



# The Concept of Authority

A multidisciplinary approach:  
from epistemology to the social sciences

*a cura di*  
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## INDICE

Preface	11
<i>Wilfried Nippel</i>	
1. The Roman Notion of <i>Auctoritas</i>	13
<i>Avisbai Margalit</i>	
2. Political Theology: The Authority of God	35
2.1 <i>Introduction</i>	35
2.2 <i>Who needs justification of authority?</i>	36
2.3 <i>The Authority of God</i>	38
2.4 <i>The Authority of the Messenger</i>	45
2.5 <i>The Authority of the Scriptures</i>	48
<i>Edna Ullmann-Margalit</i>	
3. Trust in Authority	53
3.1 <i>Paternalistic Authority</i>	55
3.2 <i>Expert Authority</i>	57
3.3 <i>The Matrix</i>	59
3.4 <i>Trust in Institutional Authority</i>	61
3.5 <i>Distrust in Institutional Authority – Partiality</i>	64
3.6 <i>Distrust in Institutional Authority – Familiarity</i>	68
3.7 <i>Theoretical/Doxastic Authority: Pesbarim</i>	71
<i>Jon Elster</i>	
4. Notes On Authority and Compliance	75
4.1 <i>Introduction</i>	75
4.2 <i>Threats and promises</i>	76

4.3	<i>Wishes</i>	77
4.4	<i>Unwritten rules: norms and conventions</i>	79
4.5	<i>Written rules: laws and constitutions</i>	82
	<i>References</i>	87
 <i>Gloria Origgi</i>		
5.	What Does it Mean to Trust in Epistemic Authority?	89
	<i>References</i>	114
 <i>Pasquale Pasquino</i>		
6.	The Authority of Non-Elected Authorities: why do People obey Constitutional Courts?	117
6.1	<i>Fragestellung</i>	117
6.2	<i>Analytic of authority</i>	118
6.3	<i>Redefining the problem</i>	120
 <i>Dan Sperber</i>		
7.	The Guru Effect	129
7.1	<i>Believing and trusting</i>	129
7.2	<i>Trusting and interpreting</i>	132
7.3	<i>Authority and argumentation</i>	138
7.4	<i>Runaway trust in authority</i>	141
	<i>References</i>	145
 <i>Joseph Raz</i>		
8.	Legitimate Authority: An Introduction	147
8.1	<i>The service conception in brief</i>	148
8.2	<i>Some refinements and elaborations</i>	157
8.3	<i>The Qualification Objection</i>	165
8.4	<i>Consent</i>	170
8.5	<i>Collective identities</i>	172

## PREFACE

This volume brings together the papers presented at a conference held at the Fondazione Adriano Olivetti, March 19-20, 2004.

The topic of the conference – the concept of authority – lent itself particularly well to its multi-disciplinary approach. Different forms of authority play decisive roles, and ought to be examined not only in the political sphere but also in the areas of social relations more generally and education.

Organized collective life would be impossible without forms of authority, however legitimate. It is thus difficult to imagine constructing a shared knowledge without thinking critically about “authority,” even though we simultaneously need it to focus our criticism. Without authority, knowledge itself would become completely subjective, unstructured, incommunicable and unable to build upon itself.

From the cognitive sciences to political and legal philosophy, the subject discussed in this volume remains one of the most fascinating areas of research and analysis in the humanities. In the interest of providing the reader with a wide spectrum of disciplinary perspectives, we thought it important to begin with the study of the origin of the concept: the *auctoritas partum* which, together with *potestas* and *majestas*, capture in the language of the political institutions of ancient Rome what we now regard vaguely as “power.”

The goal of this volume is to stimulate thought and further study, in drawing from the contributions of scholars of diverse cultural and disciplinary origins, who are themselves recognized “authorities.”

*Pasquale Pasquino*





## 1. THE ROMAN NOTION OF AUCTORITAS

«Auctoritas, non veritas facit legem», reads a famous sentence in the Latin version of Thomas Hobbes' «Leviathan». Or, as Hobbes said elsewhere, «It is not wisdom but authority that makes a law». Hobbes is often quoted by Carl Schmitt, who takes this dictum as a basis for his theory that a decision of the sovereign originates from a normative void<sup>1</sup>. Whether Schmitt offers an adequate interpretation of Hobbes is, of course, not my question and, anyway, beyond my competence. I just want to make the point that an understanding of *auctoritas* as implying the idea of a top-down command and its forceful implementation, if necessary, is a far cry from the original Roman notion.

However, it is impossible to give a straightforward definition of the Roman term. Its implications have to be inferred from an embarrassing variety of usage in legal and literary texts<sup>2</sup>. Thus, the title of my paper should better read: «Roman notions of auctoritas», and not: «*The* Roman notion of auctoritas».

I should state from the outset that my discussion is an exercise in the history of social and political concepts

<sup>1</sup> Compare Martin Rhonheimer, «Auctoritas non veritas facit legem». Thomas Hobbes, Carl Schmitt und die Idee des Verfassungsstaates, *Archiv für Rechts- und Sozialphilosophie* 86, 2000, 484-498.

