who draw maps place themselves on low ground, in order to understand the character of the mountains and other high points, and climb higher in order to understand the character of the plains. Likewise, one needs to be a ruler to understand properly the character of the people, and to be a man of the people to understand properly the character of rulers." See Dick Howard, *The Primacy of the Political*, 193 for a discussion of vision in Machiavelli's politics.

Camillus from a similar envy.²³⁴ Both Aristotelian virtue and Machiavellian *virtù* are context sensitive, but the good at which each aims is different. *Virtù* presupposes a conception of personhood whose moral and material good is so intimately bound up with the political good that the worth of the ends and the permissibility of the means by which one pursues this end are determined entirely in relation to the political good. For Machiavelli *virtù* is the ability to act in the interest of the state in whatever circumstances confront it.

This may at first blush appear to be a form of moral nihilism, or at least a cynical pragmatism. But recall that republican theory grounds political society in the mutual needs of its citizens. This places certain absolute limits on what can be considered good for a city. While a city may not be able to meet the needs of any particular individual, if it systematically fails to meet the needs of any group within it, then it lacks legitimacy. This realization helps us make sense of some of Machiavelli's more perplexing rules, such as his insistence that a Prince ought to seek a social foundation for his power in the people and not in the few, or the reciprocal relation he implies between the prince and the people in his preface to *The Prince*. Under stable conditions, those actions and institutions that meet the needs, both moral and material, of the entire population of a city are virtuous. However, since political conditions are not constant, *virtù* cannot be constant either. This message is almost a continuous refrain throughout Machiavelli's work, and this explains the seemingly amoral character of Machiavelli's counsel. If the good of the city is the very foundation of *virtù*, then no action that would undermine that good could possibly be virtuous. In this Machiavelli is simply drawing further implications from

²³⁴ See *Discourses* Book 1, Chapter 8.

Polybius' claim that the root of the virtues in the emergence of political society.²³⁵ Virtue is subject to the constraints imposed by whatever is essential for the existence of the society.

We are now in a position to see clearly the problem that Machiavelli directed his energies at. All states will face changing political circumstances at some point (fortune). Only those states able to change in order to meet the diverse challenges of the new situation can prosper. A republican constitution is uniquely suited for this difficulty insofar as it permits those with many different perspectives some share in governing. This diversity of perspective increases the chances that there will be some among the politically engaged citizens with the talents necessary to address the problems of the day (*virtù*).

A republic has greater life and has good fortune longer than a principality, for it can accommodate itself better than one prince can to the diversity of times through the diversity of the citizens that are in it.²³⁶

However, as individuals, people tend to be blind to changing fortune.

For a man who is accustomed to proceed in one mode never changes, as was said; and it must be of necessity that when the times change not in conformity with his mode he is ruined. [...] Two things are causes why we are unable to change: one, that we are unable to oppose that to which nature [as informed by our social and political circumstances] inclines us; the other, that when one individual has prospered very much with one mode of proceeding, it is not possible to persuade him that he can do well to proceed otherwise. Hence it arises that fortune varies in one man, because it varies the times and he does not vary the modes²³⁷

Machiavelli must explain how a republic is better able to select leaders most suited to the current problems facing the state among the multitude who are each as blind as the next to the current political situation.

²³⁵ Nor from a careful reading of Aristotle who not only insists that humans are social animals but that "he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god." (*Politics*, 1253A27). This is the upshot of Aristotle's claim that the virtuous citizen and the virtuous person are identical only under the best constitution.

²³⁶ *Discourses* Book 3, Chapter 9.

²³⁷ *ibid.*

Transforming Private Vice to Public Virtue through Regular Public “Tumults”

It is in answering the question of how a state can best mobilize its potential *virtù* to address changing fortune that Machiavelli finds the study of Rome to be instructive. As we have seen, Rome’s domestic politics were characterized by frequent “tumults”—public clashes over the common good, perceived injustices, and other political matters. These conflicts took place both between groups (i.e. between the plebeians and the patricians) and within the same group (i.e. among the patricians). Machiavelli spends six successive chapters early in the *Discourses* on the role of the frequent domestic political conflicts that seemed never to abate in Roman history (and returns to the topic frequently throughout the remainder of the text). This is far and away the most continuous attention any subject receives in the *Discourses*. He concludes that these clashes were the primary contributor to Rome’s continued political success.²³⁸

I say that to me it appears that those who damn the tumults between the nobles and the plebs blame those things that were the first cause of keeping Rome free, and that they consider the noises and the cries that would arise in such tumults more than the good effects that they engendered.²³⁹

It was only by means of these conflicts that Rome was able to consistently “make the right choice” in the face of fortune. They not only led Rome to create a mixed constitution without having been granted one at its foundation, but they enabled a flexibility within this constitution that permitted the development of “new modes and orders” when new circumstances demanded and generally resulted in actions that promoted the common good.

The two features of these conflicts that enabled such beneficial results were their publicity and their frequency. By bringing the diverse perspectives within the state to bear on the question of the public good, Rome’s frequent domestic conflicts drew to the attention of all

²³⁸ *Discourses* Book 1, Chapters 3-8.

²³⁹ *Discourses* Book 1, Chapter 4.

Roman society to any changes in circumstances that would have otherwise gone unnoticed by those not immediately affected by it. The publicity of these conflicts ensured that the attention of all parties was directed toward the common good rather than private interest. In the remainder of this chapter I will examine the way that Rome's institutionalization of conflict led to public good.

Public accusation

Machiavelli's method in evaluating the institutions and practices of Rome, to the extent that he can be said to have one, involves determining which of the allegedly detrimental practices could have been eliminated safely—that is, without also eliminating some element necessary for the state. As we saw earlier, he condemned Sparta and Venice for sacrificing their ability to withstand external assault in exchange for domestic tranquility. He then looks for a way to make the best of those institutions and practices that he deems necessary for the benefit of the state.

Among those commonly condemned practices that he deemed essential to Rome's success were the frequent public accusations that characterized political life in the republic. In his endorsement of this practice Machiavelli does not underestimate the dangers that factional strife poses to a state. Indeed his *Florentine Histories* can be read as an extended indictment of the feud between the Guelphs and Ghibellines for destroying the common good. However, if republican theory is correct in claiming that the virtues adopted by a group of people will be affected by their social situation to a significant extent, then any significantly large and complex society will be beset by some degree of conflict. For example, there would be no way to prevent the Plebs from feeling oppressed when confronted daily with the toils of their family and neighbors which did not receive the benefits enjoyed by the patricians. Rather than attempting to

eliminate such conflict, or to confine it to a self-contained part of society, Roman institutions encouraged the public airing of any grievances, to its great long term benefit.

Machiavelli attempts to demonstrate the benefit this practice provided to Rome by comparing it to the more common practice of private accusations—what he takes to be the only alternative in a diverse state. In the chapter titled “that calumny is as hurtful to a republic as the power to accuse is useful,” Machiavelli argues that the destructive potential of such accusations is exacerbated when they are made in private. Calumny, or private accusation, often leads to the factionalization of social divisions because it is an effective technique for inciting indignation among those already prone to such feelings. To illustrate this Machiavelli describes a conflict between Manlius Capitolinus and Furius Camillus recounted by Livy. Both men were patricians who had rendered great service to Rome during the first Gaulic siege. For reasons unmentioned Furius was granted higher honors than Manlius. Manlius, “loaded with envy”²⁴⁰ sought to ruin Furius for this perceived slight. To accomplish this he spread “various sinister opinions” through a receptive plebian class—including the claim that Camillus was responsible for embezzling public money. These unsubstantiated accusations preyed upon the prejudices of the plebs, working to divide them over which patrician to support while uniting them in their hatred for the patricians as a whole.

While they may have no immediate consequence, such effects can be cumulative and may transform the latent distrust of the patricians by the plebs into outright hatred. Rome was able to avoid this, and also to ‘vent’ the plebian suspicion, by forcing such accusations to be made in public. In the case of the present example, Rome appointed a dictator who publicly asked Manlius Capitolinus, the accuser, to identify those who had received the embezzled money. Unable to produce proof that harm had been done to the common good, the plebs were satisfied

²⁴⁰ *Discourses* Book 1, Chapter 8.

that no ill had been done. For good measure Capitolinus was imprisoned for seeking to increase his own prestige at the cost of damaging the common good. This had the good effect of keeping the plebeians satisfied, demonstrating to the patricians the dangers of acting against the common good, and also of keeping the attention of both parties directed to the common good rather than private injury. Punishment was distributed for harm done to the common good, and only those aspects of the accusation touching upon the public good were considered.

In addition to the immediate effects, institutions for public accusation also address the systemic difficulties found in pluralist republics. Not only do they satisfy the desire for vengeance felt by those who are quick to take offense at the perception of being oppressed, they instill in the people a disposition to defend their own freedom, to remain actively engaged in the political situation, while keeping the public discourse on political policy focused on the common rather than the private good. In so doing, Rome was able to turn a necessary evil (the ‘natural’ mistrust between diverse groups) into a benefit.

Regular Elections

Machiavelli also examines the effects of regular elections for political offices, concluding that they have numerous benefits. As did the practice of public accusation, elections helped “vent the humors” of the diverse classes within the state by putting to the test the suspicions of each group. By focusing the attention of the plebs on the immediate dangers the state faces and how each contender for office will address them, elections force them to consider the difficulties confronted by the patricians, and the benefits the plebs gain from those they are inclined to distrust. Additionally elections help ensure that the ambitious among the patricians neither seek

long-term power, nor disdain lesser honors—for none will hold power for long.²⁴¹ In other words, they help quell strife within as well as between groups. Most important, however, they permit the state to mobilize the *virtù* within its diverse citizens to combat the challenges posed by changing fortune.

We have already argued that a state ought to change rulers periodically, as individuals are well suited to address a limited a single set of difficulties. Frequent public elections enable a state to quickly refocus its energies on developing domestic institutions during peacetime after successful foreign campaigns. Machiavelli points to several examples of this in Roman history, most notably the different benefits conferred on Rome by Romulus and Numa respectively.²⁴² Romulus, the mythical founder, confronted a hostile and dangerous political situation and excelled in the matters of war necessary to ensure Rome's early survival. He was, however, poorly equipped to address the difficulties of managing a society in times of peace. Rome had the good fortune of finding in Numa, its next king, a talent for such matters.²⁴³

Yet, as we have said, the institution of rotating rulers does not, in and of itself, ensure that the most appropriate or virtuous ruler will rise to power. Rome was able to consistently select virtuous rulers by holding frequent public elections. Such elections allowed Rome to both identify changing circumstances and to identify those who would be qualified to address these new circumstances.

²⁴¹ See *Discourses* Book 1 Chapter 36 “Citizens who have had greater honors should not disdain lesser ones,” advice that is quite similar to Aristotle’s claim that the virtue of a ruler involves knowing both how to rule and how to be ruled.

²⁴² *Discourses* Book 1 Chapters 19-20 for a discussion on the succession of consuls in Rome. He also here sites the rotation from the warrior David to the peaceful Solomon in the biblical tradition.

²⁴³ This transition was, of course, an accident and not the product of elections. We will in a moment how elections better ensure this good luck.

Frequent public elections facilitate the rapid identification of any change in political circumstances. It is not difficult to understand how a public discussion over what threatens the state would be made more comprehensive through the inclusion of the voices of different classes, each of which has a situated view of the whole. Suppose there is a growing shortage of some material good necessary for the wellbeing of society. The few, who are usually of means, will be relatively insulated from this problem as its first effects are felt by the many, who will not have enough wealth to keep up with rising prices.²⁴⁴ Such a serious threat to the economic wellbeing of the state may not be identified by a rulership of only those economically well enough off not to recognize the problem until it was too far gone to address. On the other hand, the many who are concerned only with the present good may not recognize a growing foreign threat or care to take the necessary actions to counteract it. Machiavelli insists that “many times a people desires its own ruin deceived by a false appearance of good.”²⁴⁵ By forcing candidates for political office to adopt the perspective and address the concerns of the entire population, public elections force potential rulers to become acquainted with problems they would not otherwise have noticed.

Furthermore, public elections facilitate the identification of someone able to address the problems of the immediate circumstances. Machiavelli claims that rarely, if ever, will one lacking in ambition be well suited to rule. Yet, if those who have ambition are charged with the task of choosing among themselves envy and greed will prevent an appropriate decision. These distorting passions can be overridden, according to Machiavelli, if the question of rule is not one of abstract superiority but of addressing a particular difficulty as it inevitably is in a contest for only a short exercise of political authority. “However deceived in generalities, men are not

²⁴⁴ This sentiment is captured today nicely by the frequently invoked “beltway bubble” in which elected officials live—preventing them from understanding the concerns that face those living in the rest of the nation.

²⁴⁵ *Discourses* Book 1, Chapter 51.

deceived in particulars.”²⁴⁶ When the question is not posed in the abstract (e.g. ‘who should lead’?) but in relation to a particular difficulty (e.g. ‘who is best suited to dealing with this economic crisis?’), as it was for consular offices, which were limited to a single year term, members of the patrician class can save face by supporting a peer who is better qualified for the difficulty at hand while insisting that they would be better suited to address a different problem. At the same time, since the many recognize their own inability to address specific broad problems their judgment is clouded by neither envy nor ambition and, in the face of a specific threat, they are able to select an appropriate leader from a group they are otherwise suspicious of.

“New Modes and Orders”

However, the promotion to authority of those equipped to address a properly identified political danger is not enough to address all the difficulties that arise from changing political circumstances. This is because the very offices of authority are able to handle only a certain range of political difficulties. While a single consular authority was able to successfully lead Rome as a relatively small republic, its increase in size and complexity required a greater separation of authority. For this reason Machiavelli also insists that, “the ruin of cities also arises through not varying the order of republics with the times.”²⁴⁷ Rome was able to prevent this

²⁴⁶ *Discourses* Book 1, Chapter 47. Mansfield and Strauss both make the case that Machiavelli does not genuinely hold this opinion by citing Machiavelli’s subsequent claims that the multitude are easily deceived in, for example, the particulars of war. What they fail to notice is that such deceit requires the agreement among the few to “pull off,” an agreement that will only be possible in light of an agreement on a general threat among the few, as any other situation will give rise to arguments among the few, out of ambition and greed, that will render such deceit transparent.

²⁴⁷ *Discourses* Book 3 Chapter 9. On the topic of the “new modes and orders” and the implication that Rome was able to postpone the steady decline into corruption posited as necessary by Polybius by enacting a continual foundation Strauss is especially good. See *Thoughts on Machiavelli*, esp. pp165-173. That this is a direct challenge to the Polybian threat of natural corruption is most clear in D 3.1 where Machiavelli introduces the need for regular institutional renewal: “It is a very true thing that all worldly things have a limit to their life; but generally those go the whole course that is ordered for them by heaven, that do not disorder their body but keep it ordered so that either it does not alter or, if it alters, it is for its safety and not to its harm. ...” *Discourses* Book 3, Chapter 1.

either by adding new institutions (e.g. the transition to multiple consuls or the creation of the tribuneship) or coming to a new understanding of old institutions.

