

Plato, *Apology*, *Crito*, and *Republic* (Book I)

In the *Crito*, Plato reaches the conclusion that Socrates is constrained from disobeying the laws of Athens by virtue of having remained in the community throughout his adult life.¹ In the *Apology*, however, Plato has Socrates say that Anytus and Meletus are misapplying the law by prosecuting him.² Specifically, he draws on his conception of virtue to conclude that he cannot be *knowingly* corrupting the young, and that absent this *mens rea* the appropriate recourse ought to be for Anytus and Meletus to “take him [Socrates] aside privately for instruction and reproof” rather than prosecute him.³

This is puzzling because Socrates is portrayed as being fully aware that an ostensibly neutral law may be abused for private ends while refusing to see that this might justify disobedience. In the Athenian legal context, the absence of private prosecutors resulted in frequent prosecutions based on pre-existing enmity. Anytus, for instance, hated Socrates because Anytus’ son had become one of Socrates’ most fervent disciples.⁴ Socrates must have been well aware that the law can be abused, but he declined to draw what we might consider the logical conclusion – that he was consequently free to disobey.

I can see two possible reasons for Socrates’ insistence on abiding by the verdict. Either he believed that the law by definition cannot make mistakes, or he thought that the jury’s vote constituted an opportunity for the community to check abuse of the law. In Book I of the *Republic*, Thrasymachus makes a similar argument - that the stronger party cannot make mistakes *by definition*.⁵ Given Plato’s refutation of this position in Book I, we are left with the second option. Plato seems to be saying that whatever 501 Athenians affirm is *ipso facto* just.

This position recalls what Madison would later call “tyranny of the majority.”⁶ We would hesitate to see the genuine affection and respect which Socrates shows for the laws of Athens extended by default to the arbitrary decisions of juries or assemblies. We would be more inclined to say that the object of respect ought to be a state’s constitution and such laws and official actions as are harmonious with it. However, as Locke would later point out, no man ought to be a judge in his own case.⁷ It may be that Socrates would tell us that peering into the motives of the jury or the prosecutors is simply inappropriate for defendants, vital as it may be for the community as a whole.

¹ Plato, trans. Tredennick, Hugh 1969. *The Last Days of Socrates*. [London] Penguin Classics pp. 90-91

² Ibid, p. 56

³ Ibid, p. 56

⁴ Xenophon, trans. Tredennick, Hugh and Waterfield, Robin 1990. *Conversations of Socrates*. [London] Penguin Classics pp. 48-49

⁵ Plato, trans Griffith, Tom 2000. *The Republic*. [Cambridge] Cambridge University Press pp. 16

⁶ Madison, James, Hamilton, Alexander and Jay, John ed. Kramnick, Isaac 1987. *The Federalist Papers*. [London] Penguin Classics pp. 318-322

⁷ Locke, John ed. Macpherson, C.B. 1980. *Second Treatise of Government* [Indianapolis] §90 p. 48

Plato, *Republic* (Books II - X)

On Plato's terms, success or failure in inculcating the principles of philosophic government in the guardians will determine Kallipolis' viability and survival. *Republic* eschews details and focuses on principles. This is because Plato has determined that for a state to be well-governed, its rulers must be 'philosophers', which in practice means that they must be people who have been convinced that their self-interest is intimately bound up with the interests of their fellow citizens. If people who have internalized this concept can be put in power, the details of administration can be safely left to them and Plato has no desire to spell them out—he is entirely concerned with the principles to be inculcated in these future rulers.

It is puzzling that Plato makes no provision for bad guardians. During the laborious construction of the ideal city, Socrates speaks constantly of a "we" who will have to take various measures to ensure that new generations of guardians hew to the principles he has set out. It would be easy to accuse Plato of being unrealistic, particularly as he lived during the era of demagogues in Athens and was intimately familiar with the ways in which the public trust can be abused. However, a response which is always open to him is simply to say that no actually-existing community has remotely approximated his standards, and that therefore we do not know with any certainty that the moral rectitude he describes is impossible to achieve.