<sup>2</sup> Compare André Magdelain, De l'«auctoritas patrum» à l'«auctoritas senatus», in: idem, *Jus, Imperium, Auctoritas. Études de droit romain*, Paris 1990, 385-403.

(«Begriffsgeschichte»)<sup>3</sup>. It thus seeks to examine the usages of the very term *auctoritas* and to explain its political and social connotations; it is not an attempt to define a universally applicable ideal-type of «authority» and then to ask to which social and political phenomena in the Roman world it might properly be applied.

In the 1920s and 1930s, German classical philologists in particular understood *auctoritas* – in connection with such terms as *dignitas*, honor, *gloria*, *gravitas*, *fides*, *pietas*, *iustitia* and *mos maiorum* – as the core of an ensemble of so-called Roman virtues that allegedly made up the peculiar national spirit of the Romans<sup>4</sup>. A seminal article on *auctoritas* by Richard Heinze was later republished in a volume of Heinze's collected essays with the title, «Vom Geist des Römertums»<sup>5</sup>. Heinze pointed out that

<sup>3</sup> That means the approach practised in Otto Brunner / Werner Conze / Reinhart Koselleck (eds.), *Geschichtliche Grundbegriffe*, 8 vls., Stuttgart 1972-1997; compare Horst Rabe, «Autorität», *ibid.*, vol. I (1972), 382-406.

<sup>4</sup> Compare the articles collected in Hans Oppermann (ed.), *Römertum. Ausgewählte Aufsätze und Arbeiten aus den Jahren 1921 bis 1961*, Darmstadt 1962; *idem* (ed.), *Römische Wertbegriffe*, Darmstadt 1967. On Oppermann and his ideological stance in the Nazi period compare Jürgen Malitz, *Römertum im "Dritten Reich": Hans Oppermann*, in: *Imperium Romanum. Studien zu Geschichte und Rezeption. Festschrift für Karl Christ zum 75. Geburtstag*, Stuttgart 1998, 519-543. – The Italian equivalent was the cult of *romanità* in the fascist era which included the praise of a new *impero* allegedly based on the Augustan model; its manifestations include the "Mostra Augustea della Romanità" and the reconstruction of the Augustus Mausoleum on occasion of the 2000<sup>th</sup> anniversary of Augustus' birthday in 1937. Compare Mariella Cagnetta, *Il mito di Augusto e la "rivoluzione" fascista*, *Quaderni di Storia* 3, 1976, 139-181; Friedemann Scriba, *Augustus im Schwarzhemd? Die "Mostra Augustea della Romanità" in Rom 1937/38*, Frankfurt am Main 1995; and various articles (in Italian) in: Beat Näf (ed.), *Antike und Altertumswissenschaft in der Zeit von Faschismus und Nationalsozialismus*, Mandelbachtal 2001.

<sup>5</sup> Richard Heinze, *Auctoritas*, *Hermes* 60, 1925, 348-366, reprinted in: *idem*, *Vom Geist des Römertums* (1938), 4<sup>th</sup> ed., Darmstadt 1972, 43-58. Inspired by Heinze are works like Joseph C. Plümpe, *Wesen und Wirkung der auctoritas*

there was no Greek equivalent that could properly render the Roman term *auctoritas*<sup>6</sup>. This stress on Roman «values» was partly due to a yearning for a strong state based more on political leadership and national unity than on a constitutional system, as was the case with the Weimar Republic<sup>7</sup>. But the special interest in *auctoritas* was also stimulated by the contemporary discovery that the first Roman emperor, Augustus, had described his position with this very term; I shall come back to this point later.

It seems probable that *auctoritas* originated in the sphere of private law, and is derived from *augere*, to augment, in the sense that the expressed will of certain categories of persons needed an approbation by their superiors in order to gain a legal quality. *Auctoritas patris* designated the consent of a *pater familias* to the marriage of his daughter<sup>8</sup>. *Auctoritas tutoris* meant the guardian's affirmation of a ward's act; only in this way did it acquire legal validity<sup>9</sup>. And the seller of a certain good had to take responsibility (*auctoritas*) that he was its legal owner<sup>10</sup>.

In the public sphere, *auctoritas* is primarily associated with the role of the Roman senate. There are various technical meanings, as well as more general ones. *Patrum auctoritas* depicted the patrician senators' ratification of the decisions by the popu-

maiorum bei Cicero, Dissertation Münster 1932; Fritz Fürst, Die Bedeutung der auctoritas im privaten und öffentlichen Leben der römischen Republik, Dissertation Marburg 1934.

<sup>6</sup> Heinze, Auctoritas, in: Vom Geist des Römertums, 56.

<sup>7</sup> Heinze, Von der Ursache der Größe Roms (1921), in: Vom Geist des Römertums, 9-27. Compare Alessandro Perutelli, Richard Heinze e i Wertbegriffe, Quaderni di storia 6, 1977, 51-66.

