

ABSTRACT

Title of Document: BUREAUCRATIC DISCRETION: CITIZEN
OFFICIALS AND THE CHOICE TO RESIST

Christopher Andrew Hoffman, Doctor of
Philosophy, 2014

Directed by: Prof. C. Alford,
Department of Government and Politics

In the realm of political theory, absolutism has largely dictated the conception of bureaucratic duty. Thus the ideal has seen bureaucrats as bound to obey the dictates of the sovereign, usually seen as the body that makes law. Empirical approaches to public administration have, quite naturally, pointed out that human beings, even bureaucrats, do not merely follow orders. Yet, even if one adopts an approach that sees the problem in terms of principle and agent, the concern remains of ensuring that the sovereign controls the official. I argue that this perspective has overshadowed the republican tradition, which saw magistrates as citizens first. In other words, there is a long tradition in political theory that offers scope for officials to exercise discretion on behalf of their political communities through acts of positive resistance. Mere passivity in the form of resignation or non-compliance is sometimes insufficient. A republican conception of magistrates has long afforded these officials the capacity to act on how they see things. The need for an emphasis on this approach increases as the political community itself becomes increasingly incapable through lack of knowledge or information of acting in its own interests. In fact, it sometimes happens that officials alone possess the knowledge necessary to take action on behalf of the community. The republican tradition provides a basis for rationalizing this in

theoretical terms once we accept that all officials today are both citizens and magistrates in the traditional sense.

BUREAUCRATIC DISCRETION: CITIZEN OFFICIALS AND
THE CHOICE TO RESIST

by

Christopher Andrew Hoffman

Dissertation submitted to the Faculty of the Graduate School of the
University of Maryland, College Park, in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
2014

Advisory Committee:

Professor C. Alford, Chair
Professor C. Butterworth
Professor A. Eckstein
Professor M. Rozenblit
Professor I. Ward

TABLE OF CONTENTS

Chapter 1: Bureaucratic Discretion	1
Chapter 2: Bureaucracy in the <i>Polis</i> , Real and Imagined.....	35
Chapter 3: Bureaucracy in the <i>Res Publica</i> , Real and Imagined.....	75
Chapter 4: Modernity and Bureaucratic Servility.....	109
Chapter 5: The Discretion of Citizens as Officials.....	163
Chapter 6: Conclusion.....	199
Bibliography.....	213

Chapter 1

Bureaucratic Discretion

In the modern world, where there is a state, there is bureaucracy.¹ For more than a century, the nature of bureaucracy has been seen something somehow contrary to the nature of democracy; this has been called “the democratic paradox.”² This is basically a question of which body, the legislature or the bureaucracy, is the senior partner within the state. Legislature, as the locus of popular sovereignty and the means for expressing popular will is theoretically supreme, yet a number of issues, such as bureaucracy’s relative permanence *vis-à-vis* the legislature, or the imbalance in expertise between administrator and legislator, suggest that bureaucracy may not be responsive, or may even dominate that relationship. While conceived in terms of democracy, it is quite possible for such an imbalance to occur in other regimes as well. This is because this really is a matter of the relationship between sovereign and servant, be the sovereign legislature or king. Stated simply: is bureaucracy independent or subordinate? The normative answer to this question, which is derived from robust conceptions of sovereignty, generally insists that the bureaucracy should be subservient. Such a position has implications for the individual bureaucrat’s role.

For individual officials, particularly those of middle and lower ranks, the subordination instantiated by the relationship between bureaucracy and sovereign

¹Cf. G. Poggi, The Development of the Modern State: A Sociological Introduction, Stanford, 1978, p. 1

²See, for example, W. Choung, Control Mechanisms Over Bureaucratic Power Expansion and a Tentative Model for the Comparative Study of Bureaucracy, Temple University, dissertation, 1980, pp. 1-7; McGregor, “Great Paradox of Citizenship and Public Personnel Administration,” Public Administration Review 44 (1984), pp. 126-35; B. Karl, “The American Bureaucrat: A History of a Sheep in Wolves’ Clothing,” Public Administration Review 47 (1987), pp. 26-34

produces a tension between an official's potential exercise of private morality and his institutional or functional obligation to carry out the instructions of legitimate superiors. It has long been recognized, however, that this surrender of personal will has its own consequences: it can lead to the claim that one is but a cog in a giant machine, implying that the lowly official has no moral responsibility for his role in implementing decisions of higher authorities, who ostensibly bear the responsibility.³ Instituting specific regulations and instructions to make explicit in legal form the ethical obligations of individual public servants is one method of addressing this problem. This approach, however, only serves to make more complete the subordination of individual will within the bureaucratic context, as it relies upon and confirms a principle of subordination in order to create within the public servant a thoughtless habituation grounded in fear of punishment rather than a capacity for discernment and judgment on the basis of any particular or coherent moral system. Formal law, after all, is a means for minimizing an official's discretion, which, to some extent, is the crux of the matter. Moreover, there is something dubious about regulation as an ethical method because ethics by rule or rote is really a kind of non-ethics, or it is the appearance without the substance. For ethical practice itself is built

³This essentially is Weber's formulation: "When, despite the arguments advanced by an official, his superior insists on the execution of an instruction which the official regards as mistaken, the official's honour consists in being able to carry out that instruction, on the *responsibility* of the man issuing it, conscientiously and precisely in the same way as if it corresponded to his own convictions." (emphasis in original) "The Profession and Vocation of Politics" in P. Lassman and R. Speirs, Weber: Political Writings, CTHPT, Cambridge, 2010 [1994], pp. 309-69, quotation at pp. 330-1 Cf. Schumpeter's comments on the relationship between a citizen's "effective will" and responsibility. J. Schumpeter, Capitalism, Socialism, and Democracy, New York, 1976 [1942], pp. 261-2.

upon thought and judgment, not habit and fear. Regulation is the opposite. It is itself a means to subordinate the official to higher authority.

Until relatively recent times, political theory has not devoted much energy to bureaucracy itself or the ethics of individual officials. Indeed, the views that have shaped and continue to inform the ideology of the subordinated bureaucrat as servant, have tended to downplay or disregard the role of an individual's morality in deciding whether or not to execute policy. Classical theory did not address bureaucracy explicitly even though Athenians and Romans had public officials and bureaucracies; its focus was more on the power of the state given the condition of ambitious men in the service of the good life.⁴ When the ethical actions of political agents within the government come in for discussion, Plato, Aristotle, and Cicero focused on the characters and behaviors of the elite, not generally, and certainly not systematically, on subordinates whose task was to carry out the will of their masters: the lowly underling was not an ethical agent as his master's judgment was what mattered. Modern and contemporary political theory, when contemplating the role of officials, often focuses on those of the highest rank and their subordination, collectively or individually to the sovereign, be it the prince, the legislature, or the people. At every step, the concerns range from depoliticizing administration, to limiting bureaucratic discretion, to increasing the principle of rationality. Awareness that bureaucracy may compete with the sovereign for power suggests the importance of ensuring a proper

⁴Obviously, it matters a great deal what period of time is being considered. The Athens of Pericles had public slaves, but not a fully developed system of administration comparable in scale or complexity to what existed in the Rome of Constantine. But these distinctions are not important for present purposes. Ancient bureaucracy will be addressed in Chapters 2 (Athens) and 3 (Rome).

relationship between sovereign master and bureaucratic servant, but frequently modern political theory has not weighed the ethical choices or discretion of lower or middle ranking officials.⁵ It is important to note that the generalizations made so far concern normative political theory, not the kind of empirically informed approaches that has come to the fore in fields such as public administration or sociology.

Weber, of course, is something of an *éminence grise* in the literature. Whether one endorses his idealized conception of bureaucracy or opposes it, his approach overshadows much of the literature on bureaucracy in the modern state. Empirically motivated, sociologists, for example, have argued against Weber's ideal by offering up the behaviors of flesh-and-blood bureaucracies; and it has been relatively easy to make the case that officials are not simply mindless robots, dutifully carrying out orders to the letter. Actual human beings, after all, are variable, mostly unpredictable, and far from mechanistic.⁶ But it is worth stressing the distance between political theory and sociology. The former is normative, the latter, ostensibly scientific. Thus, sociological scholarship's normative commitment is to observation, that is, the avoidance of an overt display of values in its analysis: it aims to describe behaviors, not ethics. In public administration, which has laid claim to science as a model, empiricism has similarly become the dominant method. Some have drawn on economic theories of principal and agent as a framework for

⁵Protestant thinkers of the 16th century are a notable exception in that they made the case strongly for magisterial independence. R. Benert, Inferior Magistrates in Sixteenth-Century Political and Legal Thought, U. of Minn., dissertation, 1967; J. Franklin, ed., Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, & Mornay, New York, 1969

⁶If it were otherwise, rational choice would be far more effective than it is at explaining voter behavior. B. Caplan, The Myth of the Rational Voter, Princeton, 2007

explaining the actions of officials.⁷ Others have collated measures of various sorts to test bureaucratic responsiveness.⁸ Even these and similar approaches, while all aimed at formulating and testing hypotheses about the real world, or gathering data about actual human beings, nonetheless quite frequently display a debt to Weber: fundamentally, they often either seek to disprove Weber's ideal concept, or test its validity.⁹ In this way, he continues to cast a long shadow over subsequent students of bureaucracy.

While the present study fits within the tradition of those scholars who have written about the ethical behavior of officials, its contribution consists in its focus on the basis provided by political theory for the exercise of discretion by mid- and lower-ranked officials using moral systems external to the institutions where they find themselves. That is, individual citizens serving the public as members of the bureaucracy need not check their status as citizens at the door once they become public servants. The aim, however, is not to prescribe the content of that morality or declare what particular conceptions of right should sway an official's actions, but rather to argue that, whatever the content, individual morality can serve to temper pressures to conform and serve: an official cannot be a mere instrument of authority, even legitimate authority.¹⁰ This is a normative argument grounded in traditional views about magistrates, not a set of hypotheses designed to explain observed official

⁷For example, W. Niskanen, Bureaucracy and Representative Government, New Brunswick, 2007 [1971]

⁸B. Wood and R. Waterman, "The Dynamics of Political Control of the Bureaucracy," American Political Science Review 85.3 (Sep., 1991), pp. 801-28

⁹See, for example, A. Gouldner's Patterns of Industrial Bureaucracy, New York, 1964 [1954]

¹⁰Cf. Rousseau's concept of *volonté de corps*, Ch. 4, *infra*.

behavior, and it posits that the beneficial role of individual ethics rests on two principles: first, the importance of the official's status as a citizen and his connection to his fellows within a political community; second, the centrality of individual thought and judgment to the application of personal morality in specific circumstances.

Ancient political theory and practice draws our attention to a role for ethics within a political context that took as a given the individual's relation to others, that is, the condition of plurality. The social nature of the political community leaves an individual not unbound, but tied specifically to his community. Ethics and duties are social. This emphasis on the individual actor as a person linked reciprocally to those around him stands partly in contrast with the modern condition where these bonds are frequently broken or mitigated, partly as a reminder of the important role that social connection plays in mediating, expressing, and reifying ethical conduct.¹¹ Modern theorists, Machiavelli, most famously, have despaired of thinking about the moral content that ought to motivate men in a polity, gradually segregating ethics from politics because, perhaps, of the inability to define morality; speaking in broadest terms, modern theory has focused on power and authority in conceiving political relations, first among individual leading men, later among institutions.¹² Seeing officials as moral agents in the manner advanced here represents a devolution of the ethical dimensions of sovereignty to those middle and low ranking functionaries

¹¹Cf. B. Constant's analysis of the difference between ancient and modern liberty. "The Liberty of the Ancients Compared with that of the Moderns," in B. Fontana, *Constant: Political Writings*, CTHPT, Cambridge, 2006 [1988], pp. 308-28

¹²Consider Rawls who posits justice as fairness *ex nihilo*, but more or less declares off limits in political discourse much of what motivates most people to have an opinion in the first place: morality. *A Theory of Justice*, Cambridge, 1999 [1971]

tasked with executing policy. On this understanding, the modern practice of delineating ethics for officials through regulatory means, because it relies upon fear of punishment, represents not true ethics, but a continuation of the ancient idea of superstition as a technique of control.¹³ This is a denial of ethics in any meaningful sense of the word as it maintains the sovereign's monopoly of moral agency. The present study is a denial of that monopoly.

Scholars of bureaucracy often cite Weber as a kind of metonym for their topic without much further explication.¹⁴ Given the broad acceptance of Weber's comments as a starting point, this is both convenient and reasonable. Yet, before considering what he says, it is useful to offer a few comments regarding the word itself and its history. Weber's purpose is to analyze bureaucracy in the value-free manner of a sociologist, but language as it is actually used is often more explicit about its value judgments. First, bureaucracy is about power. The word enters English in the 19th century as a foreign import with largely negative implications.¹⁵ On the one hand, the *Oxford English Dictionary's* earliest citation is John Stuart Mill's use in the mid-19th century; on the other, the *Historical Thesaurus of the*

¹³Superstition (*deisidaimonia*) was originally a pejorative word, indicating an excessive fear of the divine. Theophrastus presents the *locus classicus* for this in *Characteres* 16. H. Diels, *Theophrasti Characteres*, OCT, Oxford, 1909 Polybius, however, identifies superstition as a positive means of social control. *Histories* 6.56.6ff. Paton, W., trans., *Polybius: The Histories*, LCL 138, Cambridge, 1979 [1923], p. 394ff.

¹⁴But see Choung's very useful discussion of the word. See, *op. cit.*, pp. 11-3 and 38.

¹⁵The negative valence is not a modern phenomenon, *pace* W. Niskanen, *op. cit.*, p. 6; for the history and various meanings, see C. Emge, "Bürokratisierung," *Kölner Zeitschrift für Soziologie und Sozialpsychologie* (1950-1), pp. 179-95

Oxford English Dictionary dates an unattributed citation even earlier, to 1818.¹⁶ Both books make clear that the connotation was largely negative, with its emphasis on the bureaucrat's arbitrary use of power or on bureaucracy's power to obstruct. Perhaps, this reflects a particularly English conception. The *OED*'s spare definition glosses over the connotations of its citations thus: "government by *bureaux*." The *New Oxford American Dictionary*, however, defines bureaucracy in terms of the balance of power between officialdom and legislature by characterizing it as a *governmental system* in which decisions are made by "officials rather than by elected representatives."¹⁷ This emphasis on power is integral to the origin of the word itself, with the etyma, *bureau* and *cratia*, making it clear that bureaucracy is fundamentally an expression of power wielded by *bureaux*.¹⁸ Furthermore, the term suggests a realization or, perhaps, frustration with the status of administrators as an independent body of actors within a government. This is, after all, the fairly general view of many in France during the period immediately preceding the revolution and after. Indeed, the term was coined to highlight the idea that *bureaux* had replaced one man (monarchy) or the people (democracy) with their own rule. And this concern remains to this day. The comparatively recent appearance of the word means that earlier

¹⁶*Compact Edition of the Oxford English Dictionary*, Oxford, 1981, svv.. *bureaucracy* and *bureaucrat*; *Historical Thesaurus of the Oxford English Dictionary*, Oxford, 2009, sv., *office*, 3.04.07 (18) and *holder of office*, 3.04.07.01 (24). F. Riggs, "Introduction: shifting meanings of the term 'bureaucracy'," *International Social Science Journal/Revue internationale des sciences sociales* 31.4 (1979), pp. 563-84. The word makes its first recorded appearance in mid-18th century French, perhaps with Vincent de Gournay; it migrates into German towards the end of the 18th century. See F. Kluge and A. Götze, *Etymologisches Wörterbuch der deutschen Sprache*, Berlin, 1953, s.v., *büro*.

¹⁷*New Oxford American Dictionary*, New York, 2001, sv., *bureaucracy*.

¹⁸The word's polemical connotation is noted by F. Morstein-Marx in *The Administrative State*, Chicago, 1957, pp. 17-8.

writers in thinking about bureaucracies will have referred by other means to this body of officials working on behalf of the government.

Prior to the appearance of bureaucracy, theorists might speak magistrates, ministers, or officials.¹⁹ To get at the idea of officialdom itself, writers either focused rather neutrally on the collective body of officials itself, *e.g.*, administration, or the individual offices and persons who carried out the duties required of them by their position in government. Now, the French word, *administration*, does not suggest the same ideas that bureaucracy does, nor does *gouvernement*. Indeed, whereas bureaucracy evinces a sense of power, perhaps even illegitimate power, *administration* incorporates the very idea of servitude. In Classical Latin, *administratio* refers simply to the carrying out of functions without any stress on the power involved.²⁰ This relatively neutral sense, retained in English and French, sometimes requires characterization as bad or good administration to make clear a thinker's particular attitude towards a given situation.²¹ But who but ministers would carry out these tasks of *administratio*? Hence the idea of subordination that is built into the concept. The word, *minister*, originally applied to the minion of a superior, that is, someone who served as an instrument of his superior's will. The idea that administration was about subservience is paralleled elsewhere. In German, for example, the word, *Beamter*, has this idea at its origin.²² This merely serves to highlight the fact that individuals, who were part of government's administrative

¹⁹Of course, such terms continue to exist side by side with bureaucracy itself.

²⁰See, for example, *Oxford Latin Dictionary*, Oxford, 1982, *sv.*, *administratio*. To be sure, the word, *minister*, implies a power relationship, but *administratio* as an abstract noun does not directly convey this as a review of the *OLD* entry shows.

²¹Cf. H. Horwill, *Modern American Usage*, Oxford, 1946, *s.v.*, *administration*.

²²Götze, *Wörterbuch*, *s.v.*, *Amt*.

staff, were generally seen as servants. Magistrates, of course, originally were officials: free citizens of the Roman Republic with specific authorities. But this word too eventually comes to refer to officials within the government, and they too, according to Bodin, following a tradition of Roman imperial law when the offices of the Republic were vestigially retained under the empire, were subject to sovereign authority. But the interesting development here is the split between magistrates, to whose duties ancient political theory did turn its attention, and their servants whom it generally ignored. Both these categories collapsed under the Roman Empire so that Bodin, for example, could make of them servants to the sovereign.

Weber's conceptualization of bureaucracy, the one most frequently used implicitly or explicitly as modern scholarship's starting point, is most fully stated in *Economy and Society*.²³ Consciously using modern bureaucracy as an ideal type against which others are compared,²⁴ Weber emphasizes several features as the marks of true bureaucracy, variously described as the "institutional-legal," "rational-legal,"

²³G. Roth and C. Wittich, edd., *Economy and Society*, Berkeley, 1978, v. 2, Ch. 11. Weber writes of bureaucracy elsewhere. See, for example, "Parliament and Government in Germany under a New Political Order" and "The Profession and Vocation of Politics" in Lassman, *op. cit.* Weber is so well-known that scholars often glibly refer to his model. Cf. J. Huber and C. Shipan, *Deliberative Discretion?*, Cambridge, 2002, pp. 17-8.

²⁴On this method, see Aron's discussion of Weber's methodology in R. Aron, *Les étapes de la pensée sociologique*, Paris, 1967, p. 511ff. He notes the problem with extracting a type from historical sources and then reapplying it to history. But it is more interesting to note that Aron does not point out the methodological incongruity between the use of history to say something about past human behavior and the modern practice of turning to mathematics for contemporary sociological analysis. At some level, these are incompatible methods, yet generalizations for comparison emerge all the same.

or “formal-legal” model.²⁵ Accordingly, Weber identifies the following criteria for bureaucracy: 1) abstract law; 2) consistency; 3) hierarchy; 4) impersonality; 5) specification of competence; 6) salaries; 7) writing; 8) career; 9) discipline; 10) expertise; and 11) formalism.²⁶ In sum, Weber says, bureaucracy is “fundamentally domination through knowledge.”²⁷

Weber’s use of the modern condition, characterized above all by the fact of capitalism, to put forward an ideal type urges upon him a distinction between the modern, rational-legal bureaucratic system, and its historical antecedents.²⁸ The relationship between the modern economy and bureaucracy is so central to his approach that he as at pains to explain, or explain away, ancient bureaucracies, such as the Egyptian, which he was forced to concede, however reluctantly, was nearly bureaucratic.²⁹ Elsewhere, he introduces the idea of patrimonialism as a category for classifying earlier systems as other than modern.³⁰ This typology emphasizes the role

²⁵On Weber’s use of the modern system as a point of comparison, see, Economy, p. 217. For “institutional legal,” see J. Dobel, Bureaucratic Integrity, Baltimore, 1999, p. 10; “rational legal,” see Suleiman, *op. cit.*, p. 27; “formal legal,” see J. Burke, Bureaucratic Responsibility, Baltimore, 1986, p. 10. Of course, “rational-legal” is Weber’s own formulation.

²⁶Economy, pp. 217-26. Identifying a number of these features with bureaucracy is not unique to Weber. Although he might have, Weber does not cite Mill on the topic, but in his discussion of the political executive the latter’s exposition of how the civil service ought to function anticipates much of Weber. Considerations on Representative Government, Chicago, 1962, Ch. 14, p. 259ff. Weber does reference Mill in his essay, “Between Two Laws,” in Writings, pp. 78-9.

²⁷Economy, pp. 227 and 956ff.

²⁸Economy, p. 964.

²⁹*ibid.*

³⁰By arguing that bureaucracy existed and grew as a strategy to bolster central authority, Strayer implicitly sees bureaucracy differently than Weber. J. Strayer, On the Medieval Origins of the Modern State, Princeton, 2005. While Weber emphasizes the role of technology and economy in the rise of bureaucracy, Strayer emphasizes the monarchy’s competition with rival estates.

of sociologically private relations in earlier administrative arrangements, unlike modern, rational-legal systems that are marked by impersonality and formality.³¹ Thus, the modern official surrenders his will to legitimate authority (sovereignty) as a matter of political duty or mere professionalism, while his earlier analogue, to the extent that he actually did what he was told, performed his duty because of a social relationship with his superior. One might paraphrase by saying that under traditional systems, officialdom was an organization of clients serving patrons: "...the position of the official derives from his purely personal submission to the ruler.... it is rather a servant's loyalty based on a strictly personal relationship to the ruler and an obligation of fealty...."³²

Whatever Weber's theoretical limitations, he was quite correct to emphasize the modern problem of bureaucratic subordination. At any rate, Weber's typology is a useful point of departure, although not all of his criteria are necessary to thinking about bureaucracy as a problem of political theory. To know a bureaucracy, one need only recognize that it is an organization of people built on the principle of hierarchy and oriented towards the execution of governmental tasks to be carried out by officials whose duty it is to perform them. Obviously, corporations and other bodies can have bureaucracies, but the interest here are bureaucracies that reify for most citizens the world over their government. After all, where the sovereign cannot be

³¹Economy, p. 1028-31. Curiously, Weber characterizes the administration of Ptolemaic Egypt as a "coincidence of bureaucracy and natural economy" only later to insist that the Egyptian system too is patrimonial, functioning, even at this late date, as the "royal oikos." *op. cit.*, p. 964 and 1047.

³²*op. cit.*, pp. 1030-1. And yet, once the nation seizes the throne, the notion of democratic control, despite concepts of meritocracy and professionalism, still demands the loyalty due the "royal oikos."

everywhere at once, he must depend upon officials to carry out his will. Organized in a body, these officials are bureaucracy, however nascent or inchoate by modern standards. Whether an official's obligations are personal or legal makes little difference as in either case he is theoretically bound to fulfill duties imposed on him by someone else.³³ In other words, bureaucracy's operative principle, modern or not, is servility, that is, service to a master. To be sure, this notion has been challenged in various ways. Sociologists, with Weber specifically in mind, have shown that bureaucracy in practice does not faithfully adhere to a mechanistic ideal. Gouldner, for example, in his study of bureaucratic control at an American gypsum plant, showed that bureaucracy actually runs into all kinds of trouble when workers are unwilling to follow procedures deemed inappropriate to their circumstances.³⁴ Burns in his examination of Scotland's post-war electronics industry reported that non-technical factors such as status or "turf" could affect a company's ability to operate according to purely hierarchical methods.³⁵ Political scientists too have also taken their crack at Weber's ideal type. Warwick examined how US State Department officials could undermine and undo programs introduced by their superiors.³⁶ Zegart emphasized the lack of legislative incentives to oversee an intelligence community that succeeds in getting perhaps too much of what it wants.³⁷ Carpenter traced the

³³The sovereign may be unbound, but the official in theory was not. On the theory of the sovereign *legibus solutus*, see J. Elstain, Sovereignty: God, State, and Self, New York, 2008, pp. 61-2.

³⁴Gouldner, *op. cit.*

³⁵T. Burns, The Management of Innovation, Oxford, 1961

³⁶D. Warwick, A Theory of Public Bureaucracy: Politics, Personality, and Organization in the State Department, Cambridge, 1979.

³⁷A. Zegart, Flawed by Design: The Evolution of the CIA, JCS, and NSC, Stanford, 1999, and Eyes on Spies, Stanford, 2010.

historical development of bureaucratic independence as the result of a variety of factors, including the recruitment of the citizenry over and against the legislature.³⁸ From a different perspective, Kingsley argued that bureaucrats in the United Kingdom reflected their masters, not because of Weberian duty, but because they were drawn from the same social strata.³⁹ Niskanen, taking economics as a reference, argued that bureaucrats engage in rational choice and strive for utility maximization.⁴⁰ It turns out, unsurprisingly, that the real world is more complex and varied than the ideal. Nevertheless, while these and other approaches do say something of value about how bureaucracy is actually practiced, each simply reflects a particular focus whether it be the relation between official and superior or bureaucracy and overseer, and, in the end, they do not invalidate Weber as a useful starting point. Indeed, only a rational choice theorist could fault Weber for not being one as well. To some extent, these studies of actual practice are interesting precisely because they use Weber as a basis of comparison. Without the Weberian type, their results might simply be puzzling and solipsistic. Therefore, it is worth stressing that Weber animates the literature, attesting to the value of what he proposed, whether as an object of criticism or a basis of understanding.⁴¹ Furthermore, to argue that Weber's basic points were invalidated by actual practice would be akin to suggesting that the ideal democracy loses its value, the less it resembles actual democracies.⁴² Clearly the *communis*

³⁸D. Carpenter, The Forging of Bureaucratic Autonomy, Princeton, 2001.

³⁹J. Kingsley, Representative Bureaucracy: An Interpretation of the British Civil Service, Yellow Springs, 1944.

⁴⁰Niskanen, *op. cit.*

⁴¹This is the Bakhtinian dialogic at work.

⁴²Indeed, for all the emphasis Bauman places on the centrality of the German bureaucracy to the holocaust, one would expect that it too functioned imperfectly. Z.

opinio, evident to even the casual observer of scholarship in *actual practice*, is that Weber got something right in his articulation, and the investigation of actual practice is interesting precisely because it differs from the ideal.⁴³ For the present purpose the basic implication of Weber's ideal, subordination organized for the accomplishment of tasks defined by an authority, will do.⁴⁴ This means that servility is a bureaucratic virtue.

Calling servility a bureaucratic virtue may at first glance appear objectionable. In particular, the modern West with its emphasis on equality and liberty would suggest an explicit opposition to the notion of slavishness within its officials.⁴⁵ But

Bauman, *Modernity and the Holocaust*, Ithaca, 1991. The incommensurability problem that exists in using the real to invalidate the ideal will be taken up below.

⁴³To the extent that bureaucracies have an initial moment, it is clear that they take on a life of their own and remain fundamentally undesigned. They respond to and interact with their environments. This is one of the points made by Burns. Thus, if even the founding moment represents an ideal from the perspective of the founder, it is clear that with the passage of time practice and circumstance will produce an unintended kind of organization, one that is not ideal by the standard of its originator.

⁴⁴At one level, much modern scholarship, with its reliance on quantitative analysis, is incommensurable with Weber's approach. It is not as though the sociological statements of Weber or others of his genre could be subject to falsification in the manner that Popper finds to be the hallmark of true science: the laws of human behavior remain to be discovered.

⁴⁵Cf. the opposition between the principles of a democratic society and bureaucratic duty discussed in K. Denhardt, "The Management of Ideals: A Political Perspective on Ethics," *Public Administration Review*, 49.2 (1989), pp. 187-93. J. Worthy argued this very point in *Big Business and Free Men*, New York, 1959. He is perhaps the most blunt exponent of what seems a *Zeitgeist* of the 1950s, namely, a desire to argue for individuals in the face of collectivities. This is no accident in the context of the Cold War. Cf. Stahl's observation that "[t]he government employee's democratic impulses can hardly be strengthened if undemocratic practices govern his life...." O. Stahl, "Democracy and Public Employee Morality," *Annals of the Academy of Political and Social Science* 297 (Jan., 1955), pp. 90-7, quotation at p. 95a. In fiction, the protagonist of *The Shrinking Man* (1956), Scott Carey, simply wonders as he heads towards oblivion: "Was he a separate, meaningful person; was he an individual? Did he matter? Was it enough just to survive?" R. Matheson, *The*

this is perhaps only because it too bluntly states what, in fact, is required by a bureaucratic hierarchy. The very idea, frequently put forth, that the legislature should wield the bureaucracy as an instrument of its will suggests as much. Otherwise the idea of a paradox between bureaucratic independence and legislative authority has no meaning: the concern is to rein in bureaucracy for the faithful execution of what the legislature as the people's representative decides. Linguistically speaking, this aspect was not always so hidden or troubling. In the late Roman empire, the bureaucracy was often referred to as *militia*, a military service. The word, *service*, itself is cognate with the Latin word for slave, *servus*. It is only over time that the implicit idea of slavery or slavishness has been masked in practice; it lingers all the same. Citizens mostly want their public servants to carry out policy as directed, not according to their individual whims, no matter how problematic this might be.⁴⁶ That modern states no longer rely upon slaves or freedmen to staff government represents a social change of great importance, but the principle not only survives, it is a necessary condition, however etiolated, to the function of bureaucracy.

This principle of servility exists in tension with two related aspects of bureaucracy, delegation and discretion. It is not necessary to enter into the legal aspects of delegation in the sense of what a legislature can or cannot delegate to the executive within the context of separation of powers, usually expressed as the

Shrinking Man, in G. Wolfe, ed., *American Science Fiction: Four Novels 1953-1956*, *Library of America*, New York, 2012, p. 634

⁴⁶“I insist on subservience,” writes Finer. His article about administrative responsibility is filled with the language of mastery and subservience. H. Finer, “Administrative Responsibility in Democratic Government,” *Public Administration Review* 1.4 (1941), pp. 335-50, quotation from p. 339b.

principle of non-delegation.⁴⁷ It is enough to acknowledge that the very idea that the sovereign or legislature decides and the administration executes entails an act of delegation, this is the basic idea that a principal assigns tasks to a subordinate agent. Bureaucrats thus tasked are fiduciaries with an obligation to fulfill the tasks assigned to them as explicitly directed either by the superior assigning the task or according to abstract standards whether articulated by rules and regulations, oaths, community standards, or other means. In essence, the principal cannot be everywhere at once and cannot perform all tasks himself.⁴⁸ Therefore, if he is sovereign, he turns to his government; if he is a senior official, he turns to a staff of subordinates, assigning them what he cannot carry out by himself. In the execution of these tasks, officials may or may not exercise their discretion. The degree of discretion employed doubtless relates to the level of detail contained in the instructions describing the task. Yet in the Weberian conception, the ideal official or staffer, who advises before the decision is made, carries out his superior's will with as much conviction as if the course of action were the result of his own decision.⁴⁹ He becomes a pure instrument of the superior's will. Although discretion must, as a practical matter, enter into the

⁴⁷This doctrine finds a historical origin in Roman law, but its political source for American jurisprudence is Locke. H. Ehmke, “*Delegata Potestas Non Potest Delegari*: A Maxim of American Constitutional Law,” Cornell Law Quarterly 47 (1961-2), pp. 50-60; *Mistretta v. United States*, 488 US 361, where the Supreme Court held that the legislature's delegation is subject to the “intelligible principle” test, meaning that the legislature must provide a minimum of guidance for the executor of delegated authority (p. 372ff.); A. Ziaja, “Hot Oil and Hot Air: The Development of the Nondelegation Doctrine through the New Deal, A History 1813-1944,” Hastings Con. Law Quarterly 35 (2008), p. 921ff..

⁴⁸Principal in the present context is not meant to imply the sense used in principal-agent theory as derived from economic analysis of the firm. K. Eisenhardt, “Agency Theory: An Assessment and Review,” Academy of Management Review 14.1 (1989), pp. 57-74.

⁴⁹See, fn. 3, *supra*.

execution of any policy, the ideal takes the principal to be the one exercising discretion, the subordinate serving as his instrument. This is why the principal, according to Weber, has the responsibility: it is he who must answer, not the subordinate. Now, the real world discretion of officials poses a problem precisely because it can result in choice wrongly exercised. When officials use discretion for their own ends, this is often seen as corruption. But one need not focus on corruption for the moment: rather, it is worth noting that acts of misused discretion may be addressed by social, *i.e.*, personal, means in those organizations identified by Weber as pre-bureaucratic, or legally and impersonally in those identified as rational-legal.⁵⁰ Both cases reaffirm the principle of subordination within the hierarchy.

Appropriateness is judged on the basis of acts in relation to delegated authority: one may not do other than what is authorized. The principle of servility is reinforced, and it is integral to the assumed operation of bureaucracy, whether as generally conceived or as posited by theorists concerned about legislative control in democracies.⁵¹

Indeed, the desire for the perfectly reliable performance of tasks finds its day-to-day culmination in the use of red-light cameras, which automatically, meaning without any discretion at all, ticket drivers who fail to stop. While in each individual case a police officer tasked with issuing tickets will, in fact, use his discretion, perhaps ticketing one driver, but letting another off with a warning, the red-light camera, which can only function on the basis of rules that are so decontextualized that they

⁵⁰On discretion as a problem, see S. Rose-Ackerman, Corruption and Government, Cambridge, 1999, pp. 39 and 62; M. Warren, "What Does Corruption Mean in a Democracy?," American Journal of Political Science 48.2 (2004), pp. 328-43.

⁵¹This is the oversight problem taken up by Zegart, for example. See also Huber and Shipan, *op. cit.*, pp. 18-22 and E. Suleiman, Dismantling Democratic States, Princeton, 2003, pp. 32-8.

allow for no mitigating factors, succeeds in eliminating completely any such messiness, ensuring that all drivers are equally subject to its ever-watchful eye. The camera is the ideal official.⁵²

The red light camera that automatically issues tickets impersonally and without discrimination is a mechanical official, who under no circumstances introduces private values into the execution of duty.⁵³ Where the human official, be he an actual slave in the ancient world, or an agent tasked with carrying out instructions faithfully and in obedience to superiors in the modern, may experience his subordination in relation to legal or social strictures, but always filtered through his own will to act, the machine is all the more faithful as a bureaucratic instrument precisely because it removes any risk that considerations exterior to the bureaucracy itself as expressed in rules might deflect the execution of policy from its generally defined and originally conceived purpose. The machine's and the bureaucracy's morality are one. The machine's subordination is organic to its nature. The human being in actual practice, no matter his bureaucratic rank or social status, always threatens to introduce personal considerations -- not to mention his level of competence and expertise -- that may contaminate his sense of duty, as a subordinate, to carry out his tasks. While this is frequently seen as a problem, the present study argues that this circumstance is a theoretical *desideratum* for bureaucratic practice

⁵²Cf. L. Winner, Autonomous Technology: Technics-out-of-Control as a Theme in Political Thought, Cambridge, 1992 [1977], pp. 20-1; W. Wallach and C. Allen, Moral Machines: Teaching Robots Right from Wrong, Oxford, 2009

⁵³Comparing kamikazes with armed drones, G. Chamayou observes, "Ce que les premiers (*sc.*, les japonais) espéraient atteindre par l'entraînement psychologique, il va s'agir pour les seconds (*sc.*, les américains) par des procédés purement techniques." "A chacun son arme: drone et kamikaze, jeu de miroirs," *Le monde diplomatique*, April 2013, p. 3.

within democracy despite the fact that bureaucratic subordination is seen as something integral to sovereignty.

But what is meant by morality, and what is its relationship to ethics? The two concepts can easily become muddled, but perhaps their relationship to each other can provide a basis for distinguishing.⁵⁴ Ethics is the specific, morality the general. On this understanding, ethics is casuistry, although not in the pejorative sense. Rather, individuals may apply morality, whatever its content, to specific cases: that application is realized as ethics.⁵⁵ Indeed, absent specific cases, morality may actually be of little relevance to anyone's life. Ethics are the practical and real expression of private, if not universal, morality within the context of a human

⁵⁴M. Midgley explicitly refrains from distinguishing morality from ethics in her article, "The Origin of Ethics." (p. 3) in P. Singer, ed., A Companion to Ethics, Oxford, 2000, pp. 3-13. Others may speak of morality without making clear the distinction between principle and practice. See, for example, S. Wolf, "Moral Saints," Journal of Philosophy, 79.8 (1982), pp. 419-39. Also, M. Quinlan, "Just Intelligence: Prolegomena to an Ethical Theory," in P. Hennessy, ed., The New Protective State: Government, Intelligence, and Terrorism, London, 2007, pp. 123-41. Quinlan, who admits to lacking specific expertise in ethics, nonetheless, is useful in showing how even in circles outside moral philosophy, the distinction between morality and ethics all but disappears.

⁵⁵Making a universalist claim about the content of morality is not only difficult, it may simply be impossible in the present day. G. Anscombe, "Modern Moral Philosophy," Philosophy 33 (1958), pp. 1-19; K. Appiah, Experiments in Ethics, Cambridge, 2008; B. Gregory, The Unintended Reformation, Cambridge, 2012, Ch. 4. Indeed, the vast number of modern approaches, many incommensurable with each other, speak to a kind of *aporia* in determining the nature of morality. In public administration scholarship, it becomes very unclear where morality, even institutional morality, ends and ethical practice begins. Consider the use of "ethics" in, for example, P. Douglas, "Improvement of Ethical Standards in the Federal Government: Problems and Proposals," Annals of the American Academy of Political and Social Science 280 (1952), pp. 149-57; P. Monypenny, "The Control of Ethical Standards in the Public Service," Annals of the American Academy of Political and Social Science 297 (1955), pp. 98-104. Nor is it enough to say that ethics is about doing the right thing. What is the right thing in a plural society which lacks a common moral language?

community. Thus, morality is to the self, what ethics are to the other. The former, inward-looking, the latter outward. This is the understanding here.

Leaving aside, then, the particular morality held by any one individual, the application of that morality to a particular case, the ethical act, implies a number of instrumental preconditions. For one must know when and how to apply a moral principle. Ethics thus presupposes the use of discernment and judgment. One must hold a conception of what the particular case is, engage oneself inwardly about its nature, and judge the application of morality to it.⁵⁶ This is what Arendt means when she speaks of thought.⁵⁷ To exercise thought requires the conscious analysis of circumstances, both as they are outside the individual and as they relate to the individual within. This is distinct from groupthink, in which the individual is suppressed by the leveling effects of the team where he plays a role, or the organization as tribe.⁵⁸ For an official within a bureaucracy, this is not merely a matter of using criteria supplied by the organization itself, but also the decision to participate in the application of those criteria. To implement those criteria without considering what it means personally for the official himself as a human being or even as a citizen within a polity where they are applied, is an act of thoughtlessness.⁵⁹

This is what Arendt had in mind when she famously and controversially judged

⁵⁶A. Applebaum, Ethics for Adversaries, Princeton, 1999, p. 219.

⁵⁷Thought has a complex role and at times a slippery meaning in Arendt's work. Yet its interiority and its relation to activity are consistent themes. The Human Condition, New York, 1959, pp. 4, 82-3, and 147-51; "Thinking and Moral Considerations: A Lecture," Social Research 38.3 (1971), pp. 417-46.

⁵⁸On the ideology of the team and its effects, see W. Whyte, The Organization Man, New York, 1956.

⁵⁹Access to information is critical to this process, and the more fragmentary the information, the more limited the capacity to exercise judgment as there may end up being little to judge. See, Winner, *op. cit.*, pp. 301-5.

Eichmann to have been a fundamentally thoughtless person.⁶⁰ This thoughtlessness, triggered in part by a modest conception of the bureaucratic self as being of insufficient rank to challenge the decisions of superiors, or, as Weber would have it, of being obliged to carry out one's tasks regardless of whatever reservations an official may have, is, in fact, a necessary component of an official's self-instrumentalization within the hierarchical strictures of bureaucracy. The

⁶⁰ Arendt has come in for a great deal of criticism for her treatment of Eichmann. But focusing on whether or not she was wrong about this or that historical detail, or whether she attended the entire trial, or sufficiently acknowledged Eichmann's agency is really to miss completely or consciously to disregard her broader and more interesting point about the importance of thought as an ethical component of bureaucratic action. For Arendt, Eichmann as a historical figure is secondary to her theoretical concerns about moral agency. After all, even accepting every criticism leveled at her reportage leaves unaddressed the philosophical and ethical importance of her analysis. Eichmann and the Holocaust, Harmondsworth, 2006; D. Cesarani, Becoming Eichmann: Rethinking the Life, Crimes, and Trial of a "Desk Murderer", Cambridge, 2004; B. Gewen, "Becoming Eichmann by David Cesarani; The Everyman of Genocide," *New York Times*, May 14, 2006. Cesarani faults Arendt for a number of reasons, including her philosophical commitments, but does not seem to see his own commitments as a problem. This also leads him to dispose of Bauman by vaguely arguing against the validity of Stanley Milgram's famous experiments, yet Bauman's argument does not hang solely on Milgram. (p. 354) Cesarani's own understanding of the role of thought within Arendt's philosophy appears rather incomplete: his various comments suggest that he understands it only in the ordinary sense of common speech. (see p. 11, for example) In other words, whatever subtlety there is in Arendt on this matter, the significance of "thoughtlessness" for her is for him boiled down to "unthinking" nearly in the sense of being careless or distracted: this misses the point, as though she meant that Eichmann just failed to notice what was happening. That is not what she means by thoughtlessness. More importantly, his approach allows him to sidestep the role of obedience in bureaucracy. To be sure, there is an important point here: the relationship between obedience and responsibility, and it seems clear that Cesarani's project is to assign responsibility. But there is an unacknowledged incompatibility of approaches: the real and the ideal. Arendt's concerns are fundamentally on the level of the ideal, Cesarani's the real. And yet, Cesarani veers into generalization himself: "Nor were the Nazis merely taking orders." (p. 355) "Every single one of them? Without exception?" one might ask. So general a proposition is impossible to make in any zealous commitment to "facts." Such a commitment leaves this question open to the investigation of each individual.

bureaucratic principle is that one's moral agency is proscribed by one's subordinate role. In this sense, private morality and private ethics theoretically have no actual place in a servile conception of bureaucracy. Morality and ethics are for superiors, or perhaps a legislature, but not for simple officials whose duty consists in the faithful implementation of policy. Again, the red-light cameras appear as a perfect technological realization of bureaucracy in that such devices are amoral and non-ethical. The ethics of the camera are the responsibility of those who determine policy, not the device that carries it out, just as Weber's superior official, when disregarding the advance of his staff, retains responsibility for decisions. But this is the level where ethics can actually take on greater significance: the lower the rank of the individual official, potentially the greater the direct impact to be had on behalf of his fellow citizens.

An important aspect of the distinction between morality and ethics arises in relation to society. Here the point is that morality remains entirely private until it becomes a source of action. And action, in an ethical sense, relates to one's condition as a member of a social group. Ethics derive their meaning in relation to another person: the other person is constitutive of the case to which morality is applied. An individual could remain moral, if he remained entirely by himself, unconnected to his fellow human beings.⁶¹ But, as Aristotle observed, human beings live in communities, or, to follow Arendt, in a condition of plurality. To put it differently, morality applied to human interaction and relationships is the substance of ethics. If morality was once divine whereas now it is merely set of abstract preferences, ethics

⁶¹This is not a reference to some hypothetical state of nature.

remains human. In this way, ethics fundamentally relates to one's connections within society. Kant urges that people should be treated as ends rather than means; ethics constitutes how that works out in individual cases. Thus, ethics are the stuff of human relations. An obvious implication is that conditions of alienation or social fragmentation undermine ethics.⁶²

Of course, when ethics are framed in these terms, being, as they are, dependent on thought as an activity within the sphere of human relations, the question naturally arises as to whether true ethics can arise from habituation. Is ethical behavior ethics?⁶³ Is ethics purely a matter of the act itself? The perspective taken here is that true ethics must involve thought. In other words, it is the result of a process internal to the individual that is evaluative, and not the product of mere habit. To be sure, the distinction between a truly ethical act and one that appears to be so may, in fact, be something that makes no difference to the outside observer, or to a political community. It may be that training individuals to behave in a particular manner, as though they were ethical by virtue of that behavior, would be sufficient, and that, indeed, is the approach taken in modern bureaucracies. Indeed, it evokes the utility of superstition that Polybius highlighted in his discussion of the Roman Republic. It is possible that an official's sincerity or understanding or intelligence may generally be of little immediate significance, but within the bureaucratic context

⁶²Cf. "It is a tragedy of moral history that the expansion of the area of the moral community has ordinarily been gained through the sacrifice of the intensity of the moral bond, or...that all men have been becoming brothers by becoming equally others." B. Nelson, The Idea of Usury: From Tribal Brotherhood to Universal Otherhood, Chicago, 1969 [1949], p. 136.

⁶³Behavior is used pointedly because of its conceptual relationship to outward appearance.

the result of this state of affairs may be the opposite: the absence of sincerity or intelligence may be very significant. This is because training individuals to behave in accordance with regulations runs into the problem of habitually applying seeing the problem in terms of learned particulars. On the one hand, habituating officials to appear ethical in their actions actually reinforces their subordination to the organization because it is the organization that itself provides the ethics. On the other hand, it fails to equip officials for the application of general principles to the particular cases that cannot be comprehended in advance by kinds of general rules as articulated in formal codes of ethics, regulations, and the like. This is the distinction that Ricks makes between education and training, where the latter prepares individuals only for specific problems, but the former provides the necessary mental equipment to think about the application of abstract principles to cases as they arise.⁶⁴ Under the conditions of bureaucracy, habituation is the problem; it certainly is not the exercise of judgment.

Habituation to rules, of course, is a standard method for ensuring ethical action in rational-legal bureaucracies. But what exactly is habituation if not a melding of ritual and superstition? Normally, ritual and superstition have mystical connotations, and, therefore, perhaps nothing to do with bureaucracy, particularly of the rational-legal type described by Weber. Yet the repetitive nature of habituation aimed at producing some good both for society at large, and particularly for the

⁶⁴His book is in many ways a tale about the bureaucratization of the American military following World War II. T. Ricks, The Generals: American Military Command from World War II to Today, New York, 2012. On the training education distinction, see Ch. 23.

bureaucratic group itself, does suggest a kind of ritual performance.⁶⁵ Every year, thousands of officials in the US government fill out forms detailing their finances. This is an ethical duty imposed upon them, but they do it, not in contemplation of the ethical principles underlying this act of self-reporting, but under threat of punishment for failure to comply. This procedure is a kind of impersonal ritual that only has the potential to take on meaning, beyond reinforcing the official's relationship to the government, if and when these forms are retrieved as part of a process that may culminate in punishment. This fear of potential punishment that lingers and pervades is superstition, and that superstition is an important component of bureaucratic control. Here superstition is meant in the utilitarian sense described by Polybius, who had argued the benefits of superstition on the grounds that it helped to control Rome's unreasoning mob.⁶⁶ For him, the ordinary masses were kept in check by this salubrious fear. In a similar fashion, bureaucratic habituation frequently relies on fear, a fear of the punishment that is promised to follow for the violation or disregard of rules.⁶⁷ Seen in this way, habituation becomes to thought what the *cliché* is to literature, a stereotyped substitute and, consequently, the antithesis of genuine and

⁶⁵Cf. M. Gluckman, Politics, Law, and Ritual in Tribal Society, New Brunswick, 2009 [1965], p. 251. Ritual is a slippery term. Gluckman distinguishes ritual and ceremonial, and he might suggest that ceremonial would be more apt here. But see R. Merton, "Bureaucratic Structure and Personality," Social Forces 18.4 (1940), pp. 560-8, esp. p. 565, and C. Goodsell, "Administration as Ritual," Public Administration Review, 49.2 (1989), pp. 161-6. Goodsell rightly observes that a negative aspect of ritual is its capacity to render bureaucrats "too docile to authority." p. 165.

⁶⁶*Histories*, 6.56.6-11 If the modern concept of sovereignty is truly a desacralized religious concept, the literal meaning of *deisidaimonia* becomes all the more fortuitous. S van Duffel, "Sovereignty as a Religious Concept," Monist 90.1 (2007), pp. 126-43.

⁶⁷Finer, *op. cit.*, pp. 335b and 341b.

meaningful ethical practice. Instead, it is a tool of subordination, a means to reinforce the official's status within an organization.

While the preceding does not represent a comprehensive tally of all the concepts that are important to the present study, they do represent a kind of explicit statement about what is understood and meant regarding particularly fundamental ideas. Of course, they will be further developed subsequently within the context of the overall argument, which, while composed of many disparate parts, culminates in the proposition that individual officials within modern bureaucracies must have space to function as independent and thoughtful moral agents.⁶⁸ At this point, some comments regarding the methods and sources will be offered. It should be admitted first that the orientation here is towards the ideal. Like much political theory, a degree of generalization is employed so that the discussion largely takes place at the level of abstractions and types even though real experiences of actual people may differ. This approach has its problems and is not satisfying to everyone, but a complete devotion to real, particular cases brings its own problems as well. It is important, however, to acknowledge this state of affairs at the outset because it seems often that those who are concerned with the real may criticize others who emphasize the ideal under the false impression that an assessment of claims about the ideal somehow operates under the same criteria of evaluation that would apply to claims about the real.⁶⁹ This is not true. While the real might be subject to falsification, the

⁶⁸This echoes the concept of jury nullification in American law or civil disobedience in political theory.

⁶⁹Cesarani's reaction to Arendt represents a failure or a refusal to read her as an idealist: in many respects they are talking past each other. See fn. 60, *supra*.

ideal operates according to the criteria of persuasion or utility in the sense of having explanatory power. In other words, it is assessed on its merits as satisfying narrative. The ideal simplifies where the real finds complexity. Thus, ideal types only work to the extent that they offer some insight or help, but they are not subject to falsification in any meaningful sense of the term: general statements about man or society could never survive such a standard as the particular always defeats them. Of course, even the empirical approach engages in simplification: the alternative is to acknowledge that nothing is truly identical with anything else, which would allow for no generalizations at all: the real world, in fact, is excessively complex. At any rate, this is not a science, nor does it pretend to be.⁷⁰ This approach is eclectic, but primarily grounded political theory. Among the ancients, Plato, Aristotle, and Cicero will figure prominently. Polybius, who has not always received his due as a political thinker in his own right, will be used for his ideas about superstition.⁷¹ Modern and contemporary thinking about bureaucracy and officials presents an interesting situation because, as empiricism has come into its own, addressing these issues has undergone to some extent a division of labor. Thus, while Machiavelli, Bodin, Montesquieu, Hobbes, Rousseau, Hegel, Constant, and Mill, for example, address in various ways how bureaucracies should function or how officials should behave in relation to the sovereign, the more one wishes to engage modern thinkers about

Winner's comments on criticisms of Ellul argument about *la technique* echoes this point. *op. cit.*, pp. 64-5

⁷⁰ A. Gouldner, "Industrial Sociology: Status and Prospects: Discussion," American Sociological Review, 13.4 (1948), pp. 396-400.

⁷¹ Eckstein's work is a refreshing exposition of Polybius as an international relations theorist. A. Eckstein, Mediterranean Anarchy, Interstate War, and the Rise of Rome, Berkeley, 2009.

bureaucracy, the more one feels compelled to draw on a range of scholarship that includes political theory, comparative politics, public administration, management, sociology, law, ethics, or philosophy. A number of these disciplines have only come into being fairly recently. This means that using modern scholarship to think about bureaucracy invites a kind of eclecticism that would not have existed with earlier thinkers. In the present case, then, modern scholarship that helps to advance or illustrate the argument is used whatever its formal discipline. For example, J. Wilson is a professor of management;⁷² Tilly, of comparative politics;⁷³ MacIntyre, of philosophy;⁷⁴ Gouldner, of sociology. They all contribute to the issues raised here. Moreover, although this is not a history of bureaucracy, history plays a subordinate role, serving to illustrate issues in concrete terms where appropriate, particularly when providing context for the ancient world. Thus, while the orientation is towards political theory, the infrastructure is more diverse.

The argument itself unfolds as follows. Chapter 2 focuses on the Greek thought about officials and their duties, particularly in light of conditions in Classical Athens. Chapter 3 engages in the same exercise, but from the perspective of Classical Rome. Several claims will be made. First, classical political thought does not specifically conceive of a bureaucracy, but does address the role of magistrates, who, in many ways, were government's senior officials. It is taken for granted these generally are social elites, although it must be acknowledged that this is not an absolute rule, especially at Athens where the democracy left posts open to all

⁷²J. Wilson, Bureaucracy: What Government Agencies Do and Why They Do It, New York, 1991.

⁷³C. Tilly, Coercion, Capital, and European States, New York, 1992

⁷⁴A. MacIntyre, After Virtue, Notre Dame, 2003 [1981].

citizens.⁷⁵ These citizens are the political actors of the ancient world, and their subordinates do not much enter into discussions about how, for example, political policy ought to be carried out in deontological terms. These are individuals who bear responsibility and are seen as moral actors within government. The reason for this, and this is the second claim, is because those who were subordinate to these magistrates were frequently conceived as either free dependents or slaves outright. And, when the state employed staff directly, they were frequently public slaves. History, of course, records significant exceptions to this claim. Many officials of the Roman empire, for example, were not slaves. But, at least in theory, imperial officials were subordinate to the sovereign or *dominus* as the source and arbiter of policy, as their master. Whether or not individuals in actual practice were faithful is immaterial just as practice in a variety of domains is not always consonant with theory. After all, the ability of the sovereign to monitor the fidelity of distant officials was seriously hampered by the level of technology: in practice, such officials would have enjoyed great discretion. At any rate, the point to bear in mind is that the focus on magistrates takes for granted servants, an assumption that has carried over into later conceptions of bureaucracy despite the fact that in the modern period those servants have, in fact, become full citizens themselves, each sharing in the sovereignty once enjoyed exclusively by monarchs. Finally, the third claim is that man's condition as the member of a community bears directly on the ancient concept of ethics. Ethical duty is substantiated by the social condition of reciprocity. What

⁷⁵ Athens and Rome are quite distinct from each other, yet there is a continuity to ancient political theory that allows one to synthesize the Greek and Roman worlds in this context.

one owes and what one deserves turns on one's social standing and his horizontal and vertical relations. In a world where an official could turn to clients, or slaves, or friends for the execution of his duties, the relative status of the individuals involved would have a bearing on their reliability.

Chapter 4 examines bureaucracy and officials in modern and contemporary thought. The central theme here is the formal importance of sovereignty to conceptions of bureaucratic subordination and the resulting attenuation of official discretion. This is most simply expressed in Weber's ideal formulation of the rational-legal bureaucracy, which calls for the official to do the bidding of the superior, but the problem of how to get magistrates to act for the community surfaces as early as Machiavelli. It is, however, with Bodin that a full statement of sovereignty and its implications for the administration finds expression. Sovereignty, whether of the one, the few, or the mass, is developed as an expression of power outside of law to which officials are subordinate. Officialdom, which is sometimes socially, sometimes legally subordinate, becomes something other than the citizen body. Once the people as nation supplanted the monarch, the tradition simply supported the people's authority: Rousseau pointed the way towards an even more exactly control of the people's government, but Saint-Just, who saw that there was a contradiction between the nature of the citizen and the nature of the subordinate official, argued that bureaucrats were apart from the polity and in need of control through law and institutions.⁷⁶ Furthermore, this is a period that witnesses a

⁷⁶ Perhaps the idea of *ressentiment* explored by Nietzsche is at work in this movement. K. Ansell-Pearson, ed., On the Genealogy of Morality, CTHPT, Cambridge, 2004 [1994]

transition from the social to the legal as a means of control of the administration. Whereas for Machiavelli officials are subordinate in social terms to the prince, who selects them as dependents, modern thinkers see this subordination as a consequence of institutional arrangement and law. This represents an abstraction and reification in legal terms of formerly social subordination. But where law and institutions only provide part of the key to bureaucracy's subordination, the idea that administration itself concerns the impersonal discovery and tallying of facts suggest that the ideal official is a kind of scientist, merely giving expression to the public will in the context of objective reality. Discretion transforms into impartial rationality and loses its dangerous aspect. But this very aspect, the disparity of knowledge between sovereign and servant and the development of corporate interest (Rousseau's *volunté de corps*) potentially at odds with that of the polity remains a problem for a democratic regime. This is all the more threatening wherever the sovereign's capacity to exercise oversight, that is, control over the bureaucracy, diminishes. A bureaucratic other, separate from society and inadequately subject to the sovereign's will, which is the basis for the legal-rational ideal, raises serious problems for the society it ostensibly serves. And here official discretion can help.