It seems to me that the behavior Plato hopes to elicit is undermined by the tight leash he places on his guardians' philosophical development. There is no scope in Kallipolis for disagreement with Plato's notion of the good, his (Socrates') conception of the unity of the virtues, or even disagreement on matters of seemingly trivial detail, such as the appropriate age for philosophical education. By deriving such things deductively on the basis of luminous concepts like justice and the good, Plato makes it very hard for future guardians to deviate even marginally from his program without essentially rejecting the whole thing.

It is difficult to imagine the "spirited" guardians placidly accepting Plato's conclusions. It seems rather more probable that they would innovate, and that some innovations would be improvements while others would not. However, for reasons already described the system is so tightly interwoven that it would be difficult for guardians to innovate without significant deviation from principle. This means that over time Plato's principles would be challenged and some would be replaced. Plato does not seem to have anticipated this inevitable constitutional evolution, despite being surrounded by hundreds of *poleis* displaying an incredible variety of constitutional forms.

Of course, Plato might respond that there will be no evolution because wise guardians will understand that the system as set out by Socrates genuinely *is* the best. However, even on these terms, it would take only a few inept guardians to cause a crisis. A class of rulers who are expert in political philosophy but forbidden from tinkering with their own constitution will not long forbear from doing just that.

Aristotle, *Politics*

There seems to be a conflict between Aristotle's idea of the public interest as the motivating factor in just government and his account of factional struggle among various classes in the state. Aristotle writes that "governments which have a regard to the common interest are constituted in accordance with strict principles of justice" and "the true forms of government, therefore, are those in which the one, or the few, or the many, govern with a view to the common interest" (1279a). Aristotle never explicitly defines the common interest, and we are left to wonder if he would have limited it to obvious shared interests such as prevention of foreign invasion or extended it to more nebulous concepts such as virtue and justice.

In books 4 and 5, Aristotle explicitly acknowledges that different classes in the state have different interests. He writes that "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 cheat the people" (1297a), and again, in the oath taken by oligarchs, "I will be an enemy to the people, and devise all the harm against them that I can" (1310a). It's clearly possible, on Aristotle's terms, for the people and the oligarchs to have different interests. Aristotle bemoans the tendency of the various classes to be "cutting the city in two by quarrels" (1310a), which suggests that he was well aware of the frequency of civil conflict in the Greek world.

It's difficult to see how Aristotle could have reconciled a unitary public interest with a plurality of views concerning the good life. In books 7 and 8, Aristotle begins a utopian project along the lines he criticizes in book 2, and he seems to be of two minds about the public interest. When he sets out his ideal constitution, he acknowledges that the poor will demand mathematical equality while the rich will demand equality in proportion with power, and he views the tensions between these conceptions of equality as a significant cause of political problems (1280a). On the other hand, he pronounces that "the best life, both for individuals and the state, is the life of excellence" (1324a).

Aristotle might retort that to the extent that there are different conceptions of the public interest, someone must be wrong. Indeed, his predilection seems to be for deductive discovery of the right way to live (see 1324-1325) rather than his more usual method of inductive observation. It's still difficult to see, however, how Aristotle's conception of the unitary public interest can have anything useful to say in intracity dispute among the classes. How, for instance, could he resolve the kind of civil wars he discusses in book 5? Aristotle attributes the cause of revolutions to differences in equality, both numerical and proportional (1303a), but he seems blind to differences based on interest. This leaves us with a puzzle – how Aristotle's ideal state might persuade the factions which comprise it that there is indeed a public interest, in spite of the real and divergent interests Aristotle identifies in each class.

Machiavelli, *The Prince*, *Discourses on Livy*

Despite Machiavelli's immoral reputation, he seems to shrink from the degree of immorality his own premises require. He prescribes behavior that must have seemed damning in the eyes of his contemporaries, including that "men must be either pampered or crushed," (III) that "men must be either won over or destroyed," (VI) and that "a prince is always compelled to injure those who have made him the new ruler" (III).

However, he tempers this understanding of the virtues proper to a political leader with a strange restriction (in the case of Agathocles), that "it cannot be called prowess [virtù] to kill fellow citizens, to betray friends, to be treacherous, pitiless, irreligious. These ways can win a prince power but not glory" (VIII). Surely we might have been entitled to think that a prince who uses cruel methods might be justified by the ends in view. Machiavelli hints at this possibility in the *Discourses on Livy*, writing of a ruler who commits cruel acts to bolster his kingdom, "while the act accuses him, the rest excuses him" (Ch. 9).