Among the many examples of Rome's creation of new modes and orders Machiavelli pays close attention to the creation of the Tribune of the Plebs. As Machiavelli remarks, while Rome was a monarchy the ambition of the patricians was kept in line out of the dangers posed by the power of the kings. In other words, the patricians would often side with the plebeians in order to prevent the king from abusing his political authority to their detriment. Once this danger was there was nothing to keep patrician ambition in check.

And as in all human affairs, those who examine them will indeed see that it is never possible to avoid one inconvenience but that another one will spring up.²⁴⁸

In order to combat patrician abuse of power the Roman plebs refused to go to war in 494BCE. To pacify the plebian objections the patricians agreed to the creation of the Tribune of the Plebs—and office that Machiavelli calls a “guard of freedom,”²⁴⁹ and one that “made the republic more perfect.”²⁵⁰

In addition to the tangible benefits the creation of this institution brought with it Machiavelli identifies several benefits that arise merely from its having been created. The institution itself served as a reminder to the plebs of the dangers posed by the ambitious patricians. Rome thus promoted a more engaged population, while channeling this inclination to distrust to patricians into a concern for the common good through the practice of public accusation and regular elections. At the same time the tribune served as a real check to the power of a political class that had become sheltered from the dangers felt by the rest of society.

²⁴⁸ *Discourses* Book 1, Chapter 6.

²⁴⁹ *Discourses* Book 1, Chapter 5.

²⁵⁰ *Discourses* Book 1, Chapter 3.

In all of these cases Machiavelli seeks to show that, by bringing the different groups within the state into conflict over specific questions Rome was able to take advantage of the diverse talents within the state while suppressing the innate distrust between these groups.

Where public conflict worked well to quell the anger of the plebs and to prevent the development of factions among the patricians, the Roman practice of granting public honors to only those members of the patrician class who had done great service helped keep the actions of the patricians direct to the common good. These were not only elective high offices and dictatorships, but also traditions such as the triumph given for great service in war. By restricting some honors to those who have done great public service Rome was able to channel the ambition of the few toward public good.

[A] free way of life proffers honors and rewards through certain honest and determinate causes, and outside these it neither rewards nor honors anyone; when one has those honors and those useful things that it appears to him he merits, he does not confess that he has an obligation to those who reward him.²⁵¹

When handled appropriately, such honors lead the ambitious to freely relinquish their power and authority or at least curb its use in order to attain honor. Nowhere is this more evident than in the remarkable Roman tradition, dating back to the celebrated Cincinnatus, of resigning dictatorial power as soon as one had addressed the danger threatening the republic. The effectiveness of this technique is, according to Machiavelli, dependent on the restriction of these honors to the patricians—for it is operating not on their desire to serve the community, but their desire to distinguish them as superior.

This tradition ought to be opposed to the Decemvir's usurpation of authority. When the few do not renounce power for prestige, it is important that the many are not entirely at their mercy, e.g. that they are necessary to the city (and thus to the few are dependent upon them). By

²⁵¹ *Discourses* Book 1, Chapter 16.

ensuring that the few remain dependent upon the many the frequency of such abuses can be curbed, as it was in the 494BCE when the plebs refused to go to war. At the same time when those honors are offset by harsh punishments for acting against the common good, the legitimate indignation of the plebs at occasional abuses by specific patricians can be addressed. It is not without a certain relish that Machiavelli describes benefits of a public execution for the satisfaction of the many is a common refrain throughout his writing.²⁵²

By creating institutions through which members of all groups within a state are able to dispute what is needful at present while also ensuring that each class depends upon the others (and is aware of this dependence) and that enable the identification of those persons best equipped to address the present difficulties Machiavelli claims that Rome was able to channel the entire *virtù* of its population and meet the dangers of fortune. Furthermore, the publicity with which these encounters took place enabled it to guard against the corruption that comes with inequality by ensuring that some reasons, acceptable to all, were given in the public debate.²⁵³ To the extent that all parties are dependent upon the state for their own wellbeing, frequent public conflict keeps the eyes of each on the common good and hence on the mutual need that grants legitimacy to the republic in the first place.

Conclusion: Prudential Tolerance and Political Illegitimacy

Machiavelli takes an atypical approach to the problem of tolerance within a pluralist state. He accepts the broad contours of the republican conception of tolerance that we identified

²⁵² *Prince*, 17 & 19; *Discourses* Book 1 Chapters 7 & 49, Book 3 Chapter 1 for a few representative examples of Machiavelli's discussion of the benefits of public execution.

²⁵³ This is quite different from any imposed mandate of public reason. It is created out of a desire to convince others rather than to justify one's own claim. Although these reasons may be *insincere* public reasons, no course of action which could not be publicly justified was taken. This shift in motivation resolves many of the problems that 'public reason' liberalism is faced with. According to public reason liberals the population is obligated to accept the most persuasive argument—the existence of which is always questionable in political matters. Machiavelli's proposal places no one under such obligations, but by tying the wellbeing of the individual to that of the state, he provides incentives (other than an appeal to one's 'better nature') for accepting arguments given in public reason.

at work in the Greek origins of the tradition. The objection component is grounded in the situated view each group within society has of itself, of the other groups, and of the common good. These objections are overruled by an acceptance component that is grounded in the shared dependence of each on the success of the state. Finally, the rejection component is also grounded in the common good—those who harm the common good are rejected.

His innovation lies in his approach to the objection component—the mutual suspicions that each group has for the others. He thinks that it is neither possible nor desirable either to eliminate this suspicion by reconciling the disparate views of each group into a single whole as Plato attempted or to circumscribe the expression of these views to a non-political domain as do public reason liberals today. This is not possible because the partial view each has of the whole will inevitably create such suspicion, especially surrounding political matters where all are affected by the actions of a few. It is not desirable because this suspicion is grounded in the partiality of the perspective of each. Airing these suspicions publicly and bringing them into conflict with one another provides an important opportunity to identify difficulties facing the state that no single group may be aware of.

Instead, Machiavelli suggests that a state can structure political institutions that will reap benefits from this mutual suspicion while diffusing the animosity that it often animates before it leads to intolerance. In order to do this, inter-group conflicts must 1) be conducted in public so that each party is aware that she is speaking to all the perspectives within the state and is thus unable to rely on the prejudices of any segment of the population and 2) be focused on specific and particular issues where the factual implications of the claim are easier to determine, inhibiting the ability of prejudices to modify judgment.

The advantages conferred by this form of republican tolerance are not without costs. When diverse and incompatible perspectives are accepted in a the same state, it is easy for citizens to become cynical about the common good and abandon its pursuit for private interests if they have lost public conflicts too often. The grounds for the success of a republic are thus fertile soil for the seeds of corruption—the pursuit among the population of private interest rather than the common good.

According to Machiavelli, Rome was a victim of its own success in this regard. The difficulty with a well-ordered republic is, paradoxically, that it defends against changing fortune too well. In the absence of need, success invites corruption. Machiavelli felt this problem so acutely that he suggested any state must undergo a catastrophe at least once a decade in order to keep the attention of all its citizens on their mutual need and on the common good.²⁵⁴

What Machiavelli's prudential argument for tolerance lacks is a conception of political legitimacy—one that will permit those who end up losing the particular fight to accept their loss without turning cynically to private interest or seeking to undermine the constitution itself. In order to be truly effective any such conception of political legitimacy must be able to address the concerns of those, like the reasonable theocrat, who place higher value on spiritual than worldly success. What is needed is a doctrine of political legitimacy that is not tied to either religious values, or individual interest, or a contested notion of equality. In the final chapter we will find just this Lefort's conception of modern democratic legitimacy.

²⁵⁴ *Discourses* Book 3, introduction.

Chapter 4: The Empty Place of Power and Modern Democratic Tolerance

[T]olerance finds its limit in aggressive intolerance of the other
Lefort, Writing, The Political Test, 144

Introduction

We found, in the previous chapter, a prudential argument for political tolerance in pluralist states. Insofar as a pluralist state is better able to adapt to changing political circumstance by mobilizing different groups within society to recognize and response to these changes a politically tolerant state will be better able to address changing fortune than a non-pluralist state. While arguments from our common stake in national interest have a long pedigree in questions of political legitimacy, such reasons are unlikely to persuade those whose core convictions are immutable on questions of tolerance and who are unwilling to put political concerns above these convictions. In other words, the prudential argument for ‘Machiavellian tolerance’ is unlikely to persuade just those who are more likely to practice intolerance.

And so we find ourselves once more where we were when we began. It appears as though the very condition in which tolerance is most attainable, a pluralist state, presupposes the lack of unity on political matters that political tolerance requires. One might think that Forst’s permission conception of tolerance is the most we can hope for. It is with this problem clearly in mind—the need to establish the legitimacy of political tolerance in a pluralist state to those who are least likely to accept prudential arguments—that I turn to the work of Claude Lefort. Lefort, an excellent exegete of Machiavelli, saw the difficulty involved in creating a unified body out of a people marked by diversity quite clearly. His answer, as we will see, does not break entirely from that of Machiavelli’s. He finds a unifying force in the institutionalized conflict over the authority to exercise political power that is repeatedly enacted in the form of regular elections within modern democracies. In this chapter I will argue that Lefort’s theory of modern

democratic legitimacy provides a more secure foundation on which to establish political tolerance that public reason liberalism and Swaine's liberalism of conscience were unable to provide. More specifically, the symbolic order of modern democracies is organized around an empty place of power, the emptiness of which prevents the attachment of legitimacy and any particular division of society in a way that sanctions political intolerance. Regular institutions for social conflict, properly configured, discourage intolerance because they provide a regular venue for social conflict, a venue whose legitimacy as a political institution entails the legitimacy of those social divisions which participate in the conflict. By authorizing the winner of this conflict to exercise political power only temporarily, the terms of the contest impose limits on how that power is exercised. While Lefort does not speak often of tolerance,²⁵⁵ I will argue that his conception of modern democracy, a conception one that legitimates social conflict, provides an implicit argument for tolerance.

Three approaches to political thought: ideal theoretical, positivist, and phenomenological.

Through [its] internal articulation [...] the political [...] govern[s] access to the world²⁵⁶

If the variety of approaches to the study of political matters share anything in common it is the attempt to make sense of the hard fact of political power. We can come to understand some of the relative strengths and weaknesses of these diverse approaches by examining how they differ on the strange phenomenon by which people, with varying degrees of voluntariness, relinquish a great deal of authority over their lives to others.

²⁵⁵ The only occurrences among his writing that has been translated into English can be found in: Lefort, "The Idea of Humanity and the Project of Universal Peace" in *Writing, The Political Test* trans. David Ames Curtis. (Duke University Press, 200) pp.142-158.

²⁵⁶ "The Permanence of the Theologico-political?" in *Democracy and Political Theory*, trans. David Macey. (John Wiley & Sons, 1991) (subsequent references to *DPT*).

Ideal theory is primarily concerned with normative questions (e.g. when is the use of force justified? What is a legitimate regime?). It attempts to isolate these questions by ignoring many of the details of actually existing political life and describing how a legitimate society would work under ideal conditions. Such approaches can claim an impressive lineage in political philosophy, dating back at least to Plato's *Republic*, in which Socrates and his friends attempt to found a city in thought and determine what form it must take in order to be legitimate. The contemporary standard bearer of this approach is John Rawls, who seeks to find a theory of justice for a well-ordered society while largely ignoring the problems of our own.

The appeal of ideal theory lies in its assumption that an ideal society provides a perspective from which one is better able to evaluate the actually existing states in our world. One can explain clearly where states fail to live up to their obligations, which institutions are corrupt, and where the limits of political power ought to lie by looking to an idealized form of political society. However, the evaluative benefits that a clear view of the ideal state grants come with a significant drawback—the inability to provide practical political advice in light of the imperfections of the actually existing political world. While it is simple enough to pass judgment on the failings of real states it is far more difficult to provide a path by which real states can be transformed into their ideal counterparts. It is not clear what non-ideal measures are justified in our non-ideal society or how that society must be reformed in order to become a well ordered society.

As we have seen time and again, the political world is messy. States are often forced to compromise their ideal norms if they seek to ensure their own success and thus the material wellbeing of their citizens. By denying these non-ideal difficulties ideal theory opens itself to the criticism that it ignores, as a precondition of its investigation, the very difficulties that

political philosophy aims to address. To give one prominent example, Rawls requires of the citizens of his ideal society a “duty to civility.”²⁵⁷ Failure to meet this moral duty to explain one’s actions and views on political issues in terms of public reasons, to listen to others’ explanations, and to act fair-mindedly in political matters does not merit any political punishment. If we assume a population that adheres to such a duty it is difficult to see what more would be needed to secure a tolerant state.

It often seems as though the main result of ideal theoretical approaches to political philosophy is an index of our current failings rather than any real solutions to our problems. This often leads to a cynical realism in political theory or at the very least what David Estlund nicely refers to as “utopophobia.”²⁵⁸ Machiavelli diagnosed this difficulty well when he wrote:

[f]or many have imagined republics and principalities that have never been seen or known to exist. However, how men live is so different from how they should live that a philosopher who does not consider what is generally done, but persists in explaining what ought to be done, will accomplish little.²⁵⁹

At the opposite extreme lies a positivist approach to political questions.²⁶⁰ We can distinguish between the naïve positivism of the political sciences and the more reflective positivism of some philosophical approaches. The former takes for granted the institutions and relations that it labels political—including their distinction from other aspects of society such as “the economic, the juridical, the aesthetic, the scientific, or the purely social”—and scrutinizes them “without ever examining the form of society within which the division of reality into

²⁵⁷ Rawls, *Political Liberalism*, p.217.

²⁵⁸ David Estlund, “Utopophobia: Concession and Aspiration in Democratic Theory,” in *Democratic Authority: A Philosophical Framework*. (Princeton University Press, 2008). Pp. 258-276.

²⁵⁹ Machiavelli, *The Prince*, 15.

²⁶⁰ Lefort is quite critical of positivism in political philosophy, especially in “The Permanence of the Theologico-Political?” And “The Question of Democracy,” in *DPT*, pp. 9-20 & 213-224 respectively. This discussion follows his criticisms.

various sections appears and is legitimated.”²⁶¹ The latter recognizes the need to find some foundation for the political form of society, but looks exclusively to empirical reality for such explanations.