<sup>8</sup> Compare Max Kaser, Das römische Privatrecht, vol. I, München 2<sup>nd</sup> ed. 1971, 76.

<sup>9</sup> Compare Kaser, Das römische Privatrecht, vol. I, 87.

<sup>10</sup> Compare Kaser, Das römische Privatrecht, vol. I, 132.

lar assembly concerning legislation and elections of magistrates; only thus did the assembly's votes become legally binding<sup>11</sup>. The rule applied only to the older type of the popular assembly, the *comitia centuriata* (and the archaic *comitia curiata*), and not to the assemblies of the Roman plebs<sup>12</sup>. The ratification was performed only by the patrician senators, even at the time when the senate was already composed of plebeian senators as well<sup>13</sup>. Starting in 339 B.C., the assent was given in advance<sup>14</sup> and thus did no longer imply an effective control. However, we do not really know its original function; whether it had been understood as a possible check on the content of laws or just an approbation of correct procedure in accordance with the rituals of sacral law<sup>15</sup>; and there is no evidence that the assent was denied in an actual case<sup>16</sup>. That *patrum auctoritas* remained a privilege of patrician senators is one of many features of the development of the Roman political system that made certain rules obsolete in any practical sense without formally abolishing them<sup>17</sup>. (In this respect, the parallel with the

<sup>11</sup> Cicero, *De re publica* 2, 56.

<sup>12</sup> Digesta (Pomponius) 1, 2, 2, 12; Gaius, *Institutiones* 1, 3.

<sup>13</sup> It has often been assumed that since the middle republic this right of ratification was transferred to the senate as a whole (compare for example Pierre Willems, *Le sénat de la république romaine*, vol. II, Louvain 1883, 38ff.; Vincenzo Mannino, *L'auctoritas patrum*, Milano 1979) but Cicero, *De domo sua* 38 is decisive on the point that it remained exclusively with the patrician senators.

<sup>14</sup> The law of 339 applied to legislation; Livius 8, 12, 15; the same procedure was extended to elections by a later law, probably of the third century; the exact date is not known; Cicero, *Brutus* 55.

<sup>15</sup> For an interpretation in the latter sense compare Theodor Mommsen, *Der Patriciersenat der Republik*, in: idem, *Römische Forschungen* vol. I, Berlin 1864, 243f.; Adalberto Giovannini, *Auctoritas patrum*, *Museum Helveticum* 42, 1985, 28-36.

<sup>16</sup> Theodor Mommsen, *Römisches Staatsrecht* (1871-1888), reprinted Graz 1955, vol. III/2, 1041 with n. 1.

<sup>17</sup> Compare Livius 1, 17, 9 for the survival of the procedure in Augustan times.

English constitution is obvious; consider in particular the royal assent to acts of Parliament which in theory is still necessary, even though such assent has not been refused since 1707).

According to Theodor Mommsen, *patrum auctoritas* can be seen in the light of *auctoritas tutoris*; the people is considered as an assembly of minors who cannot legally act without the consent of the fathers<sup>18</sup>. But the political function would probably have been aimed more at controlling the magistrates, who might initiate legislation, than controlling the people, who passed almost any law the magistrates proposed. Anyway, it is difficult, if not impossible, to derive the further usage of *auctoritas* from this allegedly primary meaning.

*Auctoritas patrum* as a privilege of the patrician members is to be distinguished from the *auctoritas* of the senate as a whole. In the later republic, *auctoritas senatus* had different meanings. It could be used alternately with *senatus consultum*, the senate's formal decree<sup>19</sup>. In a technical sense, it designated a resolution of the senate which was passed and even recorded in the journal of the senate, but remained invalid because it was vetoed by a tribune of the people or because of some procedural irregularity<sup>20</sup>. Under certain circumstances, referring to *auctoritas senatus* in this sense might imply an exhortation to magistrates and citizens to comply nevertheless with the expressed will of the senate and to trust in this body's backing in the case of ensuing conflicts<sup>21</sup>.

That something was done *ex auctoritate senatus* could mean, on the one hand, that the senate supported a particular step, for example that magistrates initiated a law to be passed

<sup>18</sup> Mommsen, *Römisches Staatsrecht*, vol. III/2, 1038f.

<sup>19</sup> For example, Cicero, *Epistulae ad Atticum* 1, 16, 2.

<sup>20</sup> Cicero, *Epistulae ad familiares* 1, 2, 4; 8, 8, 4-8; Cassius Dio 55, 3, 5; compare Mommsen, *Römisches Staatsrecht*, vol. I, 281f.; vol. III/2, 997f.

<sup>21</sup> For example, Livius 4, 57, 5.

by the popular assembly<sup>22</sup>; on the other hand it could simply mean a delegation of powers, for example to envoys who needed a certain room for negotiations<sup>23</sup>.