Machiavelli seems to want to have it both ways. He wants to be able to condemn mere 'effective brutes' like Agathocles while permitting his notional master statesman to take whatever immoral actions he deems necessary. Statesmen he approves of are given far wider latitude to misbehave. We can take the example of Remirro de Orco, Cesare Borgia's manager in the Romagna, who after reforming the region with draconian measures was murdered by Borgia as a sort of scapegoat to appease popular unrest (VI). This would seem to be precisely the sort of betrayal of friends proscribed in Book VIII. If anything, Machiavelli seems to exonerate Cesare Borgia merely because he was able to present the image of a virtuous prince more effectively than Agathocles.

This praise of Cesare Borgia also undermines another of Machiavelli's maxims, that cruelty is used well "when it is employed once for all, and one's safety depends on it, and then it is not persisted in..." (VII) The idea seems to be that an effective statesman will use shockingly brutal methods to attain or establish power and then will pivot to practicing virtue. But notice that treachery and betrayal come in for sanction in the case of Agathocles, while elsewhere Machiavelli writes that "because men are wretched creatures who would not keep their word to you, you need not keep your word to them" (XVIII).

It seems likely that Machiavelli was thoroughly enjoying the idea of immorality in the service of the state, but that he shrank from particularly brutal or frank avowals of these methods. This irony may be the result of distinct ethical systems at work. Machiavelli has internalized the classical honor-based ethic of benefitting one's friends and harming one's enemies, but it does not harmonize well with the Christian notion that we should love our enemies and do no harm to anyone. He seems to dance around the concept of the ends justifying the means, proposing it in theory (limited to political purposes) but then withholding approval from those who put it into practice.

Machiavelli, *Discourses on Livy*

In an adaptation of mixed-constitutions theory¹, Machiavelli holds that the interests of the various classes of citizens combine in republics to foster a dynamic equilibrium leading to the general welfare. This advance in constitutional theory posits that it is the inevitable conflict among sectional interests that gives rise to beneficial constitutional evolution. Machiavelli's particular example is the development of the Roman tribunate (I.3), which would not have occurred but for many "disorders and disturbances" but which ultimately benefitted the republic.

While this notion of diverse interests leading to a common good seems analytically superior to the assumption of unitary interest made by Aristotle, Machiavelli assumes that interests can nearly always be harmonized. He bases this understanding on stability – that political stability is so primary and overriding a motive that sectional interests in a republic will prefer any stable arrangement to the pursuit of their own (unfettered) interest. While this understanding is persuasive, it relies on the assumption that each section will possess an accurate understanding of its own interests and will bargain on that basis in good faith. However, Roman history, Italian history and Machiavelli's own principles provide some confuting evidence.

Machiavelli accepts significant disagreement as the price paid for a robust citizen army (I.6). That is, empowerment of the lowest classes in society is a prerequisite for Roman-style expansion, and since Machiavelli believes that states generally expand or stagnate, he is prepared to accept internal disharmony as long as it enhances the state's capabilities (I.5). He implies that only degenerate or corrupt republics will take such disagreement too far (I.17), and in any case his theory calls for a prince to step in and personalize rule once the degeneration has passed the point of institutional remediation. However, it appears that Machiavelli has no answer for the case of an uncorrupted people with divergent sectional interests who fail to appreciate the primacy of stability or who are willing to risk it in their bargaining with one another.

He is left with an easy answer, of course – failure to appreciate stability is *prima facie* evidence of a degenerate republic. But this doesn't track with his own analysis of Livy. In the famous *secessio plebis*, the (uncorrupted) Roman plebeians abandoned the city as a body, gridlocking the economy and panicking the patricians (I.3, I.35). The use of such a destabilizing tactic implies that the Roman plebeians were either a) not properly apprised of their own interests or b) were willing to risk collective ruin as a negotiating tactic.

This is all to say that even an uncorrupted republic contains enough divergent interests to make bargaining among the sections essential, and that in the inevitable negotiations over the precise bargain to be struck, a side that is willing to risk instability will reap more gains than a side that is not. As a result, the dynamic equilibrium Machiavelli proposes seems to be at risk of being undermined by the very mechanism of conflict and negotiation that he deems essential for political progress.