The political sciences clearly illustrate this naïve positivism insofar as they treat the separation of the religious and the political spheres of society as an “obvious fact” regardless of “the fact that for hundreds, or rather, thousands of years human beings made no such distinction.”²⁶² This assumption enables the positivist to evaluate developments within the social order, but at the cost of silence concerning questions of the legitimacy of that order itself. It “assumes a resolutely relativist stance” on such questions.²⁶³ For example, the impact of demographic changes in the electorate can be discussed, but questions about the appropriateness of the restrictions in place on voting rights that enable these demographic shifts to have an impact are impossible. A political scientist may explain how restricting early access to polling stations will prevent an increase in minority populations from having a greater impact on electoral results, but will leave questions about the justice of such restrictions to others.

Lefort’s phenomenological approach to political philosophy can be seen as an attempt to carve a middle path between ideal theory and positivism. Our discussion so far brings to light the following dilemma. Political philosophy appears capable of criticizing society as a whole only by taking up an idealized stance that leaves it unable to make recommendations about political matters in non-ideal circumstances. When it moves to any discussion of the institutions of a particular existing society it loses this universal perspective and with it the ability to judge the political form of society that this perspective brings. Rather than beginning with the

²⁶¹ *DPT*, 11.

²⁶² *DPT*, 221.

²⁶³ *DPT*, 221.

philosopher's own abstract arguments for normative principles, the phenomenologist seeks to uncover the principles of legitimacy that are accepted by members of the society she investigates—what ideals they use to represent their place in society as well as that society's place in the world. In other words, the political phenomenologist seeks to uncover the ontological commitments of a society, be they religious or secular. Rather than simply accepting these principles, as does the positivist, or criticizing them from another idealized place as does the ideal theorist, the phenomenologist seeks to understand the conditions that enable the genesis of these principles and the ground for their acceptance among the population of a society.

We must take care, here, to distinguish this approach from the ideology critique that developed from Marx's work. Lefort insists that in this aspect of Marx's writing he succumbed to the materialist impulse that characterizes more reflective forms of positivism found in, for example, enlightenment thinkers such as Diderot. By seeking to unmask the material conditions of certain political structures, Marx fell prey to:

[the] positivist fiction; [one that] inevitably adopt[s] the notion of a pre-social society, and posits[s] as elements aspects that can only be grasped on the basis of an experience that is already social.²⁶⁴

For example, Marx reads into the biological differences between the sexes the very basis for the development of class struggle.²⁶⁵

Of course such attempts to deduce the source of social norms from material reality are not unique to Marx, as we saw in our discussion of Polybius in the previous chapter. Neither are Lefort's criticisms on this matter entirely novel. Rousseau makes a similar argument (in this case against Hobbes) at the outset of his Second Discourse:

²⁶⁴ *DPT*, 218.

²⁶⁵ See Lefort's essay "Outline of the Genesis of Ideology in Modern Societies" in *The Modern Forms of Political Society: Bureaucracy, Democracy, Totalitarianism* trans. John B. Thompson. (*The MIT Press*, 1986) p. 181-234. (Subsequent references to *MFPS*).

The philosophers, who have inquired into the foundations of society, have all felt the necessity of going back to a state of nature; but not one of them has got there. Some of them have not hesitated to ascribe to man, in such a state, the idea of just and unjust, without troubling themselves to show that he must be possessed of such an idea, or that it could be of any use to him. Others have spoken of the natural right of every man to keep what belongs to him, without explaining what they meant by belongs. Others again, beginning by giving the strong authority over the weak, proceeded directly to the birth of government, without regard to the time that must have elapsed before the meaning of the words authority and government could have existed among men. Every one of them, in short, constantly dwelling on wants, avidity, oppression, desires and pride, has transferred to the state of nature ideas which were acquired in society; so that, in speaking of the savage, they described the social man.²⁶⁶

Rather than positing a material basis from which a social superstructure can be deduced, Lefort applies the foundational insight of phenomenology to political philosophy—viz. that we have no access to pre-interpreted (political) experience. As does Rousseau, Lefort insists time and again that the political form of society cannot be deduced from empirical reality precisely because it informs our understanding and experience of that reality in the first place. The image of the state of nature from which one attempts to deduce political principles is already informed by those principles when it is postulated. The role of the political philosopher is to examine:

different regimes or forms of society in order to identify a principle of internalization which can account for a specific mode of differentiation and articulation between classes, groups and social ranks, and, at the same time, for a specific mode of discrimination between markers—economic, juridical, aesthetic, religious markers—which order the experience of coexistence.²⁶⁷

To put it crudely, a phenomenological approach to political philosophy posits an interpretive frame through which members of a society are given access to political experience. This frame, by virtue of how it presents political matters and conditions political experience, legitimizes certain political relations and institutions in the minds of the members of a society. The phenomenologist seeks to both explain the frame and also to identify the conditions that enable

²⁶⁶ Jean-Jacques Rousseau, “Discourse on the Origin and Foundations of Inequality Among Men” in *Rousseau’s Political Writings*, 9.

²⁶⁷ *DPT*, 218

that frame to “take hold” in a society. This approach to political theory begins not by arguing *that* certain principles grant political legitimacy but rather by determining the conditions under which certain principles can grant political legitimacy.

To put it differently, phenomenological political theory insists that one cannot evaluate the legitimacy of a given society without understanding the political horizon from which that society conceives of itself as legitimate. Thus, Lefort takes as his point of departure an examination of “the political” (*le politique*), that is, the political form of society and the interpretive frame that form enables—a frame that informs the political experiences of members within that society.²⁶⁸ Using the theatre as a metaphor, he insists that these principles shape (*mise en forme*), stage (*mise en scene*), and give meaning (*mise en sens*) to human co-existence.²⁶⁹

A phenomenological approach to political theory has several advantages in addressing the problem of tolerance. One could argue that the moment the question is put in terms of *tolerance*, a word that implies suffering on the part of the one tolerating, the game has already been lost. Both the ideal theorist *and* the positivist will identify beforehand the appropriate level of tolerance, albeit from different assumptions, and construct an argument that will justify drawing the limit in a determinate place. The phenomenologist, on the other hand, will question the conditions that present a certain political relation as one requiring tolerance to begin with. When one is evaluating the possibility of legitimating a certain kind of relation it is essential to identify and investigate the interpretive horizon that informs the political dimension of that relation. Is the tolerated objectionable because she is simply bizarre or is she dangerous. Does she threaten the wellbeing of my family and friends, or does what she believe call into question

²⁶⁸ At one point Lefort characterizes the political (*le politique*) as, “the principles that generate society, or, more accurately, [that generate] different forms of society.” *DPT*, 217 .

²⁶⁹ *DPT*, 217-218.

the very basis of legitimacy of the state? Without addressing these more fundamental questions it would be difficult if not impossible to address the causes of intolerance.

A phenomenological approach aims to understand the basis for intolerance, rather than merely seeking to label and affirm or condemn it. The danger that one will present a rationally compelling argument that falls on deaf ears has plagued political philosophy since the time of Aristotle. The validity or soundness of a normative argument that appeals to principles not widely accepted in a society will do nothing to establish “real legitimacy,” a feeling of the rightfulness of the coerciveness of state power even when such coercion runs against the grain of one’s deep convictions. A political theory that begins with the ideal theorist’s normative argument, then, faces an enormous uphill battle even after the argument has been settled (something that appears to happen rather infrequently in political theory).²⁷⁰ A political theory that begins with the society’s self-understanding, on the other hand, can discuss ways to modify that self-understanding within the accepted political horizon. To understand how such a change could be made, however, one must understand the relationship between what Lefort calls the symbolic, the imaginary and the real dimensions of society.

The Symbolic, The Real and The Imaginary in Lefort’s Political Theory.

[A]ny political philosophy [...] is governed by a reflection upon power. Precisely because of this, they do not deal with specifics, but with a primal division which is constitutive of the space we call society.²⁷¹

²⁷⁰ See Estlund’s discussion of utrophobia in political theory for some very nice thoughts on this question. While I share his concern that a political theory that simply casts aside rightness for the sake of the realistic is a rather impoverished theory, I think this concern warrants an approach to political theory that begins with the citizen’s experience of the political rather than an argument for how the citizen ought to experience the polis. Limits are, after all, imposed not only by geo-political conditions but also by the human condition—which is marked by intellectual finitude. Again, see David Estlund’s, “*Utopophobia: Concession and Aspiration in Democratic Theory*,” in *Democratic Authority: A Philosophical Framework*. (Princeton University Press, 2008). pp. 258-276.

²⁷¹ *DPT*, 225.

Having indicated some of the advantages a phenomenological approach to political theory brings to a discussion of political tolerance, let us look to Lefort's work more specifically. In Lefort's own words he is practicing political ontology. That is, he investigates the categories or registers of being that pertain to political experience. Throughout his work he identifies three such categories without which there would not be what we call 'political experience': the real, the symbolic and the imaginary.²⁷² In the following pages I will introduce these categories. I will not provide an exhaustive account, but this discussion will serve to make my later presentation of Lefort's analysis of modern democratic legitimacy more approachable.

According to Lefort, political philosophy's proper object of study is the "primal division which is constitutive of the space we call society"²⁷³—the division between society as it is and society as it represents itself to itself. It is by means of this division that the overwhelming diversity of persons and relations that characterize everyday life in a given society can be understood as a unified whole. In other words, it is by means of this division that a diversity of persons becomes "a people," and a myriad of related institutions becomes a political society.

It is very easy to mistake what Lefort means by this primal division. It is not merely one privileged social division among many, as is Machavelli's distinction between the few and the many. For example, Lefort rejects the claim that all conflict can be understood in terms of class struggle. Equally implausible would be an account that seeks to explain the dynamics of a society entirely in terms of a religious conflict or a battle between the sexes. Each of these accounts fails to notice that the division of society into such categories (class, sex, race, etc.)

²⁷²While Lefort originally derived the language of the real, the symbolic, and the imaginary from Lacan, he never fully adopted the Lacanian uses of these terms. For this reason a Lacanian exegesis would be unfruitful to the current study. For the readers interested in this relationship I suggest Warren Breckman's *Adventures of the Symbolic: Postmarxism and Radical Democracy* (Columbia University Press, 2012) does an excellent job of tracing the relationship between Lacan and French post-marxist thought, as well as of explaining the function of the symbolic and the imaginary in Lefort's writing.

²⁷³ *DPT*, 225.

already assumes an interpretation in which such groupings capture salient social divisions as opposed to the meaningless divisions according to hair color or date of birth. The primal division that Lefort seeks to uncover is that which enables these social groupings to appear politically relevant in the first place. It is only by means of this division that any interpretive horizon that would enable an understanding of political relations is available. It provides members of a given society a way of relating to one another, of understanding their place in the social order, and it also enables a society to change and adapt to new circumstances without losing its sense of identity. We can distinguish within the representation of a society two registers—the symbolic and the imaginary—which, taken together, inform the daily experience citizens have of the real.

Before we move on to discuss each of these registers, I would like to forestall a few common misunderstandings. In spite of the fact that the real, the symbolic, and the imaginary are logically distinguishable from one another, they are not independent of one another. That is to say, there is no “real” sitting in isolation waiting to be interpreted through an encounter with the symbolic and the imaginary. Similarly, there is no Platonic domain of potential symbolic forms of society waiting to encounter a ‘real’ society. The three categories are all aspects of a single whole that Lefort calls *the political*, or the political form of society. We are deceived if we try to think of any of these parts as independent of one another or separable from the whole.

The next, related misunderstanding regards the notion of the real. As Lefort’s objection to positivism should have made clear, the real is not some pre-interpreted state of nature. Nor is it the equivalent of an ungraspable political “thing in itself.” Rather, it is the already interpreted set of relations people have to one another and with institutions that, together, are taken to make

up a single society.²⁷⁴ A simple observation will help here. Individuals living within any society encounter countless others every day, both directly and indirectly. Take, for example, a simple trip to a restaurant. During such a trip the restaurant-goer will encounter directly: fellow subway passengers, fellow diners, a waiter upon whom she relies on to convey her wishes to the kitchen and bring her food, and indirectly the chef who prepares that food, the farmer who grew it, and the USDA and FDA who regulate the production, transportation, storage, and preparation of that food. All parties in even these mundane encounters must have some sense of how they are to interact with one another, for it is this shared pre-reflective understanding that enables their direct communication about other things. That is, they must share an interpretation of one another's role in their encounters, and they must share this interpretation without any direct communication of it to one another. That we do have such a sense, and that society does function so well is a testament to the fact that our experiences take place in the register of 'the real,' or that our social encounters are already pre-interpreted. Furthermore, when these interactions do not go according to plan it is our shared understanding of the political that permits us to agree over how the breakdown ought to be remedied.

The Real

Given the sheer number of people we interact with, that we manage as a society to get so much done is an astounding fact. Certainly there is a great deal of trust involved, trust of the sort that Hobbes insists is necessary in order to make the act of creating lasting and surplus value reasonable. Hobbes, of course, insisted that such trust could be grounded in the awe-inspiring figure of an omnipotent monarch who would punish those who broke the law. Lefort thinks, rightly, that such a claim is absurd. Not only would the fear instilled by the Monarch be

²⁷⁴ This is not to say that there is no objective or material world independent of the human mind, but only that what we are calling with Lefort "the real" does not necessarily bear any resemblance to it—though there are, of course, certain limitations on how the real can be constructed that are imposed by this world.

inadequate to the task of enabling the shared interpretation of each of these relations to one another, but it would, lacking a far more comprehensive police presence than even we have, fail to penetrate into the diversity of modern social interactions. Rather, this trust is grounded in a shared interpretation of a society, one that enables a monarch to be seen as having such political efficacy, an interpretation that that is taken as more than mere convention. This is why the term ‘real’ is employed. It is not merely that the shared interpretation is taken to be the rightful or correct interpretation—it is not taken to be an interpretation at all. It is assumed as background knowledge. The question the Lefort must answer is how it is that an interpretive frame can take on that role.

To claim that our encounters are always pre-interpreted is, of course, not to say that the sum of our experiences is entirely reducible to this interpretation. Each individual within society is far more complex than the social roles she is playing at any given time. There is always an “excess of being” that threatens to break out of our interpretive horizon, to use Lefort’s phrase.²⁷⁵

Any manifestation of such excess threatens to have a destabilizing effect on our understanding of and ability to navigate the social world. When discussing the pre-interpretation of our experience Lefort remarks that, “the advent of a society capable of organizing social relations can come about only if it can institute the conditions of their intelligibility, and only if it can use a multiplicity of signs to arrive at a quasi-representation of itself.”²⁷⁶ Because of its foundational role in our political experience, any manifestation of the ‘excess of being’ undermines the stability of our interpretive horizon. For this reason our interpretations and our frame are never closed or complete (they are a ‘quasi-representation’) and must always be open to adjustment in order to take into account new experiences. This understanding of ‘the real’

²⁷⁵ *DPT*, 219.