In most cases, however, *auctoritas senatus* referred to the role of the senate in a more general sense. It meant that the magistrates were supposed to present all issues of public importance to the senate and then follow the advice given to them by the senate<sup>24</sup>. It is impossible to define whether this advice was binding in a *de iure* or a *de facto* sense; that corresponds to the general difficulty in defining the relation between *ius* and *mos* in the sense of a distinct hierarchy of sources of law<sup>25</sup>. Or, as Mommsen put it: «auctoritas as a term which evades any strict definition corresponds to the senate's powerful position which is very effective on the one hand but cannot be defined in legal terms on the other hand. Auctoritas is more advice than command but it is advice that one cannot properly avoid»<sup>26</sup>.

The senate's central position was due to the fact that it consisted of members for life who were admitted to the body after having obtained one of the annual magistratures. They repre-

<sup>22</sup> For example, Livius 4, 49, 6; 9, 46, 7. Compare in general Jochen Bleicken, *Lex Publica. Gesetz und Recht in der römischen Republik*, Berlin 1975, 304ff.

<sup>23</sup> For example, Cicero, *Epistulae ad Atticum* 1, 19, 2.

<sup>24</sup> Compare [Cicero], *Rhetorica ad Herennium* 4, 47.

<sup>25</sup> Compare Dietmar Schanbacher, *Ius und mos: Zum Verhältnis rechtlicher und sozialer Normen*, in: Maximilian Braun et alii (eds.), *Moribus antiquis res stat Romana. Römische Werte und römische Literatur im 3. und 2. Jh. v. Chr.*, München 2000, 353-371.

<sup>26</sup> Mommsen, *Römisches Staatsrecht*, vol. III/2, 1034. – Mommsen's position was heavily criticized by Wolfgang Kunkel, *Magistratische Gewalt und Senats Herrschaft*, in: *Aufstieg und Niedergang der römischen Welt*, vol. I/4, Berlin 1972, 3-22, who, however, also could not solve the riddle of how to adequately define the senate's competence with respect to the magistrates.

sented the political and military élite of the republic and disposed of a social power that any individual office-holder could not ignore and they guaranteed the continuity of policy despite of the permanent change with respect to individual office-holders.

And the leading members were, as a rule, scions of families that could boast of having provided magistrates for generations. As an institution, the senate stood for the continuity of the political system over the centuries, from the very beginning. Its legitimacy derived from the origins of Rome, thus it could be understood as being grounded in the *auctoritas maiorum*. This authority of the ancestors was invoked in order to argue that a peculiar decision had to be taken in accordance with long-established practice<sup>27</sup>.

But the political system had developed over centuries and combined an extraordinary stability of its basic structures with an astonishing flexibility in adapting to new requirements<sup>28</sup>. It was based on undisputed primordial rules and institutions, new regulations based on laws passed at a given time (and sometimes repealed later), decisions of the senate, new practices introduced at one time and accepted after they had proved appropriate, and on precedents that had been created with decisions in disputed cases. The heritage of the ancestors, so Cicero once claimed, included their insight that new circumstances required the recourse to new measures<sup>29</sup>.

In such a system, one could refer neither to the intentions of a distinct generation of founding fathers and, of course, nor to a constitutional charter they had created<sup>30</sup>. There was no clear-

<sup>27</sup> Cicero, *In Verrem* 2, 1, 38; 2, 5, 85; *Pro Balbo* 31.

<sup>28</sup> Livius 4, 4, 1ff.

<sup>29</sup> Cicero, *De lege Manilia* 60.

<sup>30</sup> See Cicero, *De re publica* 2, 2 for the contrast between the great Greek lawgivers and the Roman development through centuries.

cut hierarchy with respect to rules that had originated in different times and diverse sources. This can be seen in a passage of an oration of Cicero. Here Cicero tries to define the fundamental features of the constitution. He mentions the sacral laws, the competence (*potestas*) of the magistrates, *senatus auctoritas*, the laws, *mos maiorum*, the courts and other elements, but he can only do this in form of an enumeration<sup>31</sup>. *Mos maiorum*, and accordingly *auctoritas maiorum*, were extremely flexible concepts that needed authoritative interpretation in peculiar instances<sup>32</sup>. The senate was the only institution that was or should be acknowledged as being able to offer such an exegesis of the tradition<sup>33</sup>. That would necessarily imply a certain amount of arbitrariness and fiction. That was also due to the fact that this tradition was understood as man-made and was not ascribed to a transcendental authority – and this seems indeed to be a Roman peculiarity<sup>34</sup>.

The somewhat fictitious character of this reference to tradition is also indicated by Cicero. In *De Legibus*, a tract which constituted a mixture of long-established rules and some programmatic demands for reforms<sup>35</sup>, he said he would formulate the set of rules in an archaic language in order to enhance the *auctoritas* of the rules he put down in a single text<sup>36</sup>. But his

<sup>31</sup> Cicero, *Pro Sestio* 98.

<sup>32</sup> Compare Cicero, *De legibus* 2, 40.

<sup>33</sup> Compare Cicero, *Pro Sestio* 140.

<sup>34</sup> Compare Ton Hol, Authority, Law and the Roman Experience, in: *Viva vox iuris Romani. Essays in Honour of Johannes Emil Spruit*, Amsterdam 2002, 39-49.