¹ For theoretical antecedents, see Polybius, *The Histories* 6.5, and Cicero, *De republica*, 1.39

Hobbes, Leviathan

Hobbes affirms a right to resist the sovereign in cases where individuals are threatened with death, imprisonment or expropriation. This interpretation stems from his conception of sovereignty as principally concerned with the preservation of the people, and is not restricted to cases where the sovereign acts against particular individuals, but extends to cases of starvation, breakdown of the social order, and the perception of impending harm. This expansive understanding of the right to resist is puzzling in light of his argument in Chapter 15, where he attacks the view that self-interested individuals should violate the covenant whenever it appears to be in their best interest, labeling this view “successful wickedness” (15.4).

If the sovereign is holding up his part of the “mutual promise,” Hobbes seems to think this unilateral performance compels reciprocal performance save for the cases enumerated above, where an individual’s life is at stake. Hobbes reasons that a self-interested person cannot be expected to act directly against self-interest even to uphold a solemn covenant (14.8). It is hard to see how this specific exception for self-interest can be kept from swallowing the general rule of upholding covenants. Crucial here is that individuals themselves are to decide whether their interests are directly threatened by actions of the sovereign. If Hobbes allows his populace to exempt themselves from the obligations of contract on the basis of impending harm, the whole system would seem likely to unravel in a cascade of self-interested self-exemptions.

Hobbes expects individuals’ self-interest itself to restrain them from undue insistence on their self-interest, which is to say that people will recognize the overriding importance of stability and will not repudiate the contract unless their interests are so threatened by the prospect of impending death that the virtually infinite future benefits of stability and security are irrelevant to them (15.4). This places a great deal of faith on the capacity of individuals not only to correctly identify (and never exaggerate) situations where their self-interest is threatened, but then to be able to correctly set the costs of this threat against the benefits of inchoate future stability.

In effect, Hobbes is suggesting a kind of utility calculation, and it seems doubtful that people would routinely get it right. If anything, people overestimate threats to their self-interest, sometimes greatly (as in paranoia), and we also routinely discount future benefits, sometimes excessively. On Hobbes’ terms, this would lead to frequent uprisings, impairing the sovereign’s capacity to keep order and thereby undermining the motivation for other rational people to uphold the compact. But he has closed off any alternatives to individual rebellion – the people cannot act against the sovereign as a body, because in such a context they are no longer a people, but a “multitude,” incapable of direct action (16.14). It seems likely, therefore, that legitimate challenges to the sovereign’s rule would not in fact be limited to desperate highwaymen certain of the death penalty and thus free to repudiate, but would extend to all cases where people myopically elevate their present (and certain) self-interest over the uncertain future benefits of continued stability.

Hobbes, Leviathan

Hobbes takes great pains to rule out the replacement of a sovereign by act of the people. He holds the position that the people *en masse* can only act by virtue of the unity conferred on them by their representative (16.14), and emphasizes that “...where there is once a sovereignty, there can be no absolute representation of the people, but by it” (22.25). He adds that the death of the sovereign without proper succession arrangements “...leaves the multitude without any sovereign at all; that is, without any representative in whom they should be united, and be capable of doing any one action at all: and therefore they are incapable of election of any new monarch...” (19.18). It seems that sovereignty, once conferred by the people, is irrevocable and can never be reassigned.

This account is difficult to reconcile with his understanding of the way sovereignty emerges from the state of nature. Hobbes writes in several places of “men who choose their sovereign...” (20.2). “Most explicitly, he writes that “...men, for the attaining of peace, and conservation of themselves thereby, have made an artificial man, which we call a commonwealth...” (21.5). If the people can act collectively in the state of nature, it seems odd that they would be unable to do so again, particularly after lapsing back into the state of nature with the expiration of the sovereignty. Consider Hobbes’ sensible view of the long-term prospects of a particular sovereign and his issue. “And though sovereignty, in the intention of them that make it, be immortal; yet is it in its own nature, not only subject to violent death, by foreign war; but also through the ignorance and passions of men, it hath in it, from the very institution, many seeds of a natural mortality...” (21.21).