²⁷⁶ *DPT*, 219.

leads to an obvious question—from whence the interpretation and how can it be adjusted if it is not understood as an interpretation? The sources of political society’s quasi-representation of itself are what Lefort calls the symbolic order of society²⁷⁷ and the discourses and imagery of the social imaginary that embody this order. It is the interplay between these two registers that enables us to adjust our interpretative frame to account for new experiences.

The Symbolic

The symbolic order of society is “a system of oppositions by virtue of which social forms can be identified and articulated with one another.”²⁷⁸ It provides logical-conceptual structures that renders the diverse and often competing aspects of actual society into complimentary roles rather than distinct forces struggling against one another. The symbolic unity created from the diversity of society can then legitimate the various relations of social divisions to one another in such a way that all parties consider them acceptable even when they do not share a common interest. Thus, even if the different divisions are struggling against one another, they are doing so in a way that all parties find acceptable.

Lefort’s notion of a symbolic order to society has been likened to Heidegger’s ‘epochal givenness of being’ and also to Kant’s transcendental conditions for experience. Though not without merit, these comparisons ought not to be over-emphasized, as Bernard Flynn rightly notes.²⁷⁹ The transcendental conditions of experience are necessary conditions that enable us to have any experience whatever—conditions to which all experiences must conform. The same can be said of Lefort’s understanding of the symbolic structure of society as there could be no

²⁷⁷ Lefort uses the term *dispositif symbolique*. I follow Flynn in the translation symbolic order, but it has been translated otherwise.

²⁷⁸ *MFPS*, 194.

²⁷⁹ Bernard Flynn, *The Philosophy of Claude Lefort: Interpreting the Political* (Northwestern University Press: 2006) pp. 113-123.

experience of society as a whole without a symbolic structure to order that experience. However, Kant's transcendental categories are universal conditions—they do not change over time or in different societies. The symbolic order of any given society, on the other hand, is an historical contingent. While the symbolic order is a necessary register in order for there to be any experience of society at all, the symbolic structure of one society is not necessarily the same as that of another. Thus a great deal of work must be done to analyze a particular society if the philosopher is to come to understand it as its members understand it.

Lefort shares with Heidegger not only a belief in the contingency of our interpretive frame, but a conviction that it precedes our entry into the world in spite of the fact that we co-construct it. It constitutes us just as much as we (re-)constitute it. Lefort's view of the symbolic order of society follows Heidegger this far. We are born into a society that already has a symbolic structure which enables us to have political experiences in the first place. In contrast to Heidegger, who famously asserted that "only a god can save us" in response to an inquiry about how we might escape the flattened modern interpretive horizon, Lefort insists that changes in the symbolic structure of society are often responses to events or other shifts in the basis of society. While these changes may not always be predicted, or even recognized when they occur, their origins can be uncovered.²⁸⁰ There is none of Heidegger's mysticism to limit the philosopher's inquiry. As we will see further on, the generation of the symbolic structure of modern democracy was a response to the inability of the symbolic form of pre-modern European monarchies to sustain legitimacy in light of fundamental changes taking place in those societies.

²⁸⁰ I should note, in passing, that one of the primary reasons Lefort has gained so much attention in France is the unpopular position he took on the Soviet Regime—that it was a manifestation of a symbolically unstable totalitarian regime that would collapse on account of this instability. When his prediction turned out to be correct, it rendered his schema for political analysis quite plausible. This instability he found was not in the real structures of the Soviet Union, but in its symbolic order, which had attempted to collapse the gap between the symbolic and the real, and to find the conditions of legitimacy immanent in society itself—in this case in the person of the General Secretary himself.

To better illustrate Lefort's meaning I will now discuss one of the categories within the symbolic order most frequently invoked in discussions of Lefort's writing—the “place of power.” According to Lefort,

the fact that this space [society] is organized as *one* despite (or because of) its multiple divisions and that it is organized as *the same* in all its multiple dimensions implies a reference to a place from which it can be seen, read, and named.²⁸¹

This place is the place of power. It is from this symbolic place that ideal theorists seek to gain a perspective from which to view society as a whole in order to judge it. Such a symbolic place is a necessary postulate of political experience. It is, of course, not a place in terms of a physical location—a view from Olympus. Rather, it is a perspective from which the various aspects of society can be understood in their relations each to another in terms of a comprehensive whole. The existence of such a place in the symbolic order is a precondition for the experience of political society as a meaningful whole.

The ‘power’ in the place of power comes from the knowledge of society as a whole that its occupant gains. It is the power to order and evaluate ‘real’ relations—to know their purpose, to identify some as appropriate and others as deviant (to use an Aristotelian phrase) and others still as entirely illicit. Depending on the society, it can be the place from which certain domestic relations can be viewed as rightful and others as unlawful (as proponents of sodomy laws insist) or all such relations as politically benign (as proponents of gay rights claim). To understand how this knowledge can grant such power, recall that the pre-interpreted relations of the real are taken *as real*—as true or rightful. The occupant of the place of power, then, can claim real knowledge of society—knowledge that trumps the conviction or opinion of those who do not occupy this place. Depending on the symbolic structure of a society, this knowledge can be granted by an acquaintance with the divine order that organizes the world, by an understanding of human

²⁸¹ *DPT*, 225.

natures and the rights and duties that inhere in individuals resulting from it, or by insight into mechanisms driving historical change. It is often on the basis of such claims to possess such knowledge that the occupant of the place of power is granted the authority to make laws. This was as true for the theologico-political constellation of pre-modern Europe as it was in the totalitarianism of the Stalinist soviet union, where the General Secretary of the party was attributed with knowledge of the whole society and of the laws of historical necessity that gave him the basis from which to establish laws and exercise political power.²⁸²

The Imaginary

Although the implicit postulation of some place of power is a necessary aspect of the symbolic order of any political society, this place is never understood by members of that society in such terms. Were it so understood, what we might call the “dramatic effect” of the political, that which enables the interpretive horizon of a society to take on a normative force, would be destroyed. Whether any among the members of a society have access to it (e.g. a monarch, a council of elders, a legislative body) is determined in part by the social imaginary, which provides language that is structured to reflect the symbolic order and through which society can be discussed and understood. The social imaginary is comprised of those discourses and images that inform the particular presentation of any given political configuration. While the symbolic is hidden from view, the imaginary is readily accessible (though not as imaginary). For example, as we will see below, the pre-modern European symbolic order granted ‘The One’ access to the place of power. The function of this place was two-fold, to both unite society and also to relate it to the transcendent place from which power and legitimacy flowed.

The relationship between the symbolic order and the social imaginary performs the important function of permitting society to adapt to new circumstances without abandoning its

²⁸² *MFPS*, 52-88.

legitimizing structure entirely. As we saw in the second chapter, when a religion is politicized there is a significant risk involved. The permissible interpretations of its sacred and legitimizing texts tend to narrow under the pressure to justify particular political actions in a given circumstance. This often leads to a religious dogmatism that can render a church unable to respond appropriately to changing political circumstances. One consequence of this, as we saw, is the fracturing of political communities as daily life imposes pressure on the rigid interpretation of sacred texts. Using Lefort's categories we can understand this dynamic as one in which the social imaginary is taken as speaking for the symbolic order *exhaustively*. The collapse of the social imaginary and the symbolic order causes institutions to ossify, as a permissible perspective from which to revise the institutions is eliminated.

If, however, a gap between the symbolic order and the social imaginary remains, if new interpretations are permitted because, for example, we finite beings can never understand the infinite essence of God, then this dynamic can be avoided. The social imaginary can be modified in order to account for new experiences within the real or new social developments and accommodate them within the symbolic order. To give an example of this dynamic at work in democratic societies, Lefort writes:

Far from signaling a regression into the imaginary, the aspirations that have been manifested in the course of the history of democratic societies under the slogans of establishing a just state or emancipating the people have had the effect of preventing society from becoming petrified within its own order²⁸³

In a given society the social imaginary may change over time as a response to changes in political circumstances while the symbolic order remains the same. We might liken the relationship of the social imaginary and the symbolic order to the exegetical traditions surrounding a sacred text. While the full meaning of the sacred text is never exhausted by its

²⁸³ *DPT*, 232.

exegetical tradition, one can begin to understand some insight about the present circumstances through the exegetical tradition. In this analogy, however, the “text” being interpreted is hidden from the interpreter, who has internalized it.²⁸⁴

The flexibility of the social imaginary vis-à-vis the symbolic order serves an important political function—it enables a society to maintain its sense of identity in spite of changes within its institutional structure or changes in the broader world in which it rests. In other words, the flexibility of the social imaginary permits a society to maintain its identity (its symbolic order) in the face of changes in ‘the real.’ The struggle over the social imaginary of society takes place within the gap between the real and the symbolic order. It is for this reason that Lefort insists that the division between society as it is and as it represents itself to itself is *constitutive* of society. The play between the symbolic order and the real generates the social imaginary.

It should also be clear by now that it is relatively easy to identify the social imaginary for any given society at any given point. It involves those discourses and metaphors that people living within a society employ when speaking about that society. It is quite a bit more difficult to determine the underlying symbolic structure. In his investigations Lefort often combines a historical-genealogical inquiry with something akin to the phenomenological practice of eidetic variation. He looks at political societies in transition—major and minor—in order to see what it is that remains the same throughout these transitions. This constant provides a clue to the symbolic order. When there is a major change, a “mutation in the symbolic order,” he is able to identify and understand it though, as he states a number of times, he is not able to see it clearly until it has gone through enough permutations itself that its contours and limits become visible.

²⁸⁴ This distinction drawn by Lefort would be quite useful in evaluating the various “secularization theses” that have been offered since at least Schmitt’s 1922 *Political Theology*. For example, the “strong” secularization thesis—that the same categories which legitimated pre-modern Christian politics are still at play in the same way that they were then now, only without the reference in language to their theological source—*may* be explicable as a change in the social imaginary rather than the symbolic order (though, as we will see, Lefort would dissent from this view).

This is why the symbolic dimension of modern democracy did not become fully decipherable until totalitarianism showed democracies limits.²⁸⁵

Markers of Certainty

How is it that members of a society gain access to or internalize these categories? How do we come to treat the interpreted world as real? To answer these questions it will be useful to discuss what Lefort calls the “markers of certainty.” Various rules, practices, and even items in political societies serve to anchor the political form in each member of the social body’s experience of the world. Recall that for Lefort the political shapes, stages, and gives meaning to human existence. The phrases Lefort use here are phrases from theatre or derivative phrases—*mise en forme* (shaping), *mise en scene* (staging), and *mise en sens* (giving meaning). We can begin to understand how the markers of certainty allow us to integrate the three political categories into our experience (or rather to integrate our experience through the three political categories) by elaborating on the metaphor of a dramatic performance. When attending a theatrical performance one sits in a crowded room facing what is typically a fairly small stage watching a few people interact with one another and perhaps a few props for several hours. Anyone who has attended a middling performance will know that this description does not come close to capturing the experience (and even those who have seen only bad theatre will know that the experience they had was not the one intended). Rather, they are asked to imagine that they are viewing a number of different events occurring at many different places and different times. These events are related to one another in such a way that they presuppose an entire alternate world that the audience must take for granted if the events on stage are to make sense.

²⁸⁵ It would be beyond the scope of this project to discuss the relationship of totalitarianism and democracy the interested reader should consult “The Logic of Totalitarianism” and “the Image of the Body and Totalitarianism” in *MFPS*. pp. 273-306

In order to make this experience effective, the play itself employs many different devices to introduce the audience to the other world and to keep its attention there rather than the actual activity on the stage where, for example, a middle aged man might be hopping around on a broom stick rather than riding a donkey. These devices range from props, to various lighting tricks that hide stage hands—who do not exist in the other world— while they move props, to certain stage directions and lines of dialogue that inform the audience that a scene has changed or that an action which the audience was not able to view has transpired. An effectively staged performance will employ these devices in concert, so that each reinforces the other, rendering the entire fictional world more believable. If a stick represents a gun it will not only be held as a gun, but placed on other props in a way that a gun would be, and other actors will react to the prop as they would to a gun. Not only do the relations of the representative props reinforce the overall imaginary world, but an absence of these relations is acerbic to the imaginary world. When a cell phone rings, it can throw the entire audience out of the world, because the cell phone has no place in the imagined world. Likewise, were an audience member to suddenly pick up the horse and begin using it as a broom, the illusion would be destroyed.

Lefort's use of theatrical terms to describe the political is intended to highlight certain aspects of political existence. Living within a political horizon is akin to observing a play in which one is also an actor. There are no broomsticks or stagehands that one could point to as evidence of having discovered the truth behind the play. There are only relations, actions, objects, and events whose mutual relations reinforce the cohesiveness of the political world of any given society. These 'markers of certainty' provide members of a political society the assurance they need in order to act as though the political interpretive frame is simply real, rather than questioning each part as it unfolds. These devices help construct the social imaginary.

Many times the reinforcement of the social imaginary is the sole purpose of these objects. Their function lies in their ability to create and reinforce the world in which they exist and their meanings could not be understood outside of a reference to the greater whole.²⁸⁶

This often becomes clear when one is traveling. When in an unfamiliar place, one might not understand the import of certain objects, and find the behavior of people in relation to those objects to be bizarre or absurd. For example, while traveling in North Korea to film a documentary, a photographer lay down before a statue of Kim Sung Il in order to capture a picture that conveyed the scale of the likeness. For this he was threatened with deportation.²⁸⁷ To lie before the likeness of the political founder of the nation was understood by the North Korean people as an intolerable show of disrespect. While these rules may seem absurd to someone living outside the political horizon of North Korean society, from within that society those rules are not only obvious, but to not act in accord with them is a grave crime. This action is treated as such a severe transgression for the same reason that an actor who neglects to treat a prop as a gun would soon be out of work—it threatens to undermine the illusion of reality necessary to an effective drama.

These “markers of certainty” serve to enable the merging of the symbolic order and the real in the minds of the members of society. They prevent citizens from questioning the basis of their political convictions. For example, church architecture is often designed to ensure that light will filter in through stained glass windows during a Sunday morning service—affirming through an aesthetic experience the glory of the God being worshiped. Muslims worldwide bow eight

²⁸⁶ Jorge Luis Borges’ “Tlön Uqbar Orbis Tertius” in *Labrynth: Selected Stories and Other Writings* (New Directions: 1988) pp.3-18. illustrates the idea of real objects whose entire meaning resides in their imaginary import quite nicely.