Chapter 5 argues for the positive role of discretion, informed by an official's private morality. This represents a devolution of the classical ideas about moral agency among the elite down to the low ranking individuals who today constitute the staffs. Political theory about the *polis*, *res publica*, or *reppublica*, was only concerned with leaders, not lowly individuals tasked with carrying out their decisions. Yet, in the modern era, all are citizens: morally and politically equal. This suggests

that officials, particularly in a democracy, must be seen in the same way as magistrates. Chapter 5 also engages the traditional thinking about magisterial dissent on the basis higher law as articulated by 16th century protestant theorists, who went as far as to argue that magistrates by virtue of their public role were bound to act on behalf of their communities. Moving beyond those arguments, the present study foregrounds the role of officials as citizens, not as impersonal others within society, by arguing that they do not cease to become citizens simply by assuming a particular role within governmental hierarchy. The independence advocated here also serves as a positive, internal check on the public will, which, if conceived strictly as the sovereign, can lead to tyrannical policies, particularly in a mass society. Whereas Rousseau saw this as a corporate activity, the argument here is that individuals themselves are in the position to know and to act. There is room for abuse, and one can easily object that this opens the door for rampant corruption or, as Bodin suggested, chaos and anarchy. Possibly. But it is important to examine the slippery nature of corruption, and the way that it draws meaning from communal values. Corruption is what a given polity makes of it, not an objective reality. What is useful for this analysis is the ways that corruption reflects the social connection or social embeddedness of officials, and here an important distinction is made with kleptocracy, which represents a crucial shift of duty away from communities and towards the self.⁷⁷ This latter phenomenon proves to be more serious in terms of ethical conduct because it represents a denial of reciprocity that lies at the heart of true ethics. But there is no conception of discretion that eliminates risk. Saint-Just

⁷⁷ A concept borrowed from K. Polanyi, The Great Transformation: The Political and Economic Origins of Our Time, Boston, 2001.

saw this problem and conceived of a machinelike structure of laws to address it. Yet there is a limit to rules, and if the official is the living law as he goes about his business, he must have the discretion to fit generals to particulars and to decide, in the first place, whether or not a given act is the right thing to do. This is what the citizen-official does. In a sense, the tension between Chs. 4 and 5 represents a reconsideration of the famous debate between C. Friedrich and H. Finer about official responsibility.⁷⁸ On the one hand, Friedrich felt that professional ethos would serve as a check on discretion; on the other hand, Finer argued that the bureaucrat must be answerable to an authority outside himself. An internal sense was insufficient. Where this study differs in its consideration of this problem is in resuscitating a tradition in political theory that has been displaced by absolutist ideas about sovereignty. Citizen-magistrates are particularly well placed to counter negative tendencies within bureaucracy, should they choose to. Ironically, although he was not a theorist of democracy, Rousseau saw this as well.

⁷⁸C. Friedrich, "Public Policy and the Nature of Administrative Responsibility," Public Policy 1 (1940), pp. 3-24; H. Finer, "Administrative Responsibility in Democratic Government," Public Administration Review 1.4 (1941), pp. 335-50

Chapter 2

Bureaucracy in the *Polis*, Real and Imagined

Traditionally, bureaucracy is not a philosophical concern. More precisely, much Western political theory has tended to think indirectly, latently, haphazardly, or inadvertently about how the state is organized for the implementation of policy. Greek and Roman theorists, such as Plato, Aristotle, or Cicero, for example, although they were interested in law and institutional arrangements, did not directly address the way a government is staffed and made to function for the delivery of services, however limited those services may have been in the ancient world. In short, they did not anticipate public administration. Thus, while they do think about institutions and magistracies, and, it could be argued, even write about office as an abstract position independent of the office holder, they do not generally acknowledge the existence and role of subordinate staffs, tasked with carrying out the instructions of citizens office-holders. To some extent this is understandable: the decisions and acts of magistrates – men of their own social *milieu* – mattered to them; how the underlings, be they slaves or mere social inferiors, would have done their bidding, was something assumed and natural. Moreover, what underlings did was act on the decisions of superiors who wielded real power. In addition, their theories – it is a common place to say so – recapitulated their own social outlook, which took for granted a society animated by dependency among unequals, reciprocity among equals. This does, however, not mean that the ancients have nothing to say about bureaucracy. Indeed, ancient political theory has significant implications about bureaucracy, whether that of the *polis* or the republic. In brief, when speaking of

Greek and Roman political theory, agency and duty are conceptualized at the level of the magistrate, the political actor, who for the execution of his will could turn either to his social network of peers or to his subordinates whose labor he owned or rented. This is key for understanding the implications of the classical view for bureaucratic theory because the idea of staffs as subordinates bound to serve the responsible master persists to the modern period. It is worth acknowledging too that modern theory has long labored under the idea of the simple *polis* or *respublica*.⁷⁹ At any rate, the point is that moral agency within a regime is traditionally seen in terms of the citizen as magistrate or office-holder, not the staffs engaged in the drudgery of quotidian governmental activity, not that such staffs did not exist.

Ancient states of any size often relied upon officials to carry out the government's administrative tasks. The Athens of Plato and Aristotle, for example, despite being undeveloped by modern standards, nevertheless, would have provided them with examples of state-owned slaves carrying out the state's will; furthermore, they would also have been aware of other, imperial states with more developed administrations such as Egypt. Yet Greek and Roman political theory generally tends to take little notice of these foreign administrations and what implications they might have for theorizing about the nature of the state, even an ideal one. The traditional

⁷⁹On the reception of the democracy, see A. Saxonhouse, "Athenian Democracy: Modern Mythmakers and Ancient Theorists," *Political Science and Politics* 26.3 (Sep. 1993), pp. 486-90; D. Held, *Models of Democracy*, Stanford, 1996, pp. 33-4. On the republic, see F. Millar, *The Roman Republic in Political Thought*, Hanover 2002. Millar's project is to examine the reception of the republic by political thinkers in view of the republic as it was. A. Ryan rightly observes that much of the language of modern political thinking uses ancient words for modern ideas to which they may bear little resemblance. *On Politics: A History of Political Thought from Herodotus to the Present*, New York, 2012, v. 1, p. xxiii.

focus on the conceptually small *polis* and *res publica* makes all the difference: these are constructs envisioning office-holding, free citizens with the mechanics of how records are to be kept, taxes collected, and streets kept clean left behind, so to speak, a veil of ignorance. But to some extent this is the point: the writers were not concerned with staffs who would simply do whatever magistrates or the consultative bodies decided: their subservience was taken for granted because that is, in fact, what they observed in their own communities.

Before turning to Athens, it should be acknowledged that there were other traditions in the ancient world regarding the behavior of bureaucrats and holders of high office. Both Egyptian and Mesopotamian literature offer examples that, if not explicating systematic political theory, are clear in expressing ideas about the proper behavior of government officials. Weber conceded that in Ancient Egypt there was perhaps a level of systematic organization that could in his sense be called bureaucracy. The historical record itself, even if we lack a complete understanding of the Egyptian bureaucracy's numerous offices, makes it clear that functionaries abounded.⁸⁰ Critically, the Egyptians were not insensitive to the fact that holding office gave one opportunities to abuse power and build personal influence. Not only is there a body of literature enjoining the kings to behave as benevolent and upright rulers, but there is also the famous inscription from the tomb of the vizier, Rekhmire,

⁸⁰This is a simplification: there are significant differences between, for example, the Old and New Kingdoms, not to mention other periods. For an overview of Egyptian officialdom in the Middle Kingdom, see W. Grajetzki, Court Officials of the Egyptian Middle Kingdom, London, 2009. It must be admitted there that numerous titles refer to various offices, the function of which is poorly understood, if at all. *op. cit.*, p. 4. S. Finer, The History of Government: Ancient Monarchies and Empires, Oxford, 1997, v. 1, pp. 156-60.

which warns the incumbent against a variety of abuses, including making “of anyone a client.”⁸¹ The situation in Mesopotamia is similar. For, despite the difficulties associated with the translation and determination of specific functions, it is clear that the states, at times, possessed extensive bureaucracies.⁸² And there too may be found a tradition of the king’s right behavior towards subjects. For example, the *Advice to a Prince*, admittedly a late document, admonishes the king to respect “due process” in order to avoid popular discontent.⁸³ These few comments serve merely to suggest that other traditions existed within the context of ancient bureaucratic societies regarding the proper exercise of official power. To be sure, they do not necessarily represent part of a larger, systematic political theory, nor do they have any direct role in the development of the political theory to be treated here, but they do serve to

⁸¹For an example of injunctions for the king’s behavior, see the *Instruction of King Amenemhet I for his Son Sesostris I* in M. Lichtheim, *Ancient Egyptian Literature*, Berkeley, 1975, v. 1, pp. 135-9; for the inscription of Rekhmire and commentary, see R. Faulkner, “The Installation of the Vizier,” *Journal of Egyptian Archeology* 41 (Dec., 1955), pp. 18-29, with comment at p. 23, and an excerpt of the inscription in Lichtheim, *Ancient Egyptian Literature*, Berkeley, 1976, v. 2, pp. 21-4. A complete translation of this and additional inscriptions of Rekhmire’s tomb is provided in J. Breasted, *Ancient Records of Egypt*, Urbana, 2001 [1906], v. 2, p. 266ff. The word, *mrw*, rendered in Lichtheim as “client,” is rendered in Breasted as “brethren.” In his grammar, A. Gardiner translates as “friends” and “partisans.” *Egyptian Grammar*, Oxford, 1964 [1927], p. 491 (N36). Faulker’s dictionary adds “servants, underlings” and “supporters.” *A Concise Dictionary of Middle Egyptian*, Oxford, 1981 [1962], p. 111. Finally, R. Hannig’s dictionary provides the more general, “die Gehörige,” with the additional explanation: “die auf Verwaltungsbefehl zu staatlichen Arbeiten eingezogen werden können.” *Großes Handwörterbuch Ägyptisch-Deutsch*, Mainz, 1995, p. 345b. All of this suggests that it is unclear whether or not *mrw* should be rendered here as “client” “Dependent” might be the more conservative alternative.

⁸²See, for example, J. Postgate, *Early Mesopotamia*, London, 1994, p. 153. On the Assyrian empire, see Finer, *op. cit.*, pp. 224-32.

⁸³Foster suggests that the purpose of this text is uncertain, but the advice itself seems clear enough. For the text, see B. Foster, *Before the Muses*, Bethesda, 1996, v. 2, 745-7. One need not follow J. Keane’s enthusiasm in finding here some Mesopotamian antecedent of democratic sentiment. *The Life and Death of Democracy*, New York, 2009, p. 119.

acknowledge the existence other ancient traditions. Interestingly, they also parallel the Greco-Roman tradition in that whatever thought they devoted to office-holders, they did not think much about the petty underlings whose duty consisted in carrying out the master's instructions.

In Greece, the Classical Athenian democracy functioned through magistracies held by citizens themselves as amateurs. Obviously, neither the democratic institutions nor the magistrates were up to the task of running Athens by themselves. Consequently, Athens did have, for lack of a better term, an administration that grew in response to the civic communities needs. The government itself consisted of more than 400 offices filled annually by citizens, and those positions not held by citizens were sometimes staffed by state-owned slaves, or *demosioi*, who served as, among other things, file clerks and sergeants-at-arms.⁸⁴ The later Roman empire, by way of contrast, possessed an extensive administration, and it was staffed by slaves, freedmen, and men who, like John Lydus, hoped to make their way through the ranks of government and on to a comfortable retirement.⁸⁵ These cursory observations highlight the backdrop of growth in formal and informal administration against which political theory continued to be written as though the *polis*, or, later, the *res publica* were a constant. Put differently, the practicalities of administration lurked in the background, while political thought perpetuated the story of magistracies held by free men of quality and rank. This discontinuity between theory and practice is

⁸⁴D. Stockton, *The Classical Athenian Democracy*, Oxford, 1990, pp. 111-2; *s.v.*, *demosioi*, H. Cancik and H. Schneider, edd., *Brill's New Pauly*, Leiden, 2004, v. 4, p. 291a, and *s.v.*, public administration, v. 11, pp. 478b-9a. On state-owned slaves, see O. Jacob, *Les esclaves publics à Athènes*, New York, 1979 [1928]

⁸⁵A. Bandy, ed., *Ioannes Lydus: On Powers or the Magistracies of the Roman State*, Philadelphia, 1983; C. Kelly, *Ruling the Later Roman Empire*, Cambridge, 2004.

significant. For it highlights an unremarked divide between those who rule and are ruled in turn, to paraphrase Aristotle, and those socially subordinate men, who, as dependents and property, were expected to carry out the will of their masters. These preliminaries in mind, it is now possible to turn to a fuller consideration of Plato, Aristotle, and the Athens with which they were familiar.

The general features of the Athenian democracy and how it operated are uncontroversial.⁸⁶ A restricted group of males enjoyed the status of citizens, which entitled them to full political participation, including the holding of office. Thus, apart from participation in the assembly (*ekklesia*), citizens at Athens also stood a reasonable chance of serving as juror-judges at trial (*dikastes*), or on the assembly's executive council (*boule*), or, in some cases, of taking part in the *boule*'s rotating executive committee (*prutaneia*). Of the more than 400 magistracies available, the overwhelming majority was filled through a lottery system. There were a few exceptions, such as serving as general (*strategos*), but it is mostly true that the willing citizen was in a position to serve as legislator, executive, judge, or magistrate at any given time. This means that in most respects, and to the dismay of some, such as Plato or the so-called Old Oligarch, the democracy was characterized by rank amateurism.⁸⁷ Holding office at Athens was generally a matter of citizenship and luck: one had to be a citizen and the lottery bestowed office. The democracy was characterized by the notion of *isonomia*, or equality of citizens before the law, and

⁸⁶Stockton provides a good overview.

⁸⁷Tocqueville might have seen in this a kind of habituation to public life that was something more than simple amateurism.

isegoria, or the equal rights of citizens to express their views on political matters.⁸⁸

In short, these ideas meant that being a citizen *per se* was what mattered: all citizens, being equal before the law and equally entitled to speak freely, were politically fungible. In some domains, there was a concession to actual expertise: for office holding, know-how sometimes mattered more than a putative concept of civic equality. Hence, generals were subject to election and able to hold office in consecutive years. Moreover, character mattered: would-be officials were subject to the *dokimasia*, an examination of their eligibility and character, and upon leaving office they had to account for their official conduct through a process known as the *euthuna*.⁸⁹ While these mechanisms might ensure to the political community's satisfaction an incumbent's suitability to hold office and confirm that he had fulfilled his term in a minimally correct fashion, it is important to note that expertise is generally not at issue: amateurism was the rule.

It is important to admit that, although these amateurs performed functions carried out today by bureaucrats, they did not themselves constitute a bureaucracy, properly speaking. At any rate, the range of tasks covered by these magistrates

⁸⁸On these concepts, see K. Raflaub, "Democracy, Oligarchy, and the concept of the 'Free Citizen' in Late Fifth-Century Athens," *Political Theory* 11.4 (Nov. 1983), pp. 517-44; C. Rowe and M. Schofield, ed., *The Cambridge History of Greek and Roman Political Thought*, Cambridge, 2005, p. 47. S. Todd argues that *isegoria* is a collective concept. *The Shape of Athenian Law*, Oxford, 1993, p. 312; Ober suggests that it is individual, meaning that each citizen had the right to speak. It may be too much to insist one way or the other, although Ober's view seems most natural. J. Ober, *Mass and Elite in Democratic Athens*, Princeton, 1989, pp. 78-9.

⁸⁹Although the *dokimasia* was supposed to focus on strict eligibility, it often invited questions of character. See D. MacDowell, *The Law in Classical Athens*, Ithaca, 1978, pp. 167-9 and (*euthuna*) pp. 170-2. Aristotle describes the *dokimasia* and *euthuna* as he knew them in the 4th century. See S. Everson, ed., *Aristotle: The Politics and The Constitution of Athens*, *CTHPT*, Cambridge, 1996 [1984], pp. 252-3 (55), 247-8 (48), and 251-2 (54).

included, for example, conducting naval inventories, maintaining streets, supervising police and prisons, and letting public contracts: all domains deemed by modern governments to be within the purview of the professionalized bureaucracy.⁹⁰ If the ancient system at Athens leaned in any way towards a measure of professionalism in government, it was in those positions that were filled by some 2,000 public slaves (*demosioi*) because these were the individuals who, unlike magistrates, were not subject to term limits: in other words, their assured continuity guaranteed a measure of useful expertise.⁹¹ Slave status in itself did not preclude acquiring skills necessary to keeping the wheels of government in motion. As Stockton points out, “[t]he *boule* could also call on the services of a number of public slaves (*demosioi*) for various tasks requiring some considerable degree of literacy and numeracy....”⁹² In addition, their roles, while supportive of citizen office-holders, surely offered some scope for the development of expertise and, perhaps, something approaching professionalism.

To maintain security, state slaves known as Scythians functioned for roughly as century as a kind of police force or sergeant-at-arms.⁹³ In Aristophanes, for

⁹⁰This amateur management of the state’s business was not unique to Athens. See, for example, the law governing the duties of the *gymnasiarch* at Beroia, whose only qualification, judging from the law itself, seems that the incumbent be of a certain age. I. Arnaoutoglou, *Ancient Greek Laws*, London, 1998, pp. 117-23 (98).

⁹¹For 2,000 as the number of public slaves, see P. Ismard, “Public Slavery, Politics and Expertise in Classical Athens.” *Center for Hellenic Studies, Research Bulletin* 1, no. 2 (2013). Finer suggests “merely a few slaves,” but this appears to be incorrect. *op. cit.*, p. 345. His acknowledgement of the “*hyperetes*, freedmen or slaves, who manned the offices as clerks, secretaries, or archivists” speaks to more than “a few.” p. 349. On the number of police alone, see Jacob, *op. cit.*, p. 64-73.

⁹²*op. cit.*, p. 94. Cf. Jacob’s comments, *op. cit.*, pp. 185-6.

⁹³See, for example, discussion of sources in S. Olson, ed., *Aristophanes: Acharnians*, Oxford, 2002, p. 87. According to Andocides 3.5, they were initially purchased in the 5th century. M. Gargarin and D. MacDowell, *Antiphon & Andocides, The Oratory of*

example, they are called upon to arrest Lysistrata and her companions who had seized the acropolis.⁹⁴ In the *Knights*, they are drag an exasperated and sputtering Cleon from the Assembly during debate.⁹⁵ In both cases, they are state agents commanded to lay hands upon Athenian citizens, a point to which Lysistrata objects when she threatens, “if he so much as touches me, I’ll teach him to know his place!”⁹⁶ In the realm of city maintenance, the *astunomoi*, officials whose tasks included keeping the city’s public areas clean and ensuring that buildings did not have overhangs in the street, relied upon the assistance of publicly-owned slaves to remove the corpses of people abandoned in the street.⁹⁷ Slaves were also used for the physical toil of repairing roads, no doubt, under the supervision of the *hodopoioi*.⁹⁸ In the courts, slaves played a mechanical role during the selection of judges.⁹⁹ Having non-citizens carry out the physical arrest of persons might have relieved some of the tensions that might otherwise have arisen from citizens laying hands on each other, and using slaves to clean up the dead helps to distance citizens from ritual contamination; in the

Classical Greece, v. 1, Austin, 1998, p. 150; Todd, *op. cit.*, p. 79; Jacob, *op. cit.*, ch. 2.

⁹⁴*Lysistrata* l. 433ff. A. Sommerstein, trans., *Aristophanes: Lysistrata, The Acharnians, The Clouds*, Penguin Classics, Harmondsworth, 1973, p. 197.

⁹⁵*Knights* l. 665. D. Barrett and A. Sommerstein, *Aristophanes: The Knights, Peace, The Birds, The Assemblywomen, Wealth*, Penguin Classics, Harmondsworth, 1978, p. 61.

⁹⁶*Lysistrata*, ll. 435-6 (*ibid.*) Note the emphatic placement in Greek of the words indicating that he is a state slave (*demosios on*), rightly pointed out by Henderson. J. Henderson, *Aristophanes: Lysistrata*, Oxford, 1990 [1987], p. 124 (*ad loc.* 435-6) For the benefits of using slaves in this context, see Todd, *op. cit.*, p. 192.

⁹⁷Aristotle, *op. cit.*, p. 249 (50.2) Perhaps using slaves for this function relates to the pollution that comes from contact with the dead. On the dead and pollution, see, R. Parker, *Miasma*, Oxford, 1996 [1983], pp. 33-42.

⁹⁸Aristotle, *op. cit.*, p. 251 (54.1). Cf. *Politics*, p. 46 (2.7 [1267b16-9])

⁹⁹Aristotle, *op. cit.*, pp. 259-61 (63.5; 64.1; 65.1; 65.4). The word rendered as “servant” is *huperetes*.

courts, perhaps, it was their status as slaves that reinforced an atmosphere impartiality in the process. Slaves also served as public heralds as, for example, in the famous Athenian tribute assessment where they summoned members of the *prutaneia* before the *boule* for judgment.¹⁰⁰ Athens also used slaves to serve as coin-testers (*dokimastes*) to guarantee the soundness of the Athenian silver coinage.¹⁰¹ Anyone refusing the slave's judgment as to a tested coin's validity was subject to prosecution. But, as mentioned earlier, the slaves were employed not only for their physical capacities, but also for tasks that would have required greater intellectual training. Thus, a slave was used by the *boule* to keep track of accounts and maintain the list of debtors.¹⁰² At any rate, the foregoing is not a comprehensive catalogue of positions held by state-owned slaves, but a brief overview to illustrate the range of tasks fulfilled by slaves to keep the machinery of government in motion.¹⁰³

¹⁰⁰R. Meiggs and D. Lewis, edd., *A Selection of Greek Historical Inscriptions*, Oxford, 1980 [1969], p. 191 (69). Cf. A. de Sélincourt, trans., *Herodotus: The Histories*, *Penguin Classics*, Harmondsworth, 1996 [1954], p. 364 (6.121)

¹⁰¹R. Stroud, "An Athenian Law on Silver Coinage," *Hesperia* 43 (1974), pp. 157-88.

¹⁰²Aristotle, *op. cit.*, p. 247, (47.5-48.1). Identified as "state secretary" in the translation, the word in Greek is *demosios*. The adjective, *demosios*, is ambiguous. It frequently is used to denote state-owned slaves, but it can also mean simply, "of the *demos*," and it can be applied to officials who are not slaves. The standard Greek dictionary, for example, offers Demosthenes 19.129 as an example of "public notary." H. Liddell and R. Scott, *A Greek-English Lexicon*, Oxford, 1983 [1843], s.v., *demosios*, II.a. Similarly, the word *huperetes*, which means an assistant, is frequently used to designate state-owned slaves, but sometimes only designates a helper. See, for example, Plato's *Statesman* 289c where slaves (*douloi*) and assistants (*huperetai*) clearly represent two distinct, but similar, categories. J. Annas and R. Waterfield, edd., *Plato: Statesman*, *CTHPT*, Cambridge, 2005 [1995], p. 51

¹⁰³It is possible that some of these slaves enjoyed an actual status somewhat above that of the household slave's. The evidence, however, is ambiguous, as Todd points out, when he considers the possibility that Pitallakos might have been roughly on par with a resident alien (*metic*). *op. cit.*, p. 192-4; discussed by Jacob, *op. cit.*, 147-50. In this regard, it is worth recalling that manumitted slaves became *metics*. R. Sealey, *The Justice of the Greeks*, Ann Arbor, 1994, p. 65. On the other hand, it is also worth

While slaves were available to help with the execution of state functions, citizens holding office had others to whom they could turn as they carried out their duties. Those who might help them could be friends or dependents. In this context, “friend” refers specifically to a horizontal relationship, *i.e.*, someone who is more or less a social peer. “Dependent” means not just dependency in a strict sense, but someone who was a social inferior, obligated socially to aid his superior, that is, a client.¹⁰⁴ The impact of patronage at Athens during the period of the democracy is debated. In part, this is a problem of vocabulary. Because the words themselves, patron and client, come from the Roman context, *patronus* and *cliens*, and Rome had a formal system of clientage, it might be objected that these words, referring to a specific Roman institution, cannot *per se* be employed elsewhere.¹⁰⁵ At Athens, the fact that there was no word exactly corresponding to *cliens* or *patronus* can be and has been used to argue that these relationships, in fact, did not exist.¹⁰⁶ That Roman-

recalling the contempt to which they, or even their free children were subject, and the fact that even the coin-testers could be subject to the lash. For lingering contempt, see, for example, Lysias 30.5 (*Against Nicomachus*), Todd, trans., *Lysias, Oratory of Classical Greece*, v. 2, Austin, 2000, p. 300.

¹⁰⁴It is important not to understand the idea of “obligation” as some kind of rigid, iron law. Whether anyone does what he is supposed to do is always a matter of his own decision, and, obviously, people do not always follow the rules. Thus a client, though a client, may still not be completely reliable. Men are not machines.

¹⁰⁵For this reason, the words, *patronus* and *cliens*, will be used specifically in reference to the Roman institution. The modern terms, patron and client, will be used in a more general sense, to describe asymmetrical relationships characterized by exchange.

¹⁰⁶Plutarch, writing some five centuries after the Peloponnesian War, offers *prostates*, “protector,” for *patronus* in *Marius* (5), but it is not truly exact because *patronus* and *cliens* form a long established dyad in Roman culture. *Prostates*, in fact, does not stand in the same position within Greek culture, as *patronus* does in Roman, particularly during the classical period. R. Warner, *Plutarch: Fall of the Roman Republic*, Penguin Classics, Harmondsworth, 1983 [1958], p. 17.

styled *patroni* and *clientes* were not at Athens is certainly true.¹⁰⁷ This does not mean, however, that the asymmetrical relationships characterized by exchange and identified by sociologists and anthropologists as patron-client relationships did not exist. Indeed, as Finley rightly observes, “[t]o insist on restricting the terminology (and therefore the institution) to the peculiar Roman type is...unwarranted and stultifying....”¹⁰⁸ Thus, patron-client relationships along the lines articulated above, namely, as sociological categories, may be used to illuminate ancient culture: in other words, one may reasonably focus on reciprocity “between unequals, involving not only a subjective element, the ‘evaluation of the relationship’ by the client, but also the objective one of a genuine exchange of goods or services.”¹⁰⁹ This concept echoes Blok’s definition, in which he proposes a general typology of patron-client relationships.¹¹⁰ It is important to note that Blok draws attention to the impact that

¹⁰⁷The *metic* is a special case because he had to have a citizen sponsor (*prostates*). This relationship certainly could give rise to reciprocal obligations in which the citizen was the superior.

¹⁰⁸M. Finley, *Politics in the Ancient World*, Cambridge, 2002 [1983], p. 41. Sherwin-White exhibits a kind of willful obtuseness when he complains, “...the author (*sc.*, R. Saller) regularly applies the terminology of clients and patrons to the whole range of senatorial society, where it is *technically inadmissible*.” (emphasis added) This ought to lead to the question: “well, what is technical standard exactly?” If one is to use the standard of Roman law, that is one thing. But it amounts to saying that Romans were only like Romans, and that there is no basis of comparison with any other culture, which is unhelpful and uninteresting, to say the least. If, however, the objection is about the application of sociological terms to Romans, that is something quite different: in fact, Roman culture may, “technically” speaking, be subjected to sociological analysis just as much as any other culture. A. Sherwin-White, “Patronage under the Principate: *Personal Patronage under the Early Empire* by Robert P. Saller,” *Classical Review* 33.2 (1983), pp. 271-3 quotation at p. 272. Saller’s “Patronage and friendship in early Imperial Rome: drawing the distinction,” printed in A. Wallace-Hadrill, *Patronage in Ancient Society*, London, 1989, pp. 49-62, takes up the issue of technicalities.

¹⁰⁹Finley, *ibid*.

¹¹⁰A. Blok, “Variations in Patronage,” *Sociologische Gids* 16 (1969), pp. 365-78

“social roles” also have on these relationships. Specifically, the social context itself, according to him, will determine whether a person may serve as a patron in one context, or a client in another.¹¹¹ Being sensitive to this dimension helps to avoid a counterproductive and rigid view that see patrons always as patrons, or clients only as clients, let alone the more “stultifying” approach of believing that one must be called a client to be a client: these are in many ways straw-man arguments. Sociologically speaking, a patron to one person may be the client of another. In addition, it is particularly noteworthy that Blok identifies “friendship” as one of the forms of patronage.¹¹² Similar to “brokerage,” which may fit well in some ancient cases because it is marked by mediation between rural and urban communities, “friendship,” as he describes it, represents a category where patrons are not confined to a specific category, *e.g.*, *patroni*, nor are they characterized by a stable clientele as might be the case with “brokerage.” Being flexible, this fits nicely those ancient cases where friends seem to be very much in the position of a client, even if they are not explicitly categorized that way by the sources.¹¹³ The perspective adopted here,

¹¹¹Blok, *op. cit.*, p. 366

¹¹²Cf. E. Wolf’s category, “instrumental friendship,” where “...each member of the dyad acts as a potential connecting link to other persons outside the dyad. Each person is a sponsor for the other.” “Kinship, Friendship, and Patron-Client Relations in Complex Societies,” in S. Schmidt, *et al.*, ed., Friends, Followers, and Factions: A Reader in Political Clientalism, Berkeley, 1977, pp. 167-77, quotation at p. 172b.

¹¹³ Wolf’s observation is relevant: “...what may start out as a symmetrical reciprocal relationship between equal parties may, in the course of reciprocal services, develop into a relation in which one of the parties...develops a position of strength, the other a position of weakness. The charge of affect which retains the character of balanced reciprocity between equals may be seen as a device to ensure the continuity of the relationship in the face of possible ensuing imbalance.” *op. cit.*, p. 173a. Wolf sees patron-client relations as a point where instrumental friendships reach an extreme or maximum. *op. cit.*, p. 174b. Gallego rightly points out that in classical Athens, referring to one’s clients as friends (*philoï*) would serve to avoid the situation where

then, is that these arrangements did exist in classical Athens. To argue otherwise, which seems typical of some classicists, is to suggest that somehow Athens stood uniquely apart from all other societies where such phenomena seem to be a given, or to put it differently, a kind of sentimental special pleading.

To be sure, the existence and force of patronage systems during the Athenian classical democracy is controversial.¹¹⁴ Some have argued that the pressure exerted by democratic ideology was such that the power of the wealthy, which formerly existed via these networks, was eclipsed and became less relevant.¹¹⁵ Others find patronage in a recasting of terms that see traditional relationships reinterpreted within the context of this “radical democracy,” the old wine of patronage in new democratic bottles.¹¹⁶ The resolution of this debate ultimately turns, if one is honest, on what one finds most plausible because the evidence neither speaks for itself nor is it unambiguous. Those who seek to emphasize democracy’s impact on traditional patron-client relationships, simply find more plausible the idea that democracy so

“any mention of social subordination could be an indiscrete admission of the superiority of some, and of the inferiority of others....” J. Gallego, “El Patronazgo rural en la democracia ateniense,” *Studia Historica: Historia Antigua*, 27 (2009), pp. 163-75, quotation at pp. 168-9. In this connection, it is worth pointing out that no matter one’s social status, every man in a shame culture wishes to save face. This aspect is so often ignored or forgotten among those who might suggest that to be a client, it should always be expressed.

¹¹⁴A useful survey of the arguments can be found in D. Placido and C. Fornis, “Evergetismo y relaciones clientarles en la sociedad ateniense del siglo IV a.C.,” *Dialogues d’histoire ancienne* (37.2) 2011, pp. 19-47

¹¹⁵P. Millett’s article is frequently cited in this debate. “Patronage and its avoidance in classical Athens,” in Wallace-Hadrill, *op. cit.*, pp. 15-47

¹¹⁶See Gallego, *op. cit.*

transformed society that patronage lost its political significance.¹¹⁷ But it is hard to picture either that democracy succeeded in completely effacing such relationships, particularly in a pre-industrial society, or that the Athenian project was uniquely able to render such relationships politically insignificant.¹¹⁸ The communists, who had far more resources at their disposal, could only dream of so complete a transformation: in other words, it begs credulity. Consider, for example, the story of Cimon: here is a politician from the last third of the fifth century BC, frequently cited as an example of a politician investing personal resources in patronage for political gain. Aristotle says:

Cimon possessed a kingly fortune, and not merely performed his public liturgies magnificently but also maintained many of the members of his deme, for any member of the deme of Laciadae who wished could come to him every day and receive adequate maintenance, and all of his estates were unfenced so that anyone who wished could help himself to the fruit.¹¹⁹

The implications of this story can be interpreted as mere largesse, the kind of indiscriminate giving that yields no specific bond between any individual recipient

¹¹⁷Millett's conclusion that patronage was "vestigial and peripheral" and "a minor social phenomenon, with minimal political economic implications" does not follow from the evidence he cites. *op. cit.*, p. 36

¹¹⁸As Finley observes, "...the Graeco-Roman world would have been unique in history if personal patronage...were not consciously deployed in support of the power structure." *op. cit.*, p. 45. "Unique" indeed.

¹¹⁹*op. cit.*, p. 231 (27.3). Plutarch writes, "Cimon's generosity was on a scale that surpassed even the traditional hospitality and benevolence of the Athenians.... Cimon turned his home into a place of public resort (*prutaneion koinon*) for his fellow citizens, while on his country estates he allowed even foreigners to take the pick of the ripe fruit and to enjoy the best of whatever was in season." *Cimon* 10.6-7, in I. Scott-Kilvert, *Plutarch: The Rise and Fall of Athens, Penguin Classics*, Harmondsworth, 1970 [1964], p. 152. At *Pericles* 9.2 Plutarch puts it this way: "[Pericles] could not compete with the wealth or the property by means of which Cimon captured the affections of the poor; for the latter supplied a free dinner every day to any Athenian who needed it, provided clothes for the old, and took down the fences on his estates so that anyone who wish could pick the fruit." Scott-Kilvert, *op. cit.*, p. 174. Plutarch's sources are Aristotle himself and Theopompus.

and the giver, or as a case of the actual building and reinforcing of the kinds of reciprocal bonds between patron and client whereby clients were later expected to support their benefactor, or, perhaps, more reasonably, as something in between, meaning a case where Cimon would know some of those to whom he had been generous, while others he would not know. In any case, it is as hard to see Cimon's generosity arising solely from altruism as it is to imagine that many who took advantage of this generosity were unaware of its source and the social debt incurred. After all, trespassing and uninvited gathering of fruit could give rise to a lawsuit, and likely would among the litigious Athenians: anyone would have known this much, particularly in a social world where everyone monitored everyone else. While Cimon might not know specifically which fellow demesmen were benefiting from his plantations – perhaps this is merely largesse – it is hard to imagine that the face-to-face interaction implicit in the report that his fellow demesmen came to him for assistance would not cement in the minds of both some kind of relationship. The person who came to Cimon personally for assistance, necessarily felt some obligation upon acceptance.¹²⁰ And Cimon surely expected as much, particularly if the aid given, as might have been the case with the destitute, was regular. To rule out the idea that he might expect the recipient to express his gratitude in political terms

¹²⁰As Socrates argues, the failure to show gratitude would be tantamount to being unjust. *Memorabilia*, 2.2.1-2 = E. Marchant, trans., *Xenophon: Memorabilia and Oeconomicus*, v. 4, *LCL* 168, Cambridge, 1965 [1923], pp. 102-5. Ober concludes that the Athenian notion of *kharis*, or gratitude, animates patronage in Athens in a way that is similar, albeit not identical, to the Roman system. "In classical Athens, the interaction between giver and recipient never developed into a formal system of patronage on the Roman model, but the Athenian relationship based on *charis* was overt nonetheless." *op. cit.*, pp. 228-9. Well, who knows, but surely favors entailed social debts. To argue otherwise demands evidence that is not forthcoming.

seems a matter of special pleading and, to put it bluntly, incredible.¹²¹ Indeed, Plutarch's discussion of Cimon's generosity loses its forces precisely if it is seen as somehow non-political in nature. In other words, Cimon's political base derived, in part, from these acts of generosity, and Pericles, who could not match it, had to rely upon other means, *i.e.*, largesse with public monies.¹²² And this is precisely the reason, according to Aristotle, that Pericles introduced a stipend for those serving on the courts. In other words, Plutarch, and Aristotle, for that matter, sees this anecdote as a case of Pericles using public funds to counter the personal influence Cimon obtained through such acts of kindness. Moreover, if there was anything striking about Cimon, it was the scale of practice rather than the practice itself. Xenophon, for example, provides an even more explicit example of how these asymmetrical exchanges operated when he describes how Arkhidemos became associated with Krito.¹²³

Xenophon describes how Krito was feeling besieged by sycophants, who, stereotypically, would drag decent men into court in the hope that the latter would pay to avoid further legal trouble. Reminding Krito that he had dogs to keep his flocks safe from wolves, Socrates advises him to find some men who would be willing and able to serve a similar function with respect to the sycophants. "[T]here are," Socrates assures him, "men of this sort here who would be very honored to

¹²¹Connor is surely right in suggesting that this generosity was converted into political support. W. Connor, The New Politicians of Fifth-Century Athens, Princeton, 1971, p. 20.

¹²²Connor, *ibid.*

¹²³*Memorabilia* 2.9 = Marchant, *op. cit.*, pp. 108-9

profit by your friendship.”¹²⁴ Accordingly, he and Krito identified the “poor” (*penetes*) Arkhidemos as a suitable candidate, since he was an effective speaker, capable at trial, and, best of all, in need.¹²⁵ His poverty is explained as being due to his unwillingness to sell his services in any odd job. So, like Cimon, Krito provided Arkhidemos oil, wine, grain, and “...whatever other item needed for living grows in the field. Furthermore, he invited Arkhidemos to sacrifices and saw to “all other things of this sort.” Indeed, Arkhidemos came to view Krito’s house as a “refuge” and, knowing what was expected in return, eagerly took up the task of defending Krito. Xenophon observes,

And since Arkhidemos resolved this (*sc.*, a lawsuit) and other such matters, it already came about that, just as when a herdsman has a good dog, and the other herdsman want to locate their herds near him to benefit from the dog, so too many of Krito’s friends wanted him to provide them too with Arkhidemos as a guard.¹²⁶

To hostile comments that he was merely Krito’s fawning debtor, Arkhidemos retorted that there was nothing shameful in repaying good services in kind. Xenophon

¹²⁴2.9.3 = Marchant, *op. cit.*, pp. 160-1 In the *Phaedrus*, Plato makes the point that men should help those most in need: “whose gratitude will be proportionate to the severity of the hardships (*kakon*) from which we relieve them.” Furthermore, the needy should be invited to private banquets because they too will be most grateful. W. Hamilton, trans., *Phaedrus and Letters VII and VIII, Penguin Classics*, Harmondsworth, p. 30 (233d-e) For the dog metaphor, cf. G. Ferrari, ed., *Plato: The Republic, CTHPT*, Cambridge, 2004 [2000], p. 109 (416a)

¹²⁵Plato notes that one should be generous, not to the excessively needy, but to those “capable of returning the favor (*kharis*).” *ibid.* Xenophon’s Socrates notes that this kind of relationship is not a form as slavery, as Eutheros, reduced to menial jobs by penury, initially believes (2.8.4), but actually beneficial. *Memorabilia* 2.8 = Marchant, *op. cit.*, pp. 156-9 Cf. Dem. 57.45 = A. Murray, trans., *Demosthenes: Private Orations*, v. 6, *LCL* 351, Cambridge, 1964 [1935], pp. 264-5, where the connection between penury and becoming a slave because of the need to toil for one’s needs is expressed. The discomfort with dependency is foremost because dependency is the result.

¹²⁶2.9.7 = Marchant, *op. cit.*, pp. 160-3

concludes the anecdote by saying that Arkhidemos was Krito's "friend," held in honor by Krito's other friends. This story is significant for several reasons. First, it indicates explicitly that the relationship between Krito and Arkhidemos is asymmetrical. As if the point of the latter's poverty were not enough, Xenophon, first in the mouth of Socrates and then in his own voice, uses the metaphor of the dog to make clear the relationship and the role played by Arkhidemos. Moreover, whatever motives Krito might have in seeking out Arkhidemos, it is clear that their friendship is instrumental in nature.¹²⁷ Finally, Krito makes Arkhidemos his personal fixer by providing him with the necessities of life and taking care of him, both men understanding that by accepting this help Arkhidemos would be socially obliged to show his gratitude. Xenophon himself reports that Arkhidemos, in fact, excelled (*hedeos ekharizeto*).¹²⁸ Interesting is the fact that his enemies saw this as a case of clientage. Although he downplayed the political significance of clientage under the classical democracy, Millett noted that the word with which his enemies sneeringly reproached Arkhidemos, "fawning" (*kolakeuein*), is the Greek for playing the role of client (*kolax*).¹²⁹ To be sure, Krito himself had the tact to avoid calling the

¹²⁷Cf. Aristotle's observation on asymmetrical "friendships." R. Crisp, ed., *Aristotle: Nicomachean Ethics*, CTHPT, Cambridge, 2006 [2000], p. 154 (8.8.10 [1159b]) and p. 163 (8.14.1 [1163b]).

¹²⁸2.9.8 = Marchant, *op. cit.*, pp. 162-3

¹²⁹Millett on *kolax*, *op. cit.*, p. 33. But, cf. the juxtaposition of *akolasia*, usually rendered as insolence, and *demokratia* in the *Areopageticus* (20) of Isocrates. G. Nordin, trans., *Isocrates*, v. 2, LCL 229, Cambridge, 1962 [1929], pp. 114-7 This suggests the ideological position that democracy undermines patronage. Millett remarks on this, but does not follow through on its implication. *op. cit.*, p. 28.

relationship what it was, but what is related here is the technique for securing a client and labeling that relationship friendship (*philia*.)¹³⁰

Elsewhere Xenophon relates another anecdote that serves to illustrate the political nature of these relations between the wealthy and their fellow citizens. In the *Oeconomicus*, he relates a discussion about the duties of the wealthy at Athens between Socrates and Krito's son, Kritoboulos.¹³¹ Socrates pities Kritoboulos, even though the latter is far wealthier than the former. A puzzled Kritoboulos requires an explanation. Socrates obliges:

First, you have to put on many, large sacrifices....¹³² Then it is appropriate for you to host many foreigners, and in grand style at that. And then you have to provide banquets for citizens and render them good services *or find yourself bereft of allies*. And I understand that the city obliges you to pay a lot of money for horses, choruses, gymnasiarchs, and acts of patronage (*prostataiai*)....¹³³ That's why I feel sorry for you. In my case, if I should be in need of anything, I know that, as you too know, there are those would help me.... But with your friends, though they have more than you with respect to their own lifestyle, nevertheless, look to you to make themselves your debtors. (emphasis added)

The comments of Socrates are essentially in line with what he had reportedly said to Krito already regarding the nature of reciprocity. But what is significant now is the

¹³⁰See Wolf's comment on masking these relationships. Indeed, no one would have preferred the label *kolax* to *philos*. For, as Theophrastus says, to be a *kolax* is to engage in a kind of "shameful companionship that benefits the *kolax*." *Characteres* 2.1. But an admission of being a *kolax* would be an admission of dependency and, perhaps, penury. Rare would be the man to declare that with pride. Indeed, Eutheros himself initially recoils at the suggestion. fn. 125, *supra*.

¹³¹2.4-8 = Marchant, *op. cit.*, pp. 120-59

¹³²Apart from their religious aspects, sacrifices were often an important source of meat for both the participants and the butchers, who would sell it in the marketplace. L. Zaidman and P. Pantel, *Religion in the Ancient Greek City*, Cambridge, 1997 [1992], pp. 29-30 and 33-6.

¹³³The Loeb renders *prostataiai* as "presidencies," but this translation accords with the suggestions of Millet, *op. cit.*, p. 35, and Gallego, *op. cit.*, p. 168.

explicitly political nature of the obligations on Kritobolos, as, for example, when he is expected to provide sacrifices and help fellow citizens, and the fact that his friends still look to him for assistance. The point, of course, is that, just as Socrates has what he needs for his minimal needs, the friends of Kritoboulos are less wealthy than Kritoboulos and seek assistance from him. To be sure, Kritoboulos would not be so crass as to call these men in need his clients, but hostile individuals would likely see it thus, just as they had seen Krito's relationship with Arkhidemos. And these friends who turned to Kritobolos would likely be expected to support his endeavors, just like Arkhidemos, and just like the persons aided by Cimon a generation earlier.

The foregoing supports the notion that Athenian citizens, wealthy ones in particular, could and would build relationships supportive of their public and private ambitions. To argue that they might not turn to these relationships in carrying out their tasks as magistrates would be to suggest that, while they might use these "friendships" in most other contexts, in the performance of their official business alone they would refrain from their use. This begs credulity as there is no evidence that anyone viewed a magistracy as somehow uniquely off-limits for the use of social relations that they self-consciously developed and accepted as normal. In other words, it seems reasonable to infer – it is an inference – that citizen officials at Athens turned to their clients if they needed assistance in carrying out their tasks. And, as was the case with Krito, the herdsman who controlled the dog, Arkhidemos, they would have been entitled to expect some measure of loyalty and support in the carrying out of such tasks. Of course, if assisted by slaves, there would be relatively

little question of their will being executed.¹³⁴ But, assisted by clients, who obviously had more choice than slaves, they generally could expect support, just as Krito and his friends could with Arkhidemos. Social obligations can be strong in any society, even if they are not completely reliable.

It should be noted that horizontal relationships, meaning, friends in the sense of reciprocal relations among relative equals, could also be used for furthering one's interests. Giving voice to a general Greek sentiment, Meno tells Socrates that a man's virtue consists in treating one's friends well and harming one's enemies.¹³⁵ In essence, friends help each other: that is the point, as Theognis noted when advising Kurnos to make friends with the right kind of people.¹³⁶ Nor, as Connor argues, was this confined to private affairs. It was readily understood that friendships, functioning in this way, played an important part in political activity at Athens.¹³⁷ As Aristotle puts it in the *Rhetoric*: "...we define a 'friend' as one who will always try,

¹³⁴Of course, the idea that slaves were not particularly reliable is a comic trope.

¹³⁵*Meno* 71e = W. Lamb, trans., *Plato: Laches, Protagoras, Meno, Euthydemus*, v. 2, *LCL* 165, Cambridge, 1977 [1924], pp. 268-9 Cf. Solon, 12.5-6 in E. Hiller, ed., *Anthologia Lyrica*, Leipzig, 1890, p. 37; Medea notes too that this kind of reciprocity will show that she is not a weakling. D. Slavitt and P. Bovie, edd., *Euripides*, Philadelphia, 1998, v. 1, p. 46 (ll. 886-90 = *Medea*, 807-10).

¹³⁶D. Wender, trans., *Hesiod and Theognis*, *Penguin Classics*, Harmondsworth, 1984 [1973], p. 100 (l. 87ff.)

¹³⁷Connor, *op. cit.*, Ch. 2; G. Calhoun, *Athenian in Politics and Litigation*, *Studia Historica* 7, Rome, 1964 [1913]. In the famous discussion of regimes found in Herodotus, Darius identifies these close, political friendships (*philiai iskhurai*) as a source of mischief. *Histories*, p. 188 (3.82.4) This passage is interesting also for its possible anticipation of the word *prostates*, as Connor himself notes, although the Oxford text has the participle, *prostas*, not the noun, *prostates*, as he quotes it. Connor, *op. cit.*, pp. 114-5. The clubs, or *hetaireiai*, after a period of ascendancy in the 5th century BC, appear to have faded in significance during the 4th. See L. Mitchell and P. Rhodes, "Friends and Enemies in Athenian Politics," *Greece & Rome* 43.1 (Apr. 1996), pp. 11-30 But the details of this historical development are not critical to the discussion as people still sought to help friends and harm enemies in the courts and in politics generally without the clubs being the only manifestation of this.

for your sake, to do what he takes to be good for you.”¹³⁸ Indeed, the need for friends was clear enough to Plato who, when recalling the reasons that finally convinced him to abandon political ambition, noted the fact that he lacked “friends (*philon andron*) and loyal associates (*hetairon piston*).”¹³⁹ At any rate, friends obviously were important socially and politically.¹⁴⁰

The foregoing considerations suggest several things about the background against which Plato and Aristotle wrote. To be sure, their specific circumstances are not identical, but some general observations can be made to help in understanding the implications about officials within the traditional theory propounded by them. The key points are as follows. First, the Athenian *polis* forms the background for Plato and Aristotle’s political theory. Their comments about institutions, therefore, were informed by their direct knowledge about the functioning of Athenian government, a government of amateur citizens.¹⁴¹ Aristotle, as is well known, made a conscious study of various regimes, but Athens he knew from living there. Its institutions were staffed by some 2,000 state-owned slaves and citizens occupying magistracies. Some citizen-magistrates, as noted earlier, would have enjoyed the assistance of their own or state-owned slaves in carrying out their functions; and, in general, they certainly could have turned to their own resources whether it be through the exchange of favors

¹³⁸I. Bywater, trans., The Rhetoric and the Poetics of Aristotle, New York, 1984 [1954], p. 41 (1361b36-7).

¹³⁹Letter VII, p. 114 (325d)

¹⁴⁰See, for example, K. Dover, Popular Greek Morality in the Time of Plato and Aristotle, Oxford, 1974, pp. 180-4.

¹⁴¹A. Laks, “The Laws,” in C. Rowe and M. Schofield, The Cambridge History of Greek and Roman Political Thought, Cambridge, 2005 [2000], pp. 258-92. Laks endorses this very idea at pp. 268-9; G. Klosko, The Development of Plato’s Political Theory, Oxford, 2006, p. 231ff.

with friends, or turning to clients as needed to assist with their tasks, or even calling upon slaves from within their household. This situation creates an important dichotomy between subordinate helpers, slave or free, on the one hand, and superior office-holders, on the other. When discussing regimes, it is the latter that concern Plato and Aristotle.¹⁴²

It is unsurprising that neither Aristotle nor Plato discuss in great detail the use of slaves, whether privately or publicly state-owned, for the execution of official tasks, such as they would have seen first hand at Athens. They were concerned with citizens and how they organized, or ought to organize themselves in a *polis*. Tellingly, in the course of his search for the true statesmen, Plato lumped together slaves and assistants, including experts at particular governmental tasks such as scribes.¹⁴³ The point is that, as slaves take their instructions from masters, so Plato and Aristotle focus on those masters. For Plato and Aristotle, slaves, whether owned by officials or the state, are politically irrelevant. They are theoretically not independent beings operating with free will because their choices are made by those whom they serve, necessarily citizens. While the second-best regime described in Plato's *Laws* presents a detailed exposition of an ostensibly practicable state, there is relatively little discussion of the roles to be played by slaves to support the magistrates in the execution of their tasks.¹⁴⁴ Nevertheless, they are there. Their

¹⁴²Aristotle's *Constitution of Athens* is an important source for what is known about the public slaves, but it is self-consciously empirical, while his political theory is not. The *Constitution* is presented as description; the *Politics* prescription.

¹⁴³*Statesman*, pp. 51-52 (289c-90b).

¹⁴⁴T. Saunders, trans., *Plato: Laws, Penguin Classics*, Harmondsworth, 2004 [1970]. W. Westermann makes the point that the general acceptance of slavery "explains why Plato in his plan of the good life as depicted in the *Republic* did not need to mention

presence is remarked in his discussion of the country-wardens (*agronomoi*), whom he also calls “secret-service men” (*kruptoi*), and “guards-in-chief” (*phrourarkhoi*):¹⁴⁵

Wardens must assemble with the five officers and resolve that, being servants (*oiketai*), they will not possess other servants (*oiketai*) and slaves (*douloi*) for themselves, nor employ the attendants (*hyperetemata*) of other people (the farmers and villagers) for their own private needs, but only for public tasks (*ta demosia*). *With that exception*, they must expect to double as their own servants and fend for themselves....¹⁴⁶ (emphasis added)

Clearly country-wardens would be permitted to use slaves in the performance of their state functions (*ta demosia*).¹⁴⁷ This, Plato notes, is an exception to the austere rules imposed upon them to ensure that during their two years in office they would know how to serve and take care of themselves.¹⁴⁸ The rule articulated here emphasizes the point that they are to use these slaves in the course of their official duties alone, and it makes provision for them to use the slaves owned by the locals.¹⁴⁹ No mention is

the slave class.” “Between Slavery and Freedom,” *American Historical Review*, 50.2 (Jan., 1945), pp. 213-27, quotation at p. 215.

¹⁴⁵On *kruptoi*, whose harsh lifestyle in Sparta is described admiringly by Megillus, see 633b. Strauss implies that these men might have conducted assassinations. L. Strauss, *The Argument and the Action of Plato's Laws*, Chicago, 1977, p. 89. On *phrourarkhoi*, see a 760b. Their various duties are described in 760a-2b, 843d, 844b-c, and 848e.

¹⁴⁶763a

¹⁴⁷Plato envisions the country-wardens using locally-owned slaves for corvée labor. 760e

¹⁴⁸Plato says that their term of office is two years. But he also refers to “the third year” (760e) when the tribes choose the new country-wardens. The significance of this third year is not entirely clear. Does the term of one group expire with the election of their replacements occurring the very next day? Would these replacements immediately begin touring their districts without any experience of the task at hand? Possibly some sort of overlap is envisioned whereby the experienced might help the inexperienced.

¹⁴⁹Of these rustic slaves, there presumably would be an abundance given Plato's supposition that the farms would be worked by slaves. 806d-e Aristotle likewise suggests that under the best regime farming should be taken on by slaves, docile ones in particular. *Politics*, pp. 180-1 (1330a25ff.)

made regarding the option a country-warden might have to use his own slaves for official business, but Plato obviously assumes that some country-wardens might have them. Presumably, this would be an option. The law's point, though, is that for personal needs, country-wardens must help themselves during the two-year period. Apart from the restrictions, then, Plato took it for granted that slaves would be used by these officials to carry out their duties.¹⁵⁰ To take another category of official, the city-wardens presumably would not be toiling by themselves on road maintenance and building construction.¹⁵¹ Like the Athenian *hodopoioi*, they too would probably use slaves for the heavy-lifting.¹⁵² Similarly, the market-wardens, who maintain order in the market where foreigners and slaves would abound, presumably would have at their disposal slaves to maintain security, just as officials at Athens could turn to their Scythians to manhandle the rowdy.¹⁵³ But Plato would have had no particular need to mention the obvious and does not dwell at length on what would have been plain to anyone reading him.¹⁵⁴

Plato's *Kallipolis* by contrast is silent on exactly on the actual process of governance and execution of policy. No particulars comparable to what is found in the *Laws* are provided. However much the guardians resemble the country-wardens, for example, the stress is not on their specific tasks, but on the mechanisms, such as education, absence of private property, communal parenting, that would ensure their

¹⁵⁰ Pace Strauss, *ibid.* Plato stresses the idea that these officials would take care of their personal needs. This makes clear that the issue over having slaves is not one of possessing slaves altogether, but one of using them as manservants.

¹⁵¹ 763c

¹⁵² See, fn. 97, *supra*.

¹⁵³ 763e-4c

¹⁵⁴ Similarly, Laks attributes the cursory explanation of *dokimasia* in the *Laws* to the idea that Plato "accepts current [*sc.*, Athenian] practice." *op. cit.*, p. 282

continuity and their continued devotion to the city. The official tasks for philosopher-kings, made to rule despite their own, understandable inclinations to do otherwise, are essentially left out. And those remaining citizens who make up Kallipolitan society's third class, are more or less left to their own devices, lacking any real political responsibilities or official tasks, but devoted above all else to minding their own business.¹⁵⁵ Thus, unlike the *Laws*, the detail of which offers some indications of how slaves might be used in the context of an official's duties, the *Republic* sheds no light on this. Indeed, as Schlaiffer points out, consideration of slavery is cursory in the *Republic* because Plato is concerned with the free, not the enslaved, although, unlike the Magnesians of the *Laws*, the third class of free citizens in Kallipolis do not themselves have any discernible function in the state beyond staying out of trouble.¹⁵⁶ They represent a kind of higher order rabble.