<sup>35</sup> Compare Gustav Adolf Lehmann, Politische Reformvorschläge in der Krise der späten römischen Republik. Cicero *De legibus* III und Sallusts Sendschreiben an Caesar, Meisenheim/Glan 1980; Elizabeth Rawson, The Interpretation of Cicero's *De legibus*, in: *Aufstieg und Niedergang der römischen Welt*, vol. I/4, Berlin 1973, 334-356; Andrew R. Dyck, *A Commentary on Cicero, De legibus*, Ann Arbor 2004.

<sup>36</sup> Cicero, *De legibus* 2, 18.



very attempt to write down a sort of constitutional charter demonstrates that in fact the senate was no longer the undisputed interpreter of the constitution. That could easily be shown in an analysis of the late Republic's constitutional disputes on which I cannot embark here.

That the senate's authority in a general sense should constitute the cornerstone of the political system is pointed out by Cicero, who often associated the senate's authority with its role as the institution that really governed the state and that should be regarded as the guardian of the constitution<sup>37</sup>. In *De re publica*, Cicero declares that a well-balanced constitution depends on the magistrates having enough *potestas*, the senate enough *auctoritas* and the people enough *libertas*<sup>38</sup>. (Cicero also contrasted the *auctoritas* of the senate and the *potestas* of the people<sup>39</sup>; *postestas* then stood for the institutionalized competence of the popular assemblies which otherwise could also be depicted as *maiestas*). Ideally, the magistrates should execute their formal competences in compliance with the senate's advice<sup>40</sup>, the people should follow the senate's lead. To submit themselves to the will of a body that represented the collective political wisdom of the Romans neither diminishes the role of the public officials nor detracts from the people's freedom<sup>41</sup>. That is why Cicero in his political orations would claim that disregarding the senate's authority meant endangering the people's liberty<sup>42</sup>.

In *De Legibus*, a fictitious dialogue between himself and his younger brother Quintus, Cicero presents Quintus' polemics

<sup>37</sup> Cicero, *Pro Sestio* 137: The senate as *custos rei publicae*.

<sup>38</sup> Cicero, *De re publica* 2, 57; compare 1, 69.

<sup>39</sup> Cicero, *De legibus* 3, 28.

<sup>40</sup> In this sense they were "in auctoritate senatus"; Mommsen, *Staatsrecht* III/2, 1034, n. 2.

<sup>41</sup> Cicero, *De legibus* 3, 25.

<sup>42</sup> Cicero, *De domo sua* 130; Cicero, *Philippica* 10, 23.

against the introduction of the secret ballot, which was in place in popular assemblies since the late second century B.C. and was praised as an expression of *libertas populi*<sup>43</sup>. Quintus argues that this procedure had destroyed the *auctoritas* of the ruling élite. Cicero replied that one could not abolish a symbol of political freedom, but should allow the citizens to pay respect to the authority of the leading citizens by voluntarily showing them their voting tablets<sup>44</sup>.

The tension between *potestas* and *auctoritas* does not only apply to the relationship between magistrates and senate but also to the performance of magistrates and other leading politicians. *Potestas* is the competence any incumbent of a public office has in his official capacity. A man's *auctoritas* can be seen as deriving from the public office (especially the consulship) that he holds<sup>45</sup>, but also as a personal quality that he has to acquire and maintain, and which under certain circumstances can be more effective than the execution of *potestas*. In this sense, the authority of a consul does not only emanate from his office, but also depends on his personal conduct and the public trust it creates<sup>46</sup>. Roman magistrates lacked an effective enforcement agency, a sort of police apparatus; thus in situations of public disturbances it was a matter of their personal reputation and rhetorical skills whether they were able to

<sup>43</sup> Compare Bruce A. Marshall, *Libertas populi*. The introduction of secret ballot at Rome and its depiction on coinage, *Antichthon* 31, 1997, 54-72; Ursula Hall, *Species libertatis: Voting Procedure in the Late Roman Republic*, in: Michel Austin et alii (eds.), *Modus Operandi. Essays in Honour of Geoffrey Rickman*, London 1998, 15-30.

<sup>44</sup> Cicero, *De legibus* 3, 34-39. – Montesquieu (*De l'Esprit des Lois*, Book II, chapter 2) shared Quintus' position. – The "voluntarily" open voting reminds of the practice in the German Democratic Republic though it was there (and elsewhere) surely not inspired by recourse to Roman sources.

<sup>45</sup> Cicero, *De lege agraria* 1, 24; *Pro Rabirio Perduellionis* 22.

<sup>46</sup> Cicero, *De lege agraria* 1, 27; *Epistulae ad Atticum* 1, 16, 6.

enforce their will<sup>47</sup>. Magistrates who were successful in quelling riots by their appearance on the spot were praised for their *auctoritas*<sup>48</sup>. In 138 B.C. a consul addressed a crowd that demanded measures against an increase in corn prices by declaring that he understood the public good better than they did. The crowd fell silent «paying more regard to his authority [auctoritas] than to their own nutriment»<sup>49</sup>. In 61 B.C. a consul-designate, who was technically a private person before entering his office, was able to make a crowd comply with a decision of the senate; Cicero stressed that this person acted in virtue of his *auctoritas* and not a magistrate's *potestas*<sup>50</sup>. The same holds true for great generals. Pompeius or Caesar enjoyed the loyalty of their troops not only due to their formal competence as bearers of a military *imperium* and their military ability, but because of a personal authority that was of much greater importance, at least in critical situations<sup>51</sup>.