²⁸⁷ National Geographic: Inside North Korea which can be accessed at <http://www.youtube.com/watch?v=mxLBywKrTf4>.

times a day, emphasizing in their routine their submission. They do so while facing Mecca in order that this submission is tied to the entire story of Islam. Their real actions, bowing and facing Mecca, have an imaginary import, one that will affirm the symbolic order of the society in which they live. Often a particular marker will function in multiple domains simultaneously—helping to string together the three planes into a single whole. For example, the bible is a real artifact. It might be copied in an elaborate or ornate script to emphasize its importance—as we find in the tradition of illuminated manuscripts. At the same time, this object describes another place—the timeless place of god from whom legitimacy flows. The manner in which the bible is treated conveys the importance of the other place it describes. That place, once constructed in the imaginary, is then used to determine what real relations ought to be. So, for example, many fundamentalist Christians condemn homosexuality because it is condemned in the book. The “gap” between the symbolic and the real is thus hidden by the markers of certainty—and those enacting the political drama are not able to see themselves as actors in a drama but as agents in a world.

To put it a little differently, the markers of certainty enable those within the interpretive horizon of a given political community to “know” that this is not just one interpretation among many, but rather how things rightfully *are*. They enable the population to treat the social imaginary and the symbolic ordering of society behind it as though they were real.

Implications for Intolerance

Lefort’s political schema casts the question of political tolerance in a new light. Intolerance is not the product of different values or beliefs held with varying degrees of intensity. Rather, it stems from competing articulations (via the social imaginary) of the symbolic order. The very reason that an embrace of commercial society is coupled with diminishingly intense

religious beliefs is because it marks a shift in the symbolic order of society—one in which the ordering principles of society are not divine but secular. The absence of religious markers of certainty affirms a transformation of the symbolic order of society, not a diminished intensity of belief.

If intolerance is a matter of competing articulations of the social imaginary then much more is at stake in the problem of tolerance than non-public belief regardless of its intensity. The social imaginary affirms a representation of society of which we are a part, and in so doing provides us with certainty about our own position in the world. Any confrontation with a rival discourse within the social imaginary threatens to undermine our sense of place in the world. Furthermore, it is by means of the social imaginary that relations of political power are made concrete. The social imaginary provides them with a definite status that renders them knowable. Any confrontation between rival articulations of the social imaginary, then, is also a confrontation over the rightful structure of political power in a given society along with one's place in that society and the world.

One might reasonably ask if the schema outlined by Lefort is just another way of affirming with Schmitt that there will always be some quasi-religious transcendent basis for political legitimacy that is grounded in an unreasoned revelation at the foundation of society? If there is a symbolic order that is elaborated and disguised through the discourses of the social imaginary behind every society, if this is the necessary condition for any political experience, then are not all political forms “theologico-political” forms? Flynn answers this question quite well. He begins:

If [when asking about the permanence of the theologico-political form of society] one refers to the symbolic structure of society as that which gives access to the real but which is not itself a part of the real, then it is unsurpassable.²⁸⁸

²⁸⁸ Flynn, *The Philosophy of Claude Lefort* p. 131

Neither political society nor political experience are possible without a symbolic ordering of society and our experience of it. At first blush this might appear to be a death blow to our project. If society requires a pre-rational symbolic order to enable political experience, it must at the very least condemn incompatible alternatives to the symbolic order as intolerable.

Were the answer to stop here, we might simply conclude that political tolerance is as impossible a political norm as moral tolerance is a virtue. However, this is not the end of the story. Flynn goes on to note that “if one refers to an imaginary representation of the symbolic which entails a figuration of the symbolic and affirms that it resides in another place” (131) then the theologico-political is not so permanent. Though he is speaking about the theologico-political symbolic order of medieval society in particular, the implication is that the strict and immutable determination of the symbolic order of society by a particular social imaginary is not a necessary aspect of the political experience. A tolerant political form would require a symbolic order that is able to accommodate the coexistence of competing and mutually exclusive discourses in the social imaginary. For the remainder of this chapter I will argue that the political form of modern democracy does just this. It is able to accommodate competing discourses within the social imaginary by representing the symbolic place of power as empty. The emptiness of the place of power is manifest in modern democracy through practices that affirm the legitimacy of social divisions—of rival articulations of the social imaginary—and preserves the rights of democratic citizens to appeal for more rights as new forms of intolerance arise.

The Empty Place of Power

The aspect of the political form of modern democracy that enables it to support and even legitimate political tolerance can be found in Lefort’s often quoted and rarely explained assertion

that the symbolic place of power in modern democracy is empty. When Lefort insists that the place of power in the modern democratic symbolic order is empty, he does not mean that it does not exist, but that it exists as empty—as a present absence. It is perhaps easiest to approach the meaning of this phrase historically. The modern democratic symbolic order did not appear *ex nihilo*, but rather developed from the decline of the *ancien regime*. Similarly, the place of power did not just appear as empty, but rather remained as empty—it was emptied as this regime fell.

Pre-modern European Place of Power

Pre-modern European society symbolized the place of power as one that transcends the temporal world entirely, it was in “another place” in Lefort’s language. This place is atemporal, and therefore not subject to the vicissitudes of historical events. This place is most thoroughly elaborated in the social imaginary through religious discourses. The story is familiar. An omniscient and omnipotent deity resides in this place. He created the temporal worlds, judges it and all its inhabitants, intervenes occasionally, and rewards or punishes individuals upon death as he sees fit. The knowledge of the social order was grounded in God’s knowledge of society.

This symbolic order presents a unique difficulty. If the knowledge of society as a whole resides in a place entirely outside of society, how can society be known by those living within it?²⁸⁹ Knowing that the society is ordered by virtue of their knowledge that a transcendent deity can understand it does the members of a political society little good if they do not themselves also have some means of accessing that understanding themselves. Medieval European society resolved this difficulty through the symbolic place of “The One”—a social position within this world that served to mediate between the atemporal transcendent place and society.

²⁸⁹ Marsilius of Padua drew out the political implications of this nominalist claim by placing the political authority squarely above the church in worldly affairs.

Within this political form The One functioned as a single point of contact between the temporal world and the atemporal place of power, a point that permits its occupant knowledge of or at least authority over the temporal world by virtue of his relation to the place of power. Many of the disputes between the church and the state during this period took the form of rival discourses within the social imaginary vying for control over how the symbolic order was to be articulated. If political authority is grounded in divine knowledge, then the church—which claimed access to this knowledge—was the ultimate political authority and delegated power to the monarch. If political authority is grounded in the divine will, then the simple fact that God chose to elevate a particular monarch to the throne was indicative of his authority. Examples of such disputes can be found in various events such as Constantine’s conversation and subsequent theological interventions at the Nicene Council, Charlemagne’s coronation at the hands of Leo the III, and Henry IV’s three day trip to Canossa for penance.²⁹⁰ What each of these disputes affirmed, however, was that power resided in another place, and that there was a single point that mediated between this place and society. Thus, the rival articulations in the social imaginary each affirmed the same symbolic order.

By virtue of its position as the mediator between the temporal and atemporal worlds, the place of The One also served to unify society because each member of society understood herself in reference to this place. In Lefort’s language The One “attracts the gaze of all” and established

²⁹⁰ The political salience of the latter of these events is brought out nicely by Dick Howard in *The Primacy of the Political: A History of Political Thought From the Greeks to the French and American Revolutions* (Columbia University Press: 2010). To give one example: the pre-modern European symbolic order focused on power as coming from a transcendent place from which the divine created, ordered, and judges society. Political power was derived from this place, but at various times there were competing articulations in the social imaginary of this symbolic order. The church, which sought to gain political authority for itself, insisted that political power was granted by access to God’s knowledge of the world. As the spiritual authority, the church was this, the primary source of power, which it granted to the King. The monarch, who sought a monopoly on political power, insisted that the source of power was not knowledge of god’s mind but rather the divine favor, which he bestowed upon a person by elevating him to the kingship. God’s will rather than his mind was the means by which the transcendent power was translated into political activity.

the “point of view of the state.”²⁹¹ The place of The One, most often occupied by the Monarch, is a place from which all can be seen or known. The place of the king at the head of society provided members of pre-modern European society a sense of security in the form of certainty in their own place in society, and also their respective place vis-à-vis one another. Because of this certainty that the king provides his subjects, they would “delight” in his image.²⁹²

Thus the King not only provides a focal point, or a point of relation for all within the community, he is also the object of the community’s affection, and this affection helped further unify the people. By condensing both of these roles into the same position, the mediator between the temporal and atemporal and the focal point of society the pre-modern European political form was able to generate a political horizon from which the people would not only accept the rule of the king, they would do so happily.

Revolution and Transition

Having come to see the role of the king in pre-modern European political society, we are in a better position to understand the political import of the events of the French Revolution and the transition from monarchy to democracy in Europe. In the aftermath of the King’s execution, the French people acted within the same symbolic order they had been accustomed to for centuries.²⁹³ They retained the place of The One as a unifying place within political society, but

²⁹¹ *DPT*, 242.

²⁹² Much of the analysis here follows Bernard Flynn’s discussion of an untranslated work (*La Boétie et la Question du Politique*) in *The Philosophy of Claude Lefort*, pp 172-178.

²⁹³ It is, in fact, for this reason that Michelet wished the French people had not killed the king. To kill the real body of the king would be to affirm his importance, and therefore his place in the symbolic order of French society. It is in this sense a counter-revolutionary act. It is, however, not surprising that they would have done this. As an enabling condition for political experience, the symbolic order of society must remain hidden from those enacting the political drama. It is not always clear when that order has changed, though a sense that some ineffable change has occurred may be voiced. See Lefort’s analysis of Michelet in *DPT*, 239-249 and of Tocqueville in (*Writing, The Political Test*, 33-66.

attempted to fill the hole left by the monarch with the image of people. This substitution was an absolute failure the consequences of which have come to be known as The Terror.

The king was able to provide the people with a sense of identity and place only by virtue of his own unity and identity. Should all facets of society agree to identify themselves in relation to a single point, their diverse identities will cohere through the unity of that position. Unlike a monarch, the people are anything but unified and singular. They harbor the very divisions that the king as The One was supposed to reconcile. The need to present the people as a unifying pole meant that they must be presented as unified. This led to the postulation of the fictitious image of the People-as-One. Lefort describes the difficulty this brings about well when he says:

...the people are divided in their existence. Insofar as the people exist within time and space, they can appear fallible, divided, or even despicable, as when they take on the features of “mob rule” or “popular caprice,” as when they adopt gross gesticulations of the parvenus of the Paris Commune, and as when they grotesquely allow themselves to be ruled by “buffoons” [...]. In their atemporal existence [the existence of the People-as-One], they win their true identity and reveal themselves to be infallible and at one with themselves, to be in legitimate possession of an absolute right.²⁹⁴

This idealized image of a unified people could not tolerate any manifestation of particularity. Any particular manifestation of the will of the people would give the lie to the political illusion of a unified people just as the lights going up in a theatre would ruin the dramatic effect of the performance. But politics demands particular actions in response to particular events. Yet whenever such actions were taken, their perpetrators would be ruthlessly crushed in the name of the unity of the people.²⁹⁵

²⁹⁴ *DPT*, 240-241.

²⁹⁵ One of the advantages of Lefort’s analysis of The Terror is that it explains how Robespierre became a victim of the movement he was one a mouthpiece for. The Terror itself was not the work of any individual or group of individuals, but rather a political form of society that attempts to ground its identity in the image of a unified people. In this sense Robespierre was as much a subject to the political form as anyone else and his leadership role was that of a mouthpiece rather than a head.

While the effects of the Terror were dreadful, they are not inexplicable. They resulted from an attempt to prop up an old symbolic form on a social imaginary that could not support it. The pre-modern political form was able to disguise the gap between the real and the symbolic (that is, between society as it was and society as it represented itself) through the social imaginary discourses that identified the king as The One.²⁹⁶ The image of the People-as-one was unable to accomplish this same feat. When the old order collapsed, the result was the emptying of the place of power of *all* determinations. The people, not as one, but as they are, that is, as indeterminate, came to occupy the place of power. In other words, the place of power was emptied of all the determinations it had in pre-modern European society. This is the emptiness Lefort refers to when he discusses the empty place of power.

Modern Democratic Place of Power

Lefort's analysis of the political form of modern democratic society can be seen as an investigation of the implications of placing an indeterminate content within the place of power—of the emptying of the place of power and the dissolution of the markers of certainty. The verbs in these phrases of Lefort's are all too often overlooked, but they point to the continuity with the old regime that underlies the break. While the place of power is emptied, it remains as empty. Likewise, though the markers of certainty are dissolved, their dissolution prompts a perpetual quest within society to identify its own origins—a quest that leads it to constantly reestablish itself.

The modern democratic place of power is able to remain present as empty because it is filled with the image of the people as indeterminate. As the discourses of the social imaginary attest,

²⁹⁶ About these read Ernst Kantorowicz's *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton University Press, 1975) along with Lefort's "The Permanence of the Theologico-Political?", a great deal of which is dedicated to a discussion of this text.

the people do indeed constitute a pole of identity that is sufficiently defined to indicate that it has the status of a subject. The people possesses sovereignty; they are assumed to express its will; power is exercised in their name; politicians constantly evoke them. But the identity of the people remains latent. [...] ²⁹⁷

The symbolic import of this social imaginary is

that power belongs to no one; that those who exercise power do not possess it; that they do not, indeed, embody it; that the exercise of power requires a periodic and repeated contest; that the authority of those vested with power is created and re-created as a result of the manifestation of the will of the people ²⁹⁸

Though the markers of certainty by which members of society are able to know their place in the world dissolve, the symbolic order is preserved by the social imaginary through discourses that affirm the indeterminacy of the people such as elections, opinion polling, and discourses about human rights.

Modern Democracy and Legitimate Tolerance

For our purposes the emptying of the place of power has two important political implications. It permits the development of an ‘historical society’ and also limits the ability of political authorities to discriminate against members of the population.

Modern democracies are historical societies not only in the sense that they respond to events and change over time, but that they represent themselves as making such changes and adjustments. This is a sharp departure from the self-representation of pre-modern societies. Because pre-modern societies were organized around an atemporal and transcendent place of power they were forced to disguise any social changes to preserve their identity as reflecting the

²⁹⁷ *DPT*, 230.