Like Plato, Aristotle assumes that some slaves will assist magistrates in the performance of their duties. There are two main passages in the *Politics* where he, who throughout reveals his extensive knowledge of various regimes, addresses magistrates at some length.¹⁵⁷ In making the arrangements of a state, he argues, one

¹⁵⁵434c. Plato's lack of concern for the third, economic class of citizens is made clear at 421a and 434a. Schlaifer remarks that Plato essentially groups them with the *banausoi*, or tradesmen, who were generally viewed with contempt, as Plato himself suggests (*Republic*, p. 310 [590c]; *Laws*, p. 416 [918c]). R. Schlaifer, "Greek Theories of Slavery from Homer to Aristotle," *Harvard Studies in Classical Philology* 47 (1936), pp. 165-205, at p. 173. Cf. Dover, *op. cit.*, p. 40. Tellingly, Plato's second-best regime would forbid citizens from engaging in trades because of their corrupting potential. (pp. 250, 303-4, and 417-8 [806d; 846d-e; 918d-20c]) Similarly, Aristotle warns about the morally and physically degrading effects of working in the *banausic* arts, and suggests that "the best form of state will not admit them to citizenship." *Politics*, p. 68 (3.5 [1278a8]) and p. 196 (8.2 [1337b10-2])

¹⁵⁶Schlaifer, *op. cit.*, p. 191

¹⁵⁷*Politics*, pp. 114-8 (4.15 [1299a1-1300b12]) and pp. 162-6 (6.8 [1321b1-23a11])

must tend to the distribution of offices (*arkhai*), which are indispensable because “no state can exist not having the necessary offices, and no state can be well administered not having the offices which tend to preserve harmony and good order.”¹⁵⁸ On that basis, he proceeds to identify various necessary magistracies, such as those found in Athens, summarized as follows:

Offices concerned with matters of religion, with war, with the revenue and expenditure, with the market, with the city, with the harbours, with the country; also with the courts of law, with the records of contracts, with execution of sentences, with custody of prisoners, with audits and scrutinies and accounts of magistrates; lastly, there are those which preside over the public deliberations of the state.¹⁵⁹

While this summary seems detailed enough to suggest a range of domains to be dealt with by citizen-officials, Aristotle, in fact, uses this list to encapsulate the thrust of his preceding, detailed exposition of the various, specific offices that are necessary to governing a *polis*. He does not specifically describe how the magistrates will go about their tasks, but, as was suggested earlier, he need not have. That a magistrate might use a privately or publicly owned slave could be taken for granted. Indeed, a number of the offices specifically mentioned by him in this section echo the very ones that are described in the *Constitution of Athens* as being connected with the use of slave labor. For example, Aristotle references people who would tend to the maintenance of roads and buildings; at Athens the *hodopoioi*, or officials tasked with maintaining roads, used slaves to accomplish this task.¹⁶⁰ Similarly, Aristotle refers to those who would maintain the register of public debtors; such officials were

¹⁵⁸*Politics*, pp. 162-3 (6.8 [1321b6-8])

¹⁵⁹*Politics*, p. 165 (6.8 [1322b29-37])

¹⁶⁰*Politics*, p. 163 (6.8 -1321b20-1)]; *Constitution*, p. 251 (54.1).

augmented by slaves at Athens.¹⁶¹ The point, however, is that he need not have mentioned in the *Politics* the idea that some of these officials relied upon slaves to carry out their tasks. It was well known that they often did.

In point of fact, however, Aristotle does mention this specific fact in the other passage where he describes magistracies at length. At 4.15 he takes up the question of various details surrounding offices in general: their distribution, their manner of selection, and the appropriate length of their terms. On the issue of what exactly is meant by office, Aristotle, in a way that anticipates the modern split between politics and administration, offers the following:

Some duties of superintendence again are political.... Other offices are concerned with household management, like that of corn measurers who exist in many states and are elected officers. *There are also menial (huperetikai) offices which the rich have executed by slaves.* Speaking generally, those are to be called offices to which the duties are assigned of deliberating about certain measures and of judging and commanding, especially the last; for *to command is the especial duty of the magistrate.*¹⁶² (emphasis added)

Of course, Aristotle does not say that all offices entail the use of slaves, but he does say that the menial ones (*huperetikai*) tend to be.¹⁶³ The implication of his point that the rich would use slaves seems to be that at a minimum it is likely that the rich would use their personal slaves.¹⁶⁴ If, as at Athens, the state provides slaves

¹⁶¹*Politics*, p. 164 (6.8 [1322a9-10]); *Constitution*, p. 247 (48.1)

¹⁶²*Politics*, p. 115 (4.15 1299a20-8)

¹⁶³It is worth remembering that this adjective refers to the kinds of things pertaining to the *huperetes*, or servant. In other words, it need not indicate solely physical tasks, but could also encompass record keeping or whatever subordinate tasks an official may wish to entrust to his slaves. Cf. *Statesman*, p.52 (290b) where scribes, for example, fall under this head.

¹⁶⁴The phrase in Greek, *an euporosi*, means “if they have the means,” or, perhaps, “if they are able,” the “they” actually being unspecified. T. Sinclair’s translation

(*demosioi*), that simply means that even a citizen-official of lesser means could enjoy the kind of help a slave would provide. It seems clear, then, that Aristotle understood that slaves would play a role in government, as servants to citizen-officials. He simply had no more reason to detail every instance in which that would be the case than had Plato when he described his second-best regime. They both largely took this state of affairs for granted: it was, after all, their own experience of the government at Athens.

Slaves used in government service would, of course, be particularly suited to carrying out the tasks laid upon them by citizen-officials. Like their Athenian contemporaries, for both Plato and Aristotle, after all, the distinction between slave and free was crucial for the state. Citizens had a critical, mental capacity that was necessary to their role, a capacity that slaves lacked, by definition if not in actual fact. Aristotle referred to this as the deliberative capacity (*to bouleutikon*), Plato as a divine prudence (*to theion kai phronimon*).¹⁶⁵ This is not, of course, the same thing as saying that slaves are necessarily stupid human beings.¹⁶⁶ But there was a theoretical, if not ideological, distinction to be made between the free and the enslaved in their respective capacities to reason. Among citizens, too, this capacity for reason clearly operated along a continuum that ran from those on one end who could master the political art and, clearly being the minority, were best endowed for

preserves this ambiguity: “when resources permit.” Aristotle: *The Politics*, Penguin Classics, Harmondsworth, 1980 [1962], p. 183.

¹⁶⁵*Politics*, p. 29 (1.13 [1260a12]); *Republic*, p. 310 (590d) Cf. Plato’s suggestion in the *Statesman* that those who are sunk in ignorance (*amathia*) and baseness (*tapeinotes*) are worthy of slavery. p. 82 (309a)

¹⁶⁶Aristotle allows that slaves have *some* capacity to reason. *Politics*, p. 17 (1.5 [1254b22])

the task and to the rest, on the other end.¹⁶⁷ At any rate, this distinction between the capacity of the free and slave is brought out in the *Laws* where Plato discusses doctors, who themselves could be of either status. However, Plato is here asserts that the slave has learned his skills through *habituation*, and, thus, does not explain to his patients the reasons why a particular treatment may be prescribed: he lacks the knowledge to do so. Slave doctors learn their skills “empirically, by watching and obeying their masters. They’ve no systematic knowledge (*logos*) such as free doctors have learned for themselves and pass on to their pupils.”¹⁶⁸ Plato’s slave doctor, who rushes from case to case, treats slaves and does not engage in explanations. Although it might be tempting to attribute the lack of explanation to the slave’s hurried schedule, it is clear Plato sees him as lacking the knowledge necessary to explain the underlying factors requiring the treatment prescribed. The slave has only learned by doing and observing. Moreover, Plato’s free doctor, who has theoretical knowledge, engages in explanation to his free patients. In other words, he explains to someone who has the capacity to understand. The educated educates; the habituated cannot.

¹⁶⁷being small in number, *Statesman*, p. 57 (293a) and p. 63 (297b-c); this ideal person would remove the need for law because he could match desert to the particular case. pp. 58-9 (294a-b)

¹⁶⁸*Laws*, pp. 135-6 (720b) Plato does allow in this passage that some doctor assistants (*huperetai*) may be free, but his emphasis is on the slaves (*douloi*). He goes on to explain that the slave doctor “simply prescribes what he thinks best in light of experience, *as if he had precise knowledge...*” (emphasis added) p. 136 (720c) Plato makes it clear that his focus is on the distinction between free and slave doctor when he resumes the point subsequently. “Make no mistake about what would happen, if one of those doctors (*sc.*, slave doctors) who are innocent of theory and practice medicine by rule of thumb (*ton tais empeirais aneu logou*) were ever to come across a gentleman (*eleutheros*) doctor conversing with a gentleman (*eleutheros*) patient. [The latter] would be acting almost like a philosopher...” p. 319 (857c-d) The phrase *aneu logou*, rendered as “innocent of theory,” brings home the point about the lack of reasoning in the slave doctor’s training. Naturally, these claims reflect an elite ideology: Plato was a creature of his world.

As this comparison is used to introduce Plato's idea that laws should contain preambles offering a rationale for the laws, it is clear as well that, as far as Plato was concerned, citizens themselves were amenable to explanation and reason in a way that slaves are not. Citizen and free becomes almost a tautology here. Therefore, it comes as no surprise that Magnesia's citizens are to leave manual tasks to others, while they devote themselves to a form of leisure aimed at physical and moral improvement.¹⁶⁹ Citizens were to use slaves to serve their basic needs.

For Aristotle, slaves are essentially animate tools, mere extensions of the master's will, utterly lacking in any deliberative faculty. As deliberation is prior to rational choice, they never reach the question of engaging that faculty.¹⁷⁰ Thus,

¹⁶⁹*Laws*, pp. 250-2 (806d-8c) Cf. Aristotle, who likewise suggests that citizens should not have to look after their needs in well-ordered states, those tasks being left to slaves and others. *Politics*, pp. 49-50 (2.9 [1269a34-7]) Note that even Plato's prescription to treat slaves well is aimed, not so much at endearing masters to them, as at imbuing masters with just practices: it is a form of civic training. pp. 213-4 (777c-8a) Plato's recommendation that slaves be foreigners and incapable of speaking the same languages is significant in that it reinforces the notion of slaves lacking the necessary capacities to be citizens. (777d) Aristotle likewise recommends that groups of mixed foreign slaves, whether owned privately or by the state, should toil in the fields. *Politics*, pp. 180-1 (7.10 [1330a25-31]) Cf. Clytemnestra's initial reaction when she believes that Cassandra cannot speak Greek. *Agamemnon*, ll. 1060-1 in P. Vellacott, trans., *Aeschylus: The Oresteian Trilogy*, *Penguin Classics*, Harmondsworth, 1985 [1956], p. 79 Plato connects the performance of menial tasks with a weak capacity for reason; the interests of a person in this state are best served by his being a slave to the best man, who has the "divine prudence." *Republic*, p. 310 (590c-d)

¹⁷⁰R. Crisp, *Aristotle: Nicomachean Ethics*, *CTHPT*, Cambridge, 2006 [2000], pp. 40-4 (3.2-3 [1111b-1113a]); deliberation linked with wisdom and political skill, A. Kenny, *Aristotle: The Eudemian Ethics*, *Oxford World's Classics*, Oxford, 2011, pp. 81-2 (5.7-8 [1141b8-12 and 1141b30-5]) The precise relationship between the *Nicomachean* and *Eudemian Ethics* is vexed and unsettled. Kenny concludes that the case for seeing the *Eudemian Ethics* as an "immature" work "collapses (p.xi); Crisp sees the *Nicomachean Ethics* as "almost certainly the product of Aristotle's developed intellect...a revision of his earlier *Eudemian Ethics*." (p. vii) This is not the place to settle a dispute of experts. Books 5-7 of the *Nicomachean* correspond to

slaves function essentially as an extension of the master: they are the body to his mind, which does deliberate and reason.¹⁷¹ It is in this vein that Aristotle famously describes them as animate tools, belonging properly to the sphere of household management, and certainly having no proper role in the state, a sphere of life properly made up of equals.¹⁷² Moreover, slaves lack the independence necessary to proper citizens.¹⁷³ Given this understanding, it is not surprising that a slave's excellence (*arete*) consists in being "useful for [*sc.*, the master's] wants of life, and therefore he will obviously require only so much excellence as will prevent him from failing in his function...."¹⁷⁴ This point gains more force when Aristotle's thought experiment is recalled where he mentions that, if tools could function as pure *automata*, no one

the *Eudemian*'s 4-6. Cf. regarding choice, R. Waterfield, *Aristotle: Physics*, *Oxford World's Classics*, Oxford, 1999, pp. 46-7 (2.6 [197b5-b12])

¹⁷¹"And indeed the use made of slaves and tame animals is not very different; for both with their bodies minister to the needs of life." *Politics*, p. 17 (1.5 [1254b25-6]); "There is a common relationship that links soul and body, craftsman and tool, and master and slave.... [T]he body is the connatural tool of the soul, a slave is, as it were, a part and detachable tool of his master, and a tool is a sort of inanimate slave." *Eudemian Ethics*, p. 129 (7.9 [1241b17-24]) and p. 131 (7.10 [1242a28-31]) This is an interesting opposition that anticipates Taylor's conception of manager and worker. F. Taylor, *The Principles of Scientific Management*, New York, 1967 [1911]

¹⁷²animate tool (*ktema ti empsukhon*): *Politics*, p. 15 (1.4 [1253b32-3]) Aristotle inverts this claim in the *Eudemian Ethics* where he claims that "a tool is a sort of inanimate slave." p. 129 (7.9 [1241b22-3]) In the *Nicomachean Ethics*, Aristotle concludes from this that the relationship between master and slave is like that of owner and ox because it takes no part of justice. p.158 (8.11 [1161b]) On the state as a union of equals: *Politics*, p. 176 (1328a35-7)

¹⁷³*Politics*, p. 96 (4.4 [1291a10-1]) The more one engages in pure toil, the more slavish one becomes. *Politics*, p. 26 (1.11 [1258b37-8]) Lack of independence similarly made being a laborer problematic. Dover, *op. cit.*, p. 40 Though a modern concept, Aristotle would have readily understood the implication of wage-slavery. Thus Aristotle argues, "[T]he artisan is less closely connected with him (*sc.*, the master), and only attains excellence in proportion as he becomes a slave. The meaner sort of mechanic has a special and separate slavery...." *Politics*, p. 30 (1.13 [1260a41-60b1]) Cf. G. Fitzhugh, *Cannibals All! or Slaves Without Masters*, Cambridge, 1988 [1960].

¹⁷⁴*Politics*, pp. 29-30 (1.13 [1260a34-6])

would want slaves.¹⁷⁵ Obviously, as real human beings, slaves posed a problem, not least because they could be unruly.¹⁷⁶ But the implication is that the more the slave conforms to the master's will, the more automatic he becomes, and, more importantly, the more perfectly he functions as the master's extension.

While Plato and Aristotle's discussions of slavery do not overlap completely, they do offer some coherence with regard to thinking about how the amateur-officials of a *polis* would carry out their duties with the assistance of slaves. First, it is clear that slaves were a given. And they would be used, not merely for the maintenance of citizens in their homes, but also to help citizens holding office. Slaves might belong to the state; they might be drawn from the magistrate's household. Because the office-holder was a citizen, by definition he possessed the capacity to evaluate and decide matters under his control. Engaging in these deliberative activities was not a task for slaves. Instead, they would provide the physical assistance necessary to the task. Slaves, to be sure, could acquire skills: some, for example, had, if not knowledge, at least medical skill.¹⁷⁷ So one need not assume that slaves would simply be tasked with heaving of corpses from the side of the road or clearing of sewers. Presumably, they might even, as at Athens, taken part in managing the registers of debts. But critically, they were extensions of the decision-making process that characterized the work of officials. To paraphrase Aristotle, they were to the masters,

¹⁷⁵*Politics*, p. 15 (1.4 [1253b33-4a1])

¹⁷⁶Cf. Plato's comments in the *Republic* that a master removed from society would be unable to control his slaves. *Republic*, p. 295 (578d) His advice in the *Laws* on the treatment of slaves, as mentioned earlier, was oriented not so much to avoiding household rebellions as to the moral improvement of masters. See, fn. 169, *supra*.

¹⁷⁷Plato takes up the difference between knowledge (*episteme*) and skill or knack (*tekhne*) at length in the *Gorgias*.

as the body was to the mind. Thus, to the extent possible they were to serve as mere instruments until the day when more unquestioning *automata* became available.

The question remains: did Plato or Aristotle take up the other dimension of life at Athens that bore upon life there, the role of the *kolax* or client? In fact, Plato was particularly interested to remove the conditions that led to the patron-client relationship; the more pragmatic Aristotle, on the other hand, acknowledges these unequal relations, which suggests that they were taken for granted by his theory. In the *Eudemian Ethics*, for example, he takes up the issue of friendships among unequals.¹⁷⁸ Absent from his discussion is condemnation of the relationship; most friendships, after all, were in his view utilitarian.¹⁷⁹ Indeed, Aristotle highlights the fact that the superior derives from the relationship a sense of “being superior.” Nevertheless, Aristotle also recognizes the negative aspects of asymmetrical friendships. They do represent, after all, a double-edged sword. *Kolakes*, seen as flatterers or clients – the Greek does not distinguish – tended to gravitate around the tyrant where they doubtless would reinforce the latter’s notions of superiority.¹⁸⁰ But the wealthy too could attract these kinds of men, much as Krito had drawn Arkhidemos into his circle. Yet Aristotle, who contradicts Plato on this issue, is willing to wave aside this problem, namely, the negative aspects of an asymmetrical relationship because, in the final analysis, “there is the greatest pleasure in doing a kindness or service to friends or guests or companions, which can only be rendered

¹⁷⁸*Eudemian Ethics*, pp. 123-4 (7.4 [1239a1ff.])

¹⁷⁹*Eudemian Ethics*, p. 116 (7.2 [1236a33ff.]) Note that Aristotle identifies “civic friendships” as a category based on utility. p. 130

¹⁸⁰*Politics*, p. 147 (1314a1-4)]

when a man has private property.”¹⁸¹ Aristotle, indeed, viewed the liberal man as one who “gives away his surplus.”¹⁸² But “gives” to whom, if not to friends, inferiors, or the state, as Krito had done, or Kritoboulos had to do? This liberality clearly entailed a reciprocal obligation on the part of its beneficiaries, as was understood by Arkhidemos and Eutheros. Therefore, Aristotle took for granted the kinds of bonds to which reciprocity among unequals would give rise. There is no reason to think that officials, even in his ideal state, would not rely upon these relations in their capacities.

For Plato, however, the kind of asymmetrical relationships characteristic of patron-client relations were objectionable, and he provided the means to prevent them.¹⁸³ In particular, he so arranged the ownership of property that Magnesia would consist of relative equals, who within certain limits would be neither wealthy nor poor. Poverty, after all, “drives us by distress into losing all sense of shame,” a point understood quite well by Eutheros in the *Memorabilia*, who characterized such dependency as “slavery.”¹⁸⁴ Thus, Magnesia’s citizens would possess some measure

¹⁸¹ *Politics*, pp. 36-7 (2.5 [1263b5-22]). If there were any doubt about this criticism being leveled at Plato, Aristotle makes it clear when he refers to the abolishing of private property as an error of Socrates. p. 37 (2.5 [1264b30-1]) As Klosko rightly observed, Aristotle failed to understand that the Plato allowed private property to the majority, *i.e.*, the third class of ordinary citizens. *op. cit.*, p. 155

¹⁸² *Eudemian Ethics*, pp. 45-6 (3.4 [1231b28ff.]) Liberality is treated in the *Nicomachean Ethics*, where Aristotle states, “[t]he use of wealth seems to consist in spending and giving...” pp. 60-5 (4.1 [1119b-1122a]) cf. *Laws*, p. 158 (737d-e) where Plato allows in theory for a positive dimension to largesse by wealthy land-owners, but views this positive aspect as unlikely in practice.

¹⁸³ Plato’s comments regarding these relationships suggest, *pace* Millett, that their political implications were problematic.

¹⁸⁴ *Laws*, p. 417 (919b); on Eutheros, see fn. 125, *supra*.

of inalienable property to guarantee their status.¹⁸⁵ According to Plato, oligarchic regimes were characterized by some accumulating property, others selling theirs and becoming impoverished.¹⁸⁶ This is the kind of indigence that leads to metaphorical slavery, meaning dependence.¹⁸⁷ Moreover, as Plato notes, success in oligarchic regimes requires spending money “in the cause of reputation” and forming alliances to compete.¹⁸⁸ In short, having too much money yields “enmity and feuds in private and public life,” and having too little “almost invariably leads to slavery.” Plato surely does not, of course, mean actual enslavement, but the kind of dependency that marks the status of a man who cannot provide for his own basic needs, like Arkhidemos.¹⁸⁹ As he explains in his discussion of how to treat children,

A child’s fortune will be most in harmony with his circumstances, and superior to all other fortunes, if it is modest enough not to attract flatters (*akolakeutos*), but sufficient to supply all his needs (*ton d’anagkaion me endees*).¹⁹⁰

The descent of oligarchy into democracy presents simply an extension of these principles. For the rulers, who are presumably wealthy, not only do nothing to ensure that heirs with property retain some substance, but they even exploit the situation by purchasing property or lending money against it in order to “become even richer and

¹⁸⁵ *Laws*, pp. 164-5 (741a-e). Money too is strictly limited in order that citizens may remain “friends,” and litigiousness not take hold. p. 167 (744c-4a) Recall in this regard that the services of Arkhidemos were required precisely because of this kind of problem, and his enemies identified these services as playing the role of the *kolax* or client. See, fn. 130, *supra*.

¹⁸⁶ *Republic*, p. 262 (552a-b)

¹⁸⁷ *Laws*, p. 146 (779a)

¹⁸⁸ *Republic*, p. 266 (555a)

¹⁸⁹ Cf. Millet on the similarity between slavery and dependence. *op. cit.*, p. 29

¹⁹⁰ *Laws*, p. 146 (729a-b)

more highly respected.”¹⁹¹ (emphasis added) But as was seen earlier, this respect consists partly in building a retinue of friends and dependents. Plato’s hostility to wealth, informed by the idea that it leads to impoverishment and dependence, leads him to devise for Magnesia rules to ensure that the citizens interact as relative equals and remain so. Neither will they engage in trades or money-making nor will they perform service “for private individuals who are not his (*sc.*, the citizen’s) equals in status.”¹⁹² This leads to the kind of true friendship that is characterized by horizontal relations of reciprocity. To be sure, Plato has other motives for his arrangements beyond preventing the kinds of patron-client relationship that existed between Kriton and Arkhidemos. But gross inequalities also occupied his attention because it leads to a dependency of the poor on the wealthy, and this leads to shamelessness and strife. The poor man might do almost anything to secure the basic needs of life.

The real Athenian *polis* was a state characterized by citizens rotating through magistracies as amateur-officials. It lacked a true bureaucracy in the modern sense, but records still had to be kept, streets swept, and jails guarded. To fulfill these many tasks, officials had at their disposal various slaves provided by the state. Furthermore, it seems likely enough that in cases where such *demosioi* were not provided, officials were quite able, as Aristotle, and to a lesser extent Plato, suggested, to turn to their private slaves or to those bound to them because of favors previously bestowed: friends or clients (*kolakes*). The advantage of slaves, of

¹⁹¹This kind of analysis ought to temper views that somehow the democracy eliminated patronage networks. Even if taken as the clichéd critique of the conservative elite, the fact is that money still meant something, even in a radical democracy.

¹⁹²*Laws*, p. 418 (919d)

course, was that they might come closer to functioning as pure extensions of an official's will. The slave, after all, was generally in no position to question a master's commands, and, though a free dependent might be choose which requests to honor, they were socially expected to requite through loyal service favors previously bestowed. While Plato allowed for the service of slaves in Magnesia, he was keenly aware of the problems that dependency and economic inequality could produce among citizens. To forestall that situation, he provided for an arrangement that would prevent a citizen from becoming a *kolax*. It is worth pointing out that, if patronage was not a factor, why would he have bothered to devise a system aimed at undermining it. Obviously, the Athens with which he was familiar, like many other societies throughout history, was a place where patronage was a reality, not some distant memory swept away by the revolutionizing spirit of radical democracy.¹⁹³ For him, slaves sufficed to help with the duties assigned them by Magnesia's magistrates. Aristotle, whose approach was vastly more practical in orientation, allowed for both slaves and dependents. And he was more explicit in his understanding of the relationship between slave and master: it was that of body and soul, the one to serve, the other to command. Seen in this light, magistrates of the *polis* were masters endowed with the power to command. Slaves who might make up part of their staffs were there to serve. Of importance for later conceptions of bureaucracy, of course, is the focus in ancient literature on the status of citizen as someone apart, capable of deliberation, and the nature of magistracies as offices held by these free citizens

¹⁹³Conover seems largely to accept the disappearance of patronage, yet also acknowledges that wealth and, if anything, the habits of patronage still existed, even if, as with Cleon, that patronage came at state expense. K. Conover, Bribery in Classical Athens, Princeton University, dissertation, 2010, Ch.2

capable of making decisions and answering for their actions, their staffs simply adjuncts because as slaves or other social relations, they were a given, and largely did not matter.

Chapter 3

Bureaucracy in the *Res Publica*, Real and Imagined

Magistrates of the Roman republic held office by election. They were not professionals, but amateurs, generally of a certain class, and endowed with wealth and the right amount of social support in the form of friends and dependents. To carry out their functions, they had staffs of varying size, drawn from either their own circle or the state's pool of lesser assistants, made up of freedmen, slaves, and free persons of various circumstance. In literary and philosophical sources, these people barely figure, known mostly by their functions, often unnamed. Given their important role as instruments of official will, it might be surprising that Roman ideas about the state do not address them. In fact, it is not since, as was the case with Plato and Aristotle, their subordinate status could be taken for granted, and the issue of free citizens in a state largely boiled down to the proper structuring of the interests of the right kind of people: in other words, the class of persons expected to serve as magistrates. Moreover, these mostly anonymous figures who supported magistrates did not occupy positions of political power, and that made all the difference. Those positions were held by their social betters who, at least in theory, could take for granted that their orders would be followed.

Although the idea of a Roman bureaucracy usually brings up images of an elaborate system staffed by thousands, this picture betters suits the empire of late antiquity, not the Republic of the second and first centuries BC.¹⁹⁴ Nevertheless, the

¹⁹⁴On the later empire's bureaucracy, see, for example, A. Jones, The Later Roman Empire 284-602, Baltimore, 1986, v. 1, Ch. 16. Jones reckons the number of bureaucrats at roughly 30,000, which, being derived in part from the *Notitia*

Republican government did have staffs of officials that represent for the present purpose a kind of bureaucratic system, however spare. Before turning to that system, however, it will be useful to sketch of the Republican government, which lasted more or less continuously from the fifth through the first century BC.¹⁹⁵ To be sure, the Republic was subject to some changes during that lengthy period, but those details need not distract from the purpose at hand.¹⁹⁶

The Republic was made up of the assemblies, the senate, and the magistrates.

The senate was, technically speaking, an advisory body and its acts, the

Dignitatum, would reflect the 4-5th century AD. See p. 1057 with details at fn. 44 on pp. 1411-2. Numbers for earlier periods are even more difficult to come by. Duncan-Jones suggests that paying for the bureaucracy decreased from roughly 9 to 2% of the budget between 150 and 215 AD as the military portion of the budget increased. R. Duncan-Jones, *Money and Government in the Roman Empire*, Cambridge, 1998, p. 45. The basis of his calculations for “civilian employees” are discussed at pp. 37-8, but upon examination appear to reveal an inconsistency. Thus in table 3.7 he estimates that the budget for civilian employees held constant at 75 million sesterces between 150 and 215. Yet part of that 75 million had to include his estimate for citizen procurators (Table 3.4, p. 37), which he suggests ranged from 15.4 to 20.3 million sesterces between 192 and 211. As that forms a part of the overall, proposed 75 million (represented in table 3.5, p. 39), it does not makes sense that the overall total held constant because, as he states, it varied by 5 million sesterces during the period 192 through 211. At any rate, his estimates are educated guesses, and he offers no proposals for the actual number of persons involved. Harl estimates that expenditures on civil administration between the reigns of Augustus and Septimius Severus might have rivaled the demands of the military, and between the reigns of Caracalla and Constantine he cites a ten-fold increase in the number of senior civil servants. K. Harl, *Coinage in the Roman Economy: 300 B.C. to A.D. 700*, Baltimore, 1996, pp. 227-8. Thus, he appears to estimate administrative expenditure as something like four times the estimate of Duncan-Jones. No one ventures to guess as the cost of administration during the Republic.

¹⁹⁵The traditional date for the expulsion of the kings is 509 BC; the Republic experienced several interruptions of relatively brief length, such as during the period of the decemvirate in the mid-fifth century and the period of Sulla’s domination in the early 1st century.

¹⁹⁶For example, changes in the numbers of magistrates, the composition of the standing courts, the gradual opening of offices to plebeians, and other such historical modifications do not really need to be addressed here. A useful overview of the Republic’s institutions can be found in Finer, *Government*, v. 1, Ch. 4, p. 397ff.

senatusconsulta, were not laws. Nonetheless, it dominated foreign affairs, although declarations of war were traditionally matters for the popular assembly. The senators, whose numbers varied over the years, typically were former magistrates, and they sat for life, unless expelled.¹⁹⁷ Socially, members of the senate were wealthy and aristocratic. It was not a gathering of ordinary folk, nor was it a body to which any ambitious person could reasonably aspire.¹⁹⁸ Apart from the Senate, the Republic also had several bodies where citizens decided various matters. These were the three *comitia* where citizens met and voted by century (*comitia centuriata*), tribe (*comitia tributa*), or parish (*comitia curiata*). For political purposes, the *comitia centuriata* and *comitia tributa* were the ones that mattered. The former elected the higher magistrates and decided on whether or not to go to war. Citizens, assembled as centuries organized on the basis of wealth and voted in century order, wealthiest to poorest, until a majority was reached, each century casting one collective vote regardless of the actual number of citizens making up each unit. This effectively pushed the balance in favor of the wealthy, who voted first, and whose centuries were sufficiently numerous to be capable of resolving questions before the poorer centuries

¹⁹⁷ Even so-called *novi homines* were not ordinary bumpkins: Marius and Cicero both had important backing that enabled them to achieve the consulship. To be sure, Catiline was able to throw Cicero's social status in his face, calling him an "*inquilinus*," the equivalent, perhaps of calling someone nowadays "a mere immigrant," but Cicero was no prole. S. Handford, *Sallust: The Jugurthine War/The Conspiracy of Catiline*, *Penguin Classics*, Harmondsworth, 1985 [1963], p. 198 (37.1); Gaeus Julius Caesar greatly expanded the senate and enrolled persons of widely varying social backgrounds, including some freedmen, Gauls, and centurions. H. Scullard, *From the Gracchi to Nero*, London, 1977 [1959], pp. 151-2. Caesar was apparently unbothered by criticism on this point, observing that "If bandits and cut-throats had helped to defend my honour, I should have shown them *gratitude* in the same way." (emphasis added) R. Graves, *Suetonius: The Twelve Caesars*, *Penguin Classics*, London, 2003 [1957], p. 34 (*Divus Iulius* 72)

¹⁹⁸ See M. Beard and M. Crawford, *Rome in the Late Republic*, Ithaca, 1985, pp. 40-7

would be called upon. In the *comitia tributa*, citizens voted as tribes, with each tribe casting a single, collective vote. Tribes were distinguished on the basis of being either rural or urban. Because many of the urban poor were enrolled in the four urban tribes, while wealthy landowners, who could travel to Rome or already resided there, were in the 31 rural tribes, the weight again was in favor of the wealthy, although voting was simultaneous, not in order as with *comitia centuriata*. The *comitia tributa* voted on lesser magistrates and matters put before it by the convening official. There also existed a *concilium plebis*, the composition of which made it very similar to that of the *comitia tributa*. Its enactments, the *plebiscita*, had the force of law. All assemblies were limited to voting “yes” or “no” on proposals. They were not *fora* for debate or discussion, as this function was fulfilled at gatherings known as *contiones*. Thus deliberation and voting occurred separately.

The third component of the Republic consisted of the magistrates, officers elected for a year to carry out the day-to-day business of government. There exists a fundamental distinction between magistrates invested with *imperium*, or the ability to command an army, and those without it.¹⁹⁹ The senior magistrates were the praetors and consuls, and they were elected in the *comitia centuriata*; the praetors were judicial figures, and the two consuls amounted to the heads of state. Both had the authority to command armies. Lictors attended the consuls and praetors, bearing the famous rods and axes, or *fascies*, symbolizing their *imperium*. The more numerous, lesser magistrates lacked *imperium*, had more circumscribed areas of competence, and served upon election by the *comitia tributa*. These were the quaestors, aediles,

¹⁹⁹s.v., *imperium*, New Pauly, v. 6

and *tresviri capitales*. The sphere of competence for quaestors was finance, for the aediles, markets; the *tresviri* were concerned with maintaining security within Rome, although they were not policeman in any modern sense. Thus, the *tresviri*, despite not having *imperium*, did have lictors at their disposal. All told there were perhaps some 80 magistracies open for election every year.²⁰⁰ To be sure, the foregoing is a bear sketch of the Republic's institutions: they were more complex and they underwent changes during the five centuries of their operation. But this is sufficient to provide a rough outline of the Republic's so-called "mixed constitution."²⁰¹

To perform their duties, office holders were often helped by men made available to them from either their own or the state's resources. These assistants, slave and free, were known categorically as *apparitores* or *accensi*, and those directly in the state's service represented something of a bureaucracy, however rudimentary.²⁰² The term, *apparitor*, in fact, covers a wide range of skilled and semi-

²⁰⁰Finer, *Government*, p. 407. Other magistracies, such as the censorship, the tribunate, and the dictatorship, existed, but need not be addressed. Similarly, the religious colleges can be passed over. On religion in the late Republic, see Beard and Crawford, *op. cit.*, ch. 3.

²⁰¹In the *Histories*, Polybius famously described the Republic as a mixed constitution, combining as the democratic element, the assemblies, as the aristocratic, the senate, and as the monarchic, the consulate. W. Paton, trans., *Polybius: The Histories*, LCL 138, Cambridge, 1979 [1923], v. 3, pp. 294-7 (6.10.11-2)

²⁰²Finer acknowledges that these men existed, but asserts that the Republic had no bureaucracy. "*There was no bureaucracy*: it is essential to note this. Continuity – a feature of bureaucracies – was provided elsewhere, by the Senate, in practice. As for execution and implementation of the magistrates' orders, each of them had a salaried staff of various lictors, scribes, messengers, and heralds." (emphasis in original) p. 406; later he writes, "Under the Republic, as we have seen, the magistrate carried out his duties with the assistance of his private *consilium* and his freedmen and slaves." p. 549 These two passages are contradictory, and it is clear that the permanence of the scribes (*scribae*), for example, did represent the supposedly lacking "continuity." Cato Uticensis, ever fastidious, chaffed at this very thing when he sought to root out corruption in the treasury and found his wish to get rid of rotten staff thwarted.

skilled individuals permanently employed by the state. For example, lictors (*lictiores*), heralds (*praecones*), scribes (*scribae*), and messengers (*viatores*) are government-paid *apparitores*.²⁰³ These better known staffs were organized in pools or “corporations” known as *decuriae* that were ranked according to seniority and prestige; the organization of lesser bureaucrats is obscure.²⁰⁴ Many of these men were of lower social status, often being freedmen, but this was not always the case. A few either had or had acquired wealth while in their post, and there are exceptional instances in which the odd man actually came to hold office.²⁰⁵ For example, the

Plutarch, *Cato Minor* 16 = B. Perrin, trans., *Plutarch's Lives*, v. 8, *LCL* 100, Cambridge, 1959 [1919], pp. 268-73. More importantly, Cicero himself explicitly points out the imbalance in expertise between magistrates and their assistants: “...most people holding office, because of their ignorance of law, are just as knowledgeable as their assistants want them to be.” J. Zetzel, *Cicero: On the Commonwealth and On the Laws*, *CTHPT*, 2008 [1999], p. 175 (*Laws* 3.48). This disparity of knowledge between those who decide and those who execute is a common theme among those who worry about bureaucratic power.

²⁰³T. Mommsen, “De apparitoribus magistratuum Romanorum,” *Rheinisches Museum für Philologie* 6 (1848), pp. 1-57; A. Jones, “The Roman civil service (clerical and sub-clerical grades),” *Journal of Roman Studies* 39 (1949), pp. 38-55; N. Purcell, “The *apparitores*: a study in social mobility,” *Papers of the British School in Rome* 51 (1983), pp. 125-73; E. Badian, “The *scribae* of the Roman Republic,” *Klio* 71:2 (1989), pp. 582-603; J. Stambaugh, *The Ancient Roman City*, Baltimore, 1988, pp. 103-4 and 114-6. The *tresviri capitales* relied upon public slaves to assist them in carrying out executions and maintaining some kind of public order. Stambaugh, *op. cit.*, p. 125; S. Oakley, *A Commentary on Livy: Books VI-X*, Oxford, 2005, v. 3, p. 621 (*ad loc.*, 9.46.3).

²⁰⁴“corporations” is from R. MacMullen, *Corruption and the Decline of Rome*, New Haven, 1988, p. 124. The actual mechanics of scribal assignment to individual officials is unclear; apparently, they supported both senior and junior magistrates. Badian argues that Sulla retained the *decuriae* already in place precisely because to do otherwise would have meant the loss of much experience, *i.e.*, continuity, needed for the Republic’s routine administration. Badian, *op. cit.*, p. 598.

²⁰⁵Purcell argues that these men were “social climbers.” *op. cit.* As MacMullen points out, what impresses is the fact that despite their small salaries men would pay for the post and had the potential to end their careers as wealthy men. Clearly they took for granted that these posts would be a source of rents. *op. cit.*, pp. 124-6; C. Kelly, *Ruling the Later Roman Empire*, Cambridge, 2006, pp. 133-6.

scriba, Gnaeus Flavius became curule aedile in 304 BC; Marcus Claudius Glicia, momentary dictator in 249; Gaeus Cicereius, praetor in 173.²⁰⁶ These cases were rare, nor do they represent the many nameless figures found in literature, anonymously and automatically carrying out the commands of magistrates. Indeed, this anonymity *is* significant: it emphasizes that these men served, or were expected to serve, as mere appendages to whatever officials they served. Their function masks their person, reinforcing an ideology juxtaposing named officials whose will and agency instantiate the Republic against their nameless helpers. When they are named, the naming serves a purpose: perhaps to mark them as unusually successful or worthy, perhaps to mark them as particularly reprehensible or vile.

Cicero in his prosecution against Verres, Sicily's corrupt governor whose case was so hopeless that he left Rome rather than await the final verdict, preserves the names of several officials. But their names survive because the acts in which they engaged on behalf of the governor were so utterly reprehensible. There is Sextius, the lictor, for example, who unhesitatingly beat Gaeus Servilius to death at Lilybaeum because he had insulted the boss.²⁰⁷ Servilius had spoken disparagingly of Verres, who, upon learning this, promptly had him brought to court. When he refused to pay

²⁰⁶Badian provides a prosopography of Republican *scribae*. *op. cit.* On Gnaeus Flavius, see Oakley, *Livy*, v. 3, *ad loc.* 9.46.1-15, pp. 600-15. That some *scribae* came to hold office does not say much about their social status. Cf. the case preserved in the *Digest* (1.14.3) of Barbarius or Barbatius Philippus, a runaway slave who held the praetorship in the parlous 40s BC. A. Watson, ed., *The Digest of Justinian*, Philadelphia, 1998, v. 1; R. Syme, "Who was Vedius Polio?," *Journal of Roman Studies*, 51.1 (1961), pp. 23-30, Barbatius at pp. 24-5. The *scribae* are the best understood of the staffs. See also, C. Damon, "Sex. Cloelius, Scriba," *Harvard Studies in Classical Philology* 94 (1992), pp. 227-50

²⁰⁷*In Verrem* 5.54.140-2 = L. Greenwood, trans., *Cicero: The Verrine Orations*, v. 2, *LCL* 293, Cambridge, 1960 [1935], pp. 620-3

bond, Verres set his lictors, experts at the rod, on Servilius; as the task reached a *crescendo*, Sextius joined in, until Servilius, covered in blood and lying on the ground, had a change of heart and agreed to pay bond.²⁰⁸ He later died of his wounds. Killing was allegedly a regular part of his duties, although, when matters were less impromptu, Sextius could modulate the *coup de grâce*, depending on what the victim, or the victim's family, might pay.²⁰⁹ Clearly, the rods and axes borne by the lictors were not mere props: they were literally tools of the trade, but lictoring was not simply a matter of earning a living by the sweat of one's brow.²¹⁰ Lictors had other, less physically demanding tasks, such as running errands, clearing the way as the magistrate passed through a crowd, knocking on doors before a magistrate's entry. In

²⁰⁸Lictors normally kept order in court. Cf. Cicero's comment about the lictor of G. Octavius. D. Shackleton-Bailey, *Cicero's Letters to his Friends*, Atlanta, 1988, p. 654 (1.1.7.21)

²⁰⁹*In Verrem* 5.45.118. Of course, inflicting punishment was a lictor's duty; Cicero's point is the abuse of Verres. Cf. *Pro G. Rabirio* 4.13 = H. Hodge, trans., *Cicero: The Speeches*, LCL 252, Cambridge, 1966 [1927], pp. 462-5; Gellius, *Noctes Atticae*, 2.3.1 = J. Rolfe, trans., *The Attic Nights of Aulus Gellius*, v. 1, LCL 195, Cambridge, 1961 [1927], pp. 128-9. Cicero connects bribery and the use of lictors in his speech against Piso, although it is Piso who gets the money, leaving the dirty work to the lictors, presumably. In *Pisonem* 83-4 with comments *ad loc.*, R. Nisbet, ed., *Cicero: In L. Calpurnium Pisoem Oratio*, Oxford, 1975 [1961], pp. 152-3

²¹⁰Consider, for example, the *senatusconsultum de aquaeductibus* of 11 BC, printed in V. Ehrenberg and A. Jones, *Documents Illustrating the Reigns of Augustus and Tiberius*, Oxford, 1949, p. 113-5 (278). Technically speaking this is post-Republican, but interesting in particular for stating, "...since they [*sc.*, the officials in charge of public waterworks] are outside the city for this business, this body has decided that they shall have two lictors...." Presumably these lictors would symbolize their authority and, perhaps, keep locals from interfering with their tasks. Cf. W. Nippel, "Policing Rome," *Journal of Roman Studies* 74 (1984), pp. 20-9: although *lictores* were not bodyguards, they would enforce compliance. pp. 22-3

all this, of course, their role was to execute their master's will without hesitation, and, as Cicero advised his brother, even to serve as aids to an official's mildness.²¹¹

Scribes too, as mentioned earlier, generally remained unnamed figures, unless their identification served a purpose. Cicero mentions the two who served him when he was quaestor, Lucius Mamilus and Lucius Sergius, precisely because they were frugal and honorable, unlike the staff working for Verres.²¹² At any rate, the men who kept the state books and oversaw the public records were supposed to be honorable.²¹³ Indeed, they probably had to swear an oath upon assuming their official

²¹¹Shackleton-Bailey, *Cicero's Letters*, p. 651 (1.1.4.13) Plutarch reports that, when summoned, Fabius Maximus happily submitted to his son's lictor, the lictor, of course, being merely an agent of the consul's authority. I. Scott-Kilvert, trans., *Plutarch: Makers of Rome, Penguin Classics*, Harmondsworth, 1981 [1965], p. 79, (*Fabius Maximus* 24); Gellius, *Noctes Atticae*, 2.2.13 = Rolfe, *op. cit.*, pp. 126-7

²¹²*In Verrem*, = Greenwood, *op. cit.*, pp. 222-5 Perhaps it is something of a trope to claim that one's own *apparitores* are frugal and honorable. To admit the opposite would surely represent a failure on the part the man they supposedly served. Cf. Cato's claim that he "never gave wine money to his *apparitores* and friends, nor did [he] make them wealthy to the detriment of the state." How unlike the staff of Verres! Cato 173 (*De Sumptu Suo*) = Fronto 1.2 = C. Haines, trans., *The Correspondence of Marcus Cornelius Fronto*, v. 2, *LCL* 113, Cambridge, 1957 [1920], pp. 44-7

²¹³*De Domo Sua* 74 = N. Watts, trans., *Cicero: The Speeches*, v. 11, *LCL* 158, Cambridge, 1965 [1923], pp. 220-3; cf. *In Verrem*, 3.79.183 = Greenwood, *op. cit.*, pp. 224-7; Oakley, *op. cit. ad loc.* 9.46.1-2, pp. 615-6 On archives, see P. Culham, "Archives and Alternatives in Republican Rome," *Classical Philology* 82.2 (Apr. 1989), pp. 100-15 Cf. *Pro Archia* 8 = Watts, *op. cit.*, pp. 14-5 State archives were staffed albeit imperfectly. Cicero complains, "...the laws are what our clerks (*apparitores*) want them to be: we get them from scribes, and we have no authenticated public record in the public archives." *Laws*, p. 174 (3.46). Fraenkel's practical comment says it all: "If an interested party wanted to have access to certain official documents, the scribae had to produce the volume in question and see to it that authentic copies were made." This perhaps idealizes the situation, but rings true. E. Fraenkel, *Horace*, Oxford, 1980 [1957], p. 14. On the other hand, sometimes it was hardly worth the effort to bother with the "official" archives, and aristocrats often relied on their own memories. Cf. Polybius, *Histories*, 3.26 (Paton, *op. cit.*, v. 2, pp. 60-3) and 22.9 (Paton, *op. cit.*, v. 5, pp. 360-5), where, in the former case, ranking Romans often relied on memory regarding the content of treaties, while in the latter, it was ranking Achaeans. The preservation of the *acta senatus*, or minutes of the senate,

duties.²¹⁴ Cicero stresses the point that they had to be honorable precisely because of their responsibilities.²¹⁵ But these are the higher ranked *apparitores*. The lower-ranking, perhaps unsurprisingly, remain nameless. For example, messengers (*viatores*), who could compel individuals to appear directly before a magistrate, are known only by their jobs. Thus, as tribune of the people, Vatinius dispatched his *viator* to the home of Marcus Bibulus, the consul, to drag him by force (*vi*) thence.²¹⁶ Cicero says this was a completely illegal, not to mention immoral, act, yet there is no hint that the messenger hesitated: rather, he carried out the tribune's instructions, as men of his profession were expected to do. Of course, those were violent times:

was apparently haphazard during the Republic. See R. Talbert, *The Senate of Imperial Rome*, Princeton, 1984, pp. 308-23. The speech of Cato Uticensis during the Catilinarian conspiracy was, according to Plutarch, only preserved because Cicero brought dictation specialists to the senate to record the proceedings. *Cato Minor* 23.3 = Perrin, *op. cit.*, pp. 288-91. Unfortunately, the study by Metz of stenography sheds no light on those who took down senatorial minutes. A. Metz, "Die Entstehungsgeschichte der römischen Stenographie," *Hermes* 66.1 (Jan. 1931), pp. 369-86.

²¹⁴Oakley, *Livy*, v. 3, pp. 618-9 (*ad loc.* 9.46.2); according to Oakley, the oath taken by *scribae* at Urso is thought to be similar or identical to the oath taken by Rome's *scribae*. For the oath, see N. Lewis and M. Reinhold, *Roman Civilization, Sourcebook I: The Republic*, New York, 1966 [1951], p. 424 (Sect. 81).

²¹⁵See Damon's comments regarding Cicero's reasons to speak thus.

²¹⁶*In Vatinius* 22 = R. Gardner, trans., *Cicero: The Speeches*, v. 12, *LCL* 309, Cambridge, 1966 [1958], pp. 266-9. Bibulus, who was Caesar's colleague, had tried to block Caesar's legislation. His *fasces* were smashed in the ensuing riot, and he ran home to save his skin. D. Shackleton-Bailey, *Cicero*, London, 1971, p. 50; D. Stockton, *Cicero: A Political Biography*, Oxford, 1988 [1971], p. 169; M. Gelzer, *Caesar: Politician and Statesman*, Cambridge, 1968, p. 79. See also Varro's comments regarding the distinction between magistrates with *imperium*, who have lictors and the right of *vocatio*, and those who have the right of *prensio* through their *viatores*. Most interesting is his observation that many tribunes because of their inexperience (*imperiti*) wrongly believed that they too had the right of *vocatio*. The hazards of amateur magistrates! Gellius, *Noctes Atticae*, 13.12.6 = J. Rolfe, *The Attic Nights of Aulus Gellius*, v. 2, *LCL* 200, Cambridge, 1960 [1927], pp. 442-5. It probably overstates the case to call *lictores* and *viatores* "minor police authorities." E. Echols, "The Roman City Police: Origin and Development," *Classical Journal* 53.8 (May 1958), pp. 377-85.

perhaps the unnamed *viator* was only too happy to support Vatinius, regardless of his job. Although he did not, Cicero might have named him as a scoundrel worthy of his master as he had with the staff of Verres. Alternatively, any hesitation on the part of the *viator* would have only been too welcome, as Cicero could have used it to bolster his condemnation of the former tribune. But that is not the case either. The point to note here is that this messenger is nothing more than an instrument of Vatinius.

Cicero never questions that.

Magistrates also relied on dependents, drawn from the *familiae* of associates or their own: these were the *accensi*.²¹⁷ In other words, although the state provided *apparitores*, magistrates might augment these with their own men, known as *accensi*. These *accensi* were generally freedmen (*liberti*), that is, socially indebted former slaves. Not that social debts had the force of iron, but they certainly could persuade, and the legal obligations of freedmen could sometimes be brought to bear on the recalcitrant. In the military, although information about the role of *accensi* is scarce, generals did rely on a range of persons, from inferior soldiers to “clients, whom he wished to reward, or men recommended to him by friends.”²¹⁸ Perhaps some *accensi* were freeborn; such are not attested, but evidence on *accensi* is relatively sparse,

²¹⁷ P. Fracaro, “Accensi,” *Athenaeum* 5 (1927), pp. 133-46; I. di Stefano Manzella, “Accensi velati consulibus apparentes ad sacra: proposta per la soluzione di un problema dibattuto,” *Zeitschrift für Papyrologie und Epigraphik* 101 (1994), pp. 261-79 and “Accensi: profilo di una ricerca in corso (a proposito dei <<poteri collaterali>> nella società romana),” *Cahiers du Centre Gustave-Glotz* 11 (2000), pp. 223-57

²¹⁸ A. Goldsworthy, *The Roman Army at War: 100BC – AD 200*, Oxford, 1996, pp. 124-5. Slaves and freedmen assisted with military finance in the imperial period, but there is no reason to see this as an innovation. Y. Le Bohec, *The Imperial Roman Army*, New York, 1989, p. 55. Interpreters too may fall into this category. D. Peretz, “The Roman Interpreter and his Diplomatic and Military Roles,” *Zeitschrift für alte Geschichte* 55.4 (2006), pp. 451-70.

especially for the Republican period. Cicero advised his brother to employ freedmen (*liberti*) and maintain a firm grip on them as he would his slaves.²¹⁹ He could speak from experience since Publius Cornelius Lentulus Spinther's freedman, Pausanias, had served as Cicero's *accensus* during the proconsulship in Cilicia.²²⁰ At any rate, the *accensi* were men brought on board to execute without question the commands of their bosses.²²¹ That is how it was with perhaps the most notorious of the *accensi* to be memorialized outside epigraphic sources: Timarchides.²²² In him Verres found a real partner. Cicero's rhetoric is doubtless designed to paint for his audience a suitably lurid picture, but one point is rings true, and that is his unfailing execution of tasks assigned by the boss, Verres. His job included knowing all that needed to be known about the circumstances of men in the province who attracted the governor's rapacity. This amounted to the application of threats or inducements as needed. Furthermore, Timarchides peddled the governor's services: obviously he was, as he had to be for the operation to succeed, a man to be trusted, even if he was at liberty to enrich himself along the way. If the ideology of the faithful *accensus* did not apply, Cicero's argument would have failed. Yet his audience knew well enough that *accensi* were agents of their master's will; Timarchides would not have retained his

²¹⁹Shackleton-Bailey, *Cicero's Letters*, p. 651 (1.1.4.13). Freedmen were obliged by law to render service as needed to former masters. J. Crook, *Law and Life of Rome*, Ithaca, 1978 [1967], pp., 51-5; R. Knapp, *Invisible Romans*, London, 2011, Ch. 5, esp. pp. 173-82

²²⁰*Ad fam.* 3.7.4-5 = W. Williams, trans., *Cicero: The Letters to his Friends*, v. 1, *LCL* 216, Cambridge 1965 [1927], pp. 192-5

²²¹“La raccomandazione di Cicerone al fratello di scegliere l'accenso fra i propri liberti aveva un reale fondamento nel bisogno di *obbedienza assoluta*, di sicurezza e riservatezza.” (emphasis added) di Stefano Manzella, *op. cit.*, p. 244

²²²Di Stefano Manzella notes five *accensi* attested outside the epigraphic sources (C1-5); the inscriptions are mostly imperial. *op. cit.*, pp. 227 and 234-5.

employment without the sufficiently faithful execution of his master's will. That much was assumed. But *accensi* were not always louts. They could be cultured men, like Gabinius Antiochus, the freedman and *accensus* of A. Gabinius, who accompanied his former master during the governorship in Syria, and the epigraphic evidence shows that an *accensus* could take pride in his status and go on to have a respectable career in his own right: Marcus Caelius Phileros, for example, who had served in Africa as a general's *accensus*, went on to hold office at Carthage.²²³ It might be objected that these men do not represent a bureaucratic element in the Republic system because, unlike *apparitores*, who developed experience because of a continuity of service that transcended the temporary periods of office enjoyed by the magistrates, the *accensi* were essentially used on an *ad hoc* basis. That misses the point. The issue is that magistrates and other officials of the Republic relied as a matter of practice on both categories of assistants. The magistrate used *accensi* and *apparitores*, both of whom were expected to serve their superiors faithfully. This does not mean, of course, that all *apparitores* and all *accensi* were faithful servants. After all, Cato's thwarted efforts to clean up the treasury by getting rid of unsatisfactory staff shows that expectation and experience did not always match. It does mean, however, that they were employed precisely because they were supposed to act faithfully, not independently of the commands laid upon them.²²⁴

²²³ di Stefano Manzella, *op. cit.*, p. 235 (C6)

²²⁴ Though of a much later date, it is interesting that Severus, probably Severus Alexander, saw Rome's subjection to the city prefect's jurisdiction as a kind of *fideicommissum*. *Digest* 1.12.1.4 A *fideicommissum* was a formally trust by which the deceased could conditionally bequeath his estate to persons who could not formally be heirs. Thus, for example, he could leave his house to his son with the further stipulation that the house be passed to his eldest grandson upon the death of

Literary sources similarly preserve this image of staffs doing what they are told. Livy is particularly important here because of the influence his history had, courtesy of Machiavelli's discourses, on subsequent thinking about the Republic.²²⁵ In Livy, the many lictors, scribes, heralds, and messengers exist mostly as nameless figures, carrying out the orders of their magistrates. They are, unsurprisingly, only known by their function, which serves to create a cumulative emphasis on these nameless figures as mere instruments of authority. A few examples will serve to illustrate this. The case of Publius Horatius sets the tone; the story took place, of course, the regal period, but is cast in terms familiar to Livy's readers. The Albans and the Romans are on the verge of war. Rather than have their armies fight, they agree to let the war be resolved by personal combat. As it turns out, the Albans have a set of triplets, the Curiati, and the Romans have their triplets, the Horatii. Thus, this combat will be conducted by them. The Romans win, Publius Horatius being the sole survivor. The triumphant Horatius returns home bearing the spoils of his victory. It just so happens that Horatia, his sister, had been betrothed to one of the Curiatii, and she is upset to recognize among the victor's spoils a cloak that she had made for her

his son. See, for example, B. Nichols, An Introduction to Roman Law, Oxford, 1992 [1962], pp. 267-9; A. Borkowski, Textbook on Roman Law², Oxford, 2002 [1997], pp. 250-4. The implication of the quotation from Severus, then, is that the urban prefect metaphorically held Rome in trust, with the stipulations emanating from the emperor himself. Thus, the prefect, on this reading, is a fiduciary acting in good faith for the emperor. Perhaps this is merely the legalistic expression of the emperor's attitude towards his ministers; while not so articulated, it is interesting to consider how this echoes in formal terms the expected relation of staffs to their magistrates.²²⁵ The fact that Livy did not have to explain much of the Republic's apparatus to an audience assumed already to know it, has led to uncertainty about features that interest later historians. See C. Rowe and M. Schofield, The Cambridge History of Greek and Roman Political Thought, Cambridge, 2005, p. 523. In this vein, it appears that Livy only once refers to *accensi*. 38.55.4-7

intended. Horatius promptly kills her as a traitor, and the king has Horatius tried for the act. In accordance with the law, the sentence of death is pronounced, and the lictor is ordered to carry it out. Despite the obvious unpopularity of the sentence, the judge issues the command, saying: “Publius Horatius, I find you guilty of treason. Lictor, bind his arms.” The people’s sentiments notwithstanding, the lictor unhesitatingly comes forward to execute the command. Ultimately, the father intervenes, and Horatius is not executed, but the point here is that, while a citizen might appeal to prevent the execution of the sentence, the lictors never did anything but act exactly as directed.²²⁶ And, it is worth noting, they were not slaves; they were plebeians. Livy relates, for example, that, when Publilius Volero refused the draft, the consuls sent the nameless lictors to seize him – “All of plebeian birth!” – a point, Livy suggests, not wasted on the angry, common people. Although the mob manhandled the lictors and drove them from the forum, the lictors themselves never hesitated in their effort to carry out the consular command to arrest and scourge Volero.²²⁷ In a similar vein, Titus Manlius executed his son in the mid-fourth century BC, despite his military success, because he had carried out an attack without proper authority. The young man had accepted the challenge of the enemy cavalryman, Geminus Maevidius, and won the duel. He returned filled with pride and displayed the spoils to his father, who promptly ordered his execution for failing to follow his orders, both as consul and as father (*neque imperium consulare neque maiestatem*

²²⁶R. Ogilvie, trans., *Livy: The Early History of Rome, Penguin Classics*, Harmondsworth, 1987 [1960], pp. 58-63(1.25-6), quotation from p. 62 (1.26.7)
²²⁷Ogilvie, *Livy*, pp. 169-70 (2.55). Lictors were not slaves, but citizens. R. Ogilvie, *A Commentary on Livy: Books 1-5*, Oxford, 1984 [1965], p. 374, *ad loc.* 2.55.3.

patriam).²²⁸ To the horror of the soldiers witnessing this, Titus Manlius utters the dreaded command: “Go, lictor, bind him to the stake.” The anonymous lictor carries out the order without hesitation, the beheaded corpse serving as a grim and shocking reminder to all the other soldiers.²²⁹ Examples of lictors dutifully carrying out the orders of magistrates could be multiplied, but they would only serve to reinforce the point: they are invariably assumed to do the bidding of officials without question.²³⁰

Messengers (*viatores*) and heralds (*praecones*) similarly serve as nameless functionaries in Livy. As with the lictors, a few examples will suffice. While the herald might be used to quiet a crowd so that an official might speak or make an announcement, the messenger’s tasks could be more physical.²³¹ In the case of Volero, mentioned earlier, he eventually was made tribune and, together with his

²²⁸B. Radice, trans., *Livy: Rome and Italy*, *Penguin Classics*, Harmondsworth, 1982, pp. 165-7 (8.7), quotation at p. 166 (8.7.15)

²²⁹p. 166 (8.17.19) Other Livian examples of this expression are compiled in S. Oakley, *A Commentary on Livy: Books VI-X*, Oxford, 1998, v. 2, p. 450, *ad loc.* Cf. Gellius, *Noctes Atticae*, 12.3.1-2 (Rolfe, *op. cit.*, v. 2, pp. 366-9), which suggests an etymological relationship between binding and the word, lictor. Cicero in his speech on behalf G. Rabirius claimed that these commands, “Go, lictor, bind the hands,” and “cover the head and him to a tree,” were no longer lawful because citizens could not be summarily executed. Yet the interesting implication of this claim is that, in fact, lictors called upon to carry out these tasks would do so without pondering the legality of the matter. Such was the tradition, that lictors did the bidding of their masters, no matter how horrible the command might appear to people. *Pro Rabirio* 11-3 = Hodge, *op. cit.*, pp. 462-5 Legal restrictions on the peremptory flogging of citizens (*lex Porcia*) are beside the point because magistrates were always capable of violating the law, as Verres had done, and, more importantly, the issue in question is the degree to which a magistrate could rely upon his lictor to carry out his orders. Livy who is self-consciously writing a normative history, portrays lictors as reliable; Cicero does as well although in the texts cited, he is not writing history.