Hobbes’ theory thus provides for the expiration of sovereignty, but not for a reprise of the popular act that created it in the first place. This puzzle is compounded by examples cited from history, such as Hobbes’ discussion of “...the Romans, who were taught to hate monarchy, at first, by them that having deposed their sovereign, shared amongst them the sovereignty of Rome...” (21.9). If the Romans could do it, why is it ruled out for other peoples? Hobbes is very clear about the long-term prospects of sovereignty, writing that “[t]he obligation of subjects to the sovereign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them” (21.21).

It appears that Hobbes was deeply invested in stability, and sought to confer permanence on the sovereign by exaggerating the difficulties of his replacement by the “unpersonated multitude.” However, he acknowledges the capacity of popular representatives to negotiate on behalf of the people (29.15), and even acknowledges with disdain the possibility of divided sovereignty (29.16). By ruling out the mere possibility of popular replacement of the sovereign, Hobbes introduces a complication into his otherwise-elegant theory, and Part 2 of Leviathan appears to ignore or minimize the explosive implications of basing sovereignty on an act of popular will.

Locke, Second Treatise of Government

Locke's use of property to motivate the escape from the state of nature raises an interesting question. If the purpose of government is to protect property rights, why should those without property participate? Locke is very clear that government is introduced for the protection of property, and that the need for government is motivated by unequal property endowments (§49-50). He is less clear on the incentives for the propertyless to involve themselves in this process.

Locke persuasively describes the consequences of the introduction of money to his state of nature. The conviviality apparent in the first stage of the state of nature disappears once the individual incentive to accumulate is able to circumvent the spoilage problem, and the divine injunction in §25 that the earth is given to mankind in common can apparently be vitiated by human cunning. Once money has been introduced to the system, the accumulation process is able to accelerate to such an extent that those who possess much begin to fear those who possess little. This is an explicit part of the motivation for government (§85).

It is easy to imagine such super-accumulators deciding to form a civil society for the mutual preservation of their property. However, it is very difficult to see why those without much property would be interested in joining the emerging civil society. In addition, Locke has made their condition enduring by affirming the justice of wage labor (§28). The only imaginable offer that the community of accumulators might make to everyone else is something like: 1) security for the few possessions they have managed to accumulate, in exchange for 2) giving up the right of independent enforcement of the laws of nature.

Since representation is to be proportionate to taxes (§157), and since taxpayers are to be landowners (§140), it seems clear that propertyless citizens are to be excluded from a say in the legislative power. As they are ineligible to form one of the shifting majorities by which civil society imposes its will, their interests will not determine legislative action. Indeed, it seems difficult (on Locke's account) to explain what they are doing in civil society in the first place. Unlike Hobbes, who constructed his system on the justifiable fear of personal insecurity, Locke motivates his exit from the state of nature by fear of a threat to property. Those with minimal property thus have minimal reasons to exit the state of nature, and virtually no reasons to join up with one of Locke's incipient civil societies.

An advantage of Locke's system is that the focus on property rules out an attempt to use the legislative power for redistribution – this would violate the legislative power's charge to protect the property of citizens. However, this approach makes for a thin civil society, ruling over large numbers of unrepresented helots. Locke may have believed that property was so widely distributed that the propertyless class would be practically nonexistent (as Jefferson did), but the revolts of the Levellers and other populist movements in his own time ought to have convinced him otherwise.

Rousseau, Discourse on the Origin of Inequality and On the Social Contract

The concept of the general will and its interaction with individuals' private wills raises some apparent difficulties for Rousseau's political theory. The essence of a social compact is said to be the placing of the individual under the "supreme direction of the general will" (1.8).¹ However, the concept of the general will appears to be open to (at least) two interpretations – it may be a mere aggregation of private interests or an actual expression of the best interests of a people.

The origins of the general will are unclear. We are told that the true foundation of society is "the act by which a people is a people," (1.5), but this process is not given in detail. The result of this act of association, however, is a "moral and collective body" without any interests contrary to those of the people (1.6). Rousseau also says that "only the general will can direct the forces of the state according to the purposes for which it was instituted, which is the common good" (2.1), and that "the general will...always tends toward the public utility" (2.3).

Rousseau takes pains to distinguish between the general will and "the deliberations of the people," as "the populace is often tricked (2.3). We are told that "the general will is always right, but the judgment that guides it is not always enlightened....the good path it seeks must be pointed out to it" (2.6). On this account, the general will encompasses actions in the best interests of the people formed by the act of association. Sections of society can also be said to have corporate wills (2.8), which are fundamentally sectional interests.