²⁹⁸ *DPT*, 225.

unchanging divine order. For example, the need to disguise such changes is manifest in such apparently paradoxical expressions as “the king is dead; long live the king.”²⁹⁹

As we saw in the previous chapter, a refusal to recognize and adjust to changing political circumstances places a state in danger. Modern democratic societies are able to avoid this danger by pursuing a constant ‘search for their own foundations’—that is, by constantly attempting to determine the will and identity of the people on which political power is based, while denying themselves any basis for concluding this search. If the people are indeterminate, their identity may be tied up in any number of historical circumstances. Anything from the experience of war shared by an entire generation to the relative levels of economic wealth may be seen as a potentially legitimate determinate of the will of the people at a given moment. It is not only unclear who the people are, Christian, atheist, European, proletarian—it is not even clear what dimensions are constitutive of identity of the people. This lack of certainty about its own identity requires that society attempt to identify the momentary manifestation of the popular will through institutions such as regular and frequent elections (about which we will have more to say below). By grounding popular elections in an interminable quest to identify the will of the people, modern democracies not only enable but legitimate the political institutions Machiavelli identifies as the source of Rome’s success.

Second, since the only quality of the people affirmed by the modern democratic social imaginary is their indeterminateness, any attempt to justify intolerance by introducing a necessary determination into the place of power is forbidden. Lefort makes this point by drawing attention to a gap between political power and administrative authority within modern

²⁹⁹ The need to disguise any change within society in order to preserve a self-conception as reflecting an unchanging order in political society is analogous to the need, within a church, to deny novelty and suppress rival interpretations within the religious community in order to preserve the image of spiritual legitimacy discussed in the second chapter of the present work.

democratic society. Those who exercise political power cannot claim to embody—that is, they cannot claim a right to exercise based on their identity or their party platform. Since the source of identity of modern democratic society is ontologically indeterminate, no one has access to the knowledge of society granted occupying by the place of power. Without access to the place of power, no one has a firm basis from which to establish permanent political regulations. This situation does not open the door to the tyranny of the democratic majority—in which any and all laws are permissible. Rather, modern democratic society places specific limits on the kinds of laws that can be passed. Laws having a permanent and detrimental effect on the ability of those within the society to participate in the election, for example, are impermissible in modern democratic society. These limits are in place precisely because the place of power is empty. If the people are indeterminate, then the exclusion of any portion of the population from participating in the political process is a denial of the will of the people the ability to manifest itself.

The political form of modern democratic society, then, provides ground for a new conception of political tolerance. The objection component of what I will call modern democratic tolerance is grounded in the social divisions of modern democratic society. This offers an advantage over other conceptions of tolerance insofar as these divisions may change over time. A society may be divided along religious, racial, economic or any number of other lines. By addressing intolerance that arises along any of these lines modern democratic tolerance is more flexible and covers a greater set of difficulties than the conception of tolerance we found at work in public reason liberalism—which confines itself to forms on intolerance based on non-public beliefs.

Modern democratic tolerance bases both its acceptance and rejection components on the symbolic indeterminacy of the people. Because the people whose popular will justifies political power is indeterminate, any exclusion from participation in the process of political will formation based on any social division is forbidden. Restricting suffrage, the running for office, or any other essential political activities based on race, class, or religious affiliation would implicitly introduce determinations into the symbolic figure of the people and undermine the political form of modern democratic society. At the same time, those seeking to introduce such determinations into the symbolic figure of the people undermine not only the common good but the political form of society itself. For this reason the rejection component improves upon ‘Machiavellian tolerance.’ Machiavelli sought to reject those who did harm to the common good but admitted that no one in society had the authority to determine what is in the common interest. By placing this uncertainty at the center of his political theory (or rather, discovering it at the center of modern democracy) Lefort is able to reject those who seek to act intolerantly by insisting that they undermine political legitimacy. Tolerance is, thus, tied to the foundation of political experience and legitimacy in modern democratic society.

Modern Democratic Political Institutions

I would now like to illustrate how modern democracy anchors and legitimates this conception of tolerance through several key institutions and political processes: specifically, the regular contest to authorize the temporary exercise of political power (elections), universal suffrage, and the more recent development of opinion polls. In discussing these institutions I will pay particular attention to how each imposes limits on how political power is exercised—limits that affirm both the acceptance component and the rejection component of the conception of tolerance outlined above without overly restricting the objection component.

Elections

Just as religious organizations face difficulties when their prophets die, political societies face the difficulties that come from the succession of political authority. How these difficulties become manifest depends to a large extent on how political authority is treated in the symbolic order and social imaginary. Recall that pre-modern European societies developed the paradoxical expression “the king is dead; long live the king” in order to deny the political import of any such change. Since members of a modern democracy do not derive their social identity from the place of power this problem is avoided. However, the indeterminacy of the occupant of the place of power brings with it the danger that the present exercise of democratic authority is not legitimate—that is, that it does not represent the manifestation of the popular will. In other words, the political form of modern democracy creates a gap between administrative authority and political power that looms over all political actions. The danger this gap poses is minimized through the practice of frequent and regular conflicts within society over who is authorized to exercise political power—that is through elections.

The authority of public officials in a modern democracy is derived entirely from the process and results of public election. In other words, it is *not* derived from the platform on which the elected candidate runs. Unlike the coronation of a new monarchy, which affirms the unity of the society, elections routinely affirm divisions, often deep divisions, within a society. Because the place of power is empty there are no platform requirements when running for political office. Legitimate candidates for the same office can differ significantly on any number of fundamental issues for any number of reasons—both in their proposed policies and in the rationale they give for these policies. One candidate may oppose abortion for religious reasons, another for reasons of the social good (i.e. because the practice of abortion teaches a callous

attitude toward the life of others), while a third may support abortion as the most effective means to address a rising birth rate, and a fourth on the ground of protecting women's rights. The contest does not affirm the unity of the society but its disunity. However, insofar as legitimate contestants for political office lose elections, the social divisions involved in the contest are legitimated. The aspirant to public office who loses an election is not declared a 'pretender to the throne' to be exiled or executed but merely the representative of one side of a division within society. By regularly conducting elections, democratic societies dramatize and legitimate their social division rather than their unity. The regular post-election practice of congratulating the victor and of praising the defeated show unity—but a unity created out of a deeper division.

The regular practice of elections not only legitimates social division, it affirms the impermanence of the lines of division within a society. Since 'the people' who legitimate political authority are themselves indeterminate, the dimensions along which politically salient social divisions run are not static. Economic factors may be politically salient at one time, while divisions over foreign policy may eclipse economic concerns at another. The contest of the election, then, is not only a contest over which division presently represents the popular will, but over what different divisions are politically salient at a given moment in time. We saw in the previous chapter that the practice of regular elections is advantageous in this respect insofar as it enables a society to respond to new dangers and threats as they arise. By affirming an indeterminate occupant of the place of power, modern democracies are able to accept the changing fault lines of politically salient social divisions without driving members of a society to abandon political engagement for the pursuit of strictly self-interest. That is, it legitimates these differences.

This may sound like a recipe for a disastrous democratic free-for-all not unlike the Mytilene Debate recounted by Thucydides³⁰⁰ in which the Athenians first condemned to death every male in the conquered city only to reconsider the following day. The safety of the Mytilene population rested only on the superior rowing ability of the dispatch of the second day. This is an inapt comparison, however. The ontological indeterminacy of the people imposes restrictions on how the political power wielded by the winner of elections is used. Lefort discusses these restrictions in terms of a “gap between administrative authority and political power.”³⁰¹ This is because his primary concern is not with tolerance, but with “governments [...] appropriating power for their own ends, [...] incorporating it into themselves.”³⁰² However, the limitations that such a gap imposes on public officials limit their ability to exercise political power for intolerant ends. For example, the administrative authority of any elected official does not extend to altering the electoral process.

Consider the political struggles over the question of gay rights in recent decades. The rights at issue in these debates are quite varied. They range from the permissibility of certain activities ‘in the bedroom’ between consenting adults to the legal recognition (with consequent benefits) of certain relations between homosexual partners that are now available to heterosexual partners, to the right to serve openly in the military. Given the increase in financial expenditures on both sides of this debate it is clear that the status of sexual orientation has become a politically salient social division in United States in a way that it once was not.

Among the rights in contention we cannot find what T. H. Marshall calls ‘political rights’—those rights of members of a social division to participate in the political process, or

³⁰⁰ Thucydides, *The Peloponesian War*, 3.36.

³⁰¹ *DPT*, 29.

³⁰² *DPT*, 17.

‘civil rights’—those rights necessary to competently exercise political rights such as free expression and assembly.³⁰³ It has been by means of these rights, assembling for gay pride parades, and publicly advocating through media venues such as “Savage Love,” that the struggle for the expansion of gay rights to the domains of marriage and military service have been conducted. Any attempt to deny these political rights to gay persons would not only be an attack on a social division, but also an attack on the political form of modern democratic society. This is because a limitation on political rights based on sexual orientation would introduce a determination into the ontologically indeterminate people. Heterosexuality would become a “marker of certainty” and legitimacy would be tied not to the expression of an ever-inchoate will of the people, but to a natural or supernatural conception of humanity—one that is timeless and which can provide certainty that is able to guide the passage of legislation.

On the other hand those who find homosexuality to be morally, religiously or otherwise repugnant are not prohibited from holding these beliefs, having the resultant feelings, or expressing their disgust. In this, modern democratic legitimacy is at once more plausible than the moralizing or epistemological theories of tolerance and more tolerant insofar as it tolerates people as they are rather than insisting that they act as they ought to. Political tolerance is not grounded in one’s view of the other but in a society’s understanding of political legitimacy. The attitudes and beliefs of any individual—even a political representative—are irrelevant in this contest. “The legitimation of purely political conflict contains within it the principle of a legitimation of all social conflict in all its forms.”³⁰⁴ One only rejects those who seek to strip

³⁰³ One could reasonably, and I would say rightfully, argue that marriage is a civil right. I here only intend those ‘uncontroversial’ civil rights listed in the Bill of Rights, none of which are at issue.

³⁰⁴ *DPT*, 18.

others of their political and civil rights.

Voting

The legitimation of social division through political conflict leads one to ask how it is that a society which accepts divisions within the social body can take as credible the notion that it derives its legitimacy from the popular will. How can there be a will of the people if the people are not unified? The corollary of the indeterminacy of the people is the inchoate quality of its will. Just as the people are always indeterminate, the popular will is always yet to be fully articulated. This way of discussing the matter emphasizes the fact that modern democratic societies are historical and that elections are understood as a part of a progression toward the full determination of the people—even if this is necessarily an endless progression. This eternally inchoate popular will finds its expression in voting. As Lefort points out, the voting booth is a peculiar space:

The singular procedure of universal suffrage, which is based upon the principle of popular sovereignty but which, at the very moment when the people are supposed to express their will, transforms them into a pure diversity of individuals, each one of whom is abstracted from the network of social ties within which his existence is determined—into a plurality of atoms or, to be more precise, into statistic. In short, the ultimate reference to the identity of the people, to the instituting subject, proves to mask the enigmatic arbitration of number.³⁰⁵

I would like to highlight three aspects of this description: the universality of voting, the isolation of the voters while voting, and the quantitative rather than the qualitative results of the process.

The ideal of universal suffrage plays a powerful role in the modern democratic social imaginary. Suffrage is, of course, far from universal in any of the modern democracies. Children, the severely cognitively disabled, in many places felons, not to mention numerous non-citizen residents are not permitted to vote. Yet the ideal of universal suffrage is so embedded in

³⁰⁵ *PT*, 161.

the social imaginary that not only has the vote continually been expanded in modern democratic societies, but efforts continue to be made to expand it further.³⁰⁶ Regardless of the arguments used to justify these expansions in particular cases, the ideal serves to reinforce the indeterminacy of the people in the social imaginary.

The key implication for the question of tolerance is that no determination may be introduced into the image of the people as the source of legitimacy in modern democratic societies. This is perhaps well illustrated by comparing modern and classical democracy. “[I]n classical democracy [...] power still had a positive determination in that the representation of the city and the definition of citizenship rested upon a discrimination based upon natural criteria or—and this comes to the same thing—supernatural criteria.”³⁰⁷ For example, slaves and women could not vote in ancient Athenian democracy. These determinations ensured that power, though not held by any member of a group, was still wielded by a group that “has an image of itself, of its space, and of its bounds.”³⁰⁸ To engage in a process of constantly expanding suffrage is precisely to reject the grounds by which a ruling division would be able to provide itself with such an image. It cuts the citizens off from any sense of certainty about how they ought to vote, a certainty born out of a sense of identity.

As we saw in our brief discussion of the image of the people-as-one in revolutionary France, identifying power with an image that is unable to tolerate particular manifestations can have disastrous consequences. Modern democratic society is able to tolerate this indeterminacy within the place of power because the modern democratic symbolic order affirms a diversity

³⁰⁶ For example, Martha Nussbaum argues for the expansion of suffrage to the severely cognitively disabled in “The Capabilities of People with Cognitive Disabilities” in *Cognitive Disability and its Challenge to Moral Philosophy* ed. Eva Kittay and Licia Carleson (Wiley-Blackwell: 2010) pp. 75-96.

³⁰⁷ *PT*, 262.

³⁰⁸ *ibid.*

within the social order; it is not constrained to reject particularity in the expression of the popular will. The process of elections, which only ever make manifest the inchoate expression of the popular will, renders such expressions tolerable by ensuring that they are temporary. Furthermore, and more important for our purposes, the ability to influence the form any particular expression of the popular will takes is granted to all social divisions.

This indeterminacy is further affirmed in the ritual of the isolated voting booth. While, again, it is not followed strictly in practice, when casting one's vote, one is supposed to be in complete isolation. Advertising is not permitted near the polling station, bosses, union representatives, and spouses are not permitted into the booth with the voter—even if they transport the individual to the polling place. All overt signs of political pressure are to be eliminated so that the individual is free to vote her will.

While this is often remarked upon as freeing the voter from inappropriate influence, it has the additional effect of denying her any signs of certainty in her vote. Not only are those points of influence kept out of the booth, but the voter is cut off from all makers of certainty that would permit her to feel secure in her in her vote or to imagine herself as identifying with the occupant of the place of power. In the act of voting the citizen is forced to confront the role she plays not only in affirming but in creating the popular will. This ritual puts into relief the uncertainty of one's own political convictions. In so doing it undermines any individual drive to discriminate against the political rights of others. The uncertainty and isolation that is dramatized in the voting booth serves to undermine the certainty one would have to claim in order to deprive others of their political rights.

Finally, the result of the vote is a number whose connection with a qualitative context is indeterminable. As the election ends, votes are tallied and a winner is declared. While the

numbers can declare a winner unequivocally, they provide no insight into why this candidate won over her competitors. A party platform touches on multiple facets of a society and will have different resonances with different social divisions. For this reason no aspect of a candidate's platform can be declared unequivocally to have been endorsed by the people or to be an expression of their manifest will.