²³⁰Cf. Oakley, *Livy*, v. 2, p. 724, *ad loc.* 8.32.10 According to Livy, the decemvirs sat as judges by rotation. The sitting judge would be accompanied by his twelve lictors, the nine colleagues, who were not sitting in judgment, would be attended by individual *accensi*. Ogilvie, *Livy*, p. 220 (3.33.8)

²³¹On heralds, Ogilvie, *Livy*, p. 304 (4.32.1); Radice, *op. cit.*, pp. 201-2 (8.32.2) On *praecones*, see Oakley, *Livy*, v. 1, p. 419, *ad loc.* 6.3.8

colleague, Laetorius, attempted to pass legislation favorable to the plebs. At the vote, the dispute devolved into a physical confrontation with Laetorius ordering his *viator* to arrest the consul, the consul ordering his lictor to arrest Laetorius.²³² The confrontation was resolved by a quick-thinking consul. Another case of the *viator* being used to carry out an arrest arose during the confrontation between the dictator, Aulus Cornelius Cossus, and Marcus Manlius Capitolinus. The dictator interrupted Manlius as he was giving a speech to explain his actions, demanded that he summarize and apologize to the Senate, and, those demands being refused, ordered the *viator* to arrest him.²³³ The *viator*'s role in this episode is treated so perfunctorily (*arreptus a viatore*) that it serves as nothing more than a fusion of function and person.²³⁴ That is, the person who was the *viator* in this narrative only exists in his role, a role which is presented as executed with complete automaticity. The participle itself, *arreptus*, is striking for its physicality, not to say violence. In the well-known case of Rome's first poisoning trial, dated to the latter third of the fourth century BC, a *viator* was dispatched to make the accused, a group of respectable women (*matronae*), appear (*matronis...per viatorem accitis*); he simply carried out his instructions of the consuls.²³⁵ But a *viator* was not confined to delivering summons to appear or silencing the verbose; he might also deliver a magistrate's messages. For

²³² Ogilvie, *Livy*, p. 172 (2.56.10-3) Although in this tale, the consul has a lictor and the tribune a *viator*, it is clear that *viatores* were also available to other magistrates, such as the dictator.

²³³ Radice, *op. cit.*, p. 57 (6.16.1-2)

²³⁴ The identical phrase is used when Appius Claudius is arrested. Ogilvie, *Livy*, p. 245 (3.56.6)

²³⁵ Radice, *op. cit.*, p. 183 (8.18.8); Manlius had been summoned to appear and give an accounting of himself by means of a *viator*. p. 55 (6.15.1) For *viator* as senatorial messenger, see, Cicero, *De Senectute* 56 = W. Falconer, trans., *Cicero: De Senectute, De Amicitia, De Divinatione*, v. 20, LCL 154, Cambridge, 1964 [1923], pp. 66-9

example, during the Second Punic War, the dictator, Fabius, sent a messenger to tell the consul to appear before him without lictors in deference to his rank as dictator.²³⁶

Obviously and unsurprisingly, magistrates decide, staffs execute.

Still, these underlings were human beings, and there were, naturally, moments when standards and expectations of subordinate obedience might be violated. One story stands out, for example, because it shows that under extraordinary circumstances, staffs might behave like citizens and follow dictates of conscience. In 187 B.C. Publius Scipio Africanus, accused by political enemies of peculation among other things, responded in a few words then promptly departed for the Capitol. The mass of citizens (*universa contio*) in attendance followed him, and “the clerks (*scribae*) and messengers (*viatores*) abandoned the tribunes” so that no one remained “except their retinue of slaves and the herald who...summoned the defendant.”²³⁷

The point of this unusual story is to emphasize the force of Scipio’s disturbing influence, an influence so powerful that it transcended the obligations of subordinate officials. It is striking because unusual, nor does it undermine Livy’s general depiction of staffs serving as functionaries, obedient to their masters. Indeed, if not for the consistent image of obedience, the departure of the clerks and messengers would be undramatic, but their decision to abandon their posts emphasizes Scipio’s power. It is an exception that gains in all the more in force, the truer the actual rule.

²³⁶A. de Sélincourt, *Livy: The War with Hannibal*, *Penguin Classics*, Harmondsworth, 1985 [1965], p. 106 (22.11.5)

²³⁷H. Bettenson, *Livy: Rome and the Mediterranean*, *Penguin Classics*, Harmondsworth, 1983 [1976], pp. 386-7, quotation from p. 387 (38.51.12) Cf. Gellius, *Noctes Atticae*, 4.18.3-6 = Rolfe, *op. cit.*, v. 1, pp. 368-71; W. Paton, trans., *Polybius: Histories*, *LCL* 160, Cambridge, 1978 [1926], v. 5, pp. 424-5 (23.14.1-4) On this episode and surrounding events, see, H. Scullard, *Scipio Africanus: Soldier and Politician*, Ithaca, 1970, pp. 216-20.

Scribes also appear in Livy, although not with great frequency. The case of Gaeus Flavius, the scribe who publicized the legal formulae (*legis actiones*) and calendrical arcana previously held in secret by the pontifical college, and then went on to hold office in the late-fourth century BC, was mentioned earlier. He is important to Livy not as a scribe, although that status had provided Flavius with access to secret information. Instead, he is significant because he was a historical anomaly. Indeed, he was dogged by his status, be it as former scribe, as freedman's son, or both. On the one hand, he had to resign his post in order to take up the aedileship. On the other, the nobles resented being compelled to show him the respect befitting his office.²³⁸ Rare indeed was the scribe who broke faith; remarkable, the scribe who held office.²³⁹ It is, after all, striking that the literary corpus preserves the names of 22 *scribae*, five of whom are mentioned by Livy.²⁴⁰ Marcus Claudius Glicia held the dictatorship for but an instant; Lucius Cantilius, a pontifical scribe, was clubbed to death in the assembly by his boss, the pontifex maximus for the sacrilege of debauching a vestal; dangerous religious books, purportedly Numa's, were discovered on the property of Lucius Petilius; Gaeus Cicereius, Scipio's scribe, became praetor.²⁴¹ *Scribae* were generally men of the

²³⁸Gellius, *Noctes Atticae*, 7.9.1-6 = Rolfe, *op. cit.*, v. 2, pp. 116-9 See also Oakley's comments on the attitude reflected in the passage in Gellius, p. 606.

²³⁹Badian, *op. cit.*

²⁴⁰Badian, *op. cit.*, pp. 583-5

²⁴¹Badian provides the sources, p. 583-4 (2-5). Claudius, *Per.* 19 = B. Foster, trans., *Livy: History of Rome*, v. 4, *LCL* 191, Cambridge, 1963 [1926], pp. 557-9 ; Cantilius, de Sélincourt, *op. cit.*, p. 157 (22.57.2-3); Petillius, Bettenson, *op. cit.*, pp. 464-5 (40.29.3-14) The episode involving Cantilius resulted in the execution of one vestal by live burial; the other suicided. The case of Petillius is interesting because the praetor, Quintus Petillius, who insisted on having Numa's books destroyed, had made him scribe. Perhaps there is a connection between the name and the job. Presumably,

shadows, magistrates, men of the political stage. The creation of the office of censor occasioned the decision to provide secretarial staffs to assist him.²⁴² If scribes violated their duties, presumably their oaths as well, they were prosecuted. Thus, Livy relates that Lucius Licinius Lucullus, along with several of his assistants (*scribae viatoresque*), suffered in 201 BC for embezzling from the public treasury.²⁴³ Staff faced conviction, Licinius disgrace, naturally.²⁴⁴ More to be expected were the

Badian does not include Marcus Anicius because, although originally a scribe, he was a municipal rather than a Roman praetor. De Sélincourt, *op. cit.*, p. 192 (23.19.17)

²⁴²Ogilvie, *Livy*, p. 279 (4.8.4)

²⁴³de Sélincourt, *op. cit.*, p. 668 (30.39.7) Of course, given the relative lack of precision involved with accounts at the *aerarium*, allowance must always be made for politics lurking behind this case. Cf. Cicero *Pro Murena* 42 = L. Lord, trans., *Cicero: The Speeches*, v. 10, *LCL* 324, Cambridge, 1964 [1937], pp. 198-201, where charges of peculation similarly resulted in the conviction of a scribe. Regarding the imprecision of accounts see, Cicero, *In Pisonem* 61 with comments *ad loc.*, Nisbet, *op. cit.*, p. 124: “great detail was not expected,” nor was it given in the case of Scipio related above (fn. 237, *supra*)

²⁴⁴True equality before the courts always made aristocrats fret over the fate of their liberty. Cicero asserted, for example, that true equality between inferiors and their betters was most “unfair.” *Republic*, p. 23 (1.53) Cf. M. Grant, trans., *Tacitus: The Annals of Imperial Rome*, *Penguin Classics*, Harmondsworth, 1985 [1956], p. 75: “His [*sc.*, Tiberius] presence successfully induced many verdicts disregarding influential pressure and intrigue. Nevertheless, it also infringed on the independence of judges.” The Latin is more forceful: *set dum veritati consulitur, libertas corrumpebatur* (“but while fairness was considered, freedom began to be ruined.”) Furneaux and Koestermann believe that *libertas* here means “independence of the judges,” the idea being that the emperor’s presence influenced their decisions. H. Furneaux, ed., *The Annals of Tacitus*, Oxford, 1968 [1883], p. 278 (*ad loc.* 1.75.2); E. Koestermann, *Cornelius Tacitus: Annalen*, Heidelberg, 1963, v. 1, p. 245 It is also likely that Tacitus has an ironic sense here as well, namely the idea that previously aristocrats saw the effective use of influence among the judges as an expression of *their* liberty. Thus, Macmullen, *op. cit.*, p. 133 Livy offers some support. While Scipio felt that he had no duty to answer the charges of Petillius, some, in fact, argued that “nothing was so essential to the equalization of liberty (*aequandae libertatis*) as the possibility that even the most powerful men should be put on trial.” Bettenson, *op. cit.*, p. 385 (38.50.8) “Equality is impossible without impersonality,” observe D. North *et al.* *Violence and Social Orders*, Cambridge, 2009, p. 23

clerks who dutifully recorded the contributions of gold, silver, and bronze to the state treasury to pay for fleets during the 2nd Punic War.²⁴⁵

If staffs appear here and there in Livy's history, Cicero's *Commonwealth* and *Laws* contain one reference, albeit it an important one. For in that passage, he highlights the problem of disparity in knowledge between magistrates and their staffs.²⁴⁶ After all, because of the continuous nature of their position, scribes were well placed to accumulate specialized experience and knowledge. Moreover, as they tended public records, they were responsible for providing officials with fair copies of documents, a point which Cicero similarly took as vulnerability for magistrates when he declared, "...the laws are what our clerks want them to be: we get them from scribes, and we have no authenticated public record in the public archives."²⁴⁷ The anxiety appearing here reflects a recognition that, despite the theoretical status of the roles, the magistrate being the one to command, the scribe, the one to obey, in practice, magistrates might actually find themselves at the mercy of their staffs.²⁴⁸ And there was little question that Cicero considered these men social inferiors, a view his readers were expected to share. Thus, his mention in *On Duties* of Sulla's scribe, Cornelius, becoming a quaestor, an implicit jibe at the policies of Caesar, is cited to bolster his argument that lust for money gives rise to civil discord.²⁴⁹ In other words,

²⁴⁵de Sélincourt, *op. cit.*, p. 402 (26.36.11)

²⁴⁶*Laws*, p. 175 (3.48) Cf. the comments of Polybius to the effect that leading men in Rome had little concrete knowledge (*agnoun*) regarding the treaties between Rome and Carthage. Paton, *op. cit.*, v. 2, pp. 62-3 (3.26.2)

²⁴⁷*Laws*, p. 174 (3.46)

²⁴⁸This parallels comedy, which regularly shows slaves getting the better of their masters.

²⁴⁹M. Griffin and E. Atkins, edd., *Cicero: On Duties, CTHPT*, Cambridge, 2008 [1991], p. 73 (2.29); A. Dyck, *A Commentary on Cicero, De Officiis*, Ann Arbor,

it is during turbulent times that people like Cornelius can rise to positions of authority. Normally, they should not and would not. They were, after all, men who sold their services, thereby subjecting themselves to another's will and losing their liberty.²⁵⁰

Cicero, no doubt like many of Rome's social elite, distinguishes between those who acquire their wealth and position through honorable pursuits, such as agriculture, advocacy, and doing politics, and those who sell their efforts, physical or mental, to another for cash.²⁵¹ In *On Duties*, for example, he ranks among the lowest

1996, pp. 406-7 As a scribe, Cornelius had assisted Sulla during the proscriptions, perhaps by keeping accounts of confiscated property. Sallust, *Historiae*, 1.55.17 in L. Reynolds, ed., *C. Sallusti Crispi Catilina, Iugurtha, Historiarum Fragmenta Selecta, Appendix Sallustiana*, OCT, Oxford, 1991 Cf. the story of Ventidius Bassus, who despite humble origins and having started out as a muleteer, met with Caesar's favor and eventually held high office, which offended decent people. Gellius, *Noctes Atticae*, 15.4 = Rolfe, *op. cit.*, v. 3, LCL 212, pp. 68-73

²⁵⁰Cf. the stoic idea that the philosopher is truly free because freedom consists in independent action (*autopraxis*), while lesser folk are slavish because slavery consists of the absence of independent action. A. Long and D. Sedley, edd., *The Hellenistic Philosophers*, Cambridge, 1992 [1989], v. 2, pp. 426-7 (67M) Pettit is right to see freedom from subjection to the will of another as key to understanding the classical Roman idea of *libertas*, although it is not true, as he claims, that *civitas* and *libertas* were effectively synonymous. P. Pettit, *Republicanism: A Theory of Freedom and Government*, Oxford, 1999, 27-35. In fact, as the jurists put it, one's status consisted of *libertas*, *civitas*, and *familia*. *Maxima est capitis deminutio, cum aliquis simul et civitatem et libertatem amittit.... Minor sive media est capitis deminutio, cum civitas quidem amittitur, libertas vero retinetur.... Minima est capitis deminutio, cum et civitas et libertas retinetur, sed status hominis commutatur.* J. Moyle, *Imperatoris Iustiniani Institutionum Libri Quattuor*, Oxford, 1903, pp. 156-7 (1.16) At any rate, if *libertas* and *civitas* were synonymous, one could not lose one without the other. The jurists clearly make a distinction.

²⁵¹The traditional Roman view saw honor in farming. In *De Senectute* 55 (Falconer, *op. cit.*, pp. 66-7), Cicero's Cato explains the rejection of Samnite gold by Curius thus: "he said that it seemed outstanding to him, not to have gold, but to command those who do." While acknowledging that trade could be useful, if not too risky, Cato reminded his son that when people spoke of a good man, they praised him as "a good farmer and good pioneer (*colonus*).” Moreover, farmers made “the bravest men

and most unworthy of free men “workers who are paid for their labour and not for their skill” with the added comment that all craftsmen are “engaged in a demeaning trade; for there can be nothing well bred about the workshop.”²⁵² However much honor might accrue to those engaged in more mentally engaging trades such as medicine, architecture, or teaching, or, one might add, the apparitorial arts, Cicero is clear that such professions are appropriate “to the class that they befit.”²⁵³ There is always a degree of surrender or enslavement associated with the sale of one’s capacities. When he speaks of laborers as those who engage themselves in a kind of slavery for the sake of money – they are *mercennarii* – one must wonder, despite his qualification (*mercennariorum omnium quorum operae, non quorum artes emuntur*), over the extent to which such reasoning did not apply to the doctors, architects, and other such professions. It is perhaps a matter of degree, the crucial issue being the sale of services. This gradation between slavery and true freedom seems palpable when he approves the idea that extravagant expenditure delights women, children, slaves, and “those free men that are most like slaves.”²⁵⁴ While those slave-like freemen may be slave-like in their mentality, those who hire out their services, also are slave-like. The free too can surrender their volition to others at a price, as

and strongest soldiers.” Cato, *De Agricultura* 2 and 4 in W. Harper, trans., Marcus Porcius Cato on Agriculture, LCL 283, Cambridge, 1960 [1934], pp. 6-7 and 8-9

²⁵²*Duties*, p. 58 (1.150) Cicero explains that payment is a “contract for servitude” (*auctoramentum servitutis*). Crook says that the *auctoramentum* was the “oath of free men hiring themselves as gladiators.” *op. cit.*, p. 61 Even if the connotation was not always of gladiators, the word related to transactions of the demimonde or, to borrow a phrase from Cicero, “the dregs of Romulus.”

²⁵³*Duties*, *ibid.* (1.151) “[S]uch professions would not, of course, come into question for a senator’s son [*viz.*, Cicero’s, the addressee of *On Duties*]. Hence, there is no question of our text recommending that noble Romans become physicians, architects, or teachers....” Dyck, *op. cit.*, p. 336 (*ad loc.* 1.151)

²⁵⁴*Duties*, p. 85 (2.57)

doubtless did many ordinary *cives Romani*, but Cicero's Republican leaders were not of this sort. They would be men with the independence of will necessary to carry out their duties as magistrates and as guardians of the civic community.²⁵⁵

It is significant that Cicero likens government to guardianship (*ut tutela, sic procuratio republicae*).²⁵⁶ *Tutela* in Roman law was an arrangement designed to ensure that a guardian or *tutor* would manage the property of an underage child or a woman, who were legally incapable of administering it themselves.²⁵⁷ Historically, *tutela* derived from *patria potestas*, or a father's authority within his *familia*. Naturally, a *familia* included women, children, and slaves, individuals who could not stand at law on their own. The *paterfamilias* as head of the *familia* would do this. Once these relationships are understood, Cicero's statement that government was a metaphorical *tutela* becomes clearer: magistrates were competent to act on behalf of ordinary *cives*.²⁵⁸ To magistrates rightly fell the responsibility for deciding the direction of the political community, the *civitas Romana*. The picture that emerges, then, is one of the few, the right sort, holding magistracies, and the rest.²⁵⁹ And in terms of magistrates with their staffs, the former would make the decisions, the latter, execute them.

²⁵⁵Cf. D. Potter, "Holding Court in Republican Rome," *American Journal of Philology* 132.1 (Spring 2011), pp. 59-80. Potter observes that "political life was staggeringly expensive." p. 64 This obviously ensured that the ordinary citizen had little opportunity to hold office, and that even the elite often ran up huge debts in money and favors to serve their immediate political aims.

²⁵⁶*Duties*, p. 33 (1.85)

²⁵⁷Nichols, *op. cit.*, pp. 90-6; Crook, *op. cit.*, pp. 113-6.

²⁵⁸Cicero, in the voice of Scipio, describes the opposite of the tyrant as kind of "tutor and manager of the commonwealth" (*quasi tutor et procurator rei publicae*). *Commonwealth*, p. 49 (2.51)

²⁵⁹The image evokes the third class of ordinary folks who are to go about their business quietly in Plato's *Republic*. See, Ch. 2., p. 61, *supra*.

The lack of attention paid staffs in Cicero's political theory need not surprise. His concern was primarily with the men who were fitted to lead the Republic, not those who would silently help them do it.²⁶⁰ Cicero praised the Republican constitution because it assigned something (*aliquid*) to the "authority of the aristocrats (*principum*)" and certain matters (*quasdam res*) to "the judgment and wishes of the people."²⁶¹ The people, who could only approve or reject proposals presented to them, did not assemble to deliberate.²⁶² Indeed, when assembled in centuries, most did not even vote. At any rate, Cicero's point that the people were concerned with certain matters (*quasdam res*) – a phrase that loses force if explained away as mere rhetorical *variatio* – actually makes this point because those certain matters were ones brought to them by magistrates, who were to the state, as the head was to the body.²⁶³ For Cicero, ideal Republican leaders would be wise men (*prudentes*), guiding the community the way that a manager (*vilicus*) would run an estate, knowing the principles necessary to his station, but subordinating theoretical to

²⁶⁰Note that his comments on scribes come when he is explaining a proposed law on censors that itself makes no mention of them, which confirms the idea that these staffs were assumed and generally required no explicit mention in works of this sort. *Laws*, p. 174 (3.46) The proposed law (p. 161 [3.11]) is interesting because his solution to the problem of scribes controlling the laws is to identify as custodians of the law the censors, whom he likens to Greek *nomophulakes*.

²⁶¹*Commonwealth*, p. 31 (1.69)

²⁶²Recall, though, that citizens did in actual fact argue and listen to the speechifying of magistrates at gatherings called *contiones*.

²⁶³"The rule of kings and generals and magistrates and fathers (*patrum*) and nations directs their citizens and allies in the same way that the mind rules bodies, while masters subdue their slaves in the same way that the best part of the mind, wisdom, subdues the flawed and weak parts of that same mind, such as desires, anger, and other disturbances." *Commonwealth*, p. 73 (3.37a) The use of *patres* surely means senators. Cf. *Commonwealth*, p. 28 (1.64) and p. 37 (2.14); *Laws*, p. 172 (3.40)

practical concerns.²⁶⁴ Moreover, they use the state's institutions and their own ability to educate in order to rein in the impulsive mob as much with shame (*verecundia*) as with fear.²⁶⁵ The leader is a "man of foresight" (*prudens*) who, to use Cicero's metaphor, guides the elephant, "a huge and destructive creature," with "gentle instruction or touch."²⁶⁶ Cicero does not indicate – the *Commonwealth* is fragmentary – how this particular man is to be found. His comment, however, that attaining this level is a combination of will (*voluntas*) and ability (*potestas*) is significant: the required study was not simply a matter of intellectual ability, but also a matter of the leisure necessary for such pursuits.²⁶⁷ Ordinary citizens would rarely

²⁶⁴pp. 88-9 (5.5). Cf. earlier comments on the combination of practical and theoretical knowledge with the important caveat that philosophical study is for those with the capacity. p. 61 (3.6a) In *On Duties*, he connects *prudentia* ("good sense") and *consilium* ("good counsel") with the ability to anticipate events and resist impetuous reaction to turbulent events. p. 32 (1.81)

²⁶⁵p. 89 (5.6=3.3 in J. Powell, *M. Tulli Ciceronis de Re Publica*, OCT, Oxford, 2006, p. 92) Cf. Polybius, whose influence on Cicero's *Commonwealth* is explicitly acknowledged (p. 41 [2.26]), on the beneficial force of superstition (*deisidaimonia*). *Histories*, 6.56.6-11.

²⁶⁶p. 55 (2.67); p. 92 (6.1b) In *Duties*, Cicero opposes *prudentia*, which comes with maturity, to the rash behavior of youth. For this reason, the young should respect their elders. p. 48 (1.122) Despite Cicero's claim to a practical orientation, the implementation of his principles seems difficult. Laelius might observe that "[t]here is a fine supply of them among those present (*sc.*, at the conversation)," but the dialogue is itself a nostalgic fantasy. More importantly, in *Laws*, Cicero concedes that his prescriptions are not for men of his day: "What I say does not refer to this senate or to men of the present (*qui nunc sunt*), but to those of the future (*futuris*) who may wish to obey these laws. Since the law orders them to lack all faults (*omni vitio*), no one with faults will even enter the order (*sc.*, senate). That is hard to accomplish without the proper education and training...." p. 168 (3.29), cf. *Commonwealth*, pp. 87-8 (5.2a)

²⁶⁷*Commonwealth*, p. 61 (3.6a): *qui utrumque (sc., rerum magnarum tractatio atque usus cum illarum artium studiis et cognitione) voluit et potuit*. Given that all men share in the ability to reason, one might suspect that other factors, such as the leisure, would implicitly be decisive in separating the ordinary from the worthy. All men, Cicero noted, had "the capacity to learn (*discendi facultas*)," nor was there anyone who could not "reach virtue with the aid of a guide (*dux*)." *Laws*, p. 116 (1.30) For

enjoy the requisite leisure; indeed, ordinary men hold incorrect ideas.²⁶⁸ Thus, although he does not refer explicitly to an Aristotelean deliberative capacity, Cicero does make clear the distinction between rulers and ruled, the former using a practical wisdom, the latter, like children, women, slaves, and men, who are free in name, but lack full *libertas*, being unruly and dangerous as an elephant.²⁶⁹

It was by holding magistracies that men would regulate the mob.

Distinguishing between office-holders and ordinary citizen, Cicero wrote,

...the particular function (*munus*) of a magistrate is to realize that he assumes the role (*personam*) of the city and ought to sustain its standing and its seemliness, to preserve the laws, to administer justice (*iura describere*), and to be mindful of the things that have been entrusted to his good faith (*fidei*). A private person, on the other hand, ought first to live on fair and equal terms with the other citizens, neither behaving submissively and abjectly nor giving himself airs....²⁷⁰

Magistrates, as fiduciaries by virtue of their office, bear responsibility for Rome's reputation and represent law to the people, whose primary duty consists in keeping quiet.²⁷¹ To be sure, they are not submissive, as a slave would be: citizens are not

those who had natural ability, however, there was an obligation to hold public office. *Duties*, p. 29 (1.72)

²⁶⁸Cf. *Duties*, p. 132 (3.80): "In the opinion of the ordinary man, I can think of nothing that could be a greater benefit than to be king. Conversely, when I begin to bring my reasoning back to *the truth*, I find nothing less beneficial for a man who has achieved it unjustly." (emphasis added) In explaining a provision in his religious law that the ignorant should learn from official priests, he asserts that this is integral to maintaining the state, adding that ordinary people (*populum*) need "the judgment and authority of the nobility (*consilio et auctoritate optimatum*)."
Laws, p. 141 (2.30)

²⁶⁹The violence of the people, after all, would be "much more savage and uncontrolled" if there were no tribunes to reign them in. *Laws*, p. 166 (3.23)

²⁷⁰*Duties*, p. 48 (1.124) Regarding the phrase, *describere/dscribere iura*, see Dyck, *op. cit.*, p. 298, *ad loc.* On the role of faith (*fides*), note the ideas, previously mentioned, of *tutela* and *fideicommissum*, fn. 224 and p. 98, *supra*.

²⁷¹Echoing Aristotle, Cicero speaks of magistrates commanding and being prepared to obey as there is a rotation between office-holding and being a private citizen. Yet for

slaves. But they know their place all the same, and avoid being a source of quarrels.²⁷² In the *Laws*, Cicero expanded on the idea that magistrates administered law by characterizing them as “law that speaks (*lex loquens*),” and law itself as “a silent magistrate (*mutus magistratus*).”²⁷³ In other words, law has no effectual existence without the magistrate, whose duty consists in determining its application. Thus, laws rule magistrates, and magistrates “are in charge of the people.”²⁷⁴ Moreover, these magistrates should be the “respectable citizens (*boni*),” whose political position would be assured by the elimination of secret balloting.²⁷⁵ Cicero explains: “...surely you see that...the real issue in voting is what the most respectable citizens (*optimi viri*) think? Therefore my law gives the *appearance* of liberty while keeping the authority of the respectable (*boni*)...”²⁷⁶ (emphasis added) This is a world of desert according to one’s station; Cicero’s vision would institutionalize that. And these leading men, like *vilici* or estate managers, would offer the guidance and

reasons already mentioned, this should not be understood to imply that Cicero was advocating that any citizen could hold office. *Laws*, p. 158 (3.5); R. Sharples, “Cicero’s *Republic* and Greek Political Theory,” *Polis* 5 (1986), pp. 30-50, esp. pp. 38-42. Cicero’s voting scheme was meant to resolve, in the words of Nicolet, “le conflit entre la *libertas* et l’*auctoritas*.” If ordinary citizens could enjoy *libertas*, *auctoritas* belonged to their betters. C. Nicolet, “Cicéron, Platon et le vote secret,” *Historia: Zeitschrift für Alte Geschichte* 19.1 (Jan. 1970), pp. 39-66, quotation at p. 43.

²⁷²Many were poor, and helping decent, but poor men could pay dividends to a man of position. *Duties*, p. 91 (2.70)

²⁷³*Laws*, p. 157 (3.2) Cicero goes on to state that “law is the power to command.” p.158 (3.3)

²⁷⁴*ibid.*

²⁷⁵*Laws*, p. 171 (3.38) The specific law stated, “Let the creation of magistrates, the judicial decision of the people, and their orders and prohibitions be ascertained by ballot known to the best citizens (*optimates*) but free to the plebs.” p. 160 (3.10) See Nicolet, *op. cit.*: “Le peuple ne doit en somme avoir d’autre liberté que celle de reconnaître des boni, ceux qui sont des gens des honneurs.” p. 63.

²⁷⁶*Laws*, p. 171 (3.39)

education needed to keep the peace within the political community. These men are Rome's analogue to the Platonic guardians without the myths and breeding. If they ever were to come into existence, they would have the requisite combination of will and ability to justify to everyone else's satisfaction their status. Perhaps Cicero saw their existence as a real possibility once the turbulent period of the late Republic was transcended: his naïve optimism in this regard was no worse than that of Caesar's killers, who themselves seemed to think that the true Republic would emerge spontaneously from their high-minded act.²⁷⁷ At any rate, his view regarding who should hold office is clear enough. These would be the right kind of men whose claim to such honors was assured in part by their status, a point only reinforced by their combination of practical experience and theoretical learning.

Magistrates, naturally, would not hold office or conduct official business solely through *accensi* or *apparitores*. They would also turn to their circle of friends and dependents to get things done. The impact of clients in the political sphere has been the subject of much debate, which is something of a surprise since the Romans recognized the institution specifically. Of course, it is worth repeating a point previously made, namely, that a distinction must be made between the Roman categories (*patrocinium/clientela*) and modern, sociological ones (patronage/clientage). The former institution is narrower and more specific, while the

²⁷⁷ Rawson's assessment is worthwhile. *op. cit.*, Ch. 9 Both the *Laws* and the *Commonwealth* were composed in the last half of the decade before Caesar came to power. On the assassins as having only half completed the task, see, for example, Cicero's letter to Cassius. Shackleton-Bailey, *Letters*, pp. 493-4 (12.1) For comments on the circumstances, see Stockton, *op. cit.*, pp. 280-85. Shackleton-Bailey concludes that the plotters had given the aftermath of the murder little thought. *Cicero*, p. 229.

latter is broader, functional, and transcends indigenous labels. In other words, a modern category helps to look past a word like “friend” (*amicus*) to identify a relationship considered by sociological criteria a client. Not that this method enjoys favor in every quarter. Sherwin-White and Miller, for example, seem utterly repelled by the idea that sociological categories might be applied to Romans. Others, like Finley and Saller, find practicality in its application.²⁷⁸ No one, of course, denies that social ties were important to Roman society, and even Millar, who describes his as an “extreme” position, concedes that these ties, even ones of clientage, had some political relevance.²⁷⁹ The debate is really one of degree. In other words, how decisive were these ties for elections and politicking? Morstein-Marx, while not going so far as Millar, has suggested in his study of the *Commentariolum Petitionis* that the issue was not so much the absence of clientage in elections, but rather that the *nobiles* do not appear to have relied upon it particularly: clientage appears to have operated among those of middle or lower rank.²⁸⁰ At any rate, whether one enjoyed networks of clients directly and at a high level, or indirectly and through lower-

²⁷⁸Sherwin-White, *op. cit.*, Ch. 2, fn. 108, *supra*; F. Millar, “Political Character of the Classical Roman Republic 200-151 BC,” *Journal of Roman Studies* 74 (1989), pp. 1-19, esp. 9-17; Finley, *op. cit.*, Ch. 2, fn. 108, *supra*; Saller, *Personal Patronage under the Early Empire*, Cambridge, 2002 and *op. cit.*, Ch. 2, fn. 108, *supra*; Wallace-Hadrill, “Patronage in Roman Society,” in Wallace-Hadrill, *op. cit.*, pp. 63-87; R. Morstein-Marx, “Publicity, Popularity and Patronage in the ‘Commentariolum Petitionis’,” *Classical Antiquity* 17.2 (Oct. 1998), pp. 259-88; J. Tanner, “Portraits, Power, and Patronage in the Late Roman Republic,” *Journal of Roman Studies* 90 (2000), pp. 18-50, esp. 30-6.

²⁷⁹Millar’s overarching purpose is to show that the Republic was genuinely democratic. *Roman Republic*, pp. 5-6.

²⁸⁰For example, the advice at *Commentariolum* 30 to court the leaders of the *collegia*, local districts, and neighborhoods suggests that these were run by local bosses, similar to what is described by R. Joseph. *Democracy and Prebendal Politics in Nigeria*, Cambridge, 1987, pp. 57-63. Tilly’s comments on social networks and trust are of interest as well. C. Tilly, *Democracy*, Cambridge, 2007, Ch. 4

ranked intermediaries is hard to judge, and does not actually seem to be a very important distinction. What is important is the use of these vertical and horizontal networks to further one's political interests. It is hard to imagine a politics in which that one would not offer help to whoever could offer support. Sometimes this might have been a one-off exchange of services; sometimes something more lasting.²⁸¹ And taking care of one's own was a duty of office.

Plutarch gave the aspiring office-holder this advice: "There are also in public life ways which are not dishonourable of helping friends who need money to acquire it.... For the administration of affairs frequently gives man in public life this sort of chance to help friends." What kind of help? "Hand over to one friend a case at law which will bring in a good fee...to another introduce a rich man who needs legal oversight and protection, and help another to get some profitable contract or lease."²⁸² The quotation is late, but not out of place since it succinctly captures that unembarrassed expectation of what one should do once elected. Cicero's contemporaries would have understood, and even the comparatively fastidious Cicero never scrupled over helping friends when he could. Not that such willingness was without limit. His dialogue *On Friendship* is careful to note that one should not place friendship – one could assume *a fortiori* lesser dependents as well – above duty to country.²⁸³ That was always paramount. But he understood well enough that rendering service entitled one to service as well. In *On Duties* he writes, "[i]f men are

²⁸¹*Commentariolum* 22 in L. Purser, ed., *M. Tulli Ciceronis Epistulae*, v. 3, OCT, Oxford, 1902

²⁸²*Precepts of Statecraft* 808F-9A in H. Fowler, trans. *Plutarch's Moralia*, LCL 321, Cambridge, 1950 [1936], v. 10, pp. 158-299, quotations at pp. 211-2.

²⁸³*De Amicitia* 36-9, 42 = Falconer, *op. cit.*, pp. 146-51 and 152-5

beneficent, then in the first place, the more men they benefit, the more helpers they will have in acting kindly. Secondly, the custom of being beneficent will make them the readier to deserve well of many and, so to speak, more practiced at it.”²⁸⁴ The beneficent will help friends out by assuming their debts, helping to fund the marriages of their daughters, providing them with the means to buy property, supporting them when they seek higher office.²⁸⁵ Cicero’s letters provide several examples of these *commendationes* or interventions with the powerful on behalf of friends and clients. To Acilius, the proconsul, he recommends Marcus Clodius Archagathus and Gaeus Clodius Philo with the hope that Acilius will “accommodate them in all respects.” Elsewhere, he asks that Acilius intervene on behalf of Hippias, whose property is “being held by the state.” As Acilius is in a position to intervene, Cicero asks him “to extricate him from his difficulty and to accommodate him in this and other matters.” In the case of Titurnus, Cicero asks that Acilius give appropriate assurances so that Titurnus will know that Cicero is “a sufficiently powerful patron.”²⁸⁶ Perhaps Servius will take on Lyso as a client, Cicero asks. Obviously, he did not believe that it would be inappropriate to make these requests of individuals holding office, and, one may presume, he was untroubled when similar requests were made of him when he served as a magistrate. This was the normal give and take of decent society. *In fine*, provided the matter did not involve shameful acts (*turpitudō*), friends should be helped even in “somewhat unjust” (*minus iustae*) matters.²⁸⁷

²⁸⁴*Duties*, p. 83 (2.53)

²⁸⁵*Duties*, pp.84 (2.56) and 87 (2.61) Cf. *De Oratore* 3.133

²⁸⁶Shackleton-Bailey, *Letters*, pp. 453-4 (13.19), 469 (13.32), 472 (13.37), and 473 (13.39)

²⁸⁷*De Amicitia* 61 = Falconer, *op. cit.*, pp. 170-1

Turning to friends or their clients as needed to get things done was simply a natural part of the official's life. These people represented just one more set of persons, next to *accensi* and *apparitores*, to be relied upon for carrying out one's duties.

Roman officials in theory and practice relied on several kinds of persons to carry out their duties. These could be friends or clients, *accensi* or *apparitores*. While the *apparitores* were quasi-professionals paid by the state, *accensi* were frequently freedmen from the office holder's household or that of a friend. These men were supposed to serve their bosses loyally. Indeed, this is the force of Cicero's recommendation that his brother use freedmen as *accensi* so that he might exert a master's control over them. If in practice this was not always the case, the representation of these helpers in Livy suggests that this was at least the theory: besides, "always" rarely applies to real life. In Livy, these helpers are generally non-entities unless they deserve mention for some unusual reason. *Apparitores* named by Livy only exist as events. Perhaps one reveals legal secrets, another finds Numa's religious books. The point is not the *scribae* in those two cases, but the event. For Livy these staffs never transcend their function: to become an aedile is to stop being a scribe, to find Numa's artifacts is to make the function disappear into the background. The staffs are background persons, carrying out their tasks. Moreover, the social circumstance of Rome was such that magistrates might augment the services of these staffs. Friends and dependents were critical for getting things done: securing assistance for one person would allow for the favor to be requited later. For Cicero magistrates are decision-makers and originators of policy. Ordinary *plebs* might approve or deny proposals, but office holders by social and constitutional right

enjoyed the privilege of presenting them their choices. Only Cicero's ideal magistrates had the combination of will and ability, experience and knowledge, needed to serve as law personified. To be sure, the frustrating reality was that a magistrate's ignorance could actually put him at the mercy of his staff. But that did not change the fact that it was magistrates who mattered. Choices were for them; it was for others to carry out their decision. This was the assumption of Republican administration.

Chapter 4

Modernity and Bureaucratic Servility

Woodrow Wilson famously argued more than a century ago that the time was ripe for the “science of administration.”²⁸⁸ As he saw it, this would introduce efficiency of effort and expenditure to the government of the United States. Life had now become complex, as opposed to the way it was in simpler times, and administration grounded on principles developed in the traditions of centralized government found in France and, particularly, in Germany, but adapted to the circumstance of American democracy, would succeed in making the government’s operations “more businesslike.” After all, as he said, “the field of administration is the field of business.”²⁸⁹ Thus, America would need a cadre of officials trained in this discipline, imbued with the idea that administration and politics were separate domains, the former oriented towards the particular application of laws arising from

²⁸⁸W. Wilson, “The Study of Administration,” Political Science Quarterly 2.2 (June 1887), pp. 197-222; Karl offers useful summary background to the Wilson article. *op. cit.*, fn. 2, *supra*.

²⁸⁹*ibid.*, p. 209. Cf. the views of Saint-Simon who argues repeatedly that a management class of business has the experience, interest, and wherewithal necessary to administer government. G. Ionescu, ed., The Political Thought of Saint-Simon, Oxford, 1976. For historical background to the rise of bureaucratic business structures and professional management, see A. Chandler, The Visible Hand: The Managerial Revolution in American Business, Cambridge, 1977. Professional management was a later development that coincided with the depersonalization of corporate ownership, what Chandler describes as a transition from the entrepreneurial to the managerial firm where “full-time executives dominate top as well as middle management.” p. 415 This development was driven by new scales of enterprise resulting from mergers, and actually lags Wilson’s article (Chs. 12 and 13, *passim*) Nevertheless, a substantial degree of bureaucratization, spurred by these vast scales of the enterprise, had been achieved by the railroads. It would appear that in the railroads, top management focused on strategic matters, leaving local matters to middle management in a way that seems to parallel Wilson’s idea about a degree of discretion residing in senior officials. pp.143-8

the latter. There would be no need to fear the rise of a separate caste operating in its own interests for two reasons. First, public opinion, despite the multitude of “selfish, ignorant, timid, stubborn, or foolish” Americans would serve as a check and guarantee of official responsiveness, and this check would be a necessary balance to the “large power and unhampered discretion” needed by bureaucrats to carry out their duties.²⁹⁰ And, secondly, officialdom’s “good behavior” would be defined in terms of “their allegiance to the policy of government.”²⁹¹ Responsibility would lie with heads of services who could not carry out their tasks if they were “mere passive instruments.”²⁹² Thus, discretion would appear to lay with the seniors, while their subordinates, in fact, would have to wait their turn, perhaps, someday to exercise similar latitude.

Wilson argued that the failure of political science to address administration for so long was due to the change in the complexity of government and the fact that who legislates was until relatively recently the pressing question. In his words, “[i]t is getting to be harder to *run* a constitution than to form one.” (emphasis in original) Actually, his claim is only partially true. Its validity certainly lies in the emphasis placed by political theory on the issue of who is the government. The classical tradition was primarily oriented, for example, to the ordering of institutions or the organization of the political community, and the role of citizens as magistrates of their own government. But there were implications yet to be appreciated regarding the roles to be played by those who might actually assist those magistrates in the

²⁹⁰Quotations from p. 208 and 213.

²⁹¹p. 216.

²⁹²pp. 213-4, quotation from p. 212.

execution of their duties. Although magistrates might rely on their own social networks to accomplish some tasks, they would also assuredly take advantage, as needed, of slaves and other kinds of underlings – the kinds of persons whose social condition specifically constrained their actions. After all, magistrates would have the power to judge and command; their roles called for deliberation and deciding. Their subordinates, ideally at least, would in truth be their “passive instruments.”²⁹³ But there is more. For more modern writers of political philosophy did address the role of magistrates in relation to the sovereign.

The relationship between magistrates and ministers, on the one hand, and their sovereign, on the other, is an issue taken up in varying degrees of detail by Machiavelli, Bodin, and Rousseau, to name a few. Their concern reflects a realization that officers of the state exercised a power that could actually challenge the sovereign. Thus, despite their diversity of thought, the consistent answer developed by them to the problem was to emphasize the ultimate subordination of the magistrates too, their conversion in some sense into the sovereign’s public slaves. And when the people stormed the gates of sovereignty, Rousseau was absolute in his assertion that, though citizens, the people in their role as ministers of the public will would themselves have to surrender to it.²⁹⁴ Indeed, Tocqueville said that striking a

²⁹³Cf. F. Goodnow, Politics and Administration: A Study in Government, New York, 1967 [1900], p. 88.

²⁹⁴*On Social Contract or Principles of Political Right* 3.18 in A. Ritter and J. Bondanella, edd., Rousseau’s Political Writings, New York, 1988, p. 146; R. Derathé et al., edd., Jean-Jacques Rousseau: Oeuvres Complètes, Pléiade, Paris, 1966, v. 3, p. 434: “...les dépositaires de la puissance exécutive ne sont point les maîtres du peuple mais ses officiers, qu’il peut les établir et les destituer quand il lui plaît, qu’il n’est point question pour eux de contracter, mais *d’obéir*...ne font que *remplir leur devoir de Citoyens, sans avoir en aucune sorte le droit de disputer sur les conditions.*”

balance among the principles of centralization, representation, and equality was something historically unique and difficult to accomplish.²⁹⁵ But theory is one thing, practice another. For despite the development within political theory of an ideology of official subservience, modern thinking has through the rise of sociology and related “sciences”, for example, come also to emphasize the idea that human beings regardless of formal constraint do not always do what they are told, a point hinted at by a frustrated Cicero in his comment about the disparity in legal knowledge between magistrates and their scribes.²⁹⁶ Notwithstanding a strong emphasis in the later literature of sociology, public administration, and political science on the frustrating independence of bureaucrats, there has been consistently voiced in political theory an argument emphasizing that officials were servants in a very literal sense, tasked with

(emphasis added) H. Mansfield’s observation that “...everywhere in the West the modern state was, or was the work of, a monarchy” is *a propos*. “On the Impersonality of the Modern State: a Comment on Machiavelli’s Use of *Stato*,” *American Political Science Review* 77.4 (Dec. 1983), pp. 849-57, quotation from p. 855b. The development from *stato* as a thing to be acquired into an impersonal abstraction is nicely echoed in the shift from entrepreneurial to managerial corporations. Under the entrepreneurial system, company founders and their descendants “continued to look on their business empires as *personal property to personally managed...*” (emphasis added) Chandler, *op. cit.*, p. 381

²⁹⁵La Centralisation Administrative et le Système Représentatif, in A. Jardin, Tocqueville: Oeuvres, Pléiade, Paris, 1991, v. 1, p. 1114: “Ce qui arrive en ce moment parmi nous est tout nouveau dans l’histoire du monde.... Nous voulons faire coexister en même temps, sur le même sol, trois choses qui n’ont jamais été réunies nulle part: la centralisation administrative, le gouvernement représentatif et l’égalité.” This article was originally published in 1844.

²⁹⁶D. Warwick writes, for example, “Given Weber’s overarching concern with rationality and efficiency in organizational design, it is understandable that he paid little heed to such antirational factors as constituency influences, bargaining alliances, and internal conflicts.” *A Theory of Public Bureaucracy*, Cambridge, 1978, p. 184 It is not always easy to decide whether Weber’s writings are descriptive or prescriptive. Cicero, *Laws*, p. 174 (3.48): “...most people holding office, because of their ignorance of the law, are just as knowledgeable as their assistants want them to be (*tantum sapere quantum apparitores velint*).”

faithfully executing the decisions of the sovereign. The present chapter is concerned with examining this ideology, leaving the persistent problem of official discretion to the next.

If there is one important development to note, it is the idea that depoliticized professionalism combined with the right mixture of rules and law would be a means of ensuring the dutiful obedience of public servants.²⁹⁷ In other words, there is a palpable shift from the idea that officials might be kept in line through fear, elimination, or, in the case of a republic, a kind of *honorial emulation*, as Machiavelli suggested, to the relatively novel idea that loyalty might be the product of an *ethos* generated through proper education.²⁹⁸ This is precisely what Wilson with German and French models in mind suggested.²⁹⁹ Yet the point to bear in mind is that this

²⁹⁷The goal in 18th century Prussia was to create "...an army of secretaries that would constitute a small and non-capricious element of a larger, well-oiled machine." R. Michalski, Creon's Secretaries: Theories of Bureaucracy and Social Order in 18th and Early 19th Century Prussia, Ann Arbor, 2009, dissertation, pp. 55-83, quotation from p. 75. W. Dorn notes that the Prussian bureaucracy of the 18th century was "dominated by *règlement*." (p. 407) Of course, for all that, he also notes that theory and practice were not always coterminous (pp. 416-20). "The Prussian Bureaucracy in the Eighteenth Century," Political Science Quarterly 46.3 (Sep. 1931), pp. 403-23. On the professional official, see A. Wood, Hegel: Elements of the Philosophy of Right, CTHPT, Cambridge, 2007 [1991], pp. 332-6; M. Weber, The Profession and Vocation of Politics in P. Lassman and R. Speirs, Weber: Political Writings, CTHPT, Cambridge, 2010 [1994], pp. 330-1; Goodnow, *op. cit.*, p. 84ff; F. Morstein-Marx, The Administrative State, Chicago, 1957, pp. 24-5, 41-2, and 47-9. Speaking of the British Civil Service's "professional ethic" M. Quinlan writes: "...our job is to offer career-long service to the best of our ability and irrespective of personal liking...." "Ethics in Public Service," Governance 6 (1997), pp 538-44, quotation at p. 540.

²⁹⁸"honorial emulation" is, of course, a nod to T. Veblen's idea of "pecuniary emulation" according to which people pursue social esteem and envy through the accumulation of wealth. Theory of the Leisure Class, New York, 1994 [1899], ch. 2. C. Lynch's interpretive essay in his Niccolò Machiavelli: Art of War, Chicago, 2003, pp. 207-8.

²⁹⁹On the importance of Germany and France for conceptions of the state, see J. Nettl, "The State as a Conceptual Variable," World Politics 20.4 (Jul., 1968), pp. 559-92,

professionalism represents the internalization of a servile *ethos*. A senior official may retain some measure of discretion, but exercised according to the rules which he observes and the ethic with which he imbued, his reward for loyal duty being the honor and satisfaction that derive therefrom.

The present chapter, then, will explore the view in modern political theory that sets officialdom's role as one of subordination to sovereignty, a role that evokes, yet in modern formulation, goes beyond some aspects traditional theories formulations. Yet, if Greek and Roman theory was explicit in its acknowledgement that these subordinate staffs were slaves, modern theory evades the shame of that association by recasting bureaucratic servility in terms of official honor. For all that, theory and practice have been at odds, and the more the reality of uncontrolled discretion has manifested itself in the literature of sociology and public administration, the more the dilemma of control has come to the fore. It must be remembered that the goal in a democracy is to have the will of the people, the sovereign, obeyed. What is forgotten in all this is that these officials are citizens themselves, and it will be this element that the next chapter will explore. For now, the focus is on officials as servants to their sovereign.

Niccolò Machiavelli is usually taken as the initiator of modern political theory. Whether his views were sincerely Republican or not is a debated matter of interpretation that has oscillated with the concerns of commentators since his

esp. p. 567; on France for the development of administrative law, see L. Mannori and B. Sordi, "Science of Administration and Administrative Law," in D. Canale *et al.*, edd., A History of the Philosophy of Law in the Civil Law World, 1600-1900, (A Treatise of Legal Philosophy and General Jurisprudence, v. 9), New York, 2009, pp. 225-61.

publications first appeared. Thus, his work was initially vilified as anti-Republican, only to be rediscovered as a Republican, only to be reassessed as anti-Republican, only most recently to be found again to be Republican.³⁰⁰ Perhaps nothing is less certain. At any rate, whatever Machiavelli's overarching commitment, the problem of ministerial or magisterial independence is addressed both in the *Prince* and the *Discourses on Livy*.³⁰¹ In its essentials, the problem for the prince is a matter of how to ensure the loyalty of his ministers, or ensure that they do not form a plot to assassinate and replace him. In a republic, the problem is how to provide an institutional or social environment in which magistrates or commanders do not so resent the state's failure to show gratitude for deeds done that they mobilize their own retainers to seize power for themselves. In both cases, the issue is how to ensure that the sovereign, be it single or multiple, is not threatened or overthrown by its

³⁰⁰On Machiavelli's changing fortunes, see H. Baron, "Machiavelli: The Republican Citizen and the Author of 'the Prince'," *The English Historical Review* 76.299 (April 1961), p. 217-53. M. Viroli's argument for Machiavelli's republicanism, with its overwrought emphasis on his debt to the rhetorical tradition, seems particularly trivializing and unpersuasive. *Machiavelli*, Oxford, 1998. It is odd that he can cite Baron's essay approvingly and claim at the same time that "...Machiavelli's reputation as a republican theorist is a solid acquisition." p. 115 If anything, Baron's study suggests that it is anything but solid. For a robust critique of Machiavelli's text as a kind of tyrant's *vademecum*, see Bodin's preface to his first French edition. K. McRae, *Jean Bodin: The Six Bookes of a Commonweale*, Cambridge, 1962, pp. A69-70; G. Mairet, ed., *Jean Bodin: Les six livres de la République*, Paris, 1993, pp. 46-51. Equally banal is Viroli's reading of Machiavelli and Rousseau: "Republic and Politics in Machiavelli and Rousseau," *History of Political Thought* 10.3 (Autumn 1989), pp. 405-20.

³⁰¹Q. Skinner and R. Price, ed., *Machiavelli: The Prince, CTHPT*, Cambridge, 2005 [1988]; H. Mansfield and N. Tarcov, trans., *Niccolò Machiavelli: Discourses on Livy*, Chicago, 1998; M. Bonfantini, ed., *Niccolò Machiavelli: Opere*, Milan, (no date), *La Letteratura Italiana: Storia e Testi*, v. 29. The implications for bureaucracy to be found in the *Prince* differ from those of the *Discourses*, which is, perhaps, not too surprising since they speak of different regimes.

servants.³⁰² The prince in civil principality must either rule directly or through public officials, which renders him vulnerable because he depends on “the goodwill (*la volontà*) of those citizens who act as [his] officials.”³⁰³ Moreover, these officials themselves can develop a constituency of their own because citizens become, in a case of indirect rule, habituated to obeying them, not the prince. Machiavelli explicitly states that one aspect of the solution lies creating a dependency on him and his government (*bisogno dello stato e di lui*), dependency, of course, being a mark of servility.³⁰⁴ But of what is the government to consist, if not the prince and those with

³⁰²It is significant that Machiavelli displaces the classical political typology of monarchy, oligarchy or aristocracy, and democracy, with “a principality, a republic, or anarchy (*o principato o libertà o licenzia*).” *Prince*, p. 34 (Ch. 9: *The Civil Principality*) This suggests an acceptance of a long, aristocratic tradition that found democracy terrifying, and saw in republic (*libertà*) a freedom assured by power in the hands of the right people. See Saxonhouse, *op. cit.*; Held, *op. cit.*, pp. 33-4; Keane, *op. cit.*, pp. 59 and 161-5.; A. Ryan, *op. cit.*, v.1, pp. 68-9 and v. 2, pp. 818-9 Cf. J. Bryce’s relatively circumspect comments. *Modern Democracies*, London, 1929, v. 1, pp. 185-6 and 204-5.