The standing of a senator within the ranks of the senate could also be a question of his personal authority. Though all members had one vote and the decisions were taken by the majority of votes, the senate was ordered hierarchically. The senators were classified according to the magistrature they had last occupied; the former incumbents of the highest office, the ex-consuls, were asked to give their opinion first, and thus could considerably influence the process of decision-making. But sometimes members of the lower ranks might attain an importance that was higher than their status, especially when the top

<sup>47</sup> Compare Wilfried Nippel, *Public Order in Ancient Rome*, Cambridge 1995.

<sup>48</sup> Cicero, *Pro Sestio* 62; Valerius Maximus 7, 5, 2.

<sup>49</sup> Valerius Maximus 3, 7, 3.

<sup>50</sup> Cicero, *In Pisonem* 8.

<sup>51</sup> Cicero, *De lege Manilia* 28; *Epistulae ad Atticum* 7, 7, 6. Compare Cornelius Nepos, *Chabrias* 4, 1.

ranks shrank from committing themselves in a controversial question. Thus Cicero in some cases ascribes a *consularis auctoritas* to members who had not yet reached the ranks of the ex-consuls, but made an impact on decisions as if they had already done so<sup>52</sup>.

In Cicero's writings one can also find references to the *auctoritas principum*<sup>53</sup>. Those *principes* were understood as the leading citizens who formed the senate's inner circle, especially the ex-consuls ( though probably not all of them)<sup>54</sup>. But Cicero's insistence on their importance also indicates his perception that during the crisis of the late republic, the senate as a body was often divided over questions of fundamental importance and thus was no longer able to exercise the authority it was supposed to<sup>55</sup>.

The increasing use of the popular assemblies to achieve decisions against the will of the senate entailed that the rhetorical abilities of politicians in addressing crowds would become a new source of authority and thus undermine the traditional basis of political influence<sup>56</sup>. Some one hundred and fifty years later, Tacitus, looking back to crisis of the late republic, spoke of orators who as private persons had been able to influence political decisions because of their individual *auctoritas*<sup>57</sup>.

In other spheres of social and political life authority was a quality that was ascribed to leading experts in a certain disci-

<sup>52</sup> Compare Frank X. Ryan, The Meaning of "consularis auctoritas" in Cicero, *Mnemosyne* 47, 1994, 681-685.

<sup>53</sup> Cicero, *De re publica* 2, 56; compare *De legibus* 2, 30.

<sup>54</sup> Compare Matthias Gelzer, Die Nobilität der römischen Republik (1912), reprinted in: idem, *Kleine Schriften*, vol. I, Wiesbaden 1962, 53ff.; Alfred Gwosdz, Der Begriff des römischen princeps, Dissertation Breslau 1933, 24ff.

<sup>55</sup> For example, Cicero, *Epistulae ad Atticum* 1, 18, 3.

<sup>56</sup> Flattering the popular assembly could imply speaking of the *auctoritas populi Romani* in opposition to the opinions of *principes* as Cicero himself had done in 66 B.C.; *De lege Manilia* 64.

<sup>57</sup> Tacitus, *Dialogus de oratoribus* 36.

pline in relation to others of a lesser reputation or with regard to laymen. Cicero acknowledged Plato's overarching importance in philosophy by claiming that he would follow Plato's *auctoritas* even if Plato gave no reasons for his opinion<sup>58</sup>. Or, Quintilianus said that Cicero's statements in court displayed such an *auctoritas* that one would blush to disagree<sup>59</sup>. In philosophical and rhetorical contexts, however, there are also statements that, in case of a collision between *auctoritas* and rationality, reason should prevail<sup>60</sup>.

The idea that the recognized specialist is not expected to base his opinion on arguments which other people would not understand anyway is particularly relevant to the role of the Roman jurists. In Republican times, the jurists were experts who acted not in an official capacity but as private persons, «Honoratioren» in the sense of Max Weber. Their authority was based on their giving legal advice – free of charge and only oriented to the objective legal situation – to any party who asked them, as well as to magistrates and judges<sup>61</sup>. They gave opinions (*responsa*) on matters of law, not matters of fact and, as a rule, they did this without giving grounds for their position<sup>62</sup>. But judges, who were themselves laymen, based their decisions with respect to legally-disputed points on those statements, though they were not strictly bound to do so. A problem arose, of course, if opposite statements by two jurists were presented.

<sup>58</sup> Cicero, *Tusculanae Disputationes* 1, 49; compare *De officiis* 2, 10 on the authority of philosophers.

<sup>59</sup> Quintilianus, *Institutio oratoria* 10, 1, 111.