This absence of qualitative endorsement imposes a limit on any mandate that an elected official may claim. For example, should Mitt Romney have won the 2012 presidential election it will be unclear if it is because a number of people endorse his Mormonism, because a majority of the population wishes the Affordable Health Care Act to be repealed, because the population wishes to impose a lower corporate tax rate, or because the people prefer to be 'managed' rather than to govern themselves. The bare numbers do not demonstrate that the popular will endorses any particular aspect of his platform, and they certainly do not demonstrate that the population endorses it in its entirety. He would thus not have an unequivocal mandate to repeal the Affordable Health Care Act, to lower taxes, or to provide greater legal protections to religious minorities. The numerical results of an election render obscure what aspects of a politician's platform are actually endorsed by the people and thus help maintain the gap between administrative authority and political power.

Opinion Polls

The place of opinion polls in contemporary politics is a recent development enabled by advances in technology. Such polls are not universally endorsed as a good thing. In his *Decline and Fall of the American Republic*, Bruce Ackerman presents three scenarios in which opinion polls could play a role in the corruption of the American state by enabling a sitting president to force a popular policy through congress (or to bypass congress entirely). In one of these

scenarios 65% of the population support a president, as measured by the opinion poll. The sitting president then cites this number as providing him with a mandate that justifies his pushing some policy through in spite of the protests of congress.

Such a turn of events is unlikely, though not only for the reasons mentioned above—that support of a candidate cannot be translated into support for a particular policy. Ackerman neglects to acknowledge that a poll displaying a 2/3 majority is at the very same time an affirmation of a 1/3 minority—a significant portion of the population. Even the “astronomical” figure of 85%, since it is presented as a portion of the whole, implies a reference to those within a population who do not support the policy.

Ackerman’s strangely apocalyptic analysis of the dangers posed by opinion polling fails to take into account a number of features of the political form of modern democracy that inform how such polls are interpreted by the population. As we have already noted, every opinion poll affirms the dissent of the minority alongside the majority opinion. Far from justifying any unilateral action by the executive branch, they affirm the inability of any branch of government to speak with the voice and authority of the popular will.

A number of aspects of opinion polls affirm not only the division within the popular will but its indeterminacy as well. First, on most issues of national import where any poll is taken a number of rival polls are taken. These polls differ not only because of differences within the sample population but also because, as has been demonstrated time and again, people respond differently to the same set of alternatives if these alternatives are presented in different language. That rivals can cite competing polls and that multiple polls for the same issue are often presented in the media alongside one another affirms the indeterminacy of the popular will rather than its conclusiveness. Furthermore, opinion polls are rarely taken at a single time only. Rather, they

are taken at regular intervals and they are rarely static with the passage of time. A presentation of these polls as they change across time reinforces the notion of the indeterminacy of the popular will, an indeterminacy that could hardly justify a political mandate. Finally, that these are *opinion* polls undermines any claim to certainty that one could derive from such polls, and as such undermines any mandate one can claim from them.

The import of this discussion is not that it is unlikely that any particular poll will provide enough support that an executive could claim a mandate. Rather, it is that the very nature of the popular will within the modern democratic social imaginary, a nature that is well captured by the institution of opinion polls, is not suited to justifying a conclusive response on any particular political question. The popular will is marked by internal division and temporal flux in such a way that it cannot justify moving outside of the political institutions, including the governmental separation of powers, designed to act on the type of legitimacy that such a will can provide.

This discussion has shown how various institutions within modern democracy work in concert to firmly establish within the social imaginary an image of the popular will as indeterminate and indeterminable. That is, a notion of the will at odds with the abstract notion of the “People-as-One” regardless of whether it is expressed, as in the Stalinist Soviet Union as the will of Stalin or whether it is expressed, as during the Terror, as the prohibition of any particular expression of the will. I would like, now, to close with a discussion of the implications of the indeterminacy at symbolic place of power for political tolerance. Having seen how the political form of modern democracy contains protections against the introduction of intolerance, I will now turn to a discussion of the place of rights within modern democratic society as a vehicle for the redress of new or newly discovered forms of intolerance.

Tolerance and Rights

[W]hether they [human rights] concern the family, women, children, or sexuality, whether they concern justice, the function of the magistrates or the condition of prisoners, whether they concern employment, the management of enterprises, the status of farmers or the defense of peasant property against the intrusion of the state, or whether they concern the protection of nature, we have seen either changes in legislation or the rise of new demands that, despite their failure, testify to new collective needs and, judging by the positive response that they have received, to a new social sensibility of these needs.³⁰⁹

They are constantly aroused by the need for the aspirations of minorities or particular sections of the population to be socially recognized. These minorities, it should be said, may be the product of circumstance; whether they are made up of workers made redundant in a firm, inhabitants of a region threatened with the loss of their main source of subsistence through the disappearance of an industry, farmers struck by a disastrous harvest or fisherman and shopkeepers affected by an oil slick: these minorities and categories may discover their own identity, whether it is of an ethnic order or based on a cultural affinity or a similarity of situation, or they may group together around some project of general importance.³¹⁰

The question of tolerance is complicated by the fact that, as we have seen, the axes of intolerance are not static over time. Within a single society intolerance may be practiced along the lines of race, creed, sex, or sexual orientation. For this reason it is entirely unfeasible to eliminate all forms of intolerance constitutionally. The very attempt to do so would affirm the character of the political community in such a way that new forms of intolerance would be permissible. We saw this in our examination of public reason liberalism in Chapter One. In an attempt to ensure tolerance by restricting political justifications to those that could be endorsed by all public reason liberalism prevented reasonable requests to live according to rules that lack public justification even if they are accepted by all members of a community. Modern democratic legitimacy has a strong advantage over other political forms insofar as it is able to accept that politically salient social divisions—the dimensions along which intolerance is practiced—are in flux.

³⁰⁹ *MFPS*, 261

³¹⁰ *MFPS*, 264

If the fault lines of intolerance are always potentially shifting we must ask how modern democratic societies are able to address new or newly discovered forms of intolerance that appear within them. We have seen how the political form of modern democratic society is ordered in order to prevent political discrimination. We will now examine the means by which it enables those who do suffer intolerance to bring attention to and address the problem—rights.

I begin by distinguishing between what T. H. Marshall called civil rights, political rights, and social rights. Civil rights are those rights that confer individual and group freedom. They include those rights common associated with the U. S. Bill of Rights, including the rights to free assembly, freedom of the press, free worship and the like. Political rights are simply the rights to share in and use political power—suffrage and the right to run for political office for example. Social rights are the rights to social and economic welfare and are often necessary to prevent particular forms of intolerance. In what follows I will argue that the establishment of civil and political rights in modern democratic societies has created what Lefort refers to as a ‘dynamic of rights’ whereby those who experience intolerance are able to fight for new rights as a need arises in order to address new forms of intolerance. For this reason, political and civil rights are the positive pillars of tolerance in modern democratic societies.

Lefort is most clear about this in his two articles on the meaning of human rights.³¹¹ One of the major insights of these articles is that human rights are not, in fact, merely the individualizing self-seeking rights that Marx insisted bourgeois rights were. Such a conception of rights would be incompatible with the democratic social imaginary. In his analysis of the development of the practice of declaring, advocating for, and defending human rights within modern democratic society Lefort demonstrates that human rights, as they have been instituted in

³¹¹ “Politics and Human Rights” in *MFPS*, 239-272 and “Human Rights and the Welfare State” in *DPT*, pp. 21-44. Throughout Lefort refers only to “human rights.” I will attempt to clarify his discussion by employing Marshall’s distinction between civil, political, and human rights.

modern democratic society, are an excellent vehicle for the preservation of political tolerance.

We can begin our discussion with an observation. There is a huge disparity between the rights outlined in foundational documents such as the US Bill of Rights and its French counterpart the Declaration of the Rights of Man and of the Citizen, on the one hand, and those found in the United Nations Universal Declaration of Human Rights. In the former we find a declaration of civil rights³¹² while in the latter we find a declaration of social rights such as that to “periodic holidays with pay.”³¹³ In *Human Rights and the Welfare State*, Lefort ties the two together, stating that that,

the institution of human rights [i.e. civil rights in the Bill of Rights and the Universal Declaration] has come to support a dynamic of rights [of the demand for social and political rights which the Universal Declaration is but one manifestation].³¹⁴

In order to explain the development of this dynamic, Lefort begins with a critique of Marx’s interpretation of civil rights.³¹⁵ Lefort rejects Marx’s

conviction that the representation of these rights in the late eighteenth century [...] served only to provide a cover for the dissociation of individuals in society and a separation between this atomized society and the political community.³¹⁶

While his overall critique of Marx is quite rich (and encompasses more than we have time to say here), I would like to draw attention a few of Lefort’s more pertinent and penetrating

³¹² “Congress shall make no law [...] abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” In the Bill of Rights & “No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law,” in combination with, “The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.” In the Declaration of the Rights of Man.

³¹³ *Ibid.* Article 24.

³¹⁴ *DPT*, 21.

³¹⁵ The most thorough statement of this critique that we have in English can be found in *Politics and Human Rights*, in *MFPS*, 245-272.

³¹⁶ *MFPS*, 245.

insights. Lefort first claims that Marx's interpretation of human rights as turning "man into a 'monad,'" fails to take "into consideration the fact that any human action in the public sphere, however society may be constituted, necessarily links the subject to other subjects."³¹⁷

According to Lefort, when taken as a whole, civil rights are far greater than a set of merely negative freedoms—freedoms from certain forms of state coercion. They form the basis for the positive freedom to constitute community—and in doing this they take that power away from the state. As we saw in our discussion of pre-modern European society, through his access to the place of power the king was able to set the terms of social and political relations. By placing in the hands of the people the right to make claims about society, its makeup and its meaning, and to share these claims with others, modern democratic society transfers political power from the state and to society. While the place of power in modern democracies is empty, or rather occupied by the image of the people as indeterminate—this does not mean that individuals or communities have no determination. It is in the determinations that the different social divisions that vie for political power come to be and to be distinguished from one another. The freedoms described in the bill of rights are precisely the freedoms not to have the terms of one's membership in the political community set by the state. In other words, the establishment of civil rights is another manifestation of "the separation of power and right,"³¹⁸ in modern democratic society.³¹⁹

Because civil rights have come to mean those rights by which political power is transferred from the state to society in modern democratic society it is not surprising that they

³¹⁷ *MFPS*, 248-49.

³¹⁸ *MFPS*, 255 and also *DPT*, 31.

³¹⁹ While we do not have the space to analyze it here, this insight also forms the basis for Lefort's rejection of the idea that the institution of human rights is necessarily tied up with a particular conception of human nature. For more on this see *Human Rights and the Welfare State*, in *DPT*, 21-44.

also provide the foundation for political rights.³²⁰ Those rights enshrined by the Bill of Rights and the Universal Declaration ensure that the state cannot dictate the will of the people in the democratic process. There are thus implicit in these rights prohibitions on the state from ever barring the members of any social divisions within society from participating in elections. It is just these rights that grounded not only the expansion of suffrage to non-white, non-male, landless adults in the United States, but that struck down the poll tax and the literacy test.

By taking from the state the authority to establish the character of the political community, the enunciation of these political rights robs the state of its ability to legislate against any group within the political community on the grounds that it is not a part of the political body. All parties within society have equal claim to be a part of the political community, and thereby equal claim to participate in the process of determining what the voice of that community states at any given moment. The state is thus prohibited from passing any legislation that denies the right of political participation to any subsection of the population.

Limited as they are, these rights provide a greater protection for tolerance than public reason liberalism. This is because public reason liberalism denies that the political co-constitutes the frame through which we approach the world alongside such “non-public” concerns as religion. By recommending the elimination of non-public reason from politics entirely³²¹ public reason liberalism falls into the positivist mistake of thinking there are pure pre-interpreted facts,

³²⁰ It should be noted that this is the political meaning the institution of human rights *have taken* under modern democracy. It is not that this right is implicit in the specific language of these documents, or even that this was the intention of those who drafted these documents. As Lefort points out, “Neither resistance to oppression, nor property, nor freedom of opinion and expression, nor the freedom of movement mentioned in the great Declarations were judged sacred by most of those who called themselves liberals, so long as they applied to the poor, so long as they damaged the interests of the rich or threatened the stability of a political order based upon the power of elites, of, that is, those who possessed ‘honors, riches and intelligence’ as they said in France until the middle of the 19th century.” (*DPT*, 23) It is only through an analysis of the practices of modern democracy, an analysis that is attuned to the political aspects of the symbolic order of society and its social imaginary that the full import of these documents can come out.

³²¹ Harbermas’ and Rawls’ attempt to re-introduce such conversations at the level of civil society notwithstanding.

separable from the interpretive frame (the symbolic order and social imaginary) and that these facts are adequate to justifying legislation.

This poses a very serious problem for political tolerance because it denies new and developing social divisions the ability to speak for themselves. Rather, outside of the narrow political rights outlined above, all those advocating for policy are treated by public reason liberalism as one interest group among others, and all their claims are to be adjudicated as claims of interest, weighed against the common interest of all. There is no means of distinguishing between certain interests which, if denied, will minimize the ability of a particular social division to maintain their place within the political community. In other words, public reason liberalism provides no vehicle for the establishment of social rights, even when those social rights are necessary for the actual practice of political and civil rights. To state this in Lefort's language, public reason liberalism denies any social division the resources necessary to co-shape the social imaginary in such a way that it can begin to appear as a legitimate social division. All social divisions are reduced to interest groups, and members of social divisions are merely individuals within this group. The rights protected by public reason liberalism *are* the individual rights decried by Marx.

This individualism comes from the attempt on the part of public reason liberals to find one aspect that unifies the entire population, and to ground its normative claims on that. However, as we have seen, the attempt to ground the legitimacy of a regime on the image of a unified community, even if only unified through a conception of reason thin enough to produce an "overlapping consensus" lays the foundations for intolerance insofar as it excludes the voices of those speaking in discourses other than those of public reason. What we are looking for in the

attempt to legitimate a political tolerance is a political form that will render differences within the community tolerable rather than hidden.

To see how Lefort's articulation of the political form of modern democratic society moves past the constraints of public reason let us turn to the "dynamic of rights" that has developed on the basis of these more sparse political rights. The assertion of a right by members of a social division is more than simple a claim to a particular privilege based on one's self-defined interest. Rather

rights are named by human beings—and [...] this in itself indicates their ability to name themselves, to designate themselves in their humanity, in their existence as individuals, and to designate their humanity in their mode of coexistence, in the manner of their living together in the 'city.'³²²

That is, to assert one's right is to assert both one's identity and the right to have that identity. This right to define oneself is made against the claim that, in being a part of the political community, one's identity is fully determined by it. In other words, any declaration of right, social, political, or civil is an attempt to prevent the introduction of determination into the empty place of power.