³⁰³*Prince*, *ibid.*, p. 37. Although he advocates the prince’s direct rule here, in *Discourses* he suggests that the prince who would control a free community should mask his “dominion.” *Discourses*, p. 177 (2.21) As is usual with Machiavelli, maxims are not necessarily absolute, but must be matched to particular cases. Cf. the case of the Latins who only came to realize that they had, in fact, been subjects of the Roman Empire. *Discourses*, pp. 155-6 (2.13.2) and p. 160 (2.16.1)

³⁰⁴Discussed by Mansfield, in “Stato,” p. 853. Some objections should be made regarding Mansfield’s comments. First, his discussion of the difference between the modern term, state, and the words in the Classical authors (p. 850) is not thoroughly convincing. To claim that the ancients did not have a word for “state” is merely to assert, perhaps tendentiously, that the words they use did not mean state. That is possible, but it begs the question: what word would they have used for the idea under consideration? Similarly, his claim that constitutions embodied society (p. 850) as well is misleading. Society is famously seen as a modern idea, yet it is hard to see how the arrangement of institutions were anything more than one kind of social manifestation. Finally, while the force of personality was indeed great in the ancient world, it is important to recall that the offices (*arkhai/magistratus*) were things, not persons, and, as such, existed apart from the people who held them. p. 851 How else could they have been discussed apart from the persons who held office? And yet they were.

whom he surrounds himself in dependency? Thus, implicitly, another aspect of the solution lies, in part, in the need to assimilate the interests of these men to the sovereign's. For the prince must be cognizant of those nobles who align their success with his and those who do not, but the latter may represent a permanent threat.³⁰⁵ Of the former, the prince is to "honor and esteem" them. Of the latter, there is a further division between those who are pusillanimous (*pusillanimatà*) and, therefore, potentially useful (*tu ti debbi servire di quelli massime che sono di buono consiglio*), and those who might have the will and wherewithal to replace the prince himself. Not that all these nobles would serve in a prince's consistory, but clearly those that might would either be loyal because of a union of interests or too weak-willed to do other than be in his service. Such could be all the prince's men.

To secure and maintain his position, the prince should rely upon fear and love, mercy and cruelty.³⁰⁶ Machiavelli famously inverted Cicero's faith in the power of love (*diligi*) to bind men together in a polity.³⁰⁷ Machiavelli had little faith in the mirror of the prince tradition that, starting with Seneca, asserted the prince's duty as

³⁰⁵Prince, *ibid.*, p. 35. In this regard, Machiavelli notes that it is a minority who "desires to be free so as to command (*commandare*), but all the others (*sc.*, ordinary commons), who are infinite, desire freedom so as to live secure (*vivere securi*)." H. Mansfield and N. Tarcov, trans., *Niccolò Machiavelli: Discourses on Livy*, Chicago, 1998, p. 46 (1.16.5) Of those who seek command, one must either "[get] rid of them (*levargli via*) or [have] them share in so many honors...." *ibid.*

³⁰⁶Prince, pp. 58-61 (Ch. 17) Cruelty must be well executed. p. 33 (Ch. 8)

³⁰⁷Cicero, *Duties*, pp. 70-1 (2.23-4). Cicero, who sees Caesar as exemplifying the point, quotes Ennius: "They hate the men they fear; and whom one hates, one would have dead." Significantly, he compares the use of violent oppression (*vi oppressos*) of free men in republic to the treatment of slave by their masters (*ut eris in famulos*).

self-sacrifice in the service of the political community's greater good.³⁰⁸ This was profoundly unrealistic for him, who saw man as motivated by primarily private interest.³⁰⁹ To be sure, he argues, love is nice, if one can get it. But failing that, and most princes would indeed fail, one must rely on fear while being careful not to engender hatred. He concludes, if a choice is to be made, "...it is much safer to be fear than loved."³¹⁰ The crux of the matter is that men are fundamentally unreliable and tend to their own interests. While they might become friends, they may very well turn away in a prince's time of need or weakness. Love too is maintained through gratitude, which requires constant maintenance. Indeed, as noted in the *Discourses*, it was a sense of the Republic's ingratitude for services rendered that led to Caesar's decision to seize power.³¹¹ Yet, fear, engendered by the certainty of punishment, keeps them ever hesitant to break faith. This is a fear, however, that should not lead to hatred.³¹² To illustrate his point, he compares the methods of Hannibal and Scipio.³¹³ The former exhibited an "inhuman cruelty (*inumana crudeltà*)" that produced fear in his men, allowing him thereby to maintain control over an army

³⁰⁸*On Mercy* in J. Cooper and J. Procopé, *Seneca: Moral and Political Essays*, CTHPT, Cambridge, 2009 [1995], pp. 117-64. "Of all men, however, mercy becomes no man more than a king or a prince," Seneca tells Nero. p. 132 (1.3.3)

³⁰⁹See the analysis of V. Sullivan, *Machiavelli's Three Romes*, DeKalb, 1996, pp. 66-72.

³¹⁰*ibid.*, p. 59.

³¹¹*Discourses*, p. 66 (1.29.3)

³¹²The case of Remirro de Orco suggests one method for dealing with hatred when it is produced by the harsh policies of one's agents. *Prince*, p. 26 (Ch. 7) If Cesare Borgia benefited himself by killing de Orco, Maximinus Thrax missed the opportunity by failing to act when his prefects, on his orders, behaved cruelty in a way that brought hatred upon him. p. 70 (Ch. 19)

³¹³*ibid.*, p. 60 (Ch. 17) Note that the "humane and benevolent (*umani e benigni*)" dispositions of Pertinax and Severus Alexander were their undoing. Marcus Aurelius, however, was saved from this flaw because he was a rightful heir and did not owe his position to either the soldiery or the people. p. 67-8 (Ch. 19)

composed of soldiers from different countries and cultures. Scipio, however, was over-indulgent (*troppo sua pietà*) and easy going (*natura facile*). As a result, Fabius Maximus accused him of corrupting the army, and a subordinate officer was able to ravage the community at Locri. Machiavelli concludes that, but for the Senate's control (*sotto il governo del Senato*), his reputation would have not been what it was. The lesson to be drawn is that fear is superior to love precisely because love depends on the disposition of he who loves, while fear depends on the disposition of the prince himself. The one depends on the subject, the other on the prince.

The use of cruelty and fear, however, is not absolute. A wise prince must calibrate these tools to circumstances. Specifically, one must judge rightly whether one is dealing with subjects or equals. In considering the cases of Quintius Capitolinus and Appius Claudius, Machiavelli comes up with examples that appear to contradict the lessons of Hannibal and Scipio.³¹⁴ For Appius was “cruel and coarse (*crudele e rozzo*),” and, as a result, his men scarcely obeyed him. Quintius was of “kind and humane disposition (*benigno e di umano ingegno*)” and proved victorious with his men. This leads to a further conclusion, based upon whether the men being commanded are “partners” or “subject.” With partners, that is, persons of relatively equal standing, one cannot “use punishment entirely,” nor the severity recommended by Tacitus.³¹⁵ With subjects, however, one “ought to turn rather to punishment than to compliance so that they do not become insolent and do not trample on you because of too much easiness (*troppa facilità*)....” Of course, this use of cruelty is tempered by the proviso that one should not use it excessively, lest one be hated. Just as the

³¹⁴Discourses, pp. 260-1 (3.19)

³¹⁵Machiavelli's quotation cannot be identified in the Tacitean corpus.

prince should rely on fear – fearing being within his control – so he should rely on cruelty, yet in no case should this be taken to extremes for hatred imperils the prince.³¹⁶

Whether or not Machiavelli has in the back of his mind, Cicero’s explicit mention that masters use punishment with their slaves, it is worth noting the appearance of punishment as the manifestation of the cruelty which he espouses. The subordination of those subjected to cruelty and fear is noteworthy and becomes more emphatic when one considers that Machiavelli similarly suggests that a people living in a subordinate condition acquires the habit of servility.³¹⁷ Yet this is exactly the condition that the prince requires of those who would minister to him. These men must be dependent on the prince for honors, and they must be reined in by the threat of certain punishment.³¹⁸ Punishment, of course, must be sure, and it should not be arbitrary and gratuitous. Nor should it be applied to any and all: decimation provides an example of using the punishment of a few to reinforce and reinvigorate the loyalty of the many through the introduction of persistent fear.³¹⁹ The implication for the prince is that control over the *stato* is retained through fear and cruelty, in the right measure and at the right time, as well as the gift of fitting rewards given to avoid resentments that inevitably arise from ingratitude. Thus will he retain the assistance

³¹⁶Prince, pp. 63-72 (Ch. 19) “One of the best safeguards that a ruler has against plots is not being hated by the people.” p. 64

³¹⁷Discourses, p. 44 (1.16) Cf. Florence’s subordination to Rome, which rendered it abject “without thinking of itself,” which means that it had to think of another, *i.e.*, Rome. Discourses, pp. 100-1 (1.49.2-3)

³¹⁸Independent gentlemen, endowed castles and personal retainers, require a greater force in order to bring them to heel. Discourses, pp. 111-2 (1.55.4)

³¹⁹Discourses, p. 309 (3.49) Cf. the idea that punishment and fear carried out periodically to ensure that powerful individuals do not arise. p. 211 (3.1.3)

of those nobles whom he does not eliminate when he takes power, being those nobles who are pliant and useful or able to see the possibility of realizing their interests through him. These men are subordinate and dependent: they are servile and subject to his bidding, a condition that can be assured so long as the prince does not incur their hatred or contempt.

A republic, however, because it consists of free men, demands different means to ensure that no one noble seizes power and institutes tyranny. Machiavelli essentially argues that the loyalty of nobles is secured partly by ensuring that these men not have the capacity to develop private networks of retainers with whom they can challenge the republic, and partly by a divide-and-conquer approach that institutes a rivalry for honor and glory among leading men.³²⁰ In the *Discourses*, he makes a careful distinction between powerful men who develop their reputations by public means and those who act privately or, one might say, secretly.³²¹ One gains a good reputation publicly “by counseling well, by working better in the common benefit.... One ought to open to citizens the way to this honor and to put up rewards both for counsel and for works so that they have to be honored and satisfied with them.” This echoes the advice to the prince, although here the prince’s position is held by the people, hence the need for public words and deeds. Essentially, it amounts to proper rewards, *i.e.*, gratitude, when these great men align their interests

³²⁰Not allowing magistrates to continue in the same office is another dimension of avoiding the rise of a powerful figure. *Discourses*, pp. 269-70 (3.24) Cf. the distinction made in the *Art of War* between those who make soldiery their art and those who do not, the former posing a special danger to a republic. pp. 15 (1.64-6) and 17-8 (1.87-9) Cf. *Prince*, pp. 68 and 70 (Ch. 19) where Machiavelli discusses the power of the soldiery and the defects of Commodus and Maximinus Thrax.

³²¹p. 276-7 (3.28)

with the republic's. Yet building private influence leads to the building of a network that spells danger for the republic. It is striking, here, that Machiavelli specifically contradicts what Cicero had approved in *On Duties*. Thus, Machiavelli states that “[t]he private ways are doing benefit to this and that other private individual – by lending him money, marrying his daughters for him, defending him from magistrates, and doing for him similar private favors that make men partisans to oneself....”³²² Cicero, it will be recalled, in distinguishing between the extravagant and the liberal man, had identified the latter as someone who would “ransom captives from bandits, or assume their friends’ debts, or help them to finance their daughters’ marriage, or give them assistance in acquiring and enlarging their property.”³²³ Obviously, networks thus built, being private, would accrue to the noble alone, rendering him more powerful and dangerous to a republic, which is constructed of free and politically equal men. But this is only one dimension of keeping magistrates loyal to the republic; another can be inferred from Machiavelli’s consideration of the risks posed by successful army commanders.

Successful captains are dangerous to the prince precisely because their success brings glory directly to them, not the prince. Machiavelli argues, “...a prince should go personally on expeditions.... For if they win, the glory and the acquisition are all theirs; and when they are not present...the glory is someone else’s....”³²⁴ This puts

³²²Cf. *Art of War*, p. 15 (1.67)

³²³*Duties*, pp. 84 (2.56) and 87 (2.61-2)

³²⁴*Discourses*, p. 67 (1.30); cf. *Art of War*, pp. 16-7 (1.78-83): “...if a king does not order himself so that his infantrymen may be content in time of peace to return home and to live from their arts (*sc.*, peaceful arts), of necessity must come to ruin, for a more dangerous infantry is not found than that which is composed of those who make war their art.”

the commander in the position of either bestowing all glory on the prince and living with whatever ingratitude might come, or seizing power himself. Another option is to bide his time, developing the loyalty of his troops and subjects, doubtless for later action. That is the problem for the prince's consideration. For the republic, when sending commanders into battle, the key is to allow enough leading men to rise, such that their ambitions and jealousies keep them in competition with each other.³²⁵ At Rome, when not yet corrupt, this created a situation in which commanders hid their ambition and derived glory even from laying down office.³²⁶ The thirst and competition for glory achieved through the bestowal of office ensures, he argues, that the people in general need not fear from their commanders. Doubtless this is helped when terms of office are limited in time and not held serially, and when the republic itself is militaristic. It is not a concern for the common weal, as Lynch points out, but a desire to retain glory combined with the knowledge that glory is earned and retained in competition with like-spirited men.³²⁷ The implication from the principle regarding military commands is that magistrates too should be multiple and so arranged that they align their interests with the republic and achieve glory by public means. The more important aspect of Machiavelli's advice is the problem that it is meant to forestall, even if only for a time: discretion in the service of private interests.³²⁸ In other words, the issue at hand is how to get officials to carry out the sovereign's will, be it singular, as with a prince, or plural, as with a republic. The

³²⁵Art of War, p. 17 (1.86)

³²⁶Art of War, pp. 15-6 (1.68-72)

³²⁷Lynch, *op. cit.*, p. 208. His full discussion of this issue is pp. 207-12.

³²⁸Shumer, "Machiavelli: Republican Politics and Its Corruption," Political Theory 7.1 (Feb., 1979), pp. 5-34

would-be prince needs for his officials to carry out his wishes, as if they were their own, hence the desire to have nobles align their interests with his; the republic likewise must ensure that no one individual rises to a position from which he might make himself prince, although it is a regime that provides an arena where great men vie for glory. The desired end in its essence evokes the implications of the classical position: the wish for subordinates to execute faithfully the will of their superiors.

Although political scientists usually identify Machiavelli as the first of the modern theorists, in many respects he remains firmly rooted in his predecessors, and one is often left to conclude that inverting ancient moral advice and setting political effectiveness as the measure of success seems a rather paltry means of heralding the arrival of modern political theory.³²⁹ Indeed, if Machiavelli claims to propound politics as they are rather than as they should be, then Aristotle the empiricist certainly presages such an approach. At a more fundamental level, Machiavelli's approach is deeply personal: it is concerned with the actions of men in a way that is quite at home in the ancient world. There is nothing impersonal or transcendent about the state, whether it is held by the prince or by great men occupying magistracies and captaincies. However one may wish to judge that matter, it really is Jean Bodin who charts new territory.³³⁰ For Bodin makes the abstract idea of

³²⁹Arendt notes that Machiavelli first envisioned a secularized politics that could break the *anacyclosis* of regimes that was and for many remained a fundamental assumption about the nature of the political. On Revolution, p. 36; the concept of *anacyclosis* in Polybius, see the comments of Brink and Walbank. C. Brink, and F. Walbank, "The Construction of the Sixth Book of Polybius," Classical Quarterly 4.3/4 (Jul.-Oct., 1954), pp. 97-122, at pp. 110-3

³³⁰Even if his concept of sovereignty has earlier precursors, Bodin is the point of reference for the subsequent tradition. Despite the importance of Hobbes, this study will not focus on his work because it would largely only serve to reinforce what can

sovereignty or *maiestas* central to his understanding of politics, and his theory is fundamental to later conceptions of the state and the public servant.³³¹ For the popular revolutions of subsequent centuries, and ultimately democratic theory itself, dependent as they are on the idea of the collective people as sovereign, amount to little more than a replacement of one man as sovereign by one people as sovereign.³³²

be drawn from Bodin. At any rate, the deductive and quasi-scientific approach of Hobbes obscures whatever debt he may have had to Bodin. As Dunning noted a century ago, "...from different starting-points and by different routes, the two reached the same goal." W. Dunning, "Jean Bodin on Sovereignty," Political Science Quarterly 11.1 (Mar. 1896), pp. 82-104, quotation from p. 84. Hoekstra seems to take for granted a direct connection that is not immediately apparent from the *Leviathan* or *On the Citizen (De Cive)*. K. Hoekstra, "Early Modern Absolutism and Constitutionalism," Cardozo Law Review 34 (2013), pp. 1079-98. It is, after all, striking that Malcolm's chapter on Hobbes in the *Cambridge History* makes no mention of any relationship or debt to Bodin. N. Malcolm, "Hobbes and Spinoza," in Burns, ed., *op. cit.*, p. 530ff. Perhaps it is unremarkable that the chapter on Hobbes in Strauss and Cropsey makes no reference to Bodin given the completely dehistoricized and decontextualized stance adopted by their approach. L. Strauss and J. Cropsey, edd., History of Political Philosophy, Chicago, 1987 [1963].

³³¹Establishing the text of Bodin's famous book on government is complicated by the fact that it went through multiple editions in French that have various differences among them and a Latin edition that was Bodin's own work, but not a *verbatim* translation of the original. These complications can be left to specialists. For present purposes, references will be made to the selections in J. Franklin, ed., Bodin: On Sovereignty, CTHPT, Cambridge, 2008 [1992], which contains Bodin's 1.8, 1.10, 2.1, and 2.5; the 17th century English translation of Richard Knolles, reprinted in McRae, *op. cit.*; and the modernized French edition of Mairet, *op. cit.*, which, although an abridgment, contains most of the text. Obviously, where any edition is lacking, there will be no reference to them. For discussions of the various texts, one may consult the comments in the editions of Franklin and McRae.

³³²This development has been interpreted as man stepping into the shoes of the displaced monarch, human or divine. Note that Bodin himself allows for sovereignty "in the people." 2.5 = McRae, *op. cit.*, p. 221B/C; Franklin, Bodin, p. 114; Mairet, *op. cit.*, p. 223 For the transfer of the divine *mysteria* to the secular realm, see E. Kantorowicz, "Mysteries of State: An Absolutist Concept and Its Late Mediaeval Origins," Harvard Theological Review 48.1 (Jan., 1955), pp. 65-91. For the view that the nation stepped into the role of the king, see Arendt, *op. cit.*, p. 156 For an interesting critique of the concept of sovereignty precisely because it implies something exogenous to humanity, see J. Maritain, Man and the State, Chicago, 1953, Ch. 2 To Maritain, it makes no sense to argue that a people or its creature can step

One might say that the concept best suited to describe this is the transformation from monarchy to *demarchy* rather than the democracy, a term that puts the matter of power in the forefront and was originally polemical.³³³ At any rate, for Bodin sovereignty is marked by two basic features: indivisibility and perpetuity, which together allow no political space to rival claimants and render all else within the political community subordinate, or, in the words of Mairret, reduce the political community to a matter of the one versus the many.³³⁴ This idea's *nachleben* informs later conceptions of the state, no matter the institutional form.³³⁵ Absolutist theory is pliable and sufficiently useful to make way eventually for the people itself, once seen collectively as a nation, or perhaps even law itself, to step in as absolute sovereign.³³⁶

outside itself to be the sovereign. For a more modern version of this approach, see S. van Duffel, who, curiously, does not acknowledge that Maritain had previously argued for God being the only logical candidate for sovereignty. "Sovereignty as a Religious Concept," *Monist* 90.1 (2007), pp. 126-43

³³³On *demokratia* and its derivatives, see R. Sealey, "The Origins of 'Demokratia'," *California Studies in Classical Antiquity* 6 (1973), pp. 253-95

³³⁴Mairret, *op. cit.*, pp. 34-5. Interestingly, the modern salafist concept of *tawhid*, which insists on Allah's complete and indivisible sovereignty, dovetails nicely with Bodin's idea about the sovereign's nature. Radical salafists reject democracy precisely because the idea of man as legislator contradicts the notion of the divine legislator who, by definition, has no partner (*la sharika*). See, for example, S. al-Fawzan, *Concise Commentary on the Book of Tawhid*, Riyadh, 2009 [2005], Ch. 37, 38, and 59 The French rendering both of "unity" in Bodin's sense and of *tawhid* is, tellingly, the same: *unicité*. Cf. Elshtain's passing comment in her *Sovereignty: God, State, and Self*, New York, 2008, p. p. 134.

³³⁵Of course, the dominant conception of the state is Western. See, for example, C., *Coercion, Capital, and European States*, New York, 1992; C. Young, *The African Colonial State in Comparative Perspective*, New Haven, 1997; S. David, "The Primacy of Internal War," in S. Neuman, ed., *International Relations Theory and the Third World*, New York, 1998, pp. 77-101; J. Herbst, *States and Power in Africa*, Princeton, 2000.

³³⁶On the law as sovereign, see C. Schmitt, *Political Theology*, Chicago, 2005 [1985], Chs. 2 and 3. Rawls, whose work, given his totalizing concept of rationality and obsessive proceduralism, is not meaningfully democratic, pluralist, or political in nature, falls into this category. *A Theory of Justice*, Cambridge, 1999 [1971]

Bodin defines sovereignty as "...the absolute and perpetual power of the commonwealth."³³⁷ The Latin version of his definition is telling because it includes the key phrase, *soluta legibus*, or "freed from the laws." The sovereign, then, is above and external to the political community in the following sense: it is the source of law, able to modify or abrogate it at will.³³⁸ Of course, it should be noted that this absolute sovereign is not, in Bodin's understanding, completely unlimited.³³⁹ The sovereign's exemption from laws, of which he is the ultimate source, guarantor, and judge, in no way frees him from divine or natural law, which serve as an ever-present backdrop to his own activity.³⁴⁰ The limitation on his will then relates to the split between the divine and secular realms, and, while the sovereign as God's "living and breathing" image prevails in the realm of Caesar, he remains bound by God: God remains the final judge of all, although a wronged people enjoys no ultimate right of revolution and must await either the intervention of another prince or God's

Sandel's criticisms of Rawls are completely dispositive. Liberalism and the Limits of Justice, Cambridge, 1998; although not written in this vein, Shumer's comments are strong rebuttal to the kind of theory offered by Rawls. Shumer, *op. cit.*

³³⁷Bodin 1.8 = McRae, *op. cit.*, p. 84H; Franklin, *op. cit.*, p. 1; Mairet, *op. cit.*, p. 110.

³³⁸*Maiestas est summa in cives ac subditos legibusque...soluta potestas*. Quoted in McRae, *op. cit.*, p. A75. This, of course, is the theme picked up by Schmitt: the sovereign is "he who decides on the exception." C. Schmitt, *op. cit.*, p. 5

³³⁹For example, Bodin writes, "...if we say that to have absolute power is not to be subject to any law at all, no prince of this world will be sovereign, since every earthly prince is subject to the laws of God and of nature and to various human laws that are common all peoples." Bodin 1.8 = McRae, *op. cit.*, p. 84I; Franklin, *op. cit.*, p. 10; M. Shepard, "Sovereignty at the Crossroads: A Study of Bodin," Political Science Quarterly 45.4 (Dec. 1930), pp. 580-603; J. Franklin, Jean Bodin and the Rise of Absolutist Theory, Cambridge, 2009 [1973], Ch. 5.

³⁴⁰Bodin identifies lawgiving as one of sovereignty's marks: "...the first prerogative (marque) of a sovereign prince is to give law to all in general and each in particular...without the consent of any other, whether greater, equal, or below him." Bodin 1.10 = McRae, *op. cit.*, p. 159E; Franklin, Bodin, p. 56; Mairet, *op. cit.*, p. 160.

punishment for vindication.³⁴¹ This is obviously cold comfort to the sovereign's subjects. For no matter their enormity, a sovereign's misdeeds never justify a subject's rebellion: "it is not the part of any subject individually, or all of them in general, to make an attempt on the honor or the life of the monarch, either by way of force or by way of law, *even if he has committed all the misdeeds, impieties, and cruelties that one could mention.*"³⁴² (emphasis added) This conclusion flows from the idea that the sovereign is the source of law and shares that power with no one; therefore, no person subject to that law can assume the superior position implicit in the act of judging the sovereign. To allow such a circumstance would allow for incomplete or shared sovereignty, which is in Bodin's view no true sovereignty at all.

Being perpetual, sovereignty endures beyond any given sovereign's life in a way that parallels the distinction between the permanence of a magistrate's office and the temporary nature of a commissioner's.³⁴³ Being indivisible, sovereignty cannot be shared with anyone. Indeed, for Bodin, the very idea that powers can be shared is

³⁴¹Constituent or fundamental law (*leges imperii*) also binds, but the people are never able to enforce a claim arising from its violation. Bodin 1.8 = McRae, *op. cit.*, p. 95A; Franklin, *Sovereignty*, p. 18. "God, of whom [the prince] is the living & breathing image" Bodin 1.8 = McRae, *op. cit.*, p. 109D; Franklin, *Bodin*, p. 39 On foreign intervention to remove a tyrant, Bodin writes, "...so is it a most beautiful and magnificent thing for a [*viz.* foreign] prince to take up arms in order to avenge an entire people unjustly oppressed by a tyrant's cruelty...." 2.5 = McRae, *op. cit.*, p. 220K; Franklin, *Bodin*, p. 113; Mairat, *op. cit.*, p. 222 In fact, he most succinctly makes the point in the preface to the 1578 French edition, where he states, "...I denied that it was the function of a good man or of a good citizen to offer violence to his prince for any reason, however great a tyrant he might be; and contended that it was necessary to *leave this punishment to God, and to other princes.*" (emphasis added) McRae, *op. cit.*, p. A72

³⁴²Bodin takes up the issue of tyrannicide in 2.5 = McRae, *op. cit.*, p. 218If.; Franklin, *Bodin*, p. 110ff.; Mairat, *op. cit.*, p. 220ff. Quotation from 2.5 = McRae, *op. cit.*, pp. 222G-H; Franklin, *Bodin*, p. 222; Mairat, *op. cit.*, p. 224. Because he is not legitimate, a tyrant by usurpation may be resisted or killed, at least, in theory.

³⁴³Cf. Bodin 3.2 = McRae, *op. cit.*, p. 280G; Mairat, *op. cit.*, p. 267.

nonsensical, and he, therefore, rejects the classical idea of a mixed constitution.³⁴⁴

Thus, he argues, there always exists an authority of final instance, even in the case of the Roman Republic, which from Polybius onward had been traditionally seen as an example of a mixed constitution.³⁴⁵ For Bodin, division brings competition and chaos in its wake.³⁴⁶ To have a division of sovereignty would imply, for example, the executive at odds with the legislative in asserting itself as ultimate authority.

Therefore, true sovereignty can only possess a unitary nature. It is the translation of God's authority from the divine to the secular realm; only the sovereign can create and give law, and set it aside as needed.³⁴⁷

Bodin considered this matter with sufficient thoroughness to explain exactly what sovereign power meant for the duties of magistrates and government officials. While his conclusions serve partly a riposte to protestant theories about magisterial

³⁴⁴Bodin 2.1 = McRae, *op. cit.*, p. 194F-H; Franklin, *Bodin*, p. 104; Mairet, *op. cit.*, pp. 193-4

³⁴⁵Polybius had argued in Book 6 of his *Histories* that the Roman constitution, being mixed, was a kind of inexplicable oddity that somehow disrupted, albeit not perpetually, the cycle of regimes (*anacyclosis*). For Bodin's rejection of Polybius, see 2.1 = McRae, *op. cit.*, p. 188Fff.; Franklin, *Bodin*, p.95ff.; Mairet, *op. cit.*, p. 184ff.

³⁴⁶The prospect of chaos always looms in Bodin's mind as is clear from the opening words of his preface to the first French edition. Mairet, *op. cit.*, p. 45-6. The McRae edition has excerpted parts of this preface, which preserve by implication some of this concern. *op. cit.*, p. A70 Mairet's French edition is to be consulted here. Hobbes does not, *pace* Mansfield, stand apart for his opposition to "revolution as rebellion against the sovereign." H. Mansfield, "Hobbes and the Science of Indirect Government," *American Political Science Review* 65.1 (Mar. 1971), pp. 97-110, quotation at p. 98b

³⁴⁷Bodin argues, "Just as God, the great sovereign, cannot make a God equal to himself because he is infinite and by logical necessity (*par demonstration necessaire*) two infinities cannot exist, so we can say that the prince, whom we have taken as the image of God, cannot make a subject equal to himself without annihilation of his power." 1.10 = McRae, *op. cit.*, p. 155D-E; Franklin, *Bodin*, p. 50; Mairet, *op. cit.*, p. 155

discretion, it was also an expression of his theory's logical implications.³⁴⁸

According to Bodin, the power to make and repeal law is the first mark of sovereignty; from it derives the power to appoint and remove officials, which itself is sovereignty's third sign.³⁴⁹ In any case, magistrates are effectively vicars of the original source, their sovereign. Their duties and their relationship to the sovereign are treated at length in Chapters 2-6 of Book 3. Legal scholar that he is, Bodin begins his discussion, as he does with other topics, by explaining his terms. Officials are divided into two categories: the ordinary that occupy standing office, and the extraordinary that hold positions by appointment for particular periods and tasks. The latter category, therefore, encompasses commissioners because they are created *ad hoc* and hold an office that is limited in duration and scope. The former category formally consists of the officers, who, in turn, are either magistrates or ministers. Magistrates are distinct because they have the authority to command, which ministers lack. From this it is clear that the official who presents potentially the greatest challenge to the sovereign and his prerogatives, is the magistrate because he too commands. Other officials possess inferior powers.³⁵⁰ It is worth noting here how

³⁴⁸This protestant tradition will be discussed further in the next chapter, but it is important to acknowledge it here in connection with Bodin's own work. For background, see Franklin, *Absolutism*, Chs. 1 and 3; R. Kingdon, "Calvinism and Resistance Theory 1550-1580," in J. Burns, ed., *The Cambridge History of Political Thought 1450-1700*, Cambridge, 2004 [1991], pp. 193-218; H. Strohl, "Le droit à la résistance d'après les conceptions protestants," *Revue d'histoire et de philosophie religieuses* 10 (1930), pp. 126-44.

³⁴⁹1.10 = McRae, *op. cit.*, p. 163E and 166G-8G; Franklin, *Bodin*, pp. 58 and 64-7; Mairet, *op. cit.*, p.162-3 and 165-7

³⁵⁰Bodin's definitions and discussion of these officials occur in 3.2-3 = McRae, *op. cit.*, pp. 278A-309B; Mairet, *op. cit.*, pp. 264-79. It is worth observing that Bodin is careful to distinguish between laws, which come from the sovereign and apply to all,

firm Bodin is in subordinating magistrates to the sovereign. Whereas Machiavelli presents a political stage on which great men act for personal glory – such is the world of his republic – or where a single prince must balance the elimination of some challengers with the cooptation of others, Bodin posits an environment where the very nature of sovereignty itself instantiates the subordination of all else.³⁵¹ This is not a matter of enticing and cajoling: the very nature of sovereignty demands the execution of its will. Here, then, are the true precursors of the public servant as slave to a political master, whether a people or a monarch.

The question remains, however, what do these officials do when faced with orders that are manifestly unjust.³⁵² Letters of justice leave to the magistrate a wide

and edicts, which come from magistrates and are comparatively limited in scope. 1.10 = McRae, *op. cit.*, pp. 156I-7A; Franklin, *Bodin*, pp. 51-2; Mairet, *op. cit.*, pp. 157-8.

³⁵¹Ancient theory is far more consonant with Machiavelli on this point: the right kind of men in the right positions, motivated by *pietas*, use their discretion in the service of the nation (*patria*) or their friends, but always as an act of will. At Athens, to be sure, while there might be nothing wrong with *dorodokia* or helping out one's friends, pure malfeasance could be dealt with by *dokimasia*. In the final analysis, however, how an official chose to behave in no way depended on an abstract notion that one was implicitly subordinate to pure authority. On *dorodokia*, see Conover, *op.cit.*; Plutarch, *Precepts*. Cf. the status of Prussian bureaucrats in the 18th century *vis-à-vis* their sovereign. W. Dorn, "The Prussian Bureaucracy in the Eighteenth Century," *Political Science Quarterly* 46.3 (Sep. 1931), pp. 403-23

³⁵²It is important to acknowledge that for Bodin officials differ from citizens because they are public, not private, figures. "And first I call them publike persons, who are to attend upon the publike affaires: of whome there are two sorts, one which hath power to commaund, whome they call Magistrats: and another sort which hath no such commaunding power, but is onely to understand or to put in execution the commaundements of the others; and are yet all publike persons also." Public affairs are synonymous with the mundane. 3.2 = McRae, *op. cit.*, p. 278G-I; Mairet, *op. cit.*, pp. 264-5 The private man, on the other hand, "cannot by any publicke right commaund over any other subject, although that he by privat and domesticall commaunds rule and governe his own familie." 3.4 = McRae, *op. cit.*, p. 309D; Mairet, *op. cit.*, p. 280: "le particulier n'a point de sujets sur lesquels il ait puissance publique de commander...." The question of magisterial obedience itself is taken up directly in 3.4 = McRae, *op. cit.*, p. 309Cff.; Mairet, *op. cit.*, p. 280ff.

field for discretion to act in the king's name, and, therefore, do not go to the heart of the matter.³⁵³ By their nature, they call upon the magistrate himself to adjudicate matters of equity on behalf of the sovereign:

...the prince leaveth unto the discretion of him to whom such his letters are addressed, to allow of them, or to refuse them, as his conscience, and the equitie of the cause shall require: which is not in letters of commaundement which leave nothing unto him to whom they are directed, except happily sometimes the examination of the fact onely....³⁵⁴

Letters of commandment, however, do not generally grant such discretion. They leave to the magistrate only the examination of the facts, not the assessment of justice. In any event, these letters, which do not constitute law, only allow the magistrate latitude as prescribed by their content. In other words, the magistrates are free to act in a manner circumscribed by the nature of the letters themselves, which ultimately means that magistrates act at the sovereign's behest. Moreover, whenever confronted by unjust commands or commands detrimental to the republic, the magistrate, having delayed execution of the command and advised the sovereign of his scruple, one, twice, or even three times, must ultimately carry out his sovereign's order.³⁵⁵ Obviously, Weber's notion of the duty-bound bureaucrat needs neither Hegel nor Prussian bureaucracy as a frame of reference: the notion of bureaucratic obedience was already there in Bodin as a logical corollary to the very idea of monadic sovereignty. To be sure, he does seem to hedge when it comes to the matter

³⁵³3.4 = McRae, *op. cit.*, p. 312F; Mairet, *op. cit.*, p. 285

³⁵⁴3.4 = McRae, *op. cit.*, p. 311A; Mairet, *op. cit.*, p. 283 Of course, if such letters give the magistrate no discretion, his duty is to carry out his orders. 3.4 = McRae, *op. cit.*, p. 312H-I; Mairet, *op. cit.*, p. 285 For an interesting perspective on the nature of equity, see comments in P. Kahn, Political Theology: Four New Chapters on the Concept of Sovereignty, New York, 2011, Ch. 2

³⁵⁵3.4 = Mcrae, *op. cit.*, p. 313D

of implementing laws or commands contrary to the laws of God and nature, but this reservation must be squared with the following, one might say, hopeful, comment:

But some will say, no prince to be found so evill advised, nor that it is to be supposed that he would commaund any thing contrarie unto the lawes of God and nature: and *true it is*; for why he worthily loseth the title and honour of a Prince, which departing from reason, and forgetting the dutie of a prince, breaketh the lawes of God and nature.³⁵⁶ (emphasis added)

But to drive the point home regarding the magistrate's duty to his sovereign, Bodin cites the example of Anastasius, who denied plaintiffs the right to cite imperial rescripts or letters in support of their case. Even this apparently clear example of injustice did not give the magistrates then, nor would it give magistrates in any other case, the right to do anything more than advise the sovereign of the matter and carry out the sovereign's final decision.³⁵⁷ Thus, for example, "if the Maigstrate bee commaunded by the Prince to abrogat an auntient law, being more upright and profitable to give way unto another lesse iust, and less profitable for the

³⁵⁶3.4 = McRae, *op. cit.*, pp. 312K-3A; Mairret, *op. cit.*, p. 286: "Si on me dit qu'il ne se trouvera point de Prince si mal appris, et n'est pas à presume qu'il voulût commander chose contre la loi de Dieu et de nature, il est vrai: car [celui-là] perd le titre et l'honneur de Prince, qui fait contre le devoir de Prince. Nous avons montré par ci-devant que *le Prince ne peut rien contre la loi de nature...*" (emphasis added) To be sure, this conclusion calls for a suspension of disbelief, and Bodin certainly knew this. His discomfiture over this optimistic assertion is clear when he writes in the first preface, "He (*sc.*, God) gives kingdoms and empires to the wisest and most virtuous princes, or *to speak more accurately (pour mieux dire)*, to the least unjust and most proficient in managing affairs and governing peoples." (emphasis added) McRae, *op. cit.*, p. A70; Mairret, *op. cit.*, p. 49

³⁵⁷McRae, *op. cit.*, p. 314F: "Mine answere is, that that is to be understood, if in such the princes rescripts or letters no speciall clause be comprehended, derogating from the generall lawes: notwithstanding which derogation, yet the Magistrat ought neverthelesse to advertise the prince thereof, and to put him in mind of his dutie: who if he be not by the Magistrats reasons to be removed from his former opinion, but command the same the second time, the Magistrat is then to obey his commaund, although the thing so commaunded be not agreeing with the common profit, and contrarie unto the lawes."

Commonweale; he may stay the execution of such a law or commaundement in suspense, until he have shewed his reasons therefore unto the prince, which he is in dutie bound to do, not once, but even twice or thrice....”³⁵⁸ The interesting case cited by Bodin of Jean de La Vacquerie and his colleagues refusing to carry out a proposed law, even on point of death, still emphasizes that the final decision rests with the sovereign. The outcome, in which the sovereign yielded, is laudable, but the discretion remained with the king.³⁵⁹ Obviously, then, once the law is promulgated or the command issued, the time for counsel is over, and the magistrate’s duty is faithful execution.³⁶⁰

³⁵⁸3.4 = McRae, *op. cit.*, p. 313D. Note the use of law and command together: Bodin does at times obscure by his inconsistent use of these words when discussing magistrates, although it is worth bearing in mind that command is characteristic of law: *lex nihil aliud sit quam summae potestatis iussum sive sanctio*. McRae, *op. cit.*, p. A75 Whether the magistrate shall carry out his duties contrary to the law of nature is, frankly, difficult to discern. On the one hand, Bodin stipulates, “[i]f therefore the commaundement of the prince be not contrarie unto the lawes of God and nature....” On the other hand, he insists, “for all that wee must not thereof conclude or gather, that if the prince doe in that case commaund anything contrarie unto his oath or the dutie of a Prince, that the Magistrat is therefore to refuse to obey his commaund.” McRae, *op. cit.*, p. 313C

³⁵⁹3.4 = McRae, *op. cit.*, p. 315D-E It is interesting that Bodin emphasizes the social standing of the men involved in swaying the king’s judgment: “The king, beholding the gravitie, the port, and dignitie of these persons, and almost abashed with the so constant resolution of such his great magistrats, and withal doubting the power and the authoritie of the parliament, cause those his decrees so much misliked, to bee abrogated....”

³⁶⁰It is true that a magistrate may suspend execution of a command which he considers unjust on the grounds that time should be given for him to advise the sovereign of the matter. But, again, once advised, if the sovereign still wishes the law’s execution, the magistrate’s duty is obedience. As Bodin notes, “...when such constancie cannot heale the disease of the Commonweale, or faults of soveraigne princes and that the prince commaundeth the magistrats, to have his actions excused unto his subjects; it is much better for the magistrate to obey his commaund, and in so doing to cover and burie the memorie of a wicked fact already done, than in refusing so to do, to irritate the prince to the doing of worse.” 3.4 = McRae, *op. cit.*, p. 318I-K

Bodin goes further. Inasmuch as a body of magistrates will make up the sovereign's administration, he considers the possibility of resignation in the case of a magistrate who feels, even against the opinions of his colleagues, that "an edict, commission, or commaundment from his prince" is contrary to equity and, therefore, unjust. Yet in such a case, though a magistrate might submit his resignation, if the sovereign refuses, he cannot vacate his post.³⁶¹ Bodin argues that the corporate judgment of magistrates as to a law's equity, if in accord with the sovereign's wishes, must itself be respected because to allow otherwise would "open a perilous gap to all the subjects, by their example to refuse and reject the edicts and commaunds of their prince" with chaos as the ultimate outcome.³⁶² Indeed, tyrannicide suffers from a similar problem. Thus, theoretical concessions to private judgment are, practically speaking, best left merely theoretical because Bodin foresees chaos arising when everyone simply follows his own judgment of the matter.³⁶³ More to the point, the sovereign's task is to command the unwilling, a risky task indeed, if any and all are truly free to exercise personal judgment before obeying.³⁶⁴ Consideration of this point shows the way to square apparent ambiguities in his treatment of magistrates

³⁶¹3.4 = McRae, *op. cit.*, p. 316H-I

³⁶²3.4 = McRae, *op. cit.*, p. 316I

³⁶³Having carefully distinguished sovereign from tyrant, Bodin concludes, "...it is never permissible for a subject to attempt anything against a sovereign prince, no matter how wicked and cruel a tyrant he may be. It is certainly permissible not to obey him in anything that is against the law of God or nature.... For oh, how many tyrants there would be if it were lawful to kill! He who taxes too heavily would be a tyrant, as the vulgar understand it... How then should good princes be secure in their lives?" 2.5 = McRae, *op. cit.*, p. 225D-E (the Knolles text differs significantly in wording, though not in sense); Franklin, *Bodin*, p. 120; Mairret, *op. cit.*, p. 229

³⁶⁴"...the main power of sovereign majesty and absolute power consists of giving law to subjects in general *without their consent*." (emphasis added) 1.8 = McRae, *op. cit.*, p. 98H; Franklin, *Bodin*, p. 23

who find a law unjust. In theory, they may very well have the option of withdrawal or, perhaps, inaction, if a command violates God's law, although Bodin virtually claimed this an impossibility, but in practice this is actually inadvisable and ought to be avoided.³⁶⁵ *In fine*, he concludes, magistrates ought to do what they are told. Thus, for example, Bodin more or less forecloses the practical exercise of magisterial resistance, even when done on the grounds of religious conscience:

this is especially to be considered, that we pretend not the vaine show of religion, or rather of superstition, against our princes commaunds, and so upon a conscience evill grounded open a way unto rebellion: for when the magistrate maketh conscience, and a matter of religion, about the executing of his princes commaunds, he seemeth himself (and giveth occasion unto others also) to suspect evill both of the religion and conscience of his prince. Wherefore he ought to be well assured of the true knowledge of the eternall God, and of the true worship and service unto him due: which consisteth not in vaine and counterfeit shows of religion or conscience.³⁶⁶

The possibility for error in conscience is sufficient to suggest that the best course in practice is just to obey.³⁶⁷ Moreover, refraining from resistance is also preferred lest one provide examples for others to imitate, especially as their own judgment too might be in error: "...it is much more also to be feared, least that the other magistrates, by the example of one or two, and after them other privat men (*le peuple*) also, should presume to contemne (*désobéir*) the princes commaund, to the great endangering and ruine of the Commonweale."³⁶⁸ The exceptions and allowances made by Bodin appear, then, merely to dissolve as the dangers of serving as a bad

³⁶⁵"Nous avons montré par ci-devant que le Prince ne peut *rien* contre la loi de nature..." (emphasis added) Mairét, *op. cit.*, p. 286 (3.4) The Knolles text softens or obscures this claim. McRae, *op. cit.*, p. 313A

³⁶⁶3.4 = McRae, *op. cit.*, p. 325B; Mairét, *op. cit.*, pp. 291-2

³⁶⁷3.4 = McRae, *op. cit.*, p. 315A: "...the equitie and reason which we call naturall, is not alwaies so cleere and manifest..."

³⁶⁸3.4 = McRae, *op. cit.*, p. 323B; Mairét, *op. cit.*, p. 289

example, executing an error in judgment, or even diminishing the very grandeur of sovereignty all tend in the end towards chaos, which is to be avoided at all costs. Thus, Bodin's idea of sovereignty serves as the foundation, acknowledged or not, for the tradition of bureaucratic duty – a duty to obey, even after remonstrance.

Obviously, sovereignty, being the key concept in understanding the bureaucratic tradition, one could trace its development by various paths.³⁶⁹ It will suffice here to focus on that the theoretical implications of sovereignty that were taken up by Rousseau and the French revolutionaries.³⁷⁰ If one were only to argue for this on the grounds that the French administration was particularly influential, that would suffice.³⁷¹ But what is particularly intriguing here is the way in which sovereignty, once conceived as popular will, called for an even stronger form of absolutism than conceived by Bodin. In any case, Bodin's arguments about sovereignty and the duties of magistrates truly lay out all the contours that apply in later years. The French *philosophes* and *revolutionnaires* merely draw out to an

³⁶⁹It is possible to examine the development of bureaucracy through cameralism and beyond in Prussia. Michalski, *op. cit.* Or by focusing purely on political theory, one could reach Rousseau via Hobbes and Montesquieu. Or one could take Locke as a point of reference by way of Filmore. It is not so much that one approach or avenue is superior to any other, but that the development of sovereignty within the French tradition is particularly striking and revealing, especially in light of its influence on the development of scientific administration. Mannori and Sardi, *op. cit.*, pp. 240-1 Cf. Tilly, *op. cit.*, pp. 107-14 and the discussion of French administrative science in T. Porter, *Trust in Numbers*, Princeton, 1996 Friedrich observes that the development of cameralism itself was heavily influenced by Montesquieu. C. Friedrich, "The Continental Tradition of Training Administrators in Law and Jurisprudence," *The Journal of Modern History* 11.2 (Jun. 1939), pp. 129-48

³⁷⁰On the basis of good, common sense, of all things, Talmon rejects the notion that the *philosophes* did not have an impact on the revolutionary leaders. J. Talmon, *The Origins of Totalitarian Democracy*, New York, 1970, pp. 69-70.

³⁷¹Mannori and Sordi, *op. cit.*, pp. 234-42

extreme the basic principles previously articulated. The positions of Rousseau and Saint-Just illustrate this extreme position.

In his *Social Contract*, Rousseau works through the theoretical implications of the people as sovereign, as manifested through the general will.³⁷² For Rousseau, as for Bodin, the sovereign is the source and guarantor of law, capable of abrogating (*effreindre*) it as needed.³⁷³ But Rousseau goes further. Whereas for Bodin, the sovereign is constrained by divine and fundamental law (*leges imperii*), even, as was pointed out, if only in theory, Rousseau's sovereign is not so bound. He is truly *legibus solutus*. Indeed, "...there is not, nor can there be, any kind of fundamental law (*loi fondamentale*) binding on the body of the people, *not even the social contract*."³⁷⁴ (emphasis added) The implication, as Derathé points out in his comment on this passage, is precisely this: "...il n'y a point de limites

³⁷²A. Ritter and J. Bonadellia, edd., *Rousseau's Political Writings*, New York, 1988; Derathé, R., *et al.*, edd., *Jean-Jacques Rousseau: Oeuvres Complètes, Pléiade*, Paris, 1966, v. 3; Talmon, *op. cit.*, pp. 40-9 Rousseau is in practice no democrat as Constant observes: "...son (*sc.*, Rousseau's) erreur a fait de son Contrat Social, si souvent invoqué en faveur de la liberté, le plus terrible auxiliaire de tous les genres de despotisme." *Principes de Politique* in A. Roulin, A., ed., *Benjamin Constant: Oeuvres, Pléiade*, Paris, 1957, p. 1071 = B. Fontana, *Constant: Political Writings*, Cambridge, *CTHPT*, 2006 [1988], p. 177.

³⁷³*Social Contract* 1.7 = Ritter, *op. cit.*, p. 94; Derathé, *op. cit.*, p. 362 Hobbes is more often seen as paving the way for Rousseau, but it is difficult too not to see Bodin, whom Rousseau cites in his work, in the background of his discussions about sovereignty and its implications. His desire to sublimate the "particular will" evokes the concern of Hobbes with private conscience. See Mansfield, *Hobbes*, fn. 346, *supra*. For Rousseau's engagement with Machiavelli, see L. McKenzie, "Rousseau's Debate with Machiavelli in the Social Contract," *Journal of the History of Ideas* 43.2 (Apr./Jun. 1982), pp. 209-28

³⁷⁴*Social Contract*, *ibid.*, and 3.18 = Ritter, *op. cit.*, p. 148; Derathé, *op. cit.*, p. 436: "...there is no fundamental law in the state that cannot be repealed." Of course, the social contract itself *is* by its very nature fundamental law, and the people may dissolve that at will. In his *Septième lettre*, Rousseau asserted: "Or il est de l'essence de la Puissance Souveraine de ne pouvoir être limitée: elle peut tout ou elle n'est rien." *Lettres écrites de la montagne*, Derathé, *op. cit.*, p. 826

constitutionnelles à la souveraineté et...le souverain étant à tout instant maître de changer ses volontés ou ses lois, il n'y a point de lois fondamentales qu'il soit tenu de maintenir en vigueur, pas même la forme du Gouvernement."³⁷⁵ This notion brings with it the further idea that the totalizing nature of the sovereign as the expression of a people's general will, is incapable itself of harming the people as a corporate body.³⁷⁶ Being composed of all individuals, taken together as a monad or unity, the sovereign has no interest contrary to that unity and thus cannot even wish to harm it although it may itself be suppressed by a surfeit of particular wills.³⁷⁷ The general interest and the sovereign, then, are one and the same, and individuals, with their particular interests, must obey, whether willingly or under compulsion (*contraint par tout le corps*).³⁷⁸ Therefore, Rousseau reasons, the sovereign need not even provide any guarantee to those subject to it, that is, to the individual members who compose the community.³⁷⁹ Where Bodin, argued, albeit optimistically, that God himself provided sovereigns that would not seek to harm their communities, Rousseau suggests that the sovereign, as a manifestation of the community's will itself, perforce cannot harm the

³⁷⁵Derathé, *op. cit.*, p. 1447 (his fn. 5) Derathé cites several parallel passages that only reinforce Rousseau's idea.

³⁷⁶There is a potentially interesting parallel between this notion of the corporate nation state unanimity and the notion of *ijma'* in Muslim thought. This idea of consensus derives from a *hadith* according to which Muhammad had stated that the community (*umma*) would never reach consensus on a matter of error (*dhalala*). s.v., *idjma'* in H. Gibb and J. Kramers, edd., *Concise Encyclopedia of Islam*, Leiden, 1995 [1953], pp. 157a-8b

³⁷⁷*Social Contract* 4.1 = Ritter, *op. cit.*, pp. 148-50; Derathé, *op. cit.*, pp. 437-9

³⁷⁸*Social Contract*, *ibid.* = Ritter, *op. cit.*, p.95; Derathé, *op. cit.*, p. 364

³⁷⁹*Social Contract*, *ibid.* = Ritter, *op. cit.*, p.94; Derathé, *op. cit.*, p. 363 The sovereign cannot have any interest contrary to the community's (*n'a peut avoir d'intérêt contraire au leur*)

members of that community.³⁸⁰ Rousseau's sovereign, then, appears much stronger, perhaps even "radical," when compared to the one depicted by his predecessor.³⁸¹

Rousseau expands on the nature of sovereignty at greater length in Book 2 of the *Social Contract*, and in Book 3 he takes up the relationship between the sovereign and its agent, defined as government. Some aspects of this sovereign are more or less traditional: for example, inalienability (2.1) and indivisibility (2.2). But sovereignty's status as an infallible hypostasis of the community's general will, over and against particular wills, takes the tradition a step further. Rousseau asserts, for example, "that the general will is always in the right and always tends toward the public utility."³⁸² To some extent, the implicit logic is that the general will is always right (*droite*) because it is the source of law (*droit*), and laws themselves are never particular. They are general in application.³⁸³ Therefore, the general will produces by way of legislation general expressions of right, which *ipso facto* are law.³⁸⁴ In connection

³⁸⁰Cf. the critique of the line of reasoning that says "the prince is what he should be." *Social Contract* 3.6 = Ritter, *op. cit.*, pp. 131-2; Derathé, *op. cit.*, pp. 412-3

³⁸¹Elshtain rightly observes, "...Rousseau winds up with a unitary, monistic version of sovereignty that levels everything that stands in its way – particular wills, particular faiths, anything that might prove an irritant in the image of the indissolubility and indivisibility of sovereignty." *op. cit.*, p. 131 She had rightly characterized Rousseau's version of sovereignty as "radical." p. 120

³⁸²*Social Contract* 2.3 = Ritter, *op. cit.*, p. 100; Derathé, *op. cit.*, p. 371

³⁸³*Social Contract* 2.6 = Ritter, *op. cit.*, pp. 105-7; Derathé, *op. cit.*, pp. 378-80; 3.1 = Ritter, *op. cit.*, p. 118; Derathé, *op. cit.*, p. 395-6; 3.12 = Ritter, *op. cit.*, p. 140; Derathé, *op. cit.*, p. 424 This link between the general will and law, which is general in specification because it applies to all, echoes Bodin's distinction between law and edict. It is worth observing too that Rousseau considers government itself a commissary entity, a point which emphasizes its temporary nature as an agent with delegated authority ("...it [*sc.*, Government] is only the minister."). *Social Contract* 3.1 = Ritter, *op. cit.*, p. 119; Derathé, *op. cit.*, p. 396: "[c]e n'est absolument qu'une commission...." Cf. fn. 350, *supra*.

³⁸⁴The general will "must come from all to be applied to all." *Social Contract* 2.4 = Ritter, *op. cit.*, p. 102; Derathé, *op. cit.*, p. 373; for Rousseau's definition of law, see

with this, it is worth recalling Rousseau's assertion in the *Discourse on Political Economy* that the popular will, which is only a synonym for the general will, is "the voice of God."³⁸⁵ To be sure, Rousseau concedes, individuals, motivated by their particular interests, can by their acts interfere with the expression of the general will, but this concession points to the larger problem within the political community: the danger of particular wills, or, in modern terms, private interests.³⁸⁶ And this applies to members of the government as well, once they pursue their particular wills.³⁸⁷ After all, individuals, who may not themselves see the good or may be deceived, determine their actions and choose to act in response to their immediate concerns: they may lack the civic virtue or "common interest" necessary to the expression of the

Social Contract 2.6 = Ritter, *op. cit.*, p. 106; Derathé, *op. cit.*, p. 379: "Alors la matière sur laquelle on statue est générale *comme* la volonté qui statue. C'est cet acte que j'appelle une loi." (emphasis added) Law is by definition the general will's expression: "...laws are the only authentic acts of the general will...." *Social Contract* 3.12 = Ritter, *op. cit.*, p. 140; Derathé, *op. cit.*, p. 425

³⁸⁵See Rousseau's discussion of general and particular wills in his *Discourse on Political Economy*. Ritter, *op. cit.*, pp. 61-2; Derathé, *op. cit.*, pp. 244-6 The actual divine will, Rousseau argues, is simply beyond the ken of mankind; otherwise there would be no need for government or law. *Social Contract* 2.6 = Ritter, *op. cit.*, p. 105; Derathé, *op. cit.*, p. 378 In light of this observation, Rousseau's comment on nature of the lawgiver himself ("It would take gods to give laws to men.") raises interesting questions. *Social Contract* 2.7 = Ritter, *op. cit.*, p. 108; Derathé, *op. cit.*, p. 381 (where *Dieux* is capitalized; note the variation quoted in Derathé's note [p. 1462, n. 3] "*il faudroit un Dieu, etc.*")

³⁸⁶Cf. Arendt, *op. cit.*, p. 78 It is worth noting that Rousseau highlights the dangers that moral habits pose to the state: "Now, the less the particular wills relate to the general will, that is, the less moral habits (*moeurs*) relate to laws, the more the repressive force must be increased." *Social Contract* 3.1 = Ritter, *op. cit.*, p. 120; Derathé, *op. cit.*, p. 397 Rousseau contrasts *moeurs* because they are internal with laws, which are external. *Fragments* 6, Derathé, *op. cit.*, p. 555

³⁸⁷*Social Contract* 3.10 = Ritter, *op. cit.*, p. 137ff; Derathé, *op. cit.*, p. 421ff.

infallible general will.³⁸⁸ The general will, as an expression of the sovereign, then, is more completely unbound in Rousseau's configuration than Bodin's.