<sup>60</sup> [Cicero], *Rhetorica ad Herennium* 4, 4; Cicero, *De natura deorum* 1, 10; *Academica* 2, 60; *De legibus* 1, 36f.

<sup>61</sup> Cicero, *De oratore* 1, 198 and 239; *Pro Murena* 9.

<sup>62</sup> Seneca, *Epistulae ad Lucilium* 94, 27; compare Wolfgang Kunkel, *Herkunft und soziale Stellung der römischen Juristen*, Weimar 1952, 282, n. 597. – Max Weber, *Wirtschaft und Gesellschaft*, 5<sup>th</sup> ed., Tübingen 1976, drew the comparison with the “fatwa” of Islamic religious authorities.

The judge would then have to decide who was the expert with the higher reputation<sup>63</sup>. At the same time, a judgment grounded in the *auctoritas* of a well-known jurist might become a precedent for future decisions<sup>64</sup>, especially since *responsa* were no longer given orally but were submitted in writing<sup>65</sup>. In the jury courts that decided primarily on political crimes, the outcome was ascribed to the respective *auctoritas* of the speakers who acted as counsel for the prosecution and the defence, and also to the *auctoritas* of witnesses on both sides<sup>66</sup>.

*Responsa* were also issued by various bodies of priests – *pontifices*, *augures*, *haruspices* – that were responsible for declaring that a public act was performed in accordance with sacral law or, on the contrary, that it was void and should be repeated. They addressed their advice to the senate (or the magistrates), and the senate, as a rule, followed the *auctoritas* of these bodies of specialists<sup>67</sup> in taking its decision. This procedure did not diminish the position of senate and officials since those experts were themselves members of the ruling élite<sup>68</sup> (though not all priests were senators)<sup>69</sup> and since they based their advice on citing precedents that were recorded in the files of their respective boards<sup>70</sup>.

<sup>63</sup> Cicero, *Pro Caecina* 69.

<sup>64</sup> Cicero, *Topica* 28; Digesta (Papinianus) 1, 1, 7.

<sup>65</sup> Compare Detlef Liebs, *Römische Rechtsgutachten und "Responsorum libri"*, in: Gregor Vogt-Spira (ed.), *Strukturen der Mündlichkeit in der römischen Literatur*, Tübingen 1990, 83-94.

<sup>66</sup> Cicero, *Pro Murena* 58f.

<sup>67</sup> Cicero, *De haruspicio responsum* 14; *De divinatione* 2, 70; *De legibus* 2, 31.

<sup>68</sup> Cicero, *De domo sua* 1f.

<sup>69</sup> Cicero, *Epistulae ad Atticum* 4, 2, 4.

<sup>70</sup> Cicero, *De domo sua* 33 and 136f.; compare in general Georg Wissowa, *Religion und Kultus der Römer*, 2<sup>nd</sup> ed. 1912, reprinted München 1971, 513-515; Jerzy Linderski, *The Augural Law*, in: *Aufstieg und Niedergang der Römischen Welt*, vol. II/16, 3, Berlin 1986, 2146-2312.

Some exceptions notwithstanding, *auctoritas* in Roman Republican usage denoted a socially legitimized power that did not amount to binding commands and did not rely on means of enforcement. It presumed a likely obedience to social superiors (or acknowledged experts) in a society that presupposed a hierarchical order in all its segments, an obedience that emanated from the bottom-up.

The implications of *auctoritas* changed with the establishment of a new type of monarchy by Augustus, from 27 B.C. onwards. Octavian, the great nephew and (by testament) adoptive son of Caesar, had started with an illegal command that was later legalized by a decree of the senate<sup>71</sup>. Since 43 B.C., his constitutional position had been based on an Enabling Law (for the triumvirate Octavian, Antonius and Lepidus) that was later prolonged but then expired<sup>72</sup> in 32 B.C. Thereafter his control of the state, which surpassed the competence of his annual consulship, was based on the constitutional puzzle of a *consensus universorum*<sup>73</sup> which had been expressed by the oath of allegiance that the Italians and Western provincials had sworn on the eve of the war against Antonius and Cleopatra<sup>74</sup>. In January of the year 27, he declared that, after having restored

<sup>71</sup> In this sense Cicero pleaded in late 44 B.C. that the senate should give *auctoritas* to Octavian lest his then fight against Antonius should no longer be based on his private initiative; Cicero, *Philippica* 3, 5.

<sup>72</sup> For the constitutional niceties compare Klaus Bringmann, Das zweite Triumvirat. Bemerkungen zu Mommsens Lehre von der außerordentlichen konstituierenden Gewalt, in: Alte Geschichte und Wissenschaftsgeschichte. Festschrift Karl Christ, Darmstadt 1988, 22-38; Jochen Bleicken, Zwischen Republik und Prinzipat. Zum Charakter des Zweiten Triumvirats, Göttingen 1990.

<sup>73</sup> Res Gestae Divi Augusti 34, 1; compare Karl-Ernst Petzold, Die Bedeutung des Jahres 32 für die Entstehung des Prinzipats, *Historia* 18, 1969, 334-351.