On the other hand, Rousseau tells us that for a will to be general it need not be unanimous, but "it is necessary for all the votes to be counted," as any exclusion is a breach of generality (2.2). He also says that "what makes the will general is not so much the number of votes but the common interest that unites them" (2.4). Now we are considering actual desires, rather than abstract interests. This points to a difficulty. For the general will to be properly formed, opinion must be guided in such a way that individuals' desires more or less approximate their actual interests.

Education is clearly the path to such a state of affairs, but it is difficult to see how education could have formed private wills in this way in the state of nature. Rousseau is aware of this difficulty, but offers as a solution only an appeal to talented lawgivers: "For an emerging people to be capable of appreciating the sound maxims of politics and to follow the fundamental rules of statecraft, the effect would have to become the cause...men would be, prior to the advent of laws, what they ought to become by means of laws" (2.7).

We seem to have regressed to a pre-Machiavelli understanding of a divinely-inspired lawgiver in the mould of Lycurgus who will induce correct opinions. As a solution, Rousseau could have followed Machiavelli in deriving stability from the dynamic interaction of opposing corporate and private wills. The general will is extremely intriguing as a concept, but its application appears to be problematic owing to the ambiguity between interests and desires.

¹ All references are to "On the Social Contract".

Madison, Hamilton and Jay – The Federalist Papers

One of the most puzzling aspects of The Federalist Papers is the way in which the authors alter the definitions of core concepts in government which had received more-or-less consistent treatment in prior authors like Machiavelli, Locke and Rousseau. Madison in particular contrasts the anti-federalist focus on participatory democracy with the federalists' focus on "republican government." But Madison seems to use the word in a different sense than prior theorists. He draws an identity between republican and *representative* government (No. 39), and reaches the counterintuitive conclusion that republican stability is enhanced by great size (No. 51).

This move virtually inverts prior definitions of republics. Both Rousseau and Montesquieu had explicitly linked republican virtue to direct participation and limited size. In British politics the concept had radical, anti-monarchical connotations.¹ Perhaps as a result, none of the constitutions enacted by the 13 colonies so much as mentioned the word.² Madison and Hamilton also seem to have arrogated to their new notion of republics the concept of filtration of the popular will via indirect representation. Implicit in this concept is a quasi-aristocratic notion of a higher public good than the mere aggregation of popular wills, the possession by some of a superior talent for discerning the public good, and elite deliberation as a mechanism for achieving it. This is, to put it mildly, not what Rousseau (nor Montesquieu) meant by the label "republic".

The authors of The Federalist Papers make a similar move with the word "federalism". Proponents of the new constitution quickly began to refer to themselves as federalists, despite a distinct reduction in the federal character of the new constitution as compared with the prior Articles of Confederation. Madison explicitly acknowledges that the new constitution combines elements with a federal and national character (No. 51). Given this dual nature, it's curious that proponents of constitutional revision should have labelled themselves federalists. Rousseau had held up the Swiss confederation as an example of federalism *between republics*. Hamilton and Madison's project, by contrast, envisions a federation *resulting* in a republic. Hamilton is at pains to point out that the energy and vigor required to achieve the purposes of a national government require direct sovereignty over the people of the various states, and he explicitly denies the utility of a merely federal arrangement as being an inadequate means to the end willed by all. (No. 9). If that is so, why call yourself a federalist at all?

This puzzle can possibly be resolved by reference to political context. In post-revolutionary America the public was animated by a zeal for direct democracy. The revolution had aimed to drive out excessive concentrations of executive power (monarchy). Events in the decade prior to 1788 had revealed that concentrations of legislative power were equally to be feared, but popular ideology had not yet caught up with the political problems at hand. There was thus a strong political motive for a re-branding exercise, where proponents of indirect (representative) government and national sovereignty found very persuasive reasons for cloaking themselves in the language of democratic republics and inter-governmental federations.

¹ White, Daniel E. (2006). Early Romanticism and religious dissent. Cambridge University Press

² Kramnick, Isaac (1987), The Federalist Papers, Penguin (1788), Editor's Introduction.