For Rousseau, government is the sovereign's agent. To act, the sovereign depends on government in the sense that every action consists of two parts, conception and execution.³⁸⁹ Without the power to act, the desire to act is incomplete, and without the desire to act, the capacity to act is merely potential. Naturally, this analysis applies to individual members of a community just as it applies to corporate bodies within the community. Thus, particular will. Against this stands the will of the entire polity come together as a state, and the totality of its singular will is, as already explained, the general will. The general will, therefore, finds its institutional expression in the government as executive.³⁹⁰ This may take the form of monarchy, aristocracy, democracy, or mixed government. The particular institutional arrangements, however, are not as important to the discussion as the relationship they all must have to the sovereign. Even with a monarch, it is understood that he will have to operate via agents or magistrates who constitute the

³⁸⁸“Nothing is more dangerous than the influence of private interests in public affairs....,” warns Rousseau. *Social Contract* 3.4 = Ritter, *op. cit.*, p. 125; Derathé, *op. cit.*, p. 404 On political manipulation, see *Discourse on Political Economy*. Ritter, *op. cit.*, pp. 62-3; Derathé, *op. cit.*, pp. 246-7 Cf. *Social Contract* 2.4 = Ritter, *op. cit.*, p. 103; Derathé, *op. cit.*, p. 374 Regarding the necessity of virtue for all regimes, see *Social Contract* 3.4 = Ritter, *op. cit.*, p. 126; Derathé, *op. cit.*, p. 405; 4.1 = Ritter, *op. cit.*, pp. 148-50; Derathé, *op. cit.*, pp. 437-9 In *Fragments Politiques*, Rousseau states, “L’erreur de la plupart des moralistes fut toujours de prendre l’homme pour un être essentiellement raisonnable.” *Fragments* 16.1 (*Des Moeurs*), Derathé, *op. cit.*, p. 554

³⁸⁹*Social Contract* 3.1 = Ritter, *op. cit.*, p. 118; Derathé, *op. cit.*, p. 395

³⁹⁰“J’appelle donc *Gouvernement* ou supreme administration l’exercice légitime de la puissance exécutive, et Prince ou magistrat l’homme ou le corps chargé de cette administration.” (emphasis in original) *Social Contract* 3.1 = Ritter, *op. cit.*, p. 119; Derathé, *op. cit.*, p. 396

administration: thus the particular institutional arrangement need not occupy the discussion. Government is seen as mediator between the sovereign as general will and the political community made up of citizens. Put differently, “[its] most pressing concern, as well as [its] essential duty, is, therefore, to oversee the observance of the laws of which [it] is the minister and upon which all his authority is founded.”³⁹¹ Needless to say, as a commissary, government does not issue laws. Its commands are particular in nature, not general as laws are, and, therefore, they are edicts.³⁹² To carry out its duties on behalf of the sovereign, it will find instantiation in the form of officials. Enter magistrates.

Obviously, magistrates are agents of the sovereign. Their duties flow from that relationship. Yet they also are citizens and remain members of the political community. Furthermore, as Rousseau prescribes, they also form, as they do to some extent in Bodin, a corporate body. What this means is that the magistrate himself possesses and may respond to three wills: as a citizen, general will (*volonté generale*), as a private individual, particular will (*volonté particulière*), as an official, corporate will (*volonté de corps*). As Rousseau explains,

We can distinguish in the person of the magistrate three essentially different wills. First, there is private will of the individual, which tends only towards his particular advantage; secondly, there is the common will of the magistrates, which relates solely to the

³⁹¹*Political Economy*, Ritter, *op. cit.* p. 64; Derathé, *op. cit.* p. 249 Rousseau actually speaks of “the leader (*chef*)” in this context, but, as he explains in the *Social Contract*, the prince and the government are functionally interchangeable. Thus, the principle articulated here with regard to “the leader” applies to whatever form the government takes as the sovereign’s executive.

³⁹²Ryan appears not to be sufficiently attentive to this important distinction in Rousseau. Otherwise, he ought to have said that the government would operate by means of “...something closer to edicts...” *op. cit.*, v. 2, p. 566 In point of fact, by definition, the government cannot produce law, only edicts.

advantage of the prince, and which may be called the corporate will since it is general in relation to the government and particular in relation to the state of which the government forms a part; thirdly, there is the will of the people or the sovereign will, which is general both in relation to the state considered as the whole and to the government considered as part of the whole.³⁹³

Naturally, a magistrate's particular will ought always to be sublimated in service of the general or corporate wills. Otherwise, there is the risk that each may usurp sovereignty within his own domain.³⁹⁴ Yet, this is precisely the problem: the individual magistrate, in fact, runs the risk of being most responsive to his particular interest, not the general will, which in Rousseau's gradation of wills is weakest.³⁹⁵ This, in fact, is the very substance of the problem described among modern writers as the problem of "democratic control."³⁹⁶ In other words, Rousseau is conscious that the link between the expression of the general will by the sovereign and the execution of that will by the individuals so charged is always at risk of being broken because of private interests.³⁹⁷ But he goes further. By introducing the notion of corporate will,

³⁹³*Social Contract* 3.2 = Ritter, *op. cit.*, pp. 122; Derathé, *op. cit.*, pp. 400-1

³⁹⁴*Social Contract* 3.5 = Ritter, *op. cit.*, p. 128; Derathé, *op. cit.*, p. 407 Rousseau actually speaks here of the individual leaders (*chefs*), but the principle surely applies to those to whom the sovereign delegates the authority to act. Ritter's translation, "...can each (*sc.*, leaders) act as sovereign in his own region..." misses the force of the French: "...(*les chefs*) puissent *trancher du Souverain* chacun dans son département..." (emphasis added) Cf. *Social Contract* 3.10 = Ritter, *op. cit.*, p. 139; Derathé, *op. cit.*, p. 423: "...autant de Princes que de Magistrats..."

³⁹⁵*Social Contract* 3.2 = Ritter, *op. cit.*, pp. 123; Derathé, *op. cit.*, pp. 401

³⁹⁶As Rousseau states, "...the act which institutes the government is not a contract but a law, [that] the trustees of executive power are not the masters of the people but its officials (*officiers*), [that] it can establish and discharge them whenever it please, [that] for them there is no question of contracting but only of obeying..." *Social Contract* 3.18 = Ritter, *op. cit.*, p. 147; Derathé, *op. cit.*, p. 434 Rousseau is, of course, speaking here of fundamental law or *leges imperii*.

³⁹⁷Once magistrates begin to function independently in the service of their private interests, the state is on the decline. *Social Contract* 3.10 = Ritter, *op. cit.*, pp. 138-9; Derathé, *op. cit.*, p. 423. Cf. fn. 394, *supra*.

he acknowledges an ambiguous institutional concern, because, after all, even a corporate body might substitute its interests for the sovereign's.³⁹⁸ Corporate will is that particular set of interests and intention to act that officialdom inevitably possesses and must be subordinate to the general will. Obviously, as the government machinery expands, its "corporate will" tends to match more closely the general will. Yet, obviously concerned that the state should *actually* accomplish something, he asserts that a large state is best ruled by a smaller government. The implication that the corporate will under such circumstances might actually be less commensurable with general will is clear inasmuch as the magisterial body represents a smaller sample of the political community as a whole.³⁹⁹ In some sense, however, corporate will may be a compromise position: better than particular will, which can run strongest, but worse than general will, which tends to be weak.⁴⁰⁰

³⁹⁸ Cf. *Septième lettre, Lettres écrites de la montagne*, Derathé, *op. cit.*, p. 815

³⁹⁹ *Social Contract*, *ibid.* = Ritter, *op. cit.*, pp. 122-4; Derathé, *op. cit.*, pp. 400-2 Rousseau refers to government as a "machine" in 3.6. Ritter, *op. cit.*, p. 128; Derathé, *op. cit.*, p. 408 This popular trope (*i.e.*, Rousseau is not the only one to use it) obviously sees the government as a clock or watch, as the reference to mainspring (*ressort*) makes clear: it is no general machine. This metaphor is particularly significant, for, just as a watch's mainspring animates it and eventually wears out, so the mainspring of a government may also weaken and eventually lose its motive force. *Social Contract* 3.10 = Ritter, *op. cit.*, p. 138; Derathé, *op. cit.*, p. 422 It is worth noting that the late 18th century was a period when several technological innovations were introduced to horlogerie by Abraham Breguet, who survived the revolution and eventually counted Napoleon among his customers as he had Marie Antoinette. The introduction of the metaphor of government as clock (as opposed, or in addition to the older one of state as a ship) merits a separate study because it obviously reflects a shift in technology.

⁴⁰⁰ One might even see in corporate will a precursor to the notion of professionalism that became a key feature of later, idealized concepts of bureaucracy.

Moreover, in point of fact, the corporate will even has a salubrious capacity with regard to the state.⁴⁰¹ To be sure, anything that competes with the general will puts the entire community at risk. But in the scheme of things, it is particular wills and factions above all else that threaten the general will. Here, the corporate will might be of some service. In a manner evocative of Machiavelli's republic, where competition among great men's ambitions invigorates the state, Rousseau suggests that magistrates, as a corporate body, can balance or limit the prince's power.⁴⁰² Not that Rousseau elucidates the mechanics of this balancing act, but he does suggest that it can be a positive force. Corporate will, then, is not all bad, but it does pose a problem, just as any grouping inferior to the general will represents a potential threat to the state.⁴⁰³ Doubtless, this is why, when addressing the state's fundamental laws,

⁴⁰¹ Curiously, Cobban, who strives throughout his book to rescue Rousseau from the charge of having theorized a totalitarian state, does not take up the issue of corporate will in relation to the magistrates. A. Cobban, *Rousseau and the Modern State*, Hamden, 1964, pp. 46-8

⁴⁰² Prince and government are sometimes the same, sometimes distinct in the *Social Contract*. Cf. fn. 391, *supra*. Speaking of limited government, Rousseau says that the lack of balance between legislative and executive can "be prevented by establishing magistrates, who, leaving the government undivided, serve only to balance the two powers and to maintain their respective rights. In that case, the government is not mixed; it is limited." *Social Contract* 3.7 = Ritter, *op. cit.*, p. 132; Derathé, *op. cit.*, p. 414 Cf. *Social Contract* 3.10 = Ritter, *op. cit.*, p. 137; Derathé, *op. cit.*, p. 421, where Rousseau mentions the absence of a "corporate will" to resist the prince. Interestingly, Rousseau's conception of the magisterial function in the Polish constitution expresses this in terms that evoke Machiavelli's republican notions: "Je voudrais que toutes les fonctions publiques menassent ainsi de l'une à l'autre; afin que nul ne s'arrangeant pour rester dans la sienne, ne s'en fit un métier lucrative et ne se mit au dessus du jugement des hommes." *Considérations sur le gouvernement de Pologne et sur sa réformation projetée*, Derathé, *op. cit.*, pp. 1001-2

⁴⁰³ This corporate will is, of course, one of the vexing problems of bureaucracy, and animates modern concerns about the need for democratic control. On the other hand, although not specifically conceived as corporate in nature, protestant theories of magisterial discretion anticipates Rousseau's point because in that tradition, magistrates themselves may counter the sovereign in the interest of the community.

Rousseau emphasizes officialdom's necessary subordination to the sovereign.⁴⁰⁴ In other words, bureaucracy does not exist to act in its own interests. Rather, it, the government, exists to serve the sovereign, and that is precisely what Rousseau says: "...[for] the trustees of executive power...there is no question of contracting but only of obeying."⁴⁰⁵

Rousseau's *Social Contract* was only a theoretical work; it was the burden of revolutionaries to labor under its influence.⁴⁰⁶ Obviously, the French revolution is itself too large a subject to undertake here, but it is worth remembering it as a period that saw a radical change in French administration. The rise alone of a huge national army amid the circumstance of wars, internal and external, called for growth in the number of officials, but, more significantly, the overall revolutionary program called for an entirely new configuration of government on a scale never before seen in France.⁴⁰⁷ Cobb noted that perhaps as many as 150,000 new bureaucrats were

See, for example, J. Franklin, ed., Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, & Mornay, New York, 1969. This issue will be discussed in the following chapter.

⁴⁰⁴*Social Contract* 3.18 = Ritter, *op. cit.*, p. 147; Derathé, *op. cit.*, p. 434

⁴⁰⁵*Social Contract*, *ibid.*

⁴⁰⁶In A. Cobban's words, "practical circumstances dictated theory." A History of Modern France, Harmondsworth, 1984 [1957], v. 1, p. 235 In his book on Rousseau, he disappoints when it comes to discussing the Jacobins as interpreters of Rousseau's theory. Rousseau, *passim*, but esp., pp. 20-2. Goyard-Fabre notes, "Sans doute faut-il distinguer, dans la Révolution française, le mouvement des idées et l'application qui en est faite puisque 'l'essence de la souveraineté' dont parle Rousseau est en quelque sorte contredite par la politique jacobine de Salut Publique." S. Goyard-Fabre, "L'idée de souveraineté du peuple et le 'libéralisme pur' de Benjamin Constant," Revue de Métaphysique et de Morale 81.3 (Jul./Sep. 1976), pp. 289-327, quotation at p. 299.

⁴⁰⁷Tilly identifies this as the transformation from indirect to direct rule. For his discussion, see, *op. cit.*, pp. 107-14. Cf. the fascinating arguments about bureaucratization in Qin China: E. Kiser and Y. Cai "War and Bureaucratization in Qin China: Exploring an Anomalous Case," American Sociological Review 68.4

appointed during the period of the terror, and Church suggested that the bureaucracy expanded four times over.⁴⁰⁸ All this growth in a period spanning just a few years! It is no surprise, then, that the issue of control by the central authority over burgeoning officialdom would figure in the thinking of those tasked with acting on the people's behalf.⁴⁰⁹ Among the Jacobins, while Robespierre stands out, not least for his instrumental role in the terror, it was his acolyte, Saint-Just, whose theoretical efforts – improvements to Rousseau, as he perhaps saw them – were systematic and thorough-going.⁴¹⁰

(Aug. 2003), pp. 511-39 One problem with their analysis relates to the idea of “militarization,” which depends on a relatively uncritical acceptance of numbers of soldiers, casualties, and the like found in the Chinese sources with historical estimates for other civilizations that are the product of modern, critical analysis. This surely distorts, and one is tempted to recall the energy Delbrück, for example, devoted to undermining any faith in the Classical record. See H. Delbrück, Warfare in Antiquity, Lincoln, 1990 [1920], pp. 33-52. In the area of the French treasury, which one might consider a proxy for the growth of centralization during the Revolution, see J. Bosher, French Finances 1770-1795: from Business to Bureaucracy, Cambridge, 2008 [1970]

⁴⁰⁸See the comments of R. Cobb and C. Church in “Social Mobility,” Past & Present 32 (Dec. 1965), pp. 8-9 For the American experience, the table provided by Choung reveals, not surprisingly, the impetus war has provided to the growth of bureaucracy here.: “...the growth appears to be primarily a function of wars...” W. Choung, Control Mechanisms over Bureaucratic Power Expansion and a Tentative Model for the Comparative Study of Bureaucracy, Temple University, dissertation, 1981, p. 19 (Table 1.2) and p. 20 (quotation)

⁴⁰⁹Cf. Tocqueville's observation that a democratic people initially concentrates power in its prince before eventually entrusting administrative power to “des mandataires secondaires. Telle paraît être la marche naturelle instinctive et pour ainsi dire forcé que suivent les sociétés qui...sont entraînées vers la démocratie.” F. Mélonio, ed., Alexis de Tocqueville: l'ancien régime et la révolution, Paris, 1988, p. 73

⁴¹⁰Saint-Just, Robespierre's “faithful disciple”: Talmon, *op. cit.*, p. 98; Saint-Just perhaps overestimating his corrections to Rousseau: Talmon, *op. cit.*, p. 84; A. Kupiec and M. Abensour, edd., Saint-Just: Oeuvres Complètes, Paris, 2004 Terror was, according to Robespierre, a tool necessary to government during turbulent times: “Si le ressort du gouvernement populaire, dans la paix, est la vertu, le ressort du gouvernement populaire en révolution, est à la fois la vertu et la terreur...” *Le 18*

In every respect, Saint-Just's thought is animated by a deep mistrust of particular will (*volonté particulière*). Individuals left to their own devices, particularly under conditions of inequality, look only to their own concerns. Thus the various pernicious manifestations: ambition (*l'ambition*), arrogance (*l'orgueil*), jealousy (*la jalousie*), all of which undermine the general will's expression.⁴¹¹ In some ways, of course, this echoes Rousseau's concerns, but Saint-Just's words come with a sense of urgency appropriate to a man besieged by traitors, false friends, and enemies everywhere, as he surely felt himself to be.⁴¹² The goal, then, was to recreate an *apolitical* state of nature where men would (one senses that Saint-Just might say, "must") behave independently and as equals.⁴¹³ This is a paradise that can only come about by addressing the problem of physical want and creating an institutional framework utterly subordinate to law as an expression of general will, which, it is worth stressing, is only the general will, if it is also governed by reason.⁴¹⁴ Indeed, it is

Pluviôse an II sure les principes de morale politique in R. Garaudy, ed., *Les orateurs de la révolution française*, Paris, 1939, pp. 71-7, quotation from p. 75.

⁴¹¹See *Discours du 9 Thermidor*, for example, in Kupiec, *op. cit.*, p. 776: "Si tout le monde avait été modeste, et n'avait point été jaloux qu'on parlât plus d'un autre que de soi, nous serions fort paisibles... L'orgueil enfante les factions."

⁴¹²See, for example, his final speech, *Discours du 9 thermidor an II*. Kupiec, *op. cit.*, pp. 769-85.

⁴¹³Saint-Just apparently views politics as nothing but the environment of factional activity: "Si vous voulez que les factions s'éteignent, et que personne n'entreprenne de s'élever sur les débris de la liberté publique par les lieux communs de Machiavel, rendez la politique impuissante en réduisant tout à la règle froide de la justice." (emphasis added) *Discours du 9 thermidor* in Kupiec, *op. cit.*, p. 777 For him, dependence, whatever its form, represented inequality. *Institutions républicaines* in Kupiec, *op. cit.*, p. 1090. Rawls in his *Theory of Justice* seems equally driven by a desire to eliminate politics: the veil of ignorance and reason both conspire to remove the contentious essence of politics from the field of view.

⁴¹⁴This is a significant qualification as it means that the general will is not merely a tally of votes (Rousseau's will of all). The people, who are "stupid," must have reason. See *L'esprit de la révolution* in Kupiec, *op. cit.*, p. 426 (*stupidité publique*);

the creation of institutions above all else that will serve to structure a world where man can act according to his nature.⁴¹⁵ It is a world, perhaps, that lies ahead, not in the past, because the actual state of nature is not recoverable – the real state of nature had no politics, after all.⁴¹⁶ On this point, the comments of Saint-Just in the *Discours du 9 Thermidor* bear quoting. After suggesting that politics must be eliminated in order to address the problem of factions, he goes on to describe why what is needed is a system of law, not men:

Laws have no passion to divide them and make them conceal. Laws are severe, and men are not always so: an impenetrable masque can cover them for long periods. If laws protect innocence, the outsider (*l'étranger*) cannot corrupt them; but if innocence is the toy of vile intrigues, there is no longer a guarantee inside the city. One must flee to the desert to find there his independence and his friends among the wild animals. One must abandon a world where one no longer has the energy for crime or virtue and where there is nothing left but the bogeyman (*épouvante*) and indifference (*mépris*).⁴¹⁷

p. 468 (*juste et raisonnable*) Cf. the comment of Constant: "...while [Saint-Just] seemed to suppose the nation capable of the most painful sacrifices, he acknowledged her, by his style, incapable of paying attention." *Liberty of the Ancients Compared with that of the Moderns*, fn. a., in Fontana, *op. cit.*, p. 320.

⁴¹⁵"Les institutions sont la garantie du gouvernement d'un peuple libre contre la corruption des mœurs et la garantie du peuple et du citoyens contre la corruption du gouvernement." *Institutions républicaines* in Kupiec, *op. cit.*, p. 1089

⁴¹⁶Cf. A. Pons, ed., *Condorcet: Esquisse d'un tableau historique des progrès de l'esprit humain*, Paris, 1988, p. 81: "Sans doute, ces progrès pourront suivre une marche plus ou moins rapide, mais jamais elle ne sera retrograde...."

⁴¹⁷Kupiec, *op. cit.*, p. 778 Cf. in his *Institutions républicaines*, Saint-Just describes the rationale of institutions in terms that evoke the harmony of mankind in the prepolitical state of nature. Kupiec, *op. cit.*, p. 1089; cf. the comparison between law and arbitrary judgment. *L'esprit de la révolution*, Kupiec, *op. cit.*, p. 446 The comments of Constant regarding this faith in law are particularly biting: "Ce sont des fous qui, s'ils gouvernaient, recommenceraient Robespierre, avec les meilleures intentions du monde." (emphasis added) *Journal*, 27 Mai (7 Prairial) in Roulin, *op. cit.*, p. 277

Here Saint-Just seems to encapsulate his antipathy towards the world of particular wills as manifested in politics; here, he seems to say that one must either abandon mankind altogether, effectively reverting to a state of nature, or recreate those conditions via law's austere implacability.⁴¹⁸ For him, law itself can expunge destructive *amour propre*, creating a kind of world where men are all independent, like wild animals, but equal and free of jealousy: a recapitulation of *Genesis* or the *Epic of Gilgamesh* where Adam or Enkidu dwelt peacefully among the beasts.

Of course, it is not merely a matter of institutions and law. Reason must animate the system, or rather, the machine. To be sure, the metaphor of the machine or clock is a favorite during the 18th century.⁴¹⁹ Saint-Just, therefore, is not particularly unique in evoking the imagery (nor was Robespierre himself); nevertheless, it is worth pausing to consider the implications of this metaphor for a man concerned, as he was, with eliminating particular wills and ensuring the government function according to laws articulated via institutions.⁴²⁰ The watch – and this is obviously what underlies a lot of the imagery given the constant reference

⁴¹⁸The unacknowledged contradiction in this rests in the fact that man in the state nature no longer is man precisely because reason, which distinguishes men from animals, no longer has any place. Reason, which distinguishes good from bad, ceases to function in a state where everything is good.

⁴¹⁹See Bosher's comments. *op. cit.*, pp. 133-5. Cf. fn. 399, *supra*. L. Winner, although he generally focuses on the 19th century and later, is extremely insightful and eloquent on the relationship between technology and politics, which, of course, is reflected in the language used to describe both. Autonomous Technology: Technics-out-of-Control as a Theme in Political Thought, Cambridge, 1978

⁴²⁰It is worth noting that Robespierre in speech of 18 *Pluviôse* speaks of virtue as the “ressort essentiel qui le (*sc.*, democratic government) soutient et qui le fait mouvoir.” A revolutionary government has for its mainspring virtue and terror. See Garaudy, *op. cit.*, pp. 74-5

to *ressort* or mainspring – is regular and predictable in its beat.⁴²¹ Its gears and wheels are located in their proper place, and move in concert with a harmonious regularity that marks time, progress, and regularity. Once crafted by the watchmaker, or lawgiver, all of its pieces put in place, it merely needs to be set in motion to continue on its own, calmly, remorselessly. Thus the system of Saint-Just, who conceives of government as a collection of institutions and laws, subject to reason, executed by ministers whose particular will is effaced by regulation itself. Like a good watch, good government is *reglé*. In this vein, Saint-Just, discussing the censor's role in republican government, distinguishes between weak government, where one must depend on individual merit, and strong (*robuste*) government, in which “*la force et l'harmonie des institutions*” operate to good effect.⁴²² Contrasting weak government, perhaps beholding something like Machiavelli's competing great men in his mind's eye, with the strong, Saint-Just clearly portrays a government that is a mechanism or a watch movement operating in perfect time, a symphony of mere parts giving expression to the impersonal administration of justice. Hence, on the one hand, with weaker government, lacking in institutions, “il n'y a plus de contrat...il y a une réaction continuelle de forces particulières;” on the other hand, with good government, “il y en a un (*sc.*, un contrat) qui règle tous les mouvements et fait partout la loi.... il y a une force commune (*sc.*, le ressort), dont chacun fait partie, et qui concourt au même but et au même bien.”⁴²³ These are terms that, apart from

⁴²¹ Cf. the *Leviathan*'s introduction, where Hobbes also invokes the watch. R. Tuck, ed., *Hobbes: Leviathan*, *CTHPT*, Cambridge, 2006 [1991] p. 9

⁴²² *Institutions républicaines*, Kupiec, *op. cit.*, p. 1140

⁴²³ *ibid.* Although he had meant it as a criticism, it was, nonetheless, a general statement of reality, when he said, “[L]a justice est rendue en France au nom du

describing the operation of a clockwork movement, presage Weber's bureaucratic cage (*Gehäuse*): Saint-Just saw that justice could not be left to anything as uncertain and unreliable as chance or men's hearts.⁴²⁴ He was determined to design such a state where what was law, that is, *volonté generale raisonnable* made real, would find complete, inexorable expression, without exception, for all men, equality performe. This was nature recreated as impersonal mechanism, presenting a scene on which a reintroduced savage man would carry out his independent life, free.⁴²⁵

A problem remained. Laws do not speak, but require flesh and blood men to implement them.⁴²⁶ Yet, Saint-Just distrusted bureaucrats even more than he

monarque...par la bouche du magistrat...." *L'esprit de la révolution* in Kupiec, *op. cit.*, p. 381.

⁴²⁴Needless to say, even those who argue about public administration as a science merely hope that the expert will be motivated by objective, scientific knowledge, hardly the dubious uncertainties of subjective reflections. Weber used the word *Gehäuse* to describe the bureaucratic future, a word that in German refers to a watch case. Perhaps he too was echoing watch metaphor, but in a negative way. It is curious that Baehr does not take up this aspect. P. Baehr, "The 'Iron Cage' and the 'Shell as Hard as Steel': Parsons, Weber, and the Stahlhartes Gehäuse Metaphor in the Protestant Ethic and the Spirit of Capitalism," *History and Theory* 40.2 (May, 2001), pp. 153-69

⁴²⁵It is a kind of early paternalism: government carried out, even against the wishes of the governed, in their interest. While Saint-Just and Robespierre sought to hasten man's perfectibility, S. Conly in her book on paternalism abandons perfectibility, perhaps because she implicitly considers it hopeless. *Against Autonomy: Justifying Coercive Paternalism*, Cambridge, 2014 [2013] Cf. C. Caldwell's comment that education is insufficient: "Coaxers and coercers discover common ground," *Financial Times*, March 1, 2013.

⁴²⁶He acknowledged in *9 thermidor* that without magistrates, government would cease (*anéantie*). Kupiec, *op. cit.*, p. 783 But the crux of the problem is, to use Rousseau's words, this: "[l]e corps chargé de l'exécution de vos Loix en est l'interprete et l'arbitre suprême; il les fait parler comme il lui plaît; il peut les faire taire; il peut même les violer sans que vous puissiez y mettre ordre...." *Lettres écrites de la Montagne, Septième lettre*, Derathé, *op. cit.*, p. 814.

distrusted his fellow men.⁴²⁷ Whether or not he was animated by memories of the *ancien régime*, he evinced an enduring distrust of officials and, consequently, utterly rejected by implication any value placed on some kind of magisterial *volonté de corps* that Rousseau had suggested could limit the prince. Therefore, he demanded that magistrates be moral models for citizens to follow, constrained by law and removed from the civic community, rendered institutional others: they were not to be citizens precisely because the danger they represented by their tendency towards *volonté de corps* threatened to make them more powerful than citizens themselves.⁴²⁸ Saint-Just says, “whoever is a magistrate is no longer of the people.”⁴²⁹ Moreover, one must not even address an official as a citizen because the very title is superior to him.⁴³⁰ Magistrates, therefore, must constitute something outside the political community, a community which, ideally, has itself ceased to be political in any meaningful sense. Indeed, motivated by “fear,” magistrates, themselves function as mere cogs, exhibiting the kind of “inflexibility” that prevents those relationships of the past, dependency, and other human factors that lead to faction.⁴³¹ Saint-Just’s officials are

⁴²⁷ *L’esprit*, in Kupiec, *op. cit.*, p. 385; “tout officier public est un tyran.” *L’esprit*, in Kupiec, *op. cit.*, p. 426

⁴²⁸ moral example, *Institutions républicaines*, Kupiec, *op. cit.*, p. 1144 Modern discussions of public administration frequently see bureaucrats as others, not as citizens *per se*. See, for example, McGregor, *op. cit.*

⁴²⁹ *Institutions républicaines*, Kupiec, *op. cit.*, p. 1139 cf. *L’esprit*, Kupiec, *op. cit.*, p. 385

⁴³⁰ *Institutions républicaines*, Kupiec, *op. cit.*, p. 1139

⁴³¹ *Institutions républicaines*, Kupiec, *op. cit.*, p. 1144 In their study of Qin China, Kiser and Cai highlight the role of the legalist school, which rigidly stressed official obedience to law and duty, to the formation of bureaucracy. For an example of this school of thought, see B. Watson, trans., *Han Fei Tzu: Basic Writings*, New York, 1964. Saint-Just’s idea of government accords well with Han Fei’s recommendation that ministers should only do exactly and only what they are assigned, and the ruler should punish even those who accomplish good outside of their task. p. 32

Aristotle's "living tools." Saint-Just's vision, then, is even more rigid and mechanistic than Rousseau's because, perhaps, his distrust of his fellow man, despite his proclaimed faith in the people, was so intense, particularly where matters of power were involved.⁴³² For him, the only means to ensure total order for the rational machine of government consisted of an arrangement of ordered institutions, complete obedience to law, and a wall of separation between administrators and citizens. In this way alone could a proper, indeed, moral community exist, that is, with government obedient to the community's rational expression through law, its officialdom functioning as its literal servant. This is the very substance of democratic control in the modern sense, albeit one of its more conceptually robust manifestations.

Democratic control has been an enduring subject of concern for public administration.⁴³³ Put differently, the fundamental problem has been the discretion of

⁴³²The people (*le peuple* or *la nation*), it is worth recalling, is a collective entity, not truly a group of individuals. For the intellectual background to the idea of nation, see D. Bell, *The Cult of the Nation in France*, Cambridge, 2003 [2001].

⁴³³"Public responsibility demands the willing subjection of the bureaucracy to the laws as the general instructions of the representatives of the people." F. Morstein-Marx, *op. cit.*, p. 44; D. Levitan, "The Responsibility of Administrative Officials in a Democratic Society," *Political Science Quarterly* 61.4 (Dec., 1946), pp. 562-98; J. Wilson, *op. cit.*, pp. 334-6. Note that this tension has come to be recast in some circles as a principal-agent problem. K. Bawn, "Political Control Versus Expertise: Congressional Choices about Administrative Procedures," *American Political Science Review* 89.1 (Mar., 1995), pp. 62-73. The idea of democratic control is undermined as citizens come to be viewed as customers by the bureaucracy. See J. Stewart, "Advance or Retreat: From the traditions of Public Administration to the new public management and beyond," *Public Policy and Administration* 13.4 (Winter, 1998), pp. 12-27; E. Suleiman, *Dismantling Democratic States*, Princeton, 2003. It is worth stressing that the shift to empiricism in the study of administration has tended to put the research emphasis more on identifying who actually does control rather than the normative question of who should control. Thus, for example, one can discuss at length the degree to which Congress actually influences the bureaucracy without considering what the situation ought to be. T. Moe, "An Assessment of the Positive Theory of 'Congressional Dominance'," *Legislative Studies Quarterly* 12.4 (Nov.,

the official within the context of the polity's sovereign will. Thus, Finer in his well-known debate with Friedrich, argued that official responsibility within the political context was a matter of external control. Officials must be answerable, not to individual conscience or some vague sense of professionalism, but to the oversight and direction of the legislature or executive as the sovereign people's representative.⁴³⁴ Indeed, echoing Han Fei's warnings about excess, Finer went so far as to argue that one must be concerned not only about the bad official, but also the good one.⁴³⁵ In other words, excess in and of itself, for good or ill, amounts to official usurpation of the legislature's right to command.⁴³⁶ As Finer bluntly put it in an earlier article, "...the first commandment is, Subservience!"⁴³⁷ Despite that

1987), pp. 475-520; B. Wood and R. Waterman, "The Dynamics of Political Control of the Bureaucracy," American Political Science Review 85.3 (Sep., 1991), pp. 801-28. The focus of the present discussion is on normative, not empirical questions.

⁴³⁴H. Finer, "Administrative Responsibility in Democratic Government," Public Administration Review 1.4 (1941), pp. 335-50; see too "Better Government Personnel," Political Science Quarterly 51.4 (Dec., 1936), pp. 569-99, responsibility is taken up at pp. 580-2 Finer seems to emphasize the legislature as a body to which bureaucracy must ultimately answer. H. Simon advocates this approach because, he argues, the administrative task must in practice involve values and judgments. Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization, New York, 1976 [1945], p. 58. B. Constant saw this as potentially giving one branch of government excessive power and devised a different approach. See M. Hartman, "Benjamin Constant and the Question of Ministerial Responsibility in France, 1814-1815," Journal of European Studies 6 (1976), pp. 248-61.

Interestingly, Hamilton and Jefferson may have anticipated Finer and Friedrich. L. Caldwell, The Administrative Theories of Hamilton and Jefferson, New York, 1988 [1944]. For an informative and useful survey of the public administration literature through its date of publication, see D. Waldo, The Administrative State: A Study of the Political Theory of American Public Administration, New York, 1948.

⁴³⁵"Responsibility," p. 338a

⁴³⁶"Responsibility," p. 341a

⁴³⁷"Government," p. 582 Finer clearly idealizes the British civil service, which saw neutrality and subservience as a professional ethos. Cf. H. Dale, The Higher Civil Service of Great Britain, Oxford 1941, esp. ch. 5, "Relations with Ministers and Parliament." It would, however, be quite mistaken to view this as an attitude of the

apparently absolute statement, he does allow that an official is not to serve merely as a passive instrument awaiting the minister's commanding touch. Rather, without specifying exactly where the balance is to be struck, he does allow that the official has a capacity to advise, albeit, repeating a very traditional formulation, decisions once made are to be carried out. Such is his understanding of "political control," which, he argues, is to bureaucracy, what market discipline is to the business.⁴³⁸ Finer's conclusion echoes Weber's regarding the need for bureaucracy to serve, although he did not have much confidence in professionalism's efficacy as a safeguard against bureaucratic independence.⁴³⁹ This is in some sense a restating of the principle articulated by Rousseau, namely, that the decision (will) and its execution (act) are separate domains.⁴⁴⁰

Public administration pioneers like Wilson and Goodnow essentially maintain this distinction as well.⁴⁴¹ For them, politics represented a parlous domain from

past: see, for example, M. Quinlan, "Ethics in Public Service," *Governance* 6 (1993), pp. 538-44

⁴³⁸"Government," pp. 582-4 (political control, price mechanism at p. 583); pp. 586-7 (officials to give advice). Cf. Schumpeter's "third condition" for successful democracy. J. Schumpeter, *Capitalism, Socialism and Democracy*, New York, 1975 [1942], p. 293

⁴³⁹Parliamentary control is of critical importance to Weber. See, for example, "Suffrage and Democracy in Germany," in Lassman, *op. cit.*, pp. 126-7 and "Parliament and Government in Germany," Lassman, *op. cit.*, p. 159ff. As an ethical matter, the official "who receives an order which, in his view, is wrong can – and should – raise objections. If his superior then insists on the instruction it is not merely the duty of the official, it is also a point of *honour* for him to carry it out as if it corresponded to his own innermost conviction..." (emphasis in original) p. 160 This duty arises from a professional conception of "office."

⁴⁴⁰Goodnow writes, "...popular government requires that it is the executing authority which shall be subordinated to the expressing authority, since the latter in the nature of things can be made much more representative of the people than can the executing authority." *op. cit.*, p. 24

⁴⁴¹Wilson, *op. cit.*; Goodnow, *op. cit.*

which the civic community's desires would emerge, and administration existed to carry out those desires immune from political contamination.⁴⁴² Politics amounted to "the expression of the will of the state;" administration consists in "executing the will of the state."⁴⁴³ Therefore, administration itself, which carries out law and must use judgment to fit particular cases, must not be subject to politics: this ensures that administration remains impartial, just, and efficient.⁴⁴⁴ F. Morstein-Marx adds that neutrality is a means to avoid compromising "the basic purpose of the administrative system as an instrumentality of *equal use for any government* coming to power lawfully."⁴⁴⁵ (emphasis added) Of course, this discretionary power, *viz.*, the application of general rules to specific cases, cannot be exercised in arbitrary fashion.⁴⁴⁶ In fact, it is this discretionary capacity that Saint-Just and Rousseau both saw as a danger. It appears, though, that, while Saint-Just saw the solution to this problem in the ruthless imposition of rules, Goodnow and others somehow viewed the solution as a matter of objective rationality. In other words, the official, properly trained and dealing with facts in the manner of a scientist, would become a kind of

⁴⁴²On this distinction, see L. O'Toole, "Doctrines and Developments: Separation of Powers, the Politics-Administration Dichotomy, and the Rise of the Administrative State," Public Administration Review 47.1 (Jan.-Feb., 1987), pp. 17-25; Karl, *op. cit.*

⁴⁴³Goodnow, *op. cit.*, pp. 23 and 72; M. Harmon and J. White, "'Decision' and 'Action' as Contrasting Perspectives in Organization Theory," Public Administration Review 49.2 (Mar.-Apr., 1989), pp. 144-52

⁴⁴⁴Goodnow, *op. cit.*, p. 84; Cf. Wilson: "...administration lies outside the proper sphere of *politics*." (emphasis in original) *op. cit.*, p. 210

⁴⁴⁵*op. cit.*, p. 130; see also his comments at pp. 137-8

⁴⁴⁶In Wilson's words, "Public administration is detailed and systematic execution of public law. Every particular application of general law is an act of administration." *op. cit.*, p. 212 Simon reframes the politics-administration distinction as one between facts and values. While this retains the binary nature of the problem as articulated, for example, by Goodnow, he argues that the functional separation implied for legislatures and administrations cannot in practice be maintained. Officials necessarily are concerned with both facts and values as are legislatures. *op. cit.*, Ch. 3

impersonal translator of reality, a kind of corporeal *volonté raisonnable*. As Goodnow claimed, administration was apart from politics because “it embraces fields of semi-scientific, *quasi*-judicial and *quasi*-business or commercial activity – work which has little if any influence on the expression of the true state will.”⁴⁴⁷ Wilson himself had claimed, “[a]dministrative questions are not political questions” and he asserted as too “obvious” to require discussion the notion that administrative officials were essentially technical in nature.⁴⁴⁸ Officials, on Goodnow’s understanding, were engaged in “the pursuit of truth,” in other words, an impersonal and unbiased activity that would in some sense reflect in its application objective reality.⁴⁴⁹ Oakeshott seems to capture this sentiment when he writes,

The conduct of affairs, for the Rationalist, is a matter of solving problems, and in this no man can hope to be successful whose reason has become inflexible by surrender to habit or is clouded by the fumes of tradition. In this activity the character which the Rationalist claims for himself is the character of the engineer, whose mind (it is supposed) is controlled throughout by the appropriate technique and whose first step is to dismiss from his attention everything not directly related to his specific intentions.⁴⁵⁰

Oakeshott is writing about politics, but he captures the faith that seems to undergird Wilson and Goodnow’s concept of the bureaucrat as technician: the idea that his impersonal sorting of facts, based in reason, reflects his role, and, from their

⁴⁴⁷*op. cit.*, p. 85; Wilson too had business practices in the back of his mind: “The field of administration is a field of business.” *op. cit.*, pp. 201 and 209 Cf. the idea of planning in Mannheim, which effectively displaces politics. K. Mannheim, Man and Society in an Age of Reconstruction, New York, 1940

⁴⁴⁸*op. cit.*, pp. 210-1

⁴⁴⁹*ibid.*

⁴⁵⁰M. Oakeshott, “Rationalism in politics,” in Rationalism in politics and other essays, Indianapolis, 1991, pp. 5-42, quotation at p. 9

perspective, solves the problem of an arbitrary officialdom.⁴⁵¹ After all, if politics are the domain of caprice, administration is the domain of problem-solving, calling for science. It truly does evoke the vision of Saint-Just whose dream of recreating a state of nature through the absolute, impartial application of law was if anything the unflinching application of pure reason revealing nature. Here, to put it differently, the same hope seems to animate a vision of apolitical, rational technocrats, implementing the sovereign will in a manner that is objectively correct. In this way, bureaucratic subservience to popular sovereignty is maintained because the civic community provides the direction for the ship of state, while all the activities of the ship's crew are ostensibly carried out on the basis of what is objectively required. When sailing to a destination, one cannot debate the objective necessity of unfurling a sail. Thus, bureaucracy is ostensibly maintained as the sovereign's servant, employing delegated discretion only as dictated by objective circumstances.⁴⁵²

Any normative conception of bureaucracy must relate its function to the sovereign's will. Whether that sovereign is a monarch, as historically often was the case in many states that developed formalized administration, or "the people," as has become increasingly common, the fundamental issue has been one of subordinating

⁴⁵¹On the problem with the purely "technical" role envisioned here, see D. Thompson, "Ascribing Responsibility to Advisers in Government," *Ethics* 93.3 (Apr., 1983), pp. 546-60

⁴⁵²This arrangement was of specific concern to Weber who identified bureaucratic expertise as a source of power *vis-à-vis* the legislature. He saw that "...the position of power of all officials rests on *knowledge*." (emphasis in original) Lassman, *op. cit.*, p. 178ff, quotation on p. 178 Gulick argues that politics, not in the sense of a spoils system, must influence administration because that would undermine the very notion of self-rule. Here, though, he mainly means politics as the expression of government's "general will." L. Gulick, "Politics, Administration, and the 'New Deal'," *Annals of the American Academy of Political and Social Science* 169 (Sep., 1933), pp. 55-66

the bureaucracy to the sovereign. Machiavelli grasped at this idea when he considered how a prince might ensure the effective execution of his wishes; in his consideration of a republican government, however, the idea of the state as an independent entity capable of a will was less clear. Instead, it appeared that the fundamental problem was the provision of a framework that allowed great men to compete in a way that allowed the republic to continue. Accomplishing what was in the republic's interests was a matter of balancing the ambitions of these great men against one another: the polity envisioned here was competitive and turbulent. Great captains might behave appropriately because they sought glory and feared their competitors, but they were not men in service to a sovereign. The strong articulation of sovereignty came with Bodin. His theory and its subsequent permutations laid the groundwork for the idea that bureaucracy must be subordinate to the sovereign people. Of course, the problem of official discretion was not uniquely a problem for modern theorists like Weber. Bodin and those after him, like Rousseau and Saint-Just, considered the matter, and in light of the logic of sovereignty, determined that discretion must be limited. In its most extreme articulation, Saint-Just envisioned a scheme in which officials, set apart from the political community, no longer exercised discretion in any meaningful sense because law would be perfectly expressed as a kind of reasoned revelation. And this was relevant to the pioneers of public administration because they looked to the continent for their models of professional bureaucracy. The effort to separate execution and decision, seen as administration and politics, gave bureaucrats some discretion in matching actual circumstances to legislation. But this too was an attenuated discretion in the sense that reason and science would lead to impartiality.

In this sense, there is no real discretion in applying a rule to an actual case any more than there would be discretion in deciding the sum of two numbers. The facts simply emerge; objective reality is revealed. Under this understanding then, the danger of discretion evaporates, and the public servant both carries out the sovereign will and matches political values to objective facts.

Chapter 5

The Discretion of Citizens as Officials

I have explored in the preceding chapters two currents of thought about the relationship between magistrates and the political order in which they find themselves. On the one hand, there is what I will call alternatively a participatory or republican tradition that sees magistrates as leading citizens, relying to a large extent on their own discretion and turning to slaves, dependents, or friends as they fulfill their duties in furtherance of the state's policies. The magistrates, using discretion that is organic to their role, make the decisions; the staffs carry them out. This is a natural reflection both of their status as citizen-magistrates and of the socially subordinate nature of those called upon to assist them.⁴⁵³ Here, social and political arrangements are mutually reinforcing, and magistrates, although they may, as human beings are wont to do, sometimes abuse their authority, are in theory, at least, using discretion for the community's good. The other strand of theorizing about magistrates is absolutist. This approach assigns the role of decision to a robust sovereign and the role of execution to the sovereign's officials. The gradual displacement of monarchs by peoples only meant that peoples became sovereigns, and theories about how officials are to behave, have been informed fundamentally by this absolutist understanding of the relationship between sovereign and government. Even modifications allowing for official discretion have cast it in objective terms that boil down, not to moral question of right or wrong, but objective ones of fact. This is in some sense analogous to the idea that discretion plays no role in deciding whether

⁴⁵³Friends, obviously, are not subordinates.

the temperature outside if 80 degrees or not. Thus, value judgments generally remain the purview of the sovereign, who decides, not administrators as public servants. Even when the discussion has turned to those officials who might use their discretion, the emphasis has mostly been on those of senior rank, the implication being that subordinates carry out their assigned tasks as assigned.⁴⁵⁴ To be brief, strong conceptions of sovereignty have informed the normative view of bureaucratic responsiveness: even in democracies, the emphasis has been on bureaucrats fulfilling the people's sovereign will.⁴⁵⁵ Their different outlooks notwithstanding, absolutist and participatory approaches to official duty have identified the question of discretion as a matter of central importance. In the present chapter, I will argue that official discretion within the context of a modern democracy ought to remain attentive to the official's status, not as a public servant, but as a citizen. This is an understanding that draws upon a participatory theory of magistracy, and it implies that the prior status of any public servant as a citizen always entails an implicit capacity to judge circumstances and wield discretion on his own authority. Limiting factors derived from role, law, or procedure are likely to be influential in his use of discretion, if not decisive in most cases, but on theoretical grounds the choice to heed any of those or his own conscience derives not from such secondary considerations, but from his status as citizen, which is prior to all. After all, citizens partake of sovereignty, and are not merely the sovereign's subjects.

⁴⁵⁴See, for example, Goodnow, *op. cit.*, p. 88

⁴⁵⁵Consider the concerns voiced at the 2014 American Political Science Association conference by B. Ginsberg and J. Bachner regarding the problem of the government not being demographically like the people. P. Wood, "Federal workers tend to be whiter; richer; more liberal," *Baltimore Sun*, October 5, 2014, p. 8.

Discretion boils down to choices. Will an official follow the letter of the law? Will he refrain from enforcing the law? Will he actively resist the law? Will he enlist the help of his fellow citizens to thwart the law? Discretion entails such questions and many others. But, as I said, it is a matter of choice, and the question has always been whether or not there is a theoretical justification for officials to use their own judgment to make those choices. I say theoretical because human beings are not *automata*: some will make choices regardless of the rules.⁴⁵⁶ Bodin, who, as we saw earlier, was primarily interested in stability, discussed discretion as a theoretical matter when he spoke about the possibility of magistrates resigning, disregarding instructions, or even committing tyrannicide. The possibility, not to say likelihood, of erroneous opinion and the danger of setting a bad example were enough for him to leave these options theoretical: best, he seemed to conclude, to do what one is told. Saint-Just offered an extreme articulation of this view when he suggested that public servants would simply carry out laws based on reason.⁴⁵⁷ And in modern terms, Weber offered an idealized version of bureaucrats who, whatever their misgivings and counsel, would, as a matter of professional duty, execute whatever they were bidden.⁴⁵⁸ The real world, however, is not like this. Rather, it is full of examples of people bending rules and doing other than what bureaucratic duty would

⁴⁵⁶Thus the need to accept that fact and make the institution function with that as a given! R. O'Leary, The Ethics of Dissent: Managing Guerilla Government, Washington, 2006

⁴⁵⁷p. 149ff., *supra*.

⁴⁵⁸On Weber and the state, see A. Anter, "L'histoire de l'État comme histoire de la bureaucratie," Trivium 7 (2010), pp. 2-15

suggest.⁴⁵⁹ This is not to say that the political community is utter chaos: the persistent claim that people left to their own devices would simply produce confusion has not occurred. Instead, one finds a continuum between obedience and disobedience.

The thrust of a large body of empirically-oriented literature that arose as a corrective, if not refutation, of Weber's idealized bureaucrat, speaks *grosso modo* with one voice, emphasizing the common-sense notion that human beings do not always do as they are told, regardless of their professional or legal obligations. In Patterns of Industrial Bureaucracy, Gouldner described resistance encountered by a management that attempted to bring more formality to the organization of a gypsum plant.⁴⁶⁰ In the Management of Innovation, Burns detailed the social phenomena at work in the Scottish electronics companies attempting to reorient themselves to a post-World War consumer market.⁴⁶¹ Warwick in A Theory of Public Bureaucracy similarly examined how U.S. State Department bureaucrats stymied management innovations introduced by short-term appointees.⁴⁶² Noting that studies of bureaucracy have been too indebted to Weber's ideal type, Warwick argued that the political realities of bureaucracy and the role played by bureaucrats themselves in shaping organizations have consequently not been given their due. In other words, professional devotion to duty through subordination to one's political masters is *pace* Weber not reflective of reality.⁴⁶³ Niskanen's approach goes a step further by using

⁴⁵⁹Law enforcement is perhaps one of the starkest examples of this. As Davis argues, individual police officers make policy, much of it, formally illegal. K. Davis, Discretionary Justice: a Preliminary Inquiry, Urbana, 1973 [1969], pp. 80-90

⁴⁶⁰Gouldner, *op. cit.*

⁴⁶¹Burns, *op. cit.*

⁴⁶²Warwick, *op. cit.*

⁴⁶³Note the sometimes polemical tone of Ch. 10

economic principles to describe and explain bureaucratic behaviors. In essence, this is a principal-agent model that portrays the participants as rational utility-maximizers.⁴⁶⁴ To be sure this descriptive project leads him to offer advice on how to manage bureaucracies, but his approach is not fundamentally normative. In their book, Deliberate Discretion?, Huber and Shipan discerned conditions under which legislatures either left delegated authority vague or attempted to delineate with great specificity what was being left to bureaucracies to do.⁴⁶⁵ Theirs too is a principal-agent, rational-choice approach: "...the Bureaucrat, like the Politician, is a strategic political actor who will make choices that are predicated on achieving his most preferred policy outcome."⁴⁶⁶ In Forging Bureaucratic Autonomy the issue for Carpenter was not whether or not bureaucracies behave according to Weber's formulation, but when bureaucrats have succeeded – this is a matter of history – in making themselves political actors, capable of advocating issues of concern to them over and against the desires of politicians.⁴⁶⁷ Even Kingsley's famous study of the English bureaucracy, Representative Bureaucracy: An Interpretation of the British Civil Service, which argued that the British civil servant simply came more or less from the same class as the ministers and politicians, thereby reflecting the same outlook, was similarly descriptive-historical in its approach.⁴⁶⁸ Being empirical and

⁴⁶⁴Niskanen, *op. cit.*

⁴⁶⁵Huber and Shipan, *op. cit.*

⁴⁶⁶p. 84

⁴⁶⁷Carpenter, *op. cit.*

⁴⁶⁸Kingsley, *op. cit.*

written ostensibly to describe actual behavior, such approaches have generally stressed value-free description over prescription.⁴⁶⁹

Of course, normative considerations can emerge from empirically grounded observation – is this not the case with Aristotle’s *Politics*?⁴⁷⁰ The modern tendency, however, is often to produce narrow prescriptions that address issues of immediate concern, are particularistic and utilitarian in nature, and, of especial importance here, offer little to suggest that an official might act on the basis of his own moral considerations, whatever those may be.⁴⁷¹ But discretion for good or ill is of central importance. Finer, for example, worried about the official who used discretion in a manner not prescribed by rule, regardless of motive, for good or ill.⁴⁷² Yet it remains, says Davis, “indispensable for the individualization of justice.”⁴⁷³ And it hardly seems possible, except in those cases easily adapted to very specific rules or to the capabilities of modern technology, to remove it completely from the bureaucrat’s

⁴⁶⁹Cf. J. Scott, *Comparative Political Corruption*, Englewood Cliffs, 1972, Ch. 1, esp. his comments about avoiding normativity pp. 3-4; J. Noonan, *Bribes*, New York, 1984, pp. 544-50; P. Chabal and J.-P. Daloz, *Africa Works: Disorder as Political Instrument*, Oxford, 1999, Ch. 7

⁴⁷⁰It is worth stressing here that the *Politics* is just one part of an interlocking group of texts: the *Constitution of Athens*, the *Politics*, *Eudemian/Nicomachean Ethics*, and the *Rhetoric*. The difference between the fruits of Aristotle’s empiricism and that of Gouldner or Warwick or any number of modern authors who discern patterns or make normative claims on the basis of their research is stark indeed.

⁴⁷¹For an example of an approach motivated by concerns of the moment, see R. Wood, “Ethics in Government as a Problem of Executive Management,” *Public Administration Review* 15.1 (Winter, 1955), pp. 1-7

⁴⁷²cf. fn. 431, p. 154, *supra*. Rules, of course, present their own problems. See, H. van Gunsteren, *The Quest for Control: A Critique of the Rational-Central-Rule Approach in Public Affairs*, London 1976; L. Muehlhauser and L. Helm, “Intelligence Explosion and Machine Ethics,” *Machine Intelligence Research Institute* (October 01, 2014), www.intelligence.org/files/IE-ME.pdf; A. Eden, *et al.*, edd., *Singularity Hypotheses: A Scientific and Philosophical Assessment*, Berlin, 2012, pp. 101-26

⁴⁷³*op. cit.*, p. 25

hands. The question then becomes one of how to limit or control the use of discretion. Frequently, several means are invoked: law, procedure, oversight, and role.⁴⁷⁴ In other words, we can make laws indicating exactly what is to be done or not done, as when we say that the government shall not discriminate against certain minority groups. We can ensure that exact procedures are followed as when we lay out the rules for public contracting. We can provide for oversight by a variety of bodies ranging from the Congress, to the Judiciary, to administrative bodies. And we can say that the particular position held by an official serves to limit his capacity to act.

Falling back on such measures as law, procedure, oversight, and role is reasonable in a modern world where man is the measure of everything. Scholarly treatment of discretion typically does not describe the moral content that would inform an official's use of discretion. This is not very surprising. Any post-Enlightenment approach to such questions, when not theologically grounded, usually appears utterly implausible. There hardly remains any convincing basis for saying that anything is right or wrong.⁴⁷⁵ We can argue, for example, that slavery is wrong, but beyond a kind of assertion derived from the consensus of civilized peoples (*ius gentium*), there actually is no metaphysical basis in the modern public sphere for such

⁴⁷⁴This is not an exhaustive list. Professionalism is another means of control, but the question of whether or not all bureaucrats form a professional class in the way that the clergy, or lawyers, or physicians do, is far from settled. Obviously, Weber felt that professionalism was important.

⁴⁷⁵M. Horkheimer, *The Eclipse of Reason*, London, 2004 [1947]. This lack of moral consensus has important implications for artificial intelligence. Muehlhauser and Helm, *op. cit.*

an assertion.⁴⁷⁶ It was this kind of observation that initially led MacIntyre, for example, to resuscitate virtue ethics as a basis of action.⁴⁷⁷ But all of this is rather arbitrary in the modern context: there is no metaphysical hook on which we can hang any conception of right or wrong. No sovereign or lawgiver, outside and apart from man, exists to tell us what to do.⁴⁷⁸ And so the argument of Rawls, for example, is hard to swallow precisely because there is no real basis for any of his foundational claims. Moreover, his antipathy towards all the beliefs that are the very substance of politics, such as religion and moral values, and his definition of reasonableness, which is itself a veritable denial of any meaningful diversity, completely undermine the project as democratic polity: what he proposes is anything but that, and supported by nothing more than his own moral assertions.⁴⁷⁹ Given this moral *aporia*, what can those interested in official discretion do, but fall back on man-made mechanisms to constrain it? It strikes me that the collapse of theology has removed the only external and metaphysical basis for moral action, leaving man as, so to speak, the final criterion: procedure, *nomos*, or law, seen as *Rechtsstaat* or some denatured form

⁴⁷⁶“Because no logical or a priori basis exists on which people might try to persuade one another to agree on it other than by appealing to shared utilities, shared values based on some transcendent moral conception of the good cannot be rationally decided upon.” Harmon and White, *op. cit.*, p. 145b I use the phrase “public sphere” pointedly because religion, which for many people offers some metaphysical support, is in the Western democracies usually seen as a private matter. Rawls, for example, argues that religion does not belong in the political realm. It is worth recalling that *ius gentium* was traditionally little more than the shared *moeurs* of civilized peoples.

⁴⁷⁷Anscombe, *op. cit.*; MacIntyre, *op. cit.*

⁴⁷⁸This was Maritain’s critique of the word, sovereign, when applied to man. fn. 332, p. 125, *supra*.

⁴⁷⁹I leave aside the question whether fairness is a means or an end, although it does strike me as something instrumental. Behind the veil of ignorance, I find but one person. Schmitt’s point about the quiddity of politics is utterly opposed to the vision of Rawls, but far more plausible. C. Schmitt, The Concept of the Political, Chicago, 2007 [1995]

thereof, becomes the yardstick.⁴⁸⁰ At any rate, it is worth bearing in mind that actual moral content is often the scope of discussions about the cases where bureaucrats might exercise discretion for the good. And discretion for just ends is precisely where officials as citizens can be effective.