We see this very clearly in the development over the past several decades of what is now known as the LGBT community—a community based on the shared identity of having non-heterosexual sexual orientation or preference. That sexual orientation could possibly serve as the basis of a community is far from obvious. The same can be said of labor movements, where community was generated not from one's occupation but from the position of one's occupation in the greater economy more generally. These political communities were formed not strictly out of identity and not strictly out of interest, but rather out of the merging of identity and interest in the flux of modern political society. Labor formed a community through which to demand rights

³²² *DPT*, 41.

only because the shape of post-industrial democratic societies provided the opportunity for people to experience a problem within society as common; while democratic institutions ensured their political right to express both their shared identity in experiencing this problem, and their opposition to its continuance. The same can be said of the gay rights movements in the late 20th century. In short, were there no occasion for which the declaration of rights would have been appropriate, these communities would have had no impetus to form.

The development of such communities out of the confluence of interest and identity ensure that those affected by the constantly shifting lines of social division are able to identify and combat new forms of intolerance that may arise. It is because of this flux that tolerance demands more than abstract, if meaningful, civil and political rights. Social rights may be required in a given society at a given time in order to prevent intolerance and to protect the emptiness of the place of power. A right to serve in the military and perhaps a right to marriage are examples of just such social rights the need for which develop within a particular community at a particular time.

Social rights of the sort enumerated in the UN Universal Declaration and experienced with on both sides of the Atlantic are founded on the political rights enunciated in the earlier declarations and also on the political form that modern democracies take—a form that forces this interpretation of the founding declarations.

This flexibility with regard to the particular rights secured within any state at a given time is one of the great strengths of modern democratic political society to combat intolerance. The ability to adapt to new forms of intolerance as they arise is essential to a realistic conception of political tolerance. Modern democratic societies, by granting civil and political rights to all, establish a means by which such forms of intolerance can come to be recognized in the first

place. They establish a society that “let[s] those who experience oppression appeal to their fellow citizen”. Such appeals can be made in spite of deeply felt differences only in a society so structured that such appeals will not be experienced as a threat to the social imaginary.

It is often objected to claims for social rights that, having no transcendent or universal anchor in the identity of the community, they are not secure. It is true that they cannot be deduced beforehand or constitutionally enshrined in their particularity, and the immediate recognition of these rights is not guaranteed. Furthermore, “there is no institution which can, by its very nature, guarantee the existence of a public space in which it is possible to question right on an increasingly broad basis.”³²³ In short, there are risks involved in accepting modern democracy as a foundation for political tolerance. While these are significant risks, the political form of modern democracy does have certain ways to mitigate them.³²⁴

Following Tocqueville, Lefort insists that a number of the features of modern democracy help stimulate the population to seek to exercise its rights, thus ensuring that the space for the declaration of rights remains present and active.³²⁵ Elections serve such a purpose but on a small and more continuous scale. Within modern democracy, “power must now win its legitimacy without becoming divorced from competition between parties, if not by funding its basis in opinion. Now competition stems from, sustains, or even stimulates the exercise of civil liberties”³²⁶

³²³ *DPT*, 43.

³²⁴ We can find here an analogy with Machiavelli’s claim that public tumults are good for the state. Claims for rights keep the eyes of citizens on the ideals of the state—on the modern political form and the emptiness of the place of power.

³²⁵ Lefort’s discussion of Tocqueville more relevant to this discussion can be found in *Political Freedom and the Freedom of the Individual* in *DPT*, 165-182 and also *From Equality to Freedom: Fragments of an Interpretation of Democracy in America*, *DPT*, 183-209.

³²⁶ *DPT*, 34.

I would like to mention two ways in which modern democracy stimulates the exercise of civil liberties. In addition to those ways mentioned at length by Tocqueville, Lefort notes that modern democracy shapes the awareness of the place of the individual within political society—specifically it makes the individual aware she is a right-bearer. “Rights,” according to Lefort, “cannot be dissociated from an awareness of rights.”³²⁷ This conditions the individual in two ways. First, it keeps the citizenry vigilant in guarding against having its own rights abridged. This is because these infringements are seen as coming from a state that is always characterized by a gap between its administrative force and the political power it claims in having been authorized by the popular will. Since the state acts as the infringer of liberties, it would be absurd for the right-bearer to rely on the state to prevent such infringements. “[T]hat is the responsibility of the citizens themselves.”³²⁸ Institutions that would slowly enshrine intolerance are thus less likely to find the opportunity to take root in modern democracy. Tolerance expands far more than it contracts.

Second, the modern democratic political form grounds a sympathetic sentiment between citizens that is independent of common interest or identity, one that is strong in spite of the lack of these. This is the sentiment of an individual as a right-bearer. Lefort observes that,

the democratic apprehension of right implies the affirmation in speech [...] which, whilst it is not guaranteed by existing laws or a monarch’s promise, can assert its authority in the expectation of public confirmation because it appeals to the conscience of the public.³²⁹

That the conscience of the public is attuned to concerns of intolerance is a unique product of the political form of modern society. While particular rights in a democracy do not have the

³²⁷ *MFPS*, 260.

³²⁸ *DPT*, 31.

³²⁹ *DPT*, 37.

secure foundation of constitutional law, right-bearers can appeal to others not merely as members of one's community, as those who share traits with which each can identify, but as right-bearing entities. This sentiment can be seen in the numerous advocates of the expansion of gay rights who have no personal interest in their expansion. That rights are not tied to a firm transcendent basis opens the eyes of citizens to forms of intolerance that would otherwise be hidden by one's fixation on the other place as the source of morality. Citizens within the modern democratic political form are thus encouraged not only to defend their own rights, but the rights of their fellow citizens even when they are irrelevant to their own situation. This common defense of right is perceived not as an expression of tolerance, of the suffering through the existence of others, but a defense against the tyranny of the state. It is this transformation in the political psyche, above all, that renders modern democracy a fit form for political tolerance. It is able to transform the experience of tolerating another whom one is disinclined to care for into an experience of defending one's own liberty against a potentially illegitimate state. The political form of modern society enables citizens to express solidarity with one another even over concerns that are not relevant to their particular lives.

Conclusion

In this dissertation we have identified and compared conceptions of tolerance that can be supported by public reason liberalism, 'Machiavellian republicanism', and the political form of modern democratic society as analyzed by Lefort.

Public reason liberalism supports a conception of tolerance that grounds its objection, acceptance, and rejection components on the distinction between public and non-public reason. Members of a public reason liberalism are free to object to one another based on differences over beliefs that are justified by non-public reasons, typically religious, moral, or philosophical. The

acceptance component is grounded in the non-public nature of these objections. Specifically, because the objections are based on reasons that a reasonable person may reject, public reason liberalism insists that members of a society accept those who hold such beliefs by permitting them to participate equally in political processes on the basis of public reasons alone. Finally, public reason liberalism rejects those who insist on the legitimacy of political justifications based on non-public reasons. Since such reasons are open to reasonable dispute any coercion based on such reasons would itself be unreasonable.

We also examined a modified form of public reason liberalism in Swaine's liberalism of conscience. Swaine attempts to accommodate a reasonable theocrat who wishes to be governed, along with fellow believers in a tightly knit community, by laws justified by non-public reasons. Swaine suggests that liberal societies grant semi-autonomous status to such communities, provided they guarantee certain liberal rights such as education and the right to free exit. While this modification would eliminate the problem a reasonable theocrat poses to public reason liberalism, it opens the door to a great deal of new intolerance that it would be unable to address by granting political power to religious organizations.

"Machiavellian republicanism" supports a conception of tolerance grounded in the dependence of each member of the state on the success of that state for their own wellbeing. The objection component is grounded in the partiality of the perspective any member of the state has. Because each is intimately aware of the difficulties their sector of society faces while being unaware of those faced by others, each is likely to object to claims made by the others. The acceptance component is grounded in the relations of mutual dependence that a state creates. Members of complex societies are to accept one another because of the services others perform for the state. Objections are overruled out of self-interest. Finally, the rejection component is

grounded in the good of the state on which each depends. Those who would do harm to the common good, or place private before public interest are to be rejected, and rejected publicly in order to maintain the attention of each on the common good.

Finally, ‘modern democratic tolerance’ is grounded in the political form of modern democracy, especially the emptiness of the symbolic place of power and the indeterminacy of the people who generate the popular will upon which political power is based. The objection component is based on social divisions that characterize modern pluralist societies. Given the shifting conditions of modern societies, such divisions can be based class, race, religious, or sexual orientation. ‘modern democratic tolerance’ permits objections based upon any such division. The acceptance component is grounded in the ‘empty place of power’ at the center of the symbolic order of modern democratic society. Insofar as the people who generate the popular will are, as a whole, indeterminate, no political action based on such objections is permitted. Specifically, no abridgement of political and civil rights can be justified because they would introduce determinations into the image of the people and would seek to populate the place of power. Finally, the rejection component also grounded in the political form of modern democratic society. Any attempt to introduce determinations into the figure of the people or content into the place of power is to be rejected as it undermines the legitimacy of the society as a whole.

I have argued that modern democratic tolerance is superior to the conception based on public reason liberalism for three reasons. First, it is more tolerant than public reason liberalism’s conception of tolerance. Insofar as it permits the full participation in political processes of persons based on religious or other non-public reasons it is more tolerant than Rawlsian public reason liberalism. Because public reason liberalism restricts participation in

public political discourse to only those willing and able to speak in terms of public reason many who have deeply held beliefs based on non-public reasons are prohibited from participating in public political life. This is true in Swaine's liberalism of conscience as well as Rawls' political liberalism. While Swaine does permit religious communities semi-sovereign status, their members are still to restrict themselves to publicly justifiable claims when engaging in national politics and will be subject to whatever restriction are imposed upon political participation by the church that governs their semi-autonomous community at a more local level.

Second, insofar as it grounds tolerance based upon any social division whatever, it is more flexible than both Rawlsian public reason liberalism and Swaine's liberalism of conscience, both which restrict concerns of tolerance to issues of non-public reason (especially religious reasons in the case of the latter). Neither Swaine nor Rawls provides a venue to address, for example, forms of intolerance that are experienced within a society but that are justified by public reasons. For this reason, discriminatory labor practices or 'social legislation' that are backed by public reasons cannot be politically disputed except in the language of public reasons. Modern democratic tolerance, however, permits any social division that finds itself subject to discrimination to make a public case that its rights are being abridged. The right to make such a case is grounded in the civil and political rights guaranteed to all by indeterminacy of the place of power. In the case that real discrimination is experienced divisions within a modern democracy can fight for social rights that will enable them to fully exercise their civil and political rights. Additionally, by permitting each member of society to identify with the others as a rights-bearer fighting to preserve the right to self-governance from usurpation by the state, appeals to even those who may find one objectionable are more likely to resonate in a modern democratic society than a public reason liberalism.

Finally, modern democratic tolerance provides a more plausible picture of tolerance than public reason liberalism. Public reason liberalism requires of its citizens a duty to civility, including a requirement that they express their public political beliefs sincerely while also restricting the beliefs they express to only those that can be supported by public reasons. Such restrictions have a number of problems. They overestimate the capacity of individuals to distinguish public from non-public reasons and to translate beliefs that are justified by non-public reasons into ones that can be justified by public reasons. At the same time they underestimate the extent to which people are willing to ignore moral duties when matters of high interest, material or moral, are at stake. While such restrictions may govern the actions of Kant's society of devils who are perfectly reasonable, humans are unlikely to meet such a high requirements. Modern democratic tolerance, however, requires no such restraint. One is able to participate in the political process for whatever reasons one wants. The restrictions are not placed upon the participants, but upon state actions. The state is not able to abridge citizen's civil or political rights. By shifting the burden of the rejection component to state action rather than civil participation, the political form of modern democracy presents a more plausible means by which tolerance can be secured.

I have also argued that modern democratic tolerance is superior to 'Machiavellian tolerance.' Modern democratic tolerance is able to take advantage of a number of the benefits that Machiavelli identified in the 'agonistic' politics of Rome, and thus to provide a prudential argument for tolerance, while avoiding the limitations of 'Machiavellian tolerance.' By embracing, in a modified form, the agonistic political institutions such as elections and public accusation that Machiavelli identified as enabling Rome to quickly identify and effectively respond to new challenges that arise from changing political circumstances practicing modern

democratic tolerance is beneficial to all who depend upon the state's success for their own wellbeing.

At the same time modern political tolerance improves upon Machiavellian tolerance in a number of ways. Insofar as it enables the tolerator to identify with the tolerated as a barer of rights against the state it transforms the experience of tolerance from one of suffering through the differences of another to championing one's own rights in a political society against the state. The political form of modern democracy also legitimates tolerant relations insofar as no one can claim knowledge of the will of the people, and hence no one has a basis from which to justify intolerance. By grounding the political practice of tolerance in one's own experience of the legitimacy of the state and enabling an identification with the objected to, modern political tolerance supplements the prudential arguments for tolerance provided by Machiavelli with a legitimacy that will help enable those least likely to practice tolerance.

If Lefort's analysis of the political form of modern democracy is correct, then 'modern democratic tolerance' has been behind many of the expansions of tolerance in modern democratic societies—from the current expansions of LGBTQ rights to the civil rights movements and the expansion of suffrage. While there have been attempts to restrict the rights of Muslims, and there have been extreme and violent acts of intolerance against Muslim communities (and even Sikh communities mistaken for Muslim communities), these attempts have been widely condemned and have failed to gain public support. While there may not be a moral arc to the universe, as Martin Luther King Jr. famously claimed, it seems as though there is a tolerant trajectory in modern democracies.

If we accept that certain acts of intolerance can no more be eliminated than that crime itself could be eliminated then a more fruitful path of inquiry may be an attempt to discover how

to promote further tolerance and discourage further intolerance. Lefort's analysis of the political form of modern democracy here provides some helpful directions. According to Lefort, insofar as modern democracy does not attempt to disguise the gap between the real and the symbolic order of society as do the political forms of other societies, it runs a constant risk of transforming into another society as the anxiety this gap creates becomes unbearable.³³⁰ In order to further a practice and culture of tolerance, it would be helpful to regularly and publicly affirm those aspects of the political form of modern democracy that do facilitate tolerance. The emptiness of the place of power is an aspect of the symbolic order of society and cannot effectively be discussed. However, the image of the people as indeterminate that animates many of the discourses within the social imaginary can and should be. By regularly affirming that no one segment has the authority to speak on behalf of the people more could be done to further establish a culture of tolerance in current modern democracies than by attempting to persuade the members of a society to adopt new duties to civility.

³³⁰ According to Lefort, modern democracy can most easily give rise to forms of totalitarianism, which attempt to close this gap by attempting to place legitimacy immanently within society. His most clear analyses of this can be found in *MFPS*, 273-307.

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