In Discretionary Justice, Davis relates a telling anecdote that bears quoting because it illustrates the issue of discretion and just ends:

In interviewing immigration officers, I have often inquired whether the result in a particular case does not seem unjust, and the answer has often been: "Yes, but we had no choice: the statute compels the answer we gave." My next question would usually be: "Did you make note of the case, with a view to recommending a statutory change?" The answer was invariably no. The attitude is that as long as the injustice is caused by the statute, the administrator has no reason for concern.⁴⁸¹

The interesting aspect of this statement is not the fact that these officials did not go up their hierarchical chain to inform decision makers about the unjust results of policy. Davis sees that as the critical issue, and it might be that among the actions available to officials is the option to advise superiors about unjust outcomes. But I see the interesting point illustrated here as being that officials were perfectly willing to accept injustice and do nothing about it because responsibility could be assigned elsewhere. They behave as passive instruments. Yet, much like jury nullification, discretion itself, by appealing to moral values outside those of the organization, might provide

⁴⁸⁰K. Denhart and B. Catron, "The Management of Ideals: A Political Perspective on Ethics," Public Administration Review 49.2 (Mar.-Apr., 1989), pp. 187-93; Davis, *op. cit.* Tierney offers interesting comments on the state of affairs. See B. Tierney, "'The Prince is Not Bound by the Laws.' Accursius and the Origins of the Modern State," Comparative Studies in Society and History 5.4 (Jul. 1963), pp. 378-400 On political versus legal control, see T. O'Neill, "Liberal Constitutionalism & Bureaucratic Discretion," Polity 20.3 (Spring, 1988), pp. 371-92

⁴⁸¹Davis, *op. cit.*, pp. 52-3

an immediate remedy on the basis of actual circumstances, although it is equally clear from this or any number of other examples that the majority of bureaucrats are perfectly willing to carry out their duties mechanically on the theory that responsibility for the outcome lies elsewhere.⁴⁸² Later, Davis illustrates the role of discretion in actual practice with the case of beat police officers. These men and women, as Davis argues, are, in fact, involved every day in the using their discretion to make and execute policy. An officer might pull one person over for speeding and let him go. He might pull over another and issue a citation. It is his discretion that decides whether or not he cites one person or the other, regardless of whether or not the law has a general prohibition against speeding. As Davis points out, whether or not they choose to arrest one person or another is fundamentally arbitrary. And individual decisions not to arrest or cite offenders, whether or not the results are just, take place regardless of the letter of the law and without publication of any rules explaining to the public in advance how laws will be put into practice.⁴⁸³ His purpose is not to argue in favor of an excessively legalistic approach: there must be scope to act on the basis of actual circumstances. But, he says, there is a utility in being open: using rules or adjudication to decide specific cases, or to express in what way legislation or policy will actually be put into practice. The alternative, exemplified by the current behavior of police departments, is simply to engage in a capricious

⁴⁸²R. Schopp, "Verdicts of Conscience: Nullification and Necessity as Jury Responses to Crimes of Conscience," Southern California Law Review 69 (1995-6), pp. 2039-116 When such notions still had meaning, natural law did provide a basis for resistance to manmade law or civil law.

⁴⁸³Davis, *op. cit.*, pp. 80-90; J. Wilson, Bureaucracy, pp. 327-9 Davis, in a vein reminiscent of Taylor's Scientific Management, worries that beat police officers lack the education and seniority necessary to the task, and suggests that department heads should be the ones deciding these matters.

administration of justice that is often contrary to the letter, if not the spirit, of the law or, in a word, illegal. For him, the problem is not discretion *per se*, because that is in actual practice policy's lifeblood, but the task of ensuring that how it will be employed is articulated clearly and in advance by those in a position to know the circumstances of its application. We see here that he relates the use of discretion to the actual role of the police officer, and calls for procedure to curtail what he considers excessive discretion. In essence, Davis accepts the amount of discretion necessary to the task: anything beyond that can lead to injustice. It is the excessive discretion that Davis cannot stomach, and the remedy comes down to role, rule, and procedure.

For their parts, Burke and Dobel both rein in discretion fundamentally on the basis of role. Burke argues that the ability of officials to take matters into their own hands is essentially circumscribed by both their roles as bureaucrats, duty-bound to serve the state, and the actual circumstances of knowledge and proximity. In other words, officials have duties to inform decision-makers, but this duty relates to what they are in a position to know and where they are located within the organization. Put differently, someone's duty to be informed about a given matter depends on his actual relationship to it. An official's personal or chance interest in a matter may, given his actual position, lie outside the scope of his duties and, thus, would in itself provide no justification to intervene or take action. Therefore, apart from general instances where statutory rules designed to encourage whistle-blowing encourage anyone with knowledge of waste, fraud, or abuse, to come forward, an official who happens to know that something is unjust may not be duty-bound to do much about it, if it is

beyond the scope of his assigned tasks and position within the organization. To illustrate:

With respect to the general public, for example, lack of public attention to politics, low level of participation, distorted political agendas, malapportionment...and other impediments to political participation do indeed affect the character of democratic politics and, by implication, its decision-making process.... Bureaucrats stand in no (or at best minimal) causal relationship to these conditions; as a result they bear no responsibility for their remedy. One might claim, as a good democrat, that officials should devote their time, energy, and institutional resources to educating the public.... But this kind of superogatory effort should not be encouraged as responsible conduct, *since it stands in no meaningful relationship to a bureaucrat's official role....*⁴⁸⁴ (emphasis added)

An official, however, is obligated to know what pertains to his job, and to advise on that basis regarding what he himself also knows. This is the substance of Burke's idea that bureaucrats must have a sense of responsibility: officials by virtue of their office have responsibility for each other (something a little evocative of Rousseau's *volonté de corps*), a responsibility in policy formulation, and a responsibility for their own choices. Prudence, as an instrument to guide discretion, figures in Burke's understanding: individuals must make the right choices. In the final analysis, the official is bounded, nor do even foreseeably unjust results necessarily provide a basis for acting contrary to policy.⁴⁸⁵ The burden, as with Davis, is to report problems up the chain of command and let competent authorities make the decisions; fairness, in the sense of righting wrongs, is, generally speaking, not within an official's competence.⁴⁸⁶ After all, simply allowing for responses to private morality would

⁴⁸⁴Burke, *op. cit.*, pp. 64-5

⁴⁸⁵Burke, *op. cit.*, p. 70

⁴⁸⁶Burke, *op. cit.*, p. 69

“[set] political power to private purpose.”⁴⁸⁷ Obviously, role is central to Burke’s understanding of “bureaucratic responsibility.”

In his book, Public Integrity, Dobel argues that a balance must be struck between the duties of office and personal moral commitments, a balance that rests on the use of prudential judgment.⁴⁸⁸ Prudence, a concept consciously borrowed from Machiavelli, figures prominently because the official above all else ought to remain effective: “[t]he relation of prudence to public integrity flows from the ‘effectiveness imperative.’”⁴⁸⁹ The notion that one should live to fight another day means that fighting every battle ultimately results in an official failing to achieve his moral ends. Prudence also means that the official takes into account and is responsible or answerable for what he intends to accomplish. Thus, “...if several principles or goods conflict, individuals may choose to act on the ones they believe are most feasible, will endure the longest, or involve the least amount of violence.”⁴⁹⁰ Prudence is “...the logic of excellence in political achievement.”⁴⁹¹ For Dobel, an official’s personal responsibility is important, but must be balanced by his legal role because someone acting purely on his own can go too far: “Personal judgments and initiatives in government must be tested by public deliberation and accountability. This *domesticates* personal moral initiative while keeping it alive in government.”⁴⁹² (emphasis added) Naturally, there are no absolute answers, and Dobel does not

⁴⁸⁷Burke, *op. cit.*, p. 40

⁴⁸⁸Integrity, pp. 20-2; J. Dobel, “Personal Responsibility and Public Integrity,” Michigan Law Review 86.6 (May, 1988), pp. 1450-65

⁴⁸⁹Integrity, p. 18

⁴⁹⁰Integrity, p. 198

⁴⁹¹*ibid.*

⁴⁹²“Personal Responsibility,” p. 1457

accept complete surrender to role; one cannot remain passive, but one is not completely unbounded.⁴⁹³ All of this is well and good, but prudence, as an means to good judgment, addresses, perhaps, only one part of the problem.⁴⁹⁴ Dobel cannot be faulted for leaving open-ended whatever personal moral commitments might guide an individual official. Little justification is offered, however, for the idea that an official's role, which serves as the basis for his capacity to act with prudence, should imply this balance between, as the quotation from Davis suggests, statute and justice. Dobel's theory maintains the bureaucrat as a formal functionary whose organizational position somehow ought to entail the exercise of prudential judgment, although it is not always clear on what basis beyond the fact of his being an official. In other words, his status as an official is the given, and in Dobel's analysis the official is someone separate from the political community.

An approach that sees bureaucrats as political actors is presented by Denhart and Catron. They suggest that the political dimension of an official's status calls for something more than acting merely as an indifferent agent of policy: "...an administrator must approach the decision from both the broad perspective of the requirements of democratic ideals and the narrower institutional demands of bureaucratic ideals."⁴⁹⁵ Thus, administrators should not, in their view, be simple,

⁴⁹³ *Integrity*, p. 74

⁴⁹⁴ "Personal Responsibility," pp. 1462-3

⁴⁹⁵ Notice that the fact of expertise does not enter, although specialized knowledge was often offered as the rationale for exercising bureaucratic discretion. This, indeed, was the view of those, like Goodnow and Wilson, who espoused a science of public administration. But in the present instance neither knowledge nor expertise is invoked to justify taking action.

impersonal cogs.⁴⁹⁶ This ability to behave as a political agent responding to individual circumstances should be grounded on an *ethos* that is both bureaucratic and democratic by training and socialization. We might infer that this *ethos* arises almost organically from a bureaucrat's actual role and practice as an official. Denhart and Catron, however, do not provide any obvious reason why officials should rely upon "the requirements of democratic ideals" as opposed to firm adherence to "bureaucratic ideals" beyond the circumstance of their involvement in the process: this amounts to scope of action deriving from role. It does seem a rather capricious assertion without some rationale provided for why the bureaucratic role might by its nature entail political activity, although, empirically speaking, it surely must. In short, it begs the following question: why would the official's role not imply utter subordination to legal requirements or superior authority? This after all is the nature of delegated authority: the individual to whom discretion is delegated ought to operate under the terms of delegation. Furthermore, how would a particular official's role provide any basis for examining circumstance and making decisions responsive to ideas of the just? More often than not an official's role finds expression exactly in the fulfillment of *impersonal* duty regardless of actual circumstances, which suggests that there is nothing organic to the constitution of bureaucratic role to suggest a practical, legitimate capacity to exercise discretion in a manner informed by a sense of justice originating anywhere else than the organization itself. Indeed, as Applbbaum implies, a role that entails as its duty executing acts of injustice hardly carries within

⁴⁹⁶*op. cit.*, pp. 190b-91a Their discussion of a kind of duty both to judge and explain recalls Plato's insistence that laws in Magnesia would contain preambles explaining their *raison d'être*.

its constitution the means to do the opposite.⁴⁹⁷ Interestingly, although Davis was himself concerned that officials in such circumstances did not bring the problem to the attention of those in a position to effect statutory change, there obviously might have been another option: namely, to negate the statute in the interest of justice.⁴⁹⁸ It would seem that the qualities suggested so far as inhering to role and providing a basis for moral action are actually not related to the nature of the role itself. This point can be illustrated, if we reflect again on the nature of law enforcement.

If we think of police officers, a perspective emerges that undermines the idea that the official's role *per se* would offer any organic ability to apply prudence or democratic considerations. For modern circumstances now suggest that such moral capacities are accidental, not essential to role. Technology's encroachment into traditionally administrative domains suggests this because the mechanistic application of rules entails no prudence or democratic consideration whatsoever. This effectively creates a collapsed view of legitimacy where "the justice question of 'what to decide' – given substantive conflict of interests, beliefs, or values – cannot be separated from the legitimacy question of 'how to decide' or 'who is to decide.'"⁴⁹⁹ Thus, for example, when a red-light camera system uses radar to determine whether or not a driver has violated the rules of the road and then takes and processes a photograph of a car's license plate, enabling a citation to be issued automatically to the owner of the vehicle without any human mediation, it becomes clear that context in the sense individual circumstances is rendered irrelevant to this rule-based, procedural

⁴⁹⁷ Applbaum, *op. cit.*, p. 259

⁴⁹⁸ Applbaum, *op. cit.*, p. 207

⁴⁹⁹ Applbaum, *op. cit.*, p. 217

conception of duty: here duty is nothing more than specific function or process.⁵⁰⁰

Technology now makes possible what Saint-Just only dreamt of. This example also illustrates how a rule only functions by a process of reductionism or denial of context: particular circumstance is completely irrelevant to a rule that defines a violation on purely objective, finite criteria.⁵⁰¹ By this criterion, all facts are trimmed to fit the same procrustean bed of rules. Reality – the “messy world of details,” which a human being serving as a police officer might consider when deciding whether or not to issue a citation – plays no part here.⁵⁰² After all, there may be instances that justify traveling over the speed limit or running a red light. Indeed, a red light might be circumstantially irrelevant to questions of safety. While a human being might use his discretion to weigh all factors bearing on an actual situation, a computer system will not. It only functions on the basis of the rules provided, and those rules, in order to apply in all cases, must deny individual circumstance. This is a case of achieving perfect equality through perfect impersonality.⁵⁰³ Here the machine only acts according to facts deemed relevant *a priori*, becoming thereby the truly faithful civil servant, absolutely so.

⁵⁰⁰This amounts to a modern form of tax-farming because municipalities typically contract out these services in order to generate revenue. The fact that challenging these citations places very real burdens on ordinary citizens plays into the hands of these municipalities in many cases. Often, convenience figures most highly in such questions: will a person take time off from work to challenge a citation. The balance of power, which is a balance of convenience, tips in one direction in such cases.

⁵⁰¹Cf. H. Dreyfus, What Computers Can't Do: the Limits of Artificial Intelligence, New York, 1979 [1972] Although dated in parts, Dreyfus makes a number of useful arguments.

⁵⁰²H. Mintzberg, The Rise and Fall of Strategic Planning, New York, 1994, p. 224

⁵⁰³North, *et al.*, *ibid.*, fn. 244, p. 94, *supra*.

In point of fact, although red-light cameras might seem to be a minor affair or limited case, it is clear that the use of technology to carry out tasks now performed by human beings is expanding, not shrinking, and software, even now when artificial intelligence lies somewhere in the future, is taking on greater responsibility.⁵⁰⁴ We are reaching the moment when the idea of *artificial moral agents* or *autonomous artificial agents* is becoming real. Thus, reliable, stable machines are likely to become *liable* persons, capable of making moral choices on our behalf.⁵⁰⁵ An algorithm, making choices impersonally on the basis of strict criteria, does by one standard deliver truly equal treatment for all because everything is reduced to uniform inputs: whether that kind of equality represents justice is doubtful because justice typically involves judgments formed through the application of general principles to actual circumstances, the discretionary moment. Chopra suggests that it may be possible to punish software for unjust or erroneous choices, but punishing software seems quite distinct from the idea that a real human being might be found liable for wrongdoing. Surely, there is a significant distinction to be made between punishing things and punishing people regardless of whatever argument can be advanced to show that certain kinds of software qualify for legal personality: human beings, after

⁵⁰⁴The use of big data represents an empirical shift from identifying causality to identifying correlation. This would have its own implications, the more big data play a role in automating processes, such as identifying candidates for Internal Revenue Service audits. R. Satran, "IRS Data Web Snares Mostly Low- and Middle-Income Taxpayers," *U.S. News and World Report* (May 1, 2013), (www.money.usnews.com/money/personal-finance/mutual-funds/articles/2013/05/01/irs-data-web-snares-mostly-low--and-middle-income-taxpayers); V. Mayer-Schönberger and K. Cukier, *Big Data: A Revolution that Will Transform How We Live, Work, and Think*, New York, 2013

⁵⁰⁵W. Wallach and C. Allen, *Moral Machines: Teaching Robots Right from Wrong*, Oxford, 2009; S. Chopra and L. White, *A Legal Theory for Autonomous Artificial Agents*, Ann Arbor, 2011

all, are not apps, and apps are not people.⁵⁰⁶ In any case, in some domains automation effectively addresses problem of discretion posed by Davis, although it is doubtful he would see that as a boon, given his views on “the extravagant version of the rule of law.”⁵⁰⁷ As mentioned, new vistas for these and other technologies surely loom over the horizon. Apart from the implications of technology for the potential automation of more bureaucratic tasks, the very fact that some of these tasks can be taken on by software does suggest that official role itself does not imply any organic capacity for officials to serve as political actors. I argue, rather, that such capacities inhere to the *human beings* occupying those roles, not the roles themselves.

Thompson suggests that officials have responsibility, not merely because they are officials, but because they are persons. In other words, their status as human beings means that they cannot be mere cogs in the machinery of government.⁵⁰⁸ I agree with this insofar as it stresses the importance of a quality that transcends the mere condition of employment. Occupying a position within a government agency entails certain duties and functions, both implicitly and explicitly. That much is clear, but it is not enough. It too easily collapses into a surrender of personal values to those of the organization. One’s personhood is prior, and it means that, as human beings, officials bring a quality that is more than mere service. They are not *automata* or “living tools.” But personhood alone is insufficient, in my view. Nearly anything can be a person, even software, if we follow Chopra’s reasoning.⁵⁰⁹ Instead,

⁵⁰⁶J. Larnier, *You Are Not a Gadget*, New York, 2010

⁵⁰⁷Davis, *op. cit.*, p. 28ff.

⁵⁰⁸This, of course, is the implication of Taylor’s scientific management principles to government agencies. Taylor, *op. cit.*

⁵⁰⁹Chopra, *op. cit.*, Chs. 1 and 5 are of interest here.

one's status as a citizen provides a more relevant grounding on which to base an idea that officials can exercise discretion as they see fit. This is because citizens are members of the political community, particularly in democracies. As such, the emphasis on citizenship highlights the connection to that community and to its laws, particularly the foundational laws (*leges imperii*), constitutive of that community. The political theory tradition offers two ways of conceptualizing bureaucrats as political actors, duty-bound to exercise discretion. First, the magistracies as understood by traditional thinkers from Plato through Machiavelli offer a way of conceptualizing modern officials more powerfully, as citizens, who retain their moral capacities as citizens.⁵¹⁰ Second, protestant theorizing about the capacity of minor magistrates to take action on the civic community's behalf sheds light on how to reconceptualize official duty in modern democratic polities.

Because individuals have citizenship prior to any role that they might take on, citizenship offers a transcendent framework for justifying the exercise of discretion. It also implies, *contra* Saint-Just, that becoming a bureaucrat does not mean the abandonment of one's status as a citizen.⁵¹¹ Thompson, of course, was correct to emphasize that moral capacity is an essential quality of personhood, but this might suggest no more than simple flight or prayer, withdrawal or passivity in the face of injustice. Mere personhood is fundamentally private. One may simply go home in the face of injustice as Socrates did when ordered by the *Thirty* to participate in the

⁵¹⁰Thompson is critical of role itself because it overshadows the responsibility that attaches to individuals as persons. "Ascribing Responsibility," and "Moral Responsibility of Public Officials: The Problem of Many Hands," American Political Science Review 74.4 (Dec., 1980), pp. 905-16

⁵¹¹Saint-Just obviously understood the implication of citizens serving as government officials; for that reason, he insisted that they ceased to be citizens.

arrest of Leon.⁵¹² A robust conception of democratic citizenship, however, includes among its essential qualities participation in sovereignty and the capacity for action.⁵¹³ Echoing Aristotle, who stressed the fact that citizens were distinguished from other residents of a state by their capacity to participate in public offices, Rousseau asserted that men were citizens “when they participate in sovereign authority.”⁵¹⁴ The participatory tradition, as we have seen in our discussion of the Plato, Aristotle, Cicero, and Machiavelli, shows citizens holding office as active members of the political community. Indeed, citizenship on this understanding is not mere membership in a political community for census purposes, nor is it a passive activity at all, although it is true that many citizens may not fully live their citizenship. Even the citizen who does not participate remains potentially fully active. And citizenship in this sense of activity, or, to echo Arendt’s notion, in the sense of the *vita activa*, is in its very nature a kind of political liberty that echoes ancient ideas.⁵¹⁵ It differs from ancient ideas of liberty too. The fact that social status itself no longer implies political limitations in the way that it clearly did for earlier thinkers means that citizenship is in the present day a more broadly conceived

⁵¹² *Apology* in H. Tredennick, ed., *Plato: The Last Days of Socrates*, *Penguin Classics*, Harmondsworth, 1982 [1954], p. 65 Cf. Applbaum on “Pareto-Inferior Constraints,” *op. cit.*, pp. 1502

⁵¹³ For the development of the modern idea of citizenship, see R. Brubaker, *Citizenship and Nationhood in France and Germany*, Cambridge, 1992.

⁵¹⁴ *Politics* 3.1, pp. 61-3 [1274b32ff.]; *Social Contract*, p. 93 (1.6) = Derathé, *op. cit.*, p. 362, see also Rousseau’s fn. 6, *ad loc.*, which rejects Bodin’s notion of citizenship and stresses the political nature of *citoyen*.

⁵¹⁵ Arendt, *Human Condition*; Constant, “The Liberty of the Ancients Compared with that of the Moderns,” in Fontana, *op. cit.*, pp. 307-28; cf. O’Neill, *op. cit.*, pp. 392-3: “Unshackling the bureaucracy from the rule of law need not be a prescription for a lawless bureaucracy.” Quotation from p. 393 The spectre of chaos, always invoked to justify bureaucratic servility, is ethereal as best.

political concept, theoretically speaking, at least.⁵¹⁶ Therefore, the fact that individuals take jobs within the bureaucracy of a democratic government need not imply *per se* that they cease to be citizens first and foremost. This, of course, was the theory that to some extent underpinned Jacksonian patronage.⁵¹⁷ But we need not enter completely into the merits or failures of such a system to acknowledge here that citizenship itself comprehends as an essential quality the capacity to judge and to act. One's participation as a constituent member of the sovereign nation need not be negated by the assumption of one's role as a postman. I would argue that in terms of earlier thinkers such as Cicero and Machiavelli, or Plato and Aristotle, officials were seen first as citizens and second as magistrates. Thus was citizenship and magistracy combined, the implication being that one depended on the other, each bearing on the other. Obviously, this understanding contradicts the absolutist tradition that, since Bodin, has seen members of government as servants of the sovereign, the logical consequence of which was Saint-Just's formulation to the effect that officials

⁵¹⁶To be sure, political equality is partly an ideological pretense, partly a *mythos* to flatter ourselves. Cf. Tocqueville's observation: "Dans un pays où il n'est pas *impossible* que le pauvre arrive à gouverner l'État, il est plus facile d'écarter toujours les pauvres du gouvernement, que dans ceux où l'espérance du pouvoir ne lui est pas offerte; l'idée de cette grandeur *imaginaire*, où il peut être appelé un jour, se place sans cesse entre lui et le spectacle de ses misères réelles. C'est un jeu de hasard où l'énormité du gain possible attache son âme en dépit des probabilités de la perte." (emphasis added) *L'Ancien Régime*, p. 60

⁵¹⁷The spoils system was controversial in the United States, although it was for a long time the method for staffing the government. The strongest arguments against it historically seemed to come from notions of efficiency that ultimately derived from economic and business rather than political and social considerations. C. Fish, *The Civil Service and the Patronage*, *Harvard Historical Studies* 9, Cambridge, 1920; W. Turn, "In Defense of Patronage," and J. Pollock, "The Cost of the Patronage System," *Annals of the American Academy of Political and Social Science* 189 (Jan., 1937), pp. 22-34

effectively ceased to be citizens.⁵¹⁸ But his conception implies what he saw as integral to citizenship: participation in sovereignty, a contradiction that had to be resolved through absolute distinction between citizen and public servant. But, if we deny the distinction, we have a basis for bureaucratic discretion that transcends role.

Apart from an official's status as a citizen, there is a tradition in political theory that his status as a magistrate also provides a basis for independent action, contrary even to the wish of the sovereign. This tradition comes from protestant resistance theory of the 16th century. Many strands gave rise to this tradition, ranging from the elaboration of Roman civil law, ideas adumbrated vaguely by Calvin in his *Institutio Christianae Religionis*, to the religious conflict, particularly following the St. Bartholomew's Day massacre in France, but these details need not detain us.⁵¹⁹ Indeed, it is worth pointing out that Bodin's *Six Books of the Republic* represents one side of a debate about authority and obedience within the political community. In many respects, Bodin and the Huguenots represent two sides of an argument about

⁵¹⁸Not that this perspective has gone away completely: what else does it mean to speak of legislature and bureaucracy as a case of principal and agent, if not that the agent is some kind of other, functioning according to its own requirements. This kind of analysis calls for regulatory remedy, just as Saint-Just demanded. See, for example, McCubbins, M., *et al.*, "Administrative Procedures as Instruments of Political Control, Journal of Law, Economics, & Organization 3.2 (Autumn, 1987), pp. 243-77

⁵¹⁹H. Strohl, "Le droit à la résistance d'après les conceptions protestantes," Revue d'histoire et de philosophie religieuses 10 (1930), pp. 126-44; R. Benert, Inferior Magistrates in Sixteenth-Century Political and Legal Thought, U. of Minn., dissertation, 1967; J. Franklin, ed., Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, & Mornay, New York, 1969 and Jean Bodin and the Rise of Absolutist Theory, Cambridge, 2009 [1973]; R. Kingdon, "Calvinism and Resistance Theory 1550-1580," in J. Burns, ed., The Cambridge History of Political Thought 1450-1700, Cambridge, 2004 [1991], pp. 193-218 For the critical passages in Calvin, see H. Höpfl, ed., Luther and Calvin: On Secular Authority, *CTHPT*, Cambridge, 2006 [1991], pp. 82-3 (4.20.31-2)

the nature of the state and its relation to the subject, both influenced by the violence taking place around them. While Bodin stressed stability, going so far as, on the one hand, to recognize a theoretical right of magistrates to take action contrary to instructions, on the other hand, to confine that right to the realm of theory in the interest of avoiding chaos, theorists like the author of the *Vindiciae contra tyrannos sive de principis in populum populi in principem legitima potestate* (*Vindiciae*) argued that magistrates were the individuals whose office gave them a specific duty on behalf of the community to resist sovereigns that behave unjustly (*tyrannus exercitio*).⁵²⁰ It is to this theory of resistance that we now turn, Mornay's *Vindiciae contra Tyrannos* and Beza's *Right of Magistrates* (*Du droit des magistrats sur leurs subiets*) in particular.⁵²¹

While there are distinctions to be made among officials, some being of the court and directly dependent on the prince, others being created by the Estates or by municipalities, but, in any case, not being of the court, the basic question answered by this line of reasoning is whether or not magistrates or state officers may not only engage in passive resistance to their princes, but even take positive steps to thwart his

⁵²⁰In writing of tyrants, theorists distinguished between usurpers, *i.e.*, princes who had no legitimate title, and whom all were free to resist, from legitimate princes who by their actions (*exercitium*) became tyrants. Obviously, the latter category posed a thornier question when it came to who could resist and under what circumstance because these princes originally held title rightfully.

⁵²¹The authorship of the *Vindiciae* is complicated and of no interest here. I will accept for the sake of convenience Mornay as the author. Franklin takes up the issue in his collection (pp. 138-40), and Kingdon briefly touches it at p. 212. See also Benert, p. 162, fn. 2. There is a Catholic resistance tradition as well, but that will not be the focus here. For an overview, see J. Salmon, "Catholic resistance theory, Ultramontaniam, and the royalist response, 1580-1620," in J. Burns, ed., *The Cambridge History of Political Thought 1450-1700*, Cambridge, 2004 [1991], pp. 219-53. The 1579 edition of Beza's work is available through <http://books.google.com>

wishes. And, if a magistrate may so act, why? First, there is an important difference between mere subjects and officials. This was not particularly novel. Calvin, who had not fully worked out his allowance for magisterial resistance, cautioned that private individuals were to suffer injustice and await God's relief: "...we are not to imagine that it is we ourselves who are called upon to inflict it (*viz.*, vengeance on unbridled tyranny). All that has been assigned to us is to obey and suffer. Here as always, I am speaking about private persons."⁵²² In a similar vein, Beza was careful to caution against opening the floodgates (*ouvrir la porte à toutes malheureuses seditions & conspirations*) for anyone ordinary person to resist flagrant tyranny.⁵²³ Private persons (*personnes du tout privées/aucun particulier*) had no right "to use force against a tyrant."⁵²⁴ Resistance must be according "to one's rank (*selon son degré*)." Even Mornay, whose tracts most aggressively argued for resistance retains the view that mere private persons could do no more than either leave or quietly pray for God's intervention because, as he reasoned, while magistrates were endowed with the power to act (*ius gladii*), private individuals only had "the sword of the spirit."⁵²⁵ We are not yet in a world where citizens compose a civic community participating in sovereignty. To be sure, Hotman, Beza, and Mornay all argued on the basis of both their reading of history and the comments on legitimacy afforded by the *Digest* that

⁵²²*Institutio* 4.20.31 = Höpfl, *op. cit.*, p. 82; see too E. Barker, "A Huguenot Theory of Politics. The 'Vindiciae Contra Tyrannos.'," Proceedings of the Huguenot Society of London 14.1 (1930), pp. 37-61

⁵²³Kingdon observes that Huguenot resistance theory "was in no way democratic, for the general population, especially in the larger cities, had shown itself quite willing to help implement a policy of extermination (*i.e.*, during the St. Bartholomew's Day massacre)." *op. cit.*, p. 207

⁵²⁴*Magistrates* 6 in Franklin, Constitutionalism, p. 110

⁵²⁵*Vindiciae* in Franklin, Constitutionalism, p. 154ff.

princes held their power by virtue of the people seen as a collective entity contracting with the prince, but this did not mean that, as individuals, subjects retained any authority to behave in their own interests outside the sphere of private relations.⁵²⁶ A private individual might engage in self-defense against another private individual, but, once power had been conferred on the prince, an individual's capacity as a private man to revoke that act had ceased. Mornay's illustration of the relationship between state, magistrate, and ordinary people makes the point:

Now we are not speaking here of private individuals, who are not to be regarded as the basic parts of a community any more than planks, nails, and pegs are taken as the parts of a ship; or stones, beams, and mortar as the parts of a house. We are speaking rather of a province or a town, which is a part of a kingdom in the same way the prow, deck, and rudder are the parts of a ship, or the roof, walls, and foundations are the parts of a house. And we are also speaking of the magistrate who is in charge of that province or town....⁵²⁷

This appears to mean that private men, who in any case were not yet citizens in the modern sense, are simply the raw material of which a political community is composed.⁵²⁸ It is the institutions or the magistrates that give the community its form; it is the institutions or magistrates that give the ship its direction or the house, its shape. If such a metaphor had the significance that Mornay clearly ascribed to it, how could a subject do any more than remain passive in relation to those who acted as rudders and prows? Private men could do no more than passively endure tyranny

⁵²⁶*Digest* 1.4.1 analyzes the emperor's legitimacy thus: "...the populace commits to him and into him in its own entire authority and power, doing this by the *lex regia* which passed anent his authority." It is possible, incidentally, to see in the distinction between the people, taken collectively, and private individuals, taken individually, an idea that anticipates Rousseau's distinction between the general will and private interest.

⁵²⁷*Vindiciae* in Franklin, *Constitutionalism*, p. 152

⁵²⁸On the various statuses held by persons before the full development of citizenship in France, see Brubaker, *op. cit.*, pp. 35-9

or take flight.⁵²⁹ After all, a man could only answer his particular calling: “[e]ach individual is bound to serve God in the vocation to which he is called.”⁵³⁰

Furthermore, according to this analysis, subjects were effectively under the protection of government officials. In other words, magistrates and princes and the Estates were interpreted as guardians of subjects. Their duties were cast in terms of the Roman legal concept of *tutela*, much as Cicero himself has argued in his own work. Recall that *tutela* meant that the guardian was to act in the interest of his ward. Cicero had suggested that proper government entailed magistrates having a particular competence and duty to protect the interest of ordinary citizens in a legitimate republic.⁵³¹ Thus, argues Mornay, magistrates themselves have a particular charge “to protect the people’s rights and privileges and make sure that the king himself commits no crime against the people nor neglects his duty towards them.”⁵³² Like guardians, magistrates were bound by a special duty to protect the interests of their wards.⁵³³ Note that wards, being the incompetent, the youth, or women, historically needed guardians in Roman law precisely because they themselves lacked the competence in law necessary to administer their properties or protect their interests.⁵³⁴ That principle, transferred to the conception of magisterial office, meant that

⁵²⁹“Private persons, finally, have no excuse to obey sacrilegious commands. But beyond this they have no right whatsoever to take up arms....” *Vindiciae* in Franklin, *Constitutionalism*, p. 158

⁵³⁰*Vindiciae* in Franklin, *Constitutionalism*, p. 154

⁵³¹See, Ch. 3, p. 98, and for the comparison with the *vilicus*, see p. 99, *supra*.

⁵³²*Vindiciae* in Franklin, *Constitutionalism*, p. 162

⁵³³Cf. *Magistrates* 6 in Franklin, *Constitutionalism*, p. 112, which speaks of the duty of magistrates “to safeguard those within their care.”

⁵³⁴Cf. Beza’s argument for the Estates to intervene when he declares, “And it would surely be monstrously unfair to deny to an entire nation what equity concedes to private persons such as minors, women, and the simpleminded....” *Magistrates* 6 in Franklin, *Constitutionalism*, p. 125

magistrates too had a special duty by virtue of their office to protect ordinary subjects. In comparing ordinary people to wards, Mornay himself explained thus:

A ward cannot bring an action except through his guardian who acts as its author, even though the ward is the real principal and the guardian is taken as the principal only insofar as *he promotes the welfare of the ward*. In like manner the people cannot act except through the officers to whom they have transferred their authority and power.... The people, I say, have given their sword to these persons for that purpose and have submitted to their governance and care.⁵³⁵ (emphasis added)

This conception of the private individual as mere ward dependent on the protection of his magistrate, it seems to me, is transformed once we see magistrates and citizens as persons fundamentally on the same footing. In other words, the distinction between the magistrate and the private man is effaced once democratic theory insists that the government and the people are the same. Ours is no longer a political arrangement that limits each individual to his “vocation” or confines him to act in according to his social rank. Citizens, in fact, partake of sovereignty and have, in a sense, moved up the ranks *vis-à-vis* their officials: they are no longer merely private. In any case, these 16th century thinkers argued that, if anyone were in a position to act on a community’s behalf, it was the kingdom’s officials, not its subjects.

But there was more justification for magistrates to take action than their status as guardians looking out for the community’s interests. Magistrates are bound to uphold law by virtue of their oath, an oath sworn, according to Beza, to the sovereignty itself. The distinction here is important: Beza is not emphasizing an oath sworn to a particular king; he is arguing that the oath itself binds the magistrate to the state itself. Indeed, it is this sworn obligation that further distinguishes the magistrate

⁵³⁵ *Vindiciae* in Franklin, Constitutionalism, pp. 195-6

from the private individual, who swears no such oath.⁵³⁶ Mornay effectively echoes this point when he emphasizes that French magistrates swore an oath to the kingdom, taken to be the people as a whole, not to the actual monarch.⁵³⁷ This oath, according to Benert, made magistrates agents of the people and guardians of their interests.⁵³⁸ In effect, it gave them a duty-bound position independent of and joint with the prince, but faithful to sovereign power itself, *i.e.*, the regime and the community. Mornay himself concludes that in dire cases magistrates are *obligated* by virtue of office even to use force against the king. This duty stems not merely from their position as guardians of the ordinary people, but also from the oaths sworn to uphold the laws, which were understood not merely as positive or civil, but also as divine, natural, and fundamental laws. Failure to act, in fact, means sharing in a wicked monarch's evil-doing. One may not merely, Mornay argues, turn away.⁵³⁹

The looming question, of course, is what specifically justifies a magistrate's turning against his king. We understand the grounds for his capacity to act, but what legitimates magisterial resistance? Violations of divine law offered one answer. The conflict between the demands of higher and man-made law has always posed a problem, as it does today when trying to decide whether someone is a legitimate whistle-blower or merely a criminal.⁵⁴⁰ This was the theme of the *Antigone* by

⁵³⁶*Magistrates* 6 in Franklin, *Constitutionalism*, p. 112

⁵³⁷*Vindiciae* in Franklin, *Constitutionalism*, p. 164

⁵³⁸*op. cit.*, p. 176; cf. Calvin's emphasis on oath when he says that magistrates should not connive in the misdeeds of their monarchs. *Institutio* 4.20.31 in Höpfl, *op. cit.*, p. 83

⁵³⁹*Vindiciae* in Franklin, *Constitutionalism*, pp. 190-1

⁵⁴⁰As Constant grandly puts it, "Nothing justifies the man who lends his assistance to a law which he believes iniquitous." *On the Sovereignty of the People* in Fontana, *op. cit.*, p.181

Sophocles. Would Creon's demand that Polyneices not be buried be obeyed?

Antigone feels that religious scruples trump the king's desires and makes a symbolic act of burial. Creon suffers the consequences of his edict, perhaps to remind us that divine law takes precedence. So long as the divine remained something real and part of political life, divine law too could be a fact to weigh when sorting out duties owed to the state. As was mentioned above, private citizens in the tradition under consideration were not justified in resisting the monarch actively. If a king were manifestly wicked or, in other words, a tyrant in act, their only legitimate choices were flight or prayer. Magistrates, as guardians and partakers of sovereign power, however, could act and were at times duty-bound to do so. While there was broad agreement among Christian thinkers that divine law superseded the manmade, what anyone could do about conflicts between the two was difficult to decide. Although Calvin argued without much elaboration that "we must never allow ourselves to be diverted from our obedience to the one to whose will the desires of every king must be subjected....," he seemed, nevertheless, to think that disobedience would be nothing more than passive resistance, even if that were to involve martyrdom: "I know that kings are not prepared to tolerate any defiance and that their answer is a messenger of death...."⁵⁴¹ Beza argued that the community even could not obligate itself to a manifestly irreligious tyrant, suggesting as well that a government that

⁵⁴¹*Institutio* 4.20.32 in Höpfl, *op. cit.*, pp. 83-4 The statement about martyrdom in the service of God is particularly noteworthy given the fact that Calvin had the radical reformer, Michael Servetus, burnt at the stake in 1553, an act which Beza himself went on to defend. On Servetus, see R. Bainton, *Hunted Heretic*, Boston, 1953

acted against natural and divine law was worthy of repudiation and condemnation.⁵⁴²

It is worth pointing out, of course, that it was not for just anyone to take action in such cases, but rather for “those so authorized to act,” presumably meaning virtually any public official, but not private persons.⁵⁴³ Similarly, Mornay had said that one might resist kings who by engaging in unholy acts or prohibiting holy ones showed themselves “enemies of God and man”, but this was not a right of ordinary folk. Rather, this was a duty of those who possessed authority, meaning, naturally, magistrates or even other bodies such as the Estates.⁵⁴⁴

These considerations meant that magistrates had an affirmative duty to act. Unlike ordinary subjects, who could leave the community, if circumstances became unbearable, magistrates could not simply go home. In the face of his monarch’s wrong-doing, Mornay argued, conspiring with the tyrant made them liars, conniving made them traitors, and failing to defend the community made magistrates themselves tyrants.⁵⁴⁵ This special duty to act was an aspect of office precisely because magistrates were seen as guardians and protectors of the people. They and the monarch together shared responsibility to look out for the interests of their wards. As such, they had a duty emanating from their *degré* to take action, not merely to behave

⁵⁴² *Magistrates* 6 and 9 in Franklin, Constitutionalism, pp. 127-9 and 134-5 Whether or not a tyrant is manifest is important. Our authors are conscious about the problem of errors of judgment. Thus, Mornay warns “[w]here God has not spoken with his own mouth or through His prophets in *extraordinary fashion*, we must be extremely circumspect and sober.” (emphasis added) This is a very high bar indeed when considering whether or not to engage in resistance. *Vindiciae* in Franklin, Constitutionalism, p. 156; cf. Beza, *Magistrates* 6 in Franklin, Constitutionalism, p. 108

⁵⁴³ *Magistrates* 6 in Franklin, Constitutionalism, pp. 124 and 127

⁵⁴⁴ *Vindiciae* in Franklin, Constitutionalism, pp. 154 and 190

⁵⁴⁵ *Vindiciae* in Franklin, Constitutionalism, p. 193

like stage-actors, as Mornay sarcastically remarked.⁵⁴⁶ In any case, it was their position as magistrates *per se* that theorists like Mornay and Beza took as legitimating their capacity to act on behalf of the community, in the defense of positive, man-made law as well as divine, natural, or fundamental law that existed prior to the workings of the state itself.

If now we think of what this line of reasoning offers in the case of modern bureaucrats, we can conclude that bureaucrats themselves have a positive capacity to take action in the interests of justice. Justice, as mentioned earlier, has no meaning, if not an idea outside of what positive man-made law can provide. I have not ventured to say what the content of that law is, but it does seem that magistrates, or, in modern terms, bureaucrats, can refer to their own, personal convictions as a basis for deciding such questions. At a minimum, they may refer to fundamental law (*leges imperii*) which establishes the state itself, as a means of determining what justice is. Indeed, this is precisely the implication of any American official's oath to the United States constitution. It is not an oath to an agency, or an administration, or a legislature, or an Office of General Counsel. Rather, it is an oath to the Constitution, which can mean nothing other than the idea that an individual official must ultimately rely upon his own judgment as to what constitutes justice on the basis of that document, as it is prior to any institution for which he works. Two concepts stressed by the Huguenot theorists highlight this point: oath and *tutela* or guardianship. They found that the oath sworn by an official meant that he was duty-bound to respond to whatever violated that oath. To be sure, he should not be rash, nor, perhaps, should he act

⁵⁴⁶*Vindiciae* in Franklin, Constitutionalism, pp. 191-2

without consulting those whose opinions might be significant. Moreover, there was room for error, as Mornay had warned. Nevertheless, the official ultimately had to respect the meaning of his oath, if it was not to be reduced to mere ceremonial. Furthermore, magistrates themselves – and this echoes Cicero’s understanding – were guardians of the people’s interests.

It is worth pausing on the matter of guardians as protectors of interests for a moment. For it is not immediately clear why the simple fact of holding office might justify this position. To be sure, there is the argument that magistrates in some sense participated in sovereignty. But more than that, there is the very idea of knowledge. Magistrates, in fact, might be in a better position than private individuals to know the circumstances. This is precisely the significance of the notion, conceded by Bodin himself, that magistrates should advise monarchs as to the implications of their decisions. Unless magistrates were in a position to know something relevant, why would anyone think that their advice could have any bearing on the case? Yet, this is the salient point: magistrates have the knowledge and judgment which would undergird any magisterial claim to independent judgment of facts. Those circumstances are often no different today. Indeed, they are all the more relevant, both as a source of power, as Weber feared, and as a potential source of redress and judgment. In other words, modern bureaucrats are well-placed in a way that private individuals, even citizens, are not, to act as a corrective to poor decision-making and policy implementation precisely because they might actually know the circumstances. Thus the police officer on the beat. For him, context is everything because he may understand both the law and the facts.

The modern concept of citizenship only strengthens the position of the magistrate. Constant correctly noted that ancient and modern liberty differed. It is important not to be misled by ancient concepts that no longer have a relationship to modern circumstances. The ancient *civis* or *polites* participated directly in government, but at the price of comparatively little privacy. Constant overstates the case, but he is right in noting that modernity renders the citizen an utterly private person who effectively delegates the quotidian substance of his political rights to someone else in exchange for a liberty of non-interference. This is a theory of republicanism. But it does not eliminate the fundamental fact that citizens are the basis of power, even when they delegate. That is to say, they have something to delegate, which is their sovereign capacity. This participation in sovereignty, which the Huguenots saw as something integral to magisterial office, is inalienable, even if citizens today can and do delegate it for periods of time, as when they elect legislators. Legislators do not act as sovereigns by nature, but sovereigns by delegation because sovereignty itself resides within the nation and the individuals who compose it. In institutional terms, legislatures function on behalf of the sovereign, but are not inherently sovereign, although legislators as people must surely retain some part of it. I would argue that bureaucrats too, as modern citizens, retain this dimension of their personality. On the one hand, tasks are delegated to them, as a subordinate *corps*, by legislatures or by the executives, but in any case they remain themselves citizens, participating in sovereignty. If one wants to think in Rousseau's terms, they compose part of that body that produces the general will and collectively they can even check excesses of the general will because of their corporate interest

(*volonté de corps*). This means that individual officials retain, for purely political reasons that have a long history, some power to exercise discretion on the basis of their own judgment.

A body of ethical thinking about bureaucratic discretion currently falls back upon the idea that roles are decisive when it comes to determining an official's discretion. This is partly justified on the implicit grounds that to argue otherwise would invite any and all willy-nilly to second-guess legislatures and second-guess legitimate officials. The fundamental question to be answered there is whether or not this is important. To be sure, if we think that the people have stepped into the shoes of the monarch, it seems natural to assume that their will should be put into action. Yet, this, in fact, is not the correct way to see the matter. Modern democracies are not monarchies of the people. They are systems of mass participation: the people and the government are the same. This was never the situation with monarchies. With monarchy, it was people versus the prince. Once we accept that the people and the government are one, we should look to political theory that acknowledges such a tradition, one in which magistrates are also citizens. The ancient republics offered this, and they understood that magistrates operated according to their own judgment on behalf of the civic community. Where the ancient republic fail to inform us is in the social dimension: they did not function according to our understanding of social and political equality. But we do, and that means that all citizens can expect their fellows to occupy official roles. The Huguenot theorists suggested, rightly, that magistrates were duty-bound to defend the civic community because of their oaths and their status as guardians of the people. This situation has only been strengthened

as we have seen that citizens themselves, who participate in sovereignty as an *a priori* birthright, now hold office. As a result, there is a certain logic and justification from political theory that modern bureaucrats judge the justice of matters and take action accordingly. When we think that in the United States officials swear their oaths to the Constitution, it is difficult to imagine those oaths having any substance if not in this very sense: that they will judge the rightness of an act or policy on the basis of their own considered opinions. It strikes me that this is the implication of the participatory or republican tradition in political theory as opposed to the absolutist one.

Chapter 6

Conclusion

As we have seen, absolutism has dominated thinking about the relationship between sovereign and bureaucrat. Bodin's theory, expanded by Rousseau, among others, forged for democratic governments the reins whereby the people could take the bridle of state and direct its administration wheresoever it pleased. To think otherwise has consistently represented a threat to popular will however expressed. To be sure, this theme has undergone variation. Although he did not originate the idea, Rousseau posited a distinction between decision and execution. In political terms, this was cast as a bifurcation between legislation and execution, then politics and administration, and more recently principal and agent, but, despite linguistic changes, the distinction has remained fundamentally the same, the idea consistently reflecting an almost primordial division of labor between officials as slaves and citizens as masters. I do not quibble with the logic that a sovereign has some right to expect administration to honor its decisions. But we have often lost sight of the fact that this is fundamentally an absolutist legacy, not a democratic one. Indeed, it is this perspective that in the democratic context has presented bureaucrats as members of some body, alien and separate, even, inimical, to the political community, a view that can be held only if one overlooks the fact that bureaucrats themselves are actually citizens and members of that community.

What the absolutist tradition has pushed aside for too long is what I will here call a republican tradition that looked upon magistrates as citizens holding office and acting on the basis of personal convictions that in some measure were bound by the

condition of sociality. As we have seen, this tradition acknowledged a vibrant, sometimes parlous political community where citizens took turns ruling and being ruled, but ultimately in which office-holders themselves implemented policy as they judged actual circumstances. Huguenot resistance theory stressed the particular duty of officials that came from their position as guardians of the people. Stressing the Roman concept of *tutela*, they argued that only officials were in a position to counter the acts of a ruler who acted wickedly. Moreover, their oaths gave them additional justification to act on behalf of the people because they were bound by them to uphold the law, civil, foundational, natural, or divine. But this was not a call for action under just any circumstances or according to any whim. Dire circumstances, such as tyranny or violation of higher law, called for active resistance.

This literature incorporated an important distinction. Neither the ancients nor the Huguenots were advocating democracy in modern terms. These were men concerned with the elites, those socially qualified to hold office. Private individuals, as Beza or Mornay emphasized, could only pray for God's intervention or flee an intolerable situation. Cicero for his part hardly envisioned humbler folk such as the tradesmen and hirelings of their betters, stepping into the shoes of office. Indeed, ancient magistrates typically were in a position to rely on inferiors in the execution of their duties, and as bare a state as Athens provided government slaves to help citizen-magistrates carry out their functions. If Bodin advocated a logic that saw magistrates more as government servants whose will must bend to the sovereign's, the Huguenots pushed back, suggesting that magistrates were persons possessed of real power to be exercised on behalf of the political community. Modernity, however, presents new

circumstances because in democracies citizens themselves are conceptually equal, each ultimately partaking of sovereignty, and each empowered to act within the political community. This differs fundamentally from ancient democracy.

Arguments over the relative democratic quality of the Roman Republic do not, for example, claim that the ordinary man, despite the right to vote in assembly or to attend *contiones*, was fully equal to the *nobilis*. Indeed, Cicero himself made it clear that his ideal Republic was one in which the best sorts of men held office on behalf of their social inferiors: moral, social, and political quality tend all to reflect each other in his Republic. Citizen status was different for ancients than it was for moderns.

But that difference is important because now, as a matter of democratic ideology, all citizens are equal before the law and able to act politically. It is when we think of modern officials as modern citizens who retain their capacity to act that we can combine this Republican tradition of magistracy with the modern tradition of citizenship. In other words, as I have argued, citizen officials have more than the kind of passive discretion that comes from the absolutist tradition, meaning that they can do more than pray for God's intervention or resign from office when they would otherwise be impelled to act. In fact, their citizen status gives officials, regardless of rank, a capacity to act that is integral to their prior condition of citizenship.

This is theory. Sociology and other disciplines, not to speak of simple common sense, show that human beings are not mere slaves, no matter what Weber suggested would be the bureaucrat's professional devotion to duty. But, to be fair, Weber surely knew that himself; it is a bit of a caricature to pretend as if he believed that his self-consciously idealized concept was some absolute reflection of reality or

an “iron law” that would allow any observer to know in advance how any individual bureaucrat might behave. His fear that bureaucracy itself was a threat shows that he knew reality did not always mean that bureaucrats were self-effacing instruments of their political masters. I hasten to point out the fact of someone’s subordination has never warranted his total obedience, whether he was a client of another man or a slave. Roman comedy, for example, is rife with examples of the slave who is smarter than his master and capable of outwitting him. But mere empiricism is not the same thing as justification. The fact that people do not always do what they are told is not the same as saying, as I do, that disobedience might be integral to their status and integral to their condition within the polity. Constant put the matter well when he argued that the total subordination of a lesser official’s will to his superior’s was in some sense antithetical to liberty because

...if you prescribe for the officials of authority the absolute duty of an implicit and passive obedience, you let loose upon human society instruments of arbitrariness and oppression which any blind or furious power may unleash at will.⁵⁴⁷

In his chapter “On the Responsibility of Subordinates (*agents inférieurs*),” Constant made two important observations.⁵⁴⁸ First, if subordinate officials could be punishable, they must then have responsibility. In other words, they must have some capacity to act on the basis of their own judgment if they are to be held accountable. Otherwise, they could simply point to the accountable superior for all wrong-doing. Second, even if some might choose to act, the majority will not. He well understood

⁵⁴⁷*Principles of Politics* (11) in Fontana, *op. cit.*, p. 245 = Roulin, *op. cit.*, p. 1146 This obviously anticipates Weber’s fear and is a regular theme among those who worry about the tension between bureaucracy and democracy.

⁵⁴⁸*Principles of Politics* (11) in Fontana, *op. cit.*, pp. 244-50 = Roulin, *op. cit.*, pp. 1146-53

that the argument frequently trotted out to the effect that allowing for official judgment and discretion would turn everything into a chaos would actually not be the general result. If common sense suggests that people generally do not always follow every order to the letter, it also suggests that most of the time many are perfectly happy to do just that. It was not, after all, a crowd of informants who came rushing forward to reveal wrong-doing at Abu Ghraib. Most people, in fact, prefer not to take action or put themselves at risk. This has often been precisely the problem: the unwillingness of those capable of knowing and acting actually to do so. The danger has always been surfeit of passivity, not action.⁵⁴⁹

Indeed, the issue of action or active resistance is perhaps all the more acute in areas where the legislature or the people cannot, in fact, monitor the government effectively. Oversight, after all, is a critical device by which the sovereign ensures that its will is executed.⁵⁵⁰ Where secrecy prevails, but oversight does not, officials, if anyone, are most apt to be in a position to know and to act. Knowledge is the critical matter. Although her book about Congressional oversight is no longer completely accurate, Zegart makes a compelling argument that the balance of power between the watcher and the watched, in this case, the intelligence community, is

⁵⁴⁹Vitoria's discussion of when a soldier may refuse orders is interesting because he clearly believes that only certain types of men are in a position to judge the justness of a war, but he is also unsatisfied with the possibility that this might allow a man to engage in moral wrong-doing on the authority of another. *On the Law of War* 22-6 in A. Pagden and J. Lawrance, edd., *Vitoria: Political Writings*, CTHPT, Cambridge, 2003 [1991], pp. 307-9

⁵⁵⁰This corresponds to Keane's concept of monitory democracy. But that idea falls apart the more the public or its agents lack access to information. Keane, *op. cit.*

effectively broken.⁵⁵¹ Members of Congress lack the incentives, members of the public lack the means, and the intelligence community, as she argues, holds most of the cards. This is a situation that evokes the idea of regulatory capture, in which those who regulate depend on the regulated for all or most relevant information. Most recently, *ProPublica* and *This American Life* published the results of their investigation into the defective oversight conducted by the Federal Reserve Bank of New York.⁵⁵² Their findings showed that regulators repeatedly succumbed to the pressures of having to maintain good relations with the banks in order to gain a minimum of information pertinent to their duties. The fact that an aggressive approach towards the banks could jeopardize these relationships and potentially cut off access to that very information meant that they, as, one might argue, a prudential calculation, softened their approach. This is precisely the problem with regulatory capture, and it describes the problems that arise because of the imbalance of power between the overseen who know and the overseers who do not. Imagine how the discovery process during pre-trial would function if the courts could not penalize the recalcitrant! It strikes me that these are the very cases where officials cannot fall back on their “roles,” which might imply passivity, but must behave as citizens on the political community’s behalf. The act of resignation, for example, is largely meaningless if the person resigning is a petty bureaucrat, and it is not surprising that advocates of this option often cite examples of senior figures who resigned. But it

⁵⁵¹Zegart, *Eyes on Spies*; on the role of secrecy in democracies and its relationship to political responsibility, see K. Robertson, *Public Secrets: A Study in the Development of Government Secrecy*, New York, 1982

⁵⁵²J. Bernstein, “Inside the New York Fed: Secret Recordings and a Culture Clash,” *ProPublica*, September 26, 2014, www.propublica.org

was their status as senior figures that gave their act meaning: the act spoke because of who they were, just as it would be silent because of who minor figures would be. It is important to note here that in advocating resistance I speak of individual officials, not agencies, which must, as collective bodies created by the state, remain subordinate. In both the case presented by Zegart and the one presented by *ProPublica* and *This American Life*, this means that citizen officials must fall back on an understanding of duty grounded in something higher, such as foundational law. In other words, they appeal to justice before the political community.

There are two significant gaps in my argument, and they represent areas calling for further research. I have confined myself to arguing that officials as citizens have the capacity to take action on behalf of “higher purposes.” Obviously, this echoes the concept of the whistleblower, although I am proposing here an argument for that kind of person on the basis of the republican tradition in political theory. In a sense, it transcends the particular legislative concept of the whistleblower. But the matter is more complicated. First, there is the question of abused discretion. Once officials have discretion, we cannot take for granted that it will always be used for noble purposes or to defend the community. A corrupt official may help relatives, take bribes, coerce the weak.⁵⁵³ Second, one must wonder whether or not officials can be inculcated with the kind of mental equipment that might guide them in the use of their discretion. This is somewhat akin to the question of whether or not wisdom can be taught. Thus we might ask whether or not it is

⁵⁵³Deciding exactly what corruption is can be a problem. See Scott, *op. cit.* I might argue that, if we simply observed corrupt systems in sociological terms, we might, then, only see systems of redistribution. Using a moralizing category like “corruption” can overdetermine our analysis and cloud the issue.

sufficient for officials to behave ethically if they have no idea why. Is the appearance just as good as the substance?

While not a perfect answer to the problem of abused discretion, Constant offers what might be the only one. Officials who use discretion must always face the courts, or the political community for justification. They must be open about their acts and the reasons for them, and the courts or the political community on that basis can make its judgment of the matter. I would also argue that corruption is not necessarily an obvious problem. A supposed benefit of modernity is that Western states have to some extent been “emancipated” from society. In other words, impersonality and rationality are usually upheld as positive achievements in the West precisely because these imply equality of all citizens before the law. But I do not take for granted that equality and justice go hand in hand. They may, but fairness is not justice. Fairness implies a leveling out, a consideration for one’s political status purely, a kind of legal fungibility of persons that does not take into account who they are or their actual circumstances. To the question of fairness, there are merely citizens. Justice, on the other hand, is the matching of principles to individuals; it is sensitive to context in a way that mere implementation of rules is not.

It is striking the degree to which arguments against corruption appear to take for granted the economic good that comes from its elimination.⁵⁵⁴ Often the issue is not that corruption *per se* is a problem, but that, if American business, for example, must eschew bribery as a method for securing a contract, then that method should not

⁵⁵⁴Rose-Ackerman, *op. cit.*; A. Wraage, Bribery and Extortion: Undermining Business, Governments, and Security, Westport, 2007

be available to anyone.⁵⁵⁵ In other words, the issue is not corruption, but securing a level playing field. There is no particular reason, however, why *economic good* should take precedence over any other good, such as, the political good or the social good. Economic good, being material and measurable, can be seen and felt and judged by objective criteria in a way that is difficult, to say the least, for political and social good. But we should not lose sight of the fact that political good and social good have their own merits too. An argument can be made that a person might achieve justice appropriate to his situation by bribing an official to obtain redress rather than by suffering the equal treatment required by the law. Context does matter. One cannot judge circumstances before they are known, which is precisely how and why rules often fail, only to be corrected or amended after acts of injustice accumulate sufficiently to attract attention, and this is why technology, which functions entirely on the basis of rules specified in advance, does not necessarily deliver justice.

Nonetheless, there is no denying that the pervasive perception of corruption within government can undermine the faith of citizens in their government. Diogenes was reported to have said upon seeing an official being led off for some theft that it was merely a case of “the big thieves leading off the little one.”⁵⁵⁶ One suspects that a similar sentiment underlies some of the statistics and comments reported in Almond and Verba regarding attitudes of Mexican and Italian citizens towards their

⁵⁵⁵Lurking in the background is the idea of merit, that the meritorious rise to the top, and those who lack merit sink to the bottom. The idea of meritocracy has its own grim implications. See, M. Young, The Rise of the Meritocracy, Harmondsworth, 1963 [1958]

⁵⁵⁶Diogenes Laertius 6.45

government.⁵⁵⁷ On the other hand, reliance upon ascriptive criteria for the allocation of government services also might go together with richer social networks.⁵⁵⁸ I do not know if that is a social good or not, but I would suggest that its consideration would be part of an argument about abused discretion. At any rate, the suggestion here has not been to do away with law or regulation. The political community creates these directly or through its deputies. But in those realms where an official makes choices that are proscribed or the result of pure discretion, Constant's point that the case may ultimately be made before a jury is practical. The Huguenot theorists seemed to envision that minor officials acting on behalf of the community would put their case to that community or God. Modernity calls for putting a case for higher justice before the political community, that is, the court of public opinion, or the real courts.⁵⁵⁹

⁵⁵⁷G. Almond and S. Verba, Civic Culture, Boston, 1965 [1963], pp. 70, 72, and 77-8, tables 3.2-3

⁵⁵⁸My point in raising this question is not to suggest that we should work to reproduce Jacksonian democracy in America. The past is the past. But it does have relevance when considering states in Africa that are not fully emancipated from society. Merely to label government in Bamako as corrupt simply ignores the actual circumstances on the ground and denies that each state may undergo its own developmental trajectory. Consider M. van Vliet, "Weak Legislatures, Failing MPs, and the Collapse of Democracy in Mali," African Affairs 113/450 (2014), pp. 45-66 It is worth noting too, as Chabal and Daloz do, that colonizers also played a role in fostering a culture of "corruption" in Africa. P. Chabal and J.-P. Daloz, Africa Works: Disorder as Political Instrument, Oxford, 1999 These points skillfully illustrated in Hampaté Bâ's famous novel, L'étrange destin de Wangrin.

⁵⁵⁹As a separate matter, I would argue that historically acts that we now refer to as bribery were endemic and natural to democratic systems, particularly where states were still embedded in their societies. And I would emphasize Kelly's suggestive observation that bribery in the late Antique period was a means for ordinary people to by-pass social networks to gain services. It often does not occur to critics of Africa, but bribery itself may represent a way to gain government services without having to rely upon a powerful patron, one path, perhaps, towards the West's much-vaunted bureaucratic impersonality. For an interesting argument about social and political

As I mentioned, another matter that deserves full consideration is the question of how to get officials to do the right thing. To put it differently, is it possible to teach ethics?⁵⁶⁰ Implicit in this question is the matter of appearance and substance: does it matter if officials know the right thing, so long as they do it? To illustrate this, one might consider the problem of using one's position within a bureaucracy for personal gain. It is possible to list a number of acts that are illegal. An official cannot conduct private business using his government computer. He cannot use a government vehicle to take his wife to the opera. He cannot use his position to solicit free meals from potential contractors. Rules proscribing these particular behaviors may be laid out in advance, and officials can be trained to observe the particular rules. It is, therefore, possible to have an official who will scrupulously avoid letting potential contractors pay for his meals, but he may not have any particular idea why this is a problem beyond the fact of its being a rule. If confronted with a situation not covered by a rule, he may not have the abstract principles to reason through the appropriateness of various courses of action open to him. This is the distinction between training and education that Ricks discussed in his critique of the American Army.⁵⁶¹ We may produce a cadre of officials who are very good at scrupulously following the rules, but powerless to do the right thing when faced with unanticipated choices. Alternatively, we may, as in fact we do, find that officials will follow rules and procedure regardless of the justice of the outcome.

patterns in Africa, see Chabal and Daloz, *op. cit.* Their book should be read in conjunction with J.-F. Bayart *et al.*, The Criminalization of the State in Africa, Oxford, 1999.

⁵⁶⁰For an approach, see T. Piper, *et al.*, Can Ethics be Taught?, Boston, 1993

⁵⁶¹Ricks, *op. cit.*

The question of mere habituation versus true knowledge is a concern of long pedigree. I would argue, in particular, that Polybius in identifying the value of superstition (*deisidaimonia*) pointed the way for later thinkers who conceived of religion as a means to instill moral value and obedience within the political community. What is superstition but the fearful – one thinks of the Arabic word, *taqiya* or “fearful reverence” in this context – dedication to rules and procedure.⁵⁶² It has long been pointed out that superstition itself is a kind of thoughtlessness. But this is precisely the problem. There is an intrinsic relationship between fearful scruple and rule. A person must be satisfied that the rule, or the process, contains the relevant criteria for addressing relevant situations. Yet, rules themselves, because they are fundamentally reductionist, either encourage us to ignore the particulars that do not fit, or, when we cannot fit the matter to the rules, they leave us in a kind of helpless confusion, particularly as we do not have the underlying principles at our command. In other words, without the substantial reasons why there are particular rules and processes, we are often left without the equipment to respond as circumstances require. In a sense, the situation not covered by the rules is like a miracle that defies explanation. I have stated the matter starkly, although I understand that real life has more nuance, and the capacity to muddle through is always there. But, if we consider that it is better to have an understanding of the principles underlying the rules, then we see that the project of inculcating values in our officials is different in nature, and, perhaps, in difficulty than merely habituating them to desired behavioral patterns. Indeed, this is precisely what Saint-Just had in mind when he argued that reason

⁵⁶²Rendered as *Gottesfurcht* in A. Wahrmond, Handwörterbuch der neu-arabischen und deutschen Sprache, v. 1, Beirut, 1974, p. 339b

could discover all the laws needed to ensure that officials served as mere cogs administering policy like gears in a watch. And he surely wanted them to function so out of a fearful certainty that punishment would follow any infraction. I think that we do not want mindless cogs, but whether they can or should be educated with the necessary political values as opposed to mere rules of conduct poses a number of problems that merit study in their own right. They are beyond the scope of the present discussion, which is why I have not addressed them. Constant's suggestion that the courts might be the only means to address questions of discretion may seem somewhat unsatisfying, but it also might be the best that can be offered. Similarly, it is certainly possible that habituation might be the best to be hoped for. In any case, education is obviously a matter that deserves study and consideration when pondering how officialdom might be equipped to exercise discretion.

In Catch-22, Captain Yossarian refuses to conduct any more bombing missions. Publicly his comrades criticize him, privately they draw inspiration from his act or even seek his help to do the same. Eventually, he argues at one point, "[s]omeone had to do something sometime. Every victim was a culprit, every culprit a victim, and somebody had to stand up sometime to try to break the lousy chain of inherited habit that was imperiling them all."⁵⁶³ My argument in many ways is captured in this quotation. It is often the easiest thing in the world to content oneself with the thought that someone else is responsible and to feel justified in following the rules because they are the given. Absolutist doctrine demands as much of

⁵⁶³J. Heller, *Catch-22*, London, 2013 [1955], Ch. 39, p. 391 The flipside of this is the Chaplain's revelation on the technique of "protective rationalization": "Anybody could do it; it required no brains at all. It merely required no character." Ch. 34, p. 351

bureaucrats, and to some extent we have often allowed that doctrine to be clothed in democratic garb because the notion that the laws of a legislature should be obeyed has been paramount. I do not discount the value of that basic premise, but, as I have argued, we have allowed this idea, inherited from the world of monarchs, to obscure the tradition afforded us by republican thinkers. Now, if we take Keane's idea of monitory democracy seriously, it is clear that it depends for its health on the flow of information. But what is to be done when information is not available, or the interests do not exist to monitor the government? These are the instances, and they are real, where we should hope that officials take their oaths seriously, or take their own principles seriously, to act on behalf of the political community. What I have attempted to show is that political theory offers a sound, traditional basis for incorporating such a concept of official duty into democratic communities. If we were to educate officials regarding the political values of those communities, I would hope that it would include consideration of that tradition. From time to time, only the officials are in a position to act.

Bibliography

CTHPT – Cambridge Texts in the History of Political Thought

LCL – Loeb Classical Library

OCT – Oxford Classical Text

Pléiade – Bibliothèque de la Pléiade

Almond, G., and S. Verba, Civic Culture, Boston, 1965 [1963]

Annas, J., and R. Waterfield, edd., Plato: Statesman, *CTHPT*, Cambridge, 2005
[1995]

Ansell-Pearson, K., ed., Nietzsche: On the Genealogy of Morality, *CTHPT*,
Cambridge, 2004 [1994]

Anscombe, G., “Modern Moral Philosophy,” Philosophy 33 (1958), pp. 1-19

Anter, A., “L’histoire de l’État comme histoire de la bureaucratie,” Trivium 7 (2010),
pp. 2-15

Appiah, K., Experiments in Ethics, Cambridge, 2008

Applbaum, A., Ethics for Adversaries: the Morality of Roles in Public and
Professional Life, Princeton, 1999

Arendt, H., The Human Condition, New York, 1959;

On Revolution, London, 1990 [1963];

Eichmann and the Holocaust, Harmondsworth, 2006;

“Thinking and Moral Considerations: A Lecture,” Social Research 38.3
(1971), pp. 417-46

Aristotle, *Constitution of Athens*, see Everson (*CTHPT*);

Eudemian Ethics, see Waterfield;

Nicomachean Ethics, see Crisp;

- Politics*, see Everson (*CTHPT*)
- Arnautoglou, I., Ancient Greek Laws, London, 1998
- Aron, R., Les étapes de la pensée sociologique, Paris, 1967
- Badian, E., "The *scribae* of the Roman Republic," Klio 71.2 (1989), pp. 582-603
- Baehr, P., "The 'Iron Cage' and the 'Shell as Hard as Steel': Parsons, Weber, and the
Stahlhartes Gehäuse Metaphor in the Protestant Ethic and the Spirit of
Capitalism," History and Theory 40.2 (May, 2001), pp. 153-69
- Bainton, R., Hunted Heretic, Boston, 1953
- Bandy, A., ed., Ioannes Lydus: On Powers or the Magistracies of the Roman State,
Philadelphia, 1983
- Barker, E., "A Huguenot Theory of Politics. The 'Vindiciae Contra Tyrannos.',"
Proceedings of the Huguenot Society of London 14.1 (1930), pp. 37-61
- Baron, H., "Machiavelli: The Republican Citizen and the Author of 'the Prince'," The
English Historical Review 76.299 (Apr., 1961), p. 217-53
- Bauman, Z., Modernity and the Holocaust, Ithaca, 1991
- Bawn, K., "Political Control Versus Expertise: Congressional Choices about
Administrative Procedures," American Political Science Review 89.1 (Mar.,
1995), pp. 62-73
- Bayart, J.-F., *et al.*, The Criminalization of the State in Africa, Oxford, 1999
- Beard M., and M. Crawford, Rome in the Late Republic, Ithaca, 1985
- Bell, D., The Cult of the Nation in France, Cambridge, 2003 [2001]
- Benert, R., Inferior Magistrates in Sixteenth-Century Political and Legal Thought, U.
of Minn., dissertation, 1967

Bernstein, J., "Inside the New York Fed: Secret Recordings and a Culture Clash,"

ProPublica, September 26, 2014, www.propublica.org

Bettenson, H., trans., Livy: Rome and the Mediterranean, *Penguin Classics*,

Harmondsworth, 1983 [1976]

Beza, see Franklin

Beza, T., Du droit des magistrats sur leurs subiets, 1589, (<http://books.google.com/>)

Blok, A., "Variations in Patronage," Sociologische Gids 16 (1969), pp. 365-78

Bodin, see Franklin (*CTHPT*), Mairet (French), and McRae

Le Bohec, Y., The Imperial Roman Army, New York, 1989

Bonfantini, M., ed., Niccolò Machiavelli: Opere, Milan, (no date), *La Letteratura*

Italiana: Storia e Testi, v. 29

Borkowski, A., Textbook on Roman Law², Oxford, 2002 [1997]

Bosher, J., French Finances 1770-1795: from Business to Bureaucracy, Cambridge,

2008 [1970]

Breasted, J., Ancient Records of Egypt, v. 2, Urbana, 2001 [1906]

Brink, C., and F. Walbank, "The Construction of the Sixth Book of Polybius,"

Classical Quarterly 4.3/4 (Jul.-Oct., 1954), pp. 97-122

Brubaker, R., Citizenship and Nationhood in France and Germany, Cambridge, 1992

Burns, J., ed., The Cambridge History of Political Thought 1450-1700, Cambridge,

2004 [1991]

Burns, T., The Management of Innovation, Oxford, 1961

Bryce, J., Modern Democracies, London, 1929

Burke, J., Bureaucratic Responsibility, Baltimore, 1986

- Bywater, I., trans., The Rhetoric and the Poetics of Aristotle, New York, 1984 [1954]
- Caldwell, C., “Coaxers and coercers discover common ground,” *Financial Times*,
March 1, 2013
- Caldwell, L., The Administrative Theories of Hamilton and Jefferson, New York,
1988 [1944]
- Calhoun, G., Athenian in Politics and Litigation, *Studia Historica* 7, Rome, 1964
[1913]
- Calvin, see Höpfl
- Cancik, H., and H. Schneider, edd., Brill’s New Pauly, Leiden, 2002-10
- Caplan, B., The Myth of the Rational Voter, Princeton, 2007
- Carpenter, D., The Forging of Bureaucratic Autonomy, Princeton, 2001
- Cato, see Harper (*LCL*)
- Cesarani, D., Becoming Eichmann: Rethinking the Life, Crimes, and Trial of a “Desk
Murderer”, Cambridge, 2004
- Chabal, P., and J.-P. Daloz, Africa Works: Disorder as Political Instrument, Oxford,
1999
- Chamayou, G., “A chacun son arme: drone et kamikaze, jeu de miroirs,” *Le monde
diplomatique*, April 2013, p. 3
- Chandler, A., The Visible Hand: The Managerial Revolution in American Business,
Cambridge, 1977
- Choung, W., Control Mechanisms Over Bureaucratic Power Expansion and a
Tentative Model for the Comparative Study of Bureaucracy, Temple
University, dissertation, 1981

Chopra, S., and L. White, A Legal Theory for Autonomous Artificial Agents, Ann Arbor, 2011

Cicero, M., *ad Familiares*, see Williams (*LCL*);

Commonwealth, see Zetzel (*CTHPT*) and Powell (*OCT*);

De Amicitia, see Falconer (*LCL*);

De Senectute, see Falconer (*LCL*);

De Domo Sua, see Watts (*LCL*);

In Vatinius, see Gardner (*LCL*);

In Verrem, see Greenwood (*LCL*);

Letters, see Shackleton-Bailey;

On Duties, see Griffin (*CTHPT*);

On the Laws, see Zetzel (*CTHPT*) and Powell (*OCT*);

Pro Archia, see Watts (*LCL*);

Pro Murena, see Lord (*LCL*);

Pro Rabirio, see Hodge (*LCL*)

Cicero, Q., see Purser (*OCT*)

Cobb, R., and C. Church in "Social Mobility," Past & Present 32 (Dec. 1965), pp. 8-9

Cobban, A., Rousseau and the Modern State, Hamden, 1964;

A History of Modern France, v. 1, Harmondsworth, 1984 [1957]

Cohler, A., *et al.*, edd., Montesquieu: The Spirit of the Laws, *CTHPT*, Cambridge,

2004 [1989]

Condorcet, see Pons

- Conly, S., Against Autonomy: Justifying Coercive Paternalism, Cambridge, 2014
[2013]
- Connor, W., The New Politicians of Fifth-Century Athens, Princeton, 1971
- Conover, K., Bribery in Classical Athens, Princeton University, dissertation, 2010
- Constant, see Fontana (*CTHPT*) and Roulin (*Pléiade*)
- Crisp, R., ed., Aristotle: Nicomachean Ethics, *CTHPT*, Cambridge, 2006 [2000]
- Crook, J., Law and Life of Rome, Ithaca, 1978 [1967]
- Culham, P., “Archives and Alternatives in Republican Rome,” Classical Philology 82.2 (Apr., 1989), pp. 100-15
- Dale, H., The Higher Civil Service of Great Britain, Oxford, 1941
- Damon, C., “Sex. Cloelius, Scriba,” Harvard Studies in Classical Philology 94 (1992), pp. 227-50
- David, S., “The Primacy of Internal War,” in S. Neuman, ed., International Relations Theory and the Third World, New York, 1998, pp. 77-101
- Davis, K., Discretionary Justice: a Preliminary Inquiry, Urbana, 1973 [1969]
- Delbrück, H. Warfare in Antiquity, Lincoln, 1990 [1920]
- Demosthenes, see Murray (*LCL*)
- Denhardt, K., and B. Catron, “The Management of Ideals: A Political Perspective on Ethics,” Public Administration Review, 49.2 (Mar.-Apr., 1989), pp. 187-93
- Derathé, R., *et al.*, edd., Jean-Jacques Rousseau: Oeuvres Complètes, v. 3, *Pléiade*, Paris, 1966
- Diels, H., ed., *Theophrasti Characteres*, *OCT*, Oxford, 1909

- Dobel, J., "Personal Responsibility and Public Integrity," Michigan Law Review 86.6 (May, 1988), pp. 1450-65;
- Bureaucratic Integrity, Baltimore, 1999
- Dorn, W., "The Prussian Bureaucracy in the Eighteenth Century," Political Science Quarterly 46.3 (Sep. 1931), pp. 403-23
- Douglas, P., "Improvement of Ethical Standards in the Federal Government: Problems and Proposals," Annals of the American Academy of Political and Social Science 280 (1952), pp. 149-57
- Dover, K., Popular Greek Morality in the Time of Plato and Aristotle, Oxford, 1974
- Dreyfus, H., What Computers Can't Do: the Limits of Artificial Intelligence, New York, 1979 [1972]
- van Duffel, S., "Sovereignty as a Religious Concept," Monist 90.1 (2007), pp. 126-43
- Duncan-Jones, R., Money and Government in the Roman Empire, Cambridge, 1998
- Dunning, W., "Jean Bodin on Sovereignty," Political Science Quarterly 11.1 (Mar., 1896), pp. 82-104
- Dyck, A., A Commentary on Cicero, De Officiis, Ann Arbor, 1996
- Echols, E., "The Roman City Police: Origin and Development," Classical Journal 53.8 (May, 1958), pp. 377-85
- Eckstein, A., Mediterranean Anarchy, Interstate War, and the Rise of Rome, Berkeley, 2009
- Ehrenberg V., and A. Jones, edd., Documents Illustrating the Reigns of Augustus and Tiberius, Oxford, 1949

- Ehmke, H., “‘*Delegata Potestas Non Potest Delegari*.’ A Maxim of American Constitutional Law,” Cornell Law Quarterly 47 (1961-2), pp. 50-60
- Eisenhardt, K., “Agency Theory: An Assessment and Review,” Academy of Management Review 14.1 (1989), pp. 57-74
- Elshtain, J., Sovereignty, God, State, and Self, New York, 2008
- Emge, C., “Bürokratisierung,” Kölner Zeitschrift für Soziologie und Sozialpsychologie (1950-1), pp. 179-95
- Everson, S., ed., Aristotle: The Politics and The Constitution of Athens, *CTHPT*, Cambridge, 1996 [1984]
- Falconer, W., trans., Cicero: De Senectute, De Amicitia, De Divinatione, v. 20, *LCL* 154, Cambridge, 1964 [1923]
- al-Fawzan, S., Concise Commentary on the Book of Tawhid, Riyadh, 2009 [2005]
- Faulkner, R., “The Installation of the Vizier,” Journal of Egyptian Archeology 41 (Dec., 1955);
- A Concise Dictionary of Middle Egyptian, Oxford, 1981 [1962]
- Ferrari, G., ed., Plato: The Republic, *CTHPT*, Cambridge, 2004 [2000]
- Finer, H., “Better Government Personnel,” Political Science Quarterly 51.4 (Dec., 1936), pp. 569-99;
- “Administrative Responsibility in Democratic Government,” Public Administration Review 1.4 (1941), pp. 335-50
- Finer, S., The History of Government: Ancient Monarchies and Empires, v. 1, Oxford, 1997
- Finley, M., Politics in the Ancient World, Cambridge, 2002 [1983]

- Fish, C., The Civil Service and the Patronage, *Harvard Historical Studies* 9, Cambridge, 1920
- Fitzhugh, G., Cannibals All! or Slaves Without Masters, Cambridge, 1988 [1960]
- Fontana, B., Constant: Political Writings, Cambridge, *CTHPT*, 2006 [1988]
- Foster, B., trans., Livy: History of Rome, v. 4, *LCL* 191, Cambridge, 1963 [1926]
- Foster, B., Before the Muses, v. 2, Bethesda, 1996
- Fowler, H., trans., Plutarch's Moralia, v. 10, *LCL* 321, Cambridge, 1950 [1936]
- Fracaro, P., "Accensi," Athenaeum 5 (1927), pp. 133-46
- Franklin, J., Jean Bodin and the Rise of Absolutist Theory, Cambridge, 2009 [1973]
- Franklin, J., ed., Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, & Mornay, New York, 1969;
Bodin: On Sovereignty, *CTHPT*, Cambridge, 2008 [1992]
- Fraenkel, E., Horace, Oxford, 1980 [1957]
- Friedrich, C., "The Continental Tradition of Training Administrators in Law and Jurisprudence," The Journal of Modern History 11.2 (Jun. 1939), pp. 129-48;
"Public Policy and the Nature of Administrative Responsibility," Public Policy 1 (1940), pp. 3-24
- Fronto, see Haines (*LCL*)
- Furneaux, H., ed., The Annals of Tacitus, Oxford, 1968 [1883]
- Gallego, J., "El Patronazgo rural en la democracia ateniense," Studia Historica: Historia Antigua, 27 (2009), pp. 163-75
- Garaudy, R., ed., Les orateurs de la révolution française, Paris, 1939
- Gardiner, A., Egyptian Grammar, Oxford, 1964 [1927]

- Gardner, R., trans., Cicero: The Speeches, v. 12, *LCL* 309, Cambridge, 1966 [1958]
- Gargarin, M., and D. MacDowell, ed., Antiphon & Andocides, *The Oratory of Classical Greece*, v. 1, Austin, 1998
- Gellius, see Rolfe (*LCL*)
- Gelzer, M., Caesar: Politician and Statesman, Cambridge, 1968
- Gewen, B., “*Becoming Eichmann* by David Cesarani; The Everyman of Genocide,” *New York Times*, May 14, 2006
- Gibb, H., and J. Kramers, ed., Concise Encyclopedia of Islam, Leiden, 1995 [1953]
- Gluckman, M., Politics, Law, and Ritual in Tribal Society, New Brunswick, 2009 [1965]
- Goldsworthy, A., The Roman Army at War: 100BC – AD 200, Oxford, 1996
- Goodnow, F., Politics and Administration: A Study in Government, New York, 1967 [1900]
- Goodsell, C., “Administration as Ritual,” Public Administration Review, 49.2 (1989), pp. 161-6
- Gouldner, A., Patterns of Industrial Bureaucracy, New York, 1964 [1954]; “Industrial Sociology: Status and Prospects: Discussion,” American Sociological Review, 13.4 (1948), pp. 396-400
- Goyard-Fabre, S., “L’idée de souveraineté du peuple et le ‘libéralisme pur’ de Benjamin Constant,” Revue de Métaphysique et de Morale 81.3 (Jul./Sep. 1976), pp. 289-327
- Grajetzki, W., Court Officials of the Egyptian Middle Kingdom, London, 2009

- Grant, M., trans., Tacitus: The Annals of Imperial Rome, *Penguin Classics*, Harmondsworth, 1985 [1956]
- Graves, R., Suetonius: The Twelve Caesars, *Penguin Classics*, London, 2003 [1957]
- Greenwood, L., trans., Cicero: The Verrine Orations, v. 2, *LCL* 293, Cambridge, 1960 [1935],
- Gregory, B., The Unintended Reformation, Cambridge, 2012
- Griffin, M., and E. Atkins, edd., Cicero: On Duties, *CTHPT*, Cambridge, 2008 [1991]
- Gulick, L., "Politics, Administration, and the 'New Deal'," Annals of the American Academy of Political and Social Science 169 (Sep., 1933), pp. 55-66
- van Gunsteren, H., The Quest for Control: A Critique of the Rational-Central-Rule Approach in Public Affairs, London 1976.
- Haines, C., trans., The Correspondence of Marcus Cornelius Fronto, v. 2, *LCL* 113, Cambridge, 1957 [1920]
- Handford, S., trans., Sallust: The Jugurthine War/The Conspiracy of Catiline, *Penguin Classics*, Harmondsworth, 1985 [1963]
- Hamilton, W., trans., Phaedrus and Letters VII and VIII, *Penguin Classics*, Harmondsworth, 1977 [1973]
- Hampaté Bâ, A., L'étrange destin de Wangrin ou Les Roueries d'un interprète africain, Paris, 1973
- Han Fei, see Watson
- Hannig, R., Großes Handwörterbuch Ägyptisch-Deutsch, Mainz, 1995
- Harl, K., Coinage in the Roman Economy: 300 B.C. to A.D. 700, Baltimore, 1996

- Harmon, M., and J. White, "'Decision' and 'Action' as Contrasting Perspectives in Organization Theory," Public Administration Review 49.2 (Mar.-Apr., 1989), pp. 144-52
- Harper, W., trans., Marcus Porcius Cato on Agriculture, *LCL* 283, Cambridge, 1960 [1934]
- Hartman, M., "Benjamin Constant and the Question of Ministerial Responsibility in France, 1814-1815," Journal of European Studies 6 (1976), pp. 248-61
- Hegel, see Wood
- Held, D., Models of Democracy, Stanford, 1996
- Heller, J., Catch-22, London, 2013 [1955]
- Henderson, J., Aristophanes: Lysistrata, Oxford, 1990 [1987]
- Herbst, J., States and Power in Africa, Princeton, 2000
- Hiller, E., ed., Anthologia Lyrica, Leipzig, 1890
- Hobbes, see Tuck
- Hodge, H., trans., Cicero: The Speeches, *LCL* 252, Cambridge, 1966 [1927]
- Hoekstra, K., "Early Modern Absolutism and Constitutionalism," Cardozo Law Review 34 (2013), pp. 1079-98
- Höpfl, H., ed., Luther and Calvin: On Secular Authority, *CTHPT*, Cambridge, 2006 [1991],
- Horkheimer, M., The Eclipse of Reason, London, 2004 [1947]
- Horwill, H., Modern American Usage, Oxford, 1946
- Huber, J., and C. Shipan, Deliberative Discretion?, Cambridge, 2002
- Ionescu, G., ed., The Political Thought of Saint-Simon, Oxford, 1976

- Ismard, P., "Public Slavery, Politics and Expertise in Classical Athens." *Center for Hellenic Studies, Research Bulletin* 1, no. 2 (2013)
- Isocrates, see Nordin (*LCL*)
- Jacob, O., Les esclaves publics à Athènes, New York, 1979 [1928]
- Jardin, A., Tocqueville: Oeuvres, v. 1, *Pléiade*, Paris, 1991
- Jones, A., "The Roman civil service (clerical and sub-clerical grades)," Journal of Roman Studies 39 (1949), pp. 38-55;
The Later Roman Empire 284-602, v. 1, Baltimore, 1986
- Joseph, R., Democracy and Prebendal Politics in Nigeria, Cambridge, 1987
- Kahn, P., Political Theology: Four New Chapters on the Concept of Sovereignty,
New York, 2011
- Kantorowicz, E., "Mysteries of State: An Absolutist Concept and Its Late Mediaeval Origins," Harvard Theological Review 48.1 (Jan., 1955), pp. 65-91
- Karl, B., "The American Bureaucrat: A History of a Sheep in Wolves' Clothing,"
Public Administration Review 47 (Jan.-Feb., 1987), pp. 26-34
- Keane, J., The Life and Death of Democracy, New York, 2009
- Kelly, C., Ruling the Later Roman Empire, Cambridge, 2004
- Kenny, A., trans., Aristotle: The Eudemian Ethics, *Oxford World's Classics*, Oxford, 2011
- Kingdon, R., "Calvinism and Resistance Theory 1550-1580," in J. Burns, ed., The Cambridge History of Political Thought 1450-1700, Cambridge, 2004 [1991], pp. 193-218

- Kingsley, J., Representative Bureaucracy: An Interpretation of the British Civil Service, Yellow Springs, 1944
- Kiser, E., and Y. Cai “War and Bureaucratization in Qin China: Exploring an Anomalous Case,” American Sociological Review 68.4 (Aug., 2003), pp. 511-39
- Klosko, G., The Development of Plato’s Political Theory, Oxford, 2006
- Kluge, F., and A. Götze, Etymologisches Wörterbuch der deutschen Sprache, Berlin, 1953
- Knapp, R., Invisible Romans, London, 2011
- Koestermann, E., Cornelius Tacitus: Annalen, v. 1, Heidelberg, 1963
- Kupiec, A., and M. Abensour, edd., Saint-Just: Oeuvres Complètes, Paris, 2012
- Laks, A., “The Laws,” in C. Rowe and M. Schofield, The Cambridge History of Greek and Roman Political Thought, Cambridge, 2005 [2000], pp. 258-92
- Lamb, W., trans., Plato: Laches, Protagoras, Meno, Euthydemus, v. 2, *LCL* 165, Cambridge, 1977 [1924]
- Larnier, J., You Are Not a Gadget, New York, 2010
- Lassman, P., and R. Speirs, Weber: Political Writings, CTHPT, Cambridge, 2010 [1994]
- Levitan, D., “The Responsibility of Administrative Officials in a Democratic Society,” Political Science Quarterly 61.4 (Dec., 1946), pp. 562-98
- Lewis N., and M. Reinhold, edd., Roman Civilization, Sourcebook I: The Republic, New York, 1966 [1951]
- Lichtheim, M., Ancient Egyptian Literature, vv. 1-2, Berkeley, 1975-6

- Liddell, H., and R. Scott, ed., A Greek-English Lexicon, Oxford, 1983 [1843]
- Livy, see Bettenson (*Penguin*), Ogilvie (*Penguin*), Radice (*Penguin*), de Sélincourt (*Penguin*),
- Long, A., and D. Sedley, ed., The Hellenistic Philosophers, v. 2, Cambridge, 1992 [1989]
- Lord, L., trans., Cicero: The Speeches, v. 10, *LCL* 324, Cambridge, 1964 [1937]
- Lynch, C., Niccolò Machiavelli: Art of War, Chicago, 2003
- Machiavelli, *The Prince*, see Skinner;
- Discourses*, see Mansfield
- Art of War*, see Lynch
- MacDowell, D., The Law in Classical Athens, Ithaca, 1978
- MacIntyre, A., After Virtue, Notre Dame, 2003 [1981]
- MacMullen, R., Corruption and the Decline of Rome, New Haven, 1988
- Mairet, G., ed., Jean Bodin: Les six livres de la République, Paris, 1993
- Mannheim, K., Man and Society in an Age of Reconstruction, New York, 1940
- Mannori, L., and B. Sordi, “Science of Administration and Administrative Law,” in D. Canale *et al.*, ed., A History of the Philosophy of Law in the Civil Law World, 1600-1900, (A Treatise of Legal Philosophy and General Jurisprudence, v. 9), New York, 2009, pp. 225-61
- Mansfield, H., “Hobbes and the Science of Indirect Government,” American Political Science Review 65.1 (Mar., 1971), pp. 97-110;
- “On the Impersonality of the Modern State: a Comment on Machiavelli’s Use of Stato,” American Political Science Review 77.4 (Dec., 1983), pp. 849-57

- Mansfield, H., and N. Tarcov, trans., Niccolò Machiavelli: Discourses on Livy, Chicago, 1998
- Marchant, E., trans., Xenophon: Memorabilia and Oeconomicus, v. 4, *LCL* 168, Cambridge, 1965 [1923]
- Maritain, J., Man and the State, Chicago, 1951
- Matheson, R., *The Shrinking Man*, in G. Wolfe, ed., American Science Fiction: Four Novels 1953-1956, *Library of America*, New York, 2012, p. 585ff.
- Mayer-Schönberger, V., and K. Cukier, Big Data: A Revolution that Will Transform How We Live, Work, and Think, New York, 2013
- McCubbins, M., *et al.*, “Administrative Procedures as Instruments of Political Control, Journal of Law, Economics, & Organization 3.2 (Autumn, 1987), pp. 243-77
- McGregor, “Great Paradox of Citizenship and Public Personnel Administration,” Public Administration Review 44 (1984), pp. 126-35
- McKenzie, L., “Rousseau’s Debate with Machiavelli in the Social Contract,” Journal of the History of Ideas 43.2 (Apr./Jun., 1982), pp. 209-28
- McRae, K., ed., Jean Bodin: The Six Bookes of a Commonweale, Cambridge, 1962
- Meiggs, R., and D. Lewis, edd., A Selection of Greek Historical Inscriptions, Oxford, 1980 [1969]
- Mélonio, F., ed., Alexis de Tocqueville: l’ancien régime et la révolution, Paris, 1988
- Merton, R., “Bureaucratic Structure and Personality,” Social Forces 18.4 (1940), pp. 560-8

- Metz, A., "Die Entstehungsgeschichte der römischen Stenographie," Hermes 66.1
(Jan., 1931)
- Michalski, R., Creon's Secretaries: Theories of Bureaucracy and Social Order in 18th
and early 19th Century Prussia, U. of Michigan, dissertation, 2009
- Midgley, M., "The Origin of Ethics," in Singer, ed., A Companion to Ethics, Oxford,
2000, pp. 3-13
- Millar, F., "Political Character of the Classical Roman Republic 200-151 BC,"
Journal of Roman Studies 74 (1989), pp. 1-19;
The Roman Republic in Political Thought, Hanover, 2002
- Millett, P., "Patronage and its avoidance in classical Athens," in A. Wallace-Hadrill,
ed., Patronage in Ancient Society, London, 1989, pp. 15-47
- Mintzberg, H., The Rise and Fall of Strategic Planning, New York, 1994
- Mistretta v. United States*, 488 US 361
- Mitchell, L., and P. Rhodes, "Friends and Enemies in Athenian Politics," Greece &
Rome 43.1 (Apr., 1996), pp. 11-30
- Moe, T. "An Assessment of the Positive Theory of 'Congressional Dominance'," Legislative Studies Quarterly 12.4 (Nov., 1987), pp. 475-520
- Mommsen, T., "De apparitoribus magistratuum Romanorum," Rheinisches Museum
für Philologie 6 (1848), pp. 1-57
- Montesquieu, see Cohler
- Monypenny, P., "The Control of Ethical Standards in the Public Service," Annals of
the American Academy of Political and Social Science 297 (1955), pp. 98-104
- Mornay, see Franklin

- Morstein-Marx, F., The Administrative State, Chicago, 1957
- Morstein-Marx, R., “Publicity, Popularity and Patronage in the ‘Commentariolum Petitionis’,” Classical Antiquity 17.2 (Oct. 1998), pp. 259-88
- Moyle, J., *Imperatoris Iustiniani Institutionum Libri Quattuor*, Oxford, 1903
- Muehlhauser, L., and L. Helm, “Intelligence Explosion and Machine Ethics,” *Machine Intelligence Research Institute* (October 01, 2014), www.intelligence.org/files/IE-ME.pdf; and in A. Eden *et al.*, edd., Singularity Hypotheses: A Scientific and Philosophical Assessment, Berlin, 2012, pp. 101-26
- Murray, A., trans., Demosthenes: Private Orations, v. 6, *LCL* 351, Cambridge, 1964 [1935]
- Nelson, B., The Idea of Usury: From Tribal Brotherhood to Universal Otherhood, Chicago, 1969 [1949]
- Nettl, J., “The State as a Conceptual Variable,” World Politics 20.4 (Jul., 1968), pp. 559-92
- Neuman, S., ed., International Relations Theory and the Third World, New York, 1998
- Nichols, B., An Introduction to Roman Law, Oxford, 1992 [1962]
- Nicolet, C., “Cicéron, Platon et le vote secret,” Historia: Zeitschrift für Alte Geschichte 19.1 (Jan., 1970), pp. 39-66
- Nietzsche, F., see Ansell-Pearson (*CTHPT*)
- Nippel, W., “Policing Rome,” Journal of Roman Studies 74 (1984), pp. 20-9
- Nisbet, R., ed., Cicero: In L. Calpurnium Pisonem Oratio, Oxford, 1975 [1961]

- Niskanen, W., Bureaucracy and Representative Government, New Brunswick, 2007
[1971]
- Noonan, J., Bribes, New York, 1984
- Nordin, G., trans., Isocrates, v. 2, *LCL* 229, Cambridge, 1962 [1929]
- North, D., *et al.*, Violence and Social Orders, Cambridge, 2009
- Oakley, S., A Commentary on Livy: Books VI-X, vv. 2-3, Oxford, 2005
- Oakeshott, M., "Rationalism in politics," in Rationalism in politics and other essays, Indianapolis, 1991, pp. 5-42
- Ober, J., Mass and Elite in Democratic Athens, Princeton, 1989
- Ogilvie, R., trans., Livy: The Early History of Rome, *Penguin Classics*, Harmondsworth, 1987 [1960];
A Commentary on Livy: Books 1-5, Oxford, 1984 [1965]
- O'Leary, R., The Ethics of Dissent: Managing Guerilla Government, Washington, 2006
- Olson, S., ed., Aristophanes: Acharnians, Oxford, 2002
- O'Neill, T., "Liberal Constitutionalism & Bureaucratic Discretion," Polity 20.3 (Spring, 1988), pp. 371-92
- O'Toole, L., "Doctrines and Developments: Separation of Powers, the Politics-Administration Dichotomy, and the Rise of the Administrative State," Public Administration Review 47.1 (Jan.-Feb., 1987), pp. 17-25
- Pagden, A., and J. Lawrance, edd., Vitoria: Political Writings, *CTHPT*, Cambridge, 2003 [1991]
- Parker, R., Miasma, Oxford, 1996 [1983]

- Paton, W., trans., Polybius: The Histories, vv. 2, 3, 5, and 6, *LCL* 128, 137-8, and 160, Cambridge, 1979 [1922-33]
- Pettit, P., Republicanism: A Theory of Freedom and Government, Oxford, 1999
- Peretz, D., “The Roman Interpreter and his Diplomatic and Military Roles,” Zeitschrift für alte Geschichte 55.4 (2006), pp. 451-70
- Perrin, B., trans., Plutarch’s Lives, v. 8, *LCL* 100, Cambridge, 1959 [1919]
- Piper, T., *et al.*, Can Ethics be Taught?, Boston, 1993
- Placido, D., and C. Fornis, “Evergetismo y relaciones clientarles en la sociedad anteniense del siglo IV a.C.,” Dialogues d’histoire ancienne (37.2) 2011, pp. 19-47
- Plato, *Laws*, see Saunders (*Penguin*);
Meno, see Lamb (*LCL*);
Phaedrus, see Hamilton (*Penguin*);
Republic, see Ferrari (*CTHPT*);
Statesman, see Annas (*CTHPT*)
- Plutarch, *Lives*, see Perrin (*LCL*), Scott-Kilvert (*Penguin*), and Warner (*Penguin*);
Precepts, see Fowler (*LCL*)
- Poggi, G., The Development of the Modern State: A Sociological Introduction, Stanford, 1978
- Polanyi, K., The Great Transformation: The Political and Economic Origins of Our Time, Boston, 2001
- Pollock, J., “The Cost of the Patronage System,” Annals of the American Academy of Political and Social Science 189 (Jan., 1937), pp. 29-34

- Polybius, see Paton (*LCL*)
- Pons, A., ed., Condorcet: Esquisse d'un tableau historique des progrès de l'esprit humain, Paris, 1988
- Porter, T., Trust in Numbers, Princeton, 1996
- Postgate J., Early Mesopotamia, London, 1994
- Potter, D., "Holding Court in Republican Rome," American Journal of Philology 132.1 (Spring 2011), pp. 59-80
- Powell, J., M. Tulli Ciceronis de Re Publica, *OCT*, Oxford, 2006
- Purcell, N., "The *apparitores*: a study in social mobility," Papers of the British School in Rome 51 (1983), pp. 125-73
- Purser, L., ed., M. Tulli Ciceronis Epistulae, v. 3, *OCT*, Oxford, 1902
- Quinlan, M., "Ethics in Public Service," Governance 6 (1997), pp 538-44;
 "Just Intelligence: Prolegomena to an Ethical Theory," in P. Hennessy, ed.,
The New Protective State: Government, Intelligence, and Terrorism, London,
 2007, pp. 123-41
- Radice, B., trans., Livy: Rome and Italy, *Penguin Classics*, Harmondsworth, 1982
- Raflaub, K., "Democracy, Oligarchy, and the concept of the 'Free Citizen' in Late Fifth-Century Athens," Political Theory 11.4 (Nov., 1983), pp. 517-44
- Rawls, J., A Theory of Justice, Cambridge, 1999 [1971]
- Rawson, E., Cicero: A Portrait, Ithaca, 1983
- Reynolds, L., ed., C. Sallusti Crispi Catilina, Iugurtha, Historiarum Fragmenta Selecta, Appendix Sallustiana, *OCT*, Oxford, 1991

- Ricks, T., The Generals: American Military Command from World War II to Today, New York, 2012
- Riggs, F., “Introduction: shifting meanings of the term ‘bureaucracy’,” International Social Science Journal/Revue internationale des sciences sociales 31.4 (1979), pp. 563-84
- Ritter, A., and J. Bonadellia, edd., Rousseau’s Political Writings, New York, 1988
- Robertson, K., Public Secrets: A Study in the Development of Government Secrecy, New York, 1982
- Rolfe, J., trans., The Attic Nights of Aulus Gellius, vv. 1-3, *LCL* 195, 200, and 212, Cambridge, 1960-1 [1927]
- Rousseau, see Ritter and Derathé (Pléiade)
- Rose-Ackerman, S., Corruption and Government, Cambridge, 1999
- Roth, G., and C. Wittich, edd., Max Weber: Economy and Society, Berkeley, 1978
- Roulin, A., ed., Benjamin Constant: Oeuvres, Pléiade, Paris, 1957
- Rowe, C., and M. Schofield, edd., The Cambridge History of Greek and Roman Political Thought, Cambridge, 2005
- Ryan, A., On Politics: A History of Political Thought from Herodotus to the Present, vv. 1-2, New York, 2012
- Saint-Just, see Kupiec
- Saint-Simon, see Ionescu
- Saller, R., Personal Patronage under the Early Empire, Cambridge, 2002;

- “Patronage and friendship in early Imperial Rome: drawing the distinction,”
printed in A. Wallace-Hadrill, Patronage in Ancient Society, London, 1989,
pp. 49-62
- Sallust, see Handford (*Penguin*)
- Salmon, J., “Catholic resistance theory, Ultramontaniam, and the royalist response,
1580-1620,” in J. Burns, ed., The Cambridge History of Political Thought
1450-1700, Cambridge, 2004 [1991], pp. 219-53
- Sandel, M., Liberalism and the Limits of Justice, Cambridge, 1998
- Satran, R., “IRS Data Web Snares Mostly Low- and Middle-Income Taxpayers,” *U.S.
News and World Report* (May 1, 2013),
([www.money.usnews.com/money/personal-finance/mutual-
funds/articles/2013/05/01/irs-data-web-snares-mostly-low--and-middle-
income-taxpayers](http://www.money.usnews.com/money/personal-finance/mutual-funds/articles/2013/05/01/irs-data-web-snares-mostly-low--and-middle-income-taxpayers))
- Saunders, T., trans., Plato: Laws, *Penguin Classics*, Harmondsworth, 2004 [1970]
- Saxonhouse, A., “Athenian Democracy: Modern Mythmakers and Ancient
Theorists,” Political Science and Politics 26.3 (Sep., 1993), pp. 486-90
- Schlaifer, R., “Greek Theories of Slavery from Homer to Aristotle,” Harvard Studies
in Classical Philology 47 (1936), pp. 165-205
- Schmitt, C., Political Theology, Chicago, 2005 [1985];
The Concept of the Political, Chicago, 2007 [1995]
- Schmidt, S., *et al.*, ed., Friends, Followers, and Factions: A Reader in Political
Clientalism, Berkeley, 1977

- Schopp, R., "Verdicts of Conscience: Nullification and Necessity as Jury Responses to Crimes of Conscience," Southern California Law Review 69 (1995-6), pp. 2039-116
- Schumpeter, J., Capitalism, Socialism and Democracy, New York, 1975 [1942]
- Scott, J., Comparative Political Corruption, Englewood Cliffs, 1972
- Scott-Kilvert, I., Plutarch: The Rise and Fall of Athens, *Penguin Classics*, Harmondsworth, 1970 [1964];
- Plutarch: Makers of Rome, *Penguin Classics*, Harmondsworth, 1981 [1965]
- Scullard, H., From the Gracchi to Nero, London, 1977 [1959];
- Scipio Africanus: Soldier and Politician, Ithaca, 1970
- Sealey, R., "The Origins of 'Demokratia'," California Studies in Classical Antiquity 6 (1973), pp. 253-95
- The Justice of the Greeks, Ann Arbor, 1994;
- de Sélincourt, A., trans., Herodotus: The Histories, *Penguin Classics*, Harmondsworth, 1996 [1954];
- Livy: The War with Hannibal, *Penguin Classics*, Harmondsworth, 1985 [1965]
- Seneca, see Cooper
- Shackleton-Bailey, D., trans., Cicero's Letters to his Friends, Atlanta, 1988;
- Cicero, London, 1971
- Sharples, R., "Cicero's *Republic* and Greek Political Theory," Polis 5 (1986)
- Shepard, M., "Sovereignty at the Crossroads: A Study of Bodin," Political Science Quarterly 45.4 (Dec., 1930), pp. 580-603

- Sherwin-White, A., "Patronage under the Principate: *Personal Patronage under the Early Empire* by Robert P. Saller," Classical Review 33.2 (1983)
- Shumer, S., "Machiavelli: Republican Politics and Its Corruption," Political Theory 7.1 (Feb., 1979), pp. 5-34
- Simon, H., Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization, New York, 1976 [1945],
- Sinclair, T., Aristotle: The Politics, *Penguin Classics*, Harmondsworth, 1980 [1962]
- Singer, P., ed., A Companion to Ethics, Oxford, 2000, pp. 3-13
- Skinner, Q., and R. Price, edd., Machiavelli: The Prince, *CTHPT*, Cambridge, 2005 [1988]
- Slavitt, D. and P. Bovie, edd., Euripides, v.1, Philadelphia, 1998
- Sommerstein, A., trans., Aristophanes: Lysistrata, The Acharnians, The Clouds, *Penguin Classics*, Harmondsworth, 1973;
- Aristophanes: The Knights, Peace, The Birds, The Assemblywomen, Wealth, *Penguin Classics*, Harmondsworth, 1978
- Stahl, O., "Democracy and Public Employee Morality," Annals of the Academy of Political and Social Science 297 (Jan., 1955), pp. 90-7
- Stambaugh, J., The Ancient Roman City, Baltimore, 1988
- di Stefano Manzella, I., "Accensi velati consulibus apparentes ad sacra: proposta per la soluzione di un problema dibattuto," Zeitschrift für Papyrologie und Epigraphik 101 (1994), pp. 261-79;

- “Accensi: profilo di una ricerca in corso (a proposito dei <<poteri collaterali>> nella società romana),” Cahiers du Centre Gustave-Glotz 11 (2000), pp. 223-57
- Stewart, J., “Advance or Retreat: From the traditions of Public Administration to the new public management and beyond,” Public Policy and Administration 13.4 (Winter, 1998), pp. 12-27
- Stockton, D., Cicero: A Political Biography, Oxford, 1988 [1971];
The Classical Athenian Democracy, Oxford, 1990
- Strauss, L., The Argument and the Action of Plato’s Laws, Chicago, 1977
- Strauss, L., and J. Cropsey, edd., History of Political Philosophy, Chicago, 1987 [1963].
- Strayer, J., On the Medieval Origins of the Modern State, Princeton, 2005
- Strohl, H., “Le droit à la résistance d’après les conceptions protestantes,” Revue d’histoire et de philosophie religieuses 10 (1930), pp. 126-44
- Stroud, R., “An Athenian Law on Silver Coinage,” Hesperia 43 (1974)
- Suetonius, see Graves (*Penguin*)
- Suleiman, E., Dismantling Democratic States, Princeton, 2003
- Sullivan, V., Machiavelli’s Three Romes, DeKalb, 1996
- Syme, R., “Who was Vedius Polio?,” Journal of Roman Studies, 51.1 (1961), pp. 23-30
- Talbert, R., The Senate of Imperial Rome, Princeton, 1984
- Talmon, J., The Origins of Totalitarian Democracy, New York, 1970

- Tanner, J., "Portraits, Power, and Patronage in the Late Roman Republic," Journal of Roman Studies 90 (2000), pp. 18-50
- Taylor, F., The Principles of Scientific Management, New York, 1967 [1911]
- Theophrastus, see Diels (*OCT*)
- Thompson, D., "Moral Responsibility of Public Officials: The Problem of Many Hands," American Political Science Review 74.4 (Dec., 1980), pp. 905-16;
 "Ascribing Responsibility to Advisers in Government," Ethics 93.3 (Apr., 1983), pp. 546-60
- Tierney, B., "'The Prince is Not Bound by the Laws.' Accursius and the Origins of the Modern State," Comparative Studies in Society and History 5.4 (Jul., 1963), pp. 378-400
- Tilly, C., Coercion, Capital, and European States, New York, 1992;
Democracy, Cambridge, 2007
- Tocqueville, *Ancien Régime*, see Mélonio;
Centralisation Administrative, see Jardin (*Pléiade*)
- Todd, S., The Shape of Athenian Law, Oxford, 1993;
Lysias, Oratory of Classical Greece, v. 2, Austin, 2000
- Tredennick, H., ed., Plato: The Last Days of Socrates, *Penguin Classics*,
 Harmondsworth, 1982 [1954],
- Tuck, R., Hobbes: Leviathan, CTHPT, Cambridge, 2006 [1991]
- Turn, W., "In Defense of Patronage," Annals of the American Academy of Political and Social Science 189 (Jan., 1937), pp. 22-8
- Veblen, T., Theory of the Leisure Class, New York, 1994 [1899]

- Vellacott, P., trans., Aeschylus: The Oresteian Trilogy, *Penguin Classics*, Harmondsworth, 1985 [1956]
- Viroli, M., Machiavelli, Oxford, 1998;
- “Republic and Politics in Machiavelli and Rousseau,” History of Political Thought 10.3 (Autumn 1989), pp. 405-20
- Vitoria, see Pagden
- van Vliet, M., “Weak Legislatures, Failing MPs, and the Collapse of Democracy in Mali,” African Affairs 113/450 (2014), pp. 45-66
- Wahrmund, A., Handwörterbuch der neu-arabischen und deutschen Sprache, v. 1, Beirut, 1974
- Wallace-Hadrill, A., Patronage in Ancient Society, London, 1989;
- “Patronage in Roman Society,” in Patronage, pp. 63-87
- Waldo, D., The Administrative State: A Study of the Political Theory of American Public Administration, New York, 1948
- Wallach, W., and C. Allen, Moral Machines: Teaching Robots Right from Wrong, Oxford, 2009
- Warner, R., Plutarch: Fall of the Roman Republic, *Penguin Classics*, Harmondsworth, 1983 [1958]
- Warren, M., “What Does Corruption Mean in a Democracy?,” American Journal of Political Science 48.2 (2004), pp. 328-43
- Warwick, D., A Theory of Public Bureaucracy, Cambridge, 1978 [1975]
- Waterfield, R., trans., Aristotle: Physics, *Oxford World’s Classics*, Oxford, 1999
- Watson, A. ed., The Digest of Justinian, Philadelphia, 1998

- Watts, N., trans., Cicero: The Speeches, v. 11, *LCL* 158, Cambridge, 1965 [1923]
- Watson, B. trans., Han Fei Tzu: Basic Writings, New York 1964
- Weber, see Lassman (*CTHPT*)
- Wender, D., trans., Hesiod and Theognis, *Penguin Classics*, Harmondsworth, 1984
[1973]
- Westermann, W., “Between Slavery and Freedom,” American Historical Review,
50.2 (Jan., 1945), pp. 213-27
- Whyte, W., The Organization Man, New York, 1956
- Williams, W., trans., Cicero: The Letters to his Friends, v. 1, *LCL* 216, Cambridge
1965 [1927]
- Wilson, J., Bureaucracy: What Government Agencies Do and Why They Do It, New
York, 1991
- Wilson, W., “The Study of Administration,” Political Science Quarterly 2.2 (June
1887), pp. 197-222
- Winner, L., Autonomous Technology: Technics-out-of-Control as a Theme in
Political Thought, Cambridge, 1978;
- Wolf, E., “Kinship, Friendship, and Patron-Client Relations in Complex Societies,” in
S. Schmidt, *et al.*, edd., Friends, Followers, and Factions: A Reader in
Political Clientalism, Berkeley, 1977, pp. 167-77
- Wolf, W., “Moral Saints,” Journal of Philosophy 79.8 (1982), pp. 419-39
- Wood, A., Hegel: Elements of the Philosophy of Right, *CTHPT*, Cambridge, 2007
[1991]

- Wood, B., and R. Waterman, "The Dynamics of Political Control of the Bureaucracy," American Political Science Review 85.3 (Sep., 1991), pp. 801-28
- Wood, P., "Federal workers tend to be whiter; richer; more liberal," *Baltimore Sun*, October 5, 2014, p. 8
- Wood, R., "Ethics in Government as a Problem of Executive Management," Public Administration Review 15.1 (Winter, 1955), pp. 1-7
- Worthy, J., Big Business and Free Men, New York, 1959
- Wrage, A., Bribery and Extortion: Undermining Business, Governments, and Security, Westport, 2007
- Xenophon, see Marchant (*LCL*)
- Young, C., The African Colonial State in Comparative Perspective, New Haven, 1997
- Young, The Rise of the Meritocracy, Harmondsworth, 1963 [1958]
- Zaidman, L., and P. Pantel, Religion in the Ancient Greek City, Cambridge, 1997 [1992]
- Zegart, Flawed by Design: The Evolution of the CIA, JCS, and NSC, Stanford, 1999; Eyes on Spies, Stanford, 2010
- Zetzel, J., ed., Cicero: On the Commonwealth and On the Laws, *CTHPT*, 2008 [1999]
- Ziaja, A., "Hot Oil and Hot Air: The Development of the Nondelegation Doctrine through the New Deal, A History 1813-1944," Hastings Con. Law Quarterly 35 (2008), p. 921ff.