<sup>74</sup> Res Gestae Divi Augusti 25, 2.

the peace and unity of the Roman people, he would give up all power except his post as a consul within the year. In return the senate asked him to keep in control over the troops stationed in provinces which were not yet fully pacified and it conferred a corresponding command upon him. And only then did he receive, by a resolution of the senate, the honorary title of Augustus. This title (and the additional honours that acknowledged his virtues<sup>75</sup>) gave him a sacral nimbus; its connotations and a possible allusion to *auctoritas* are, however, far from clear<sup>76</sup>.

A key document for the new official ideology is the *Res Gestae Divi Augusti*. Old Augustus had ordered that this record of his deeds and achievements be publicly displayed as an inscription on his Mausoleum at Rome. The original is lost; the text has been known since 1555 from a bilingual copy – in Latin and Greek – which had been discovered at Ancyra (now the Turkish capital). The crucial passage in which Augustus described his constitutional position after the so-called restoration of the republic in 27 B.C. had survived only in the Greek version. The Greek term *axioma* was translated by Mommsen as *dignitas*<sup>77</sup>, which corresponded with Mommsen's theory that the *principate* should be considered like a republican magistrature<sup>78</sup>. The hierarchy of magistrates corresponded to different degrees of dignity. In 1914 and 1924 fragments of another copy which had only the Latin text were found in Antiochia, another city in modern Anatolia. It turned out that the crucial term must

<sup>75</sup> *Res Gestae Divi Augusti* 34, 2.

<sup>76</sup> Suetonius, *Augustus* 7, 2; Ovid, *Fasti* 1, 607ff.; Cassius Dio 53, 16, 8; compare Dietmar Kienast, *Augustus. Prinzeps und Monarch*, Darmstadt 1982, 80, n. 47; Edwin S. Ramage, *The Nature and Purpose of Augustus "Res Gestae"*, Stuttgart 1987, 100ff.

<sup>77</sup> In his edition of the inscription, Berlin 1865; 2<sup>nd</sup> ed. 1883.

<sup>78</sup> Mommsen, *Staatsrecht* II/2, 749ff.



read *auctoritas*<sup>79</sup>. This detection fostered the boom of scholarly works on this concept in the 1920s and 1930s which I had mentioned earlier.

The key sentence now reads: «After this time [that is, the settlement of 27 B.C.] I excelled all in authority [*auctoritas*], but I possessed no more power [*potestas*] than the others who were my colleagues in each magistracy»<sup>80</sup>.

Two sentences earlier, Augustus had said that he had «transferred the republic from my power [*potestas*] to the dominion of the senate and people of Rome»<sup>81</sup>. We see that, as in Republican times, *auctoritas* is contrasted with *potestas*<sup>82</sup>, the competence of magistrates; it is the authority of the one and only *princeps* (as Augustus styled himself<sup>83</sup>) and not of the senate or of a smaller circle of leading senators. Augustus wanted to stress that he no longer had any extra-constitutional power in comparison to the other magistrates<sup>84</sup> (and contrary to the *mos maiorum*<sup>85</sup>) and that his dominant position emanated from the exercise and acceptance of his *auctoritas* in a traditional sense. This was part of his strategy to present the new system as a restoration of the republic<sup>86</sup> and to veil his position and leave it

<sup>79</sup> Compare Ernst Schoenbauer, *Wesen und Ursprung des römischen Prinzipats*, *Zeitschrift für Rechtsgeschichte. Romanistische Abteilung* 47, 1927, 264-318.

<sup>80</sup> *Res Gestae Divi Augusti* 34, 3.

<sup>81</sup> *Res Gestae Divi Augusti* 34, 1.

<sup>82</sup> In 2 B.C., Augustus received the title *pater patriae*, father of the fatherland. That he mentions this title at the very end of his *Res Gestae* underlines that he considered it as the highest honour that had been conferred on him. A Roman father had *auctoritas* but also *potestas* in a legal sense over the members of his family.

<sup>83</sup> *Res Gestae Divi Augusti* 13; 30; 32, 3; compare Tacitus, *Annales* 1, 9, 5.

<sup>84</sup> That is why he did not accept the offer of a dictatorship in 22 B.C; *Res Gestae Divi Augusti* 5, 1.

<sup>85</sup> *Res Gestae Divi Augusti* 6, 1.

<sup>86</sup> Compare Velleius Paterculus 2, 89, 3f. (with the rather strange formulation that Augustus restored the *auctoritas* of the courts and the *maiestas* of the

to others to interpret it<sup>87</sup>. However, the republic had not known a monopoly of *auctoritas* in the political sphere<sup>88</sup>. The domination of one man, who took his decisions behind closed doors and with the help of a kitchen cabinet, gives no room for *auctoritas* and *consilium*, as Cicero had remarked in 44 with respect to Caesar<sup>89</sup>.

In the case of Augustus, the idea of a voluntary acceptance of *auctoritas* was reduced to a fiction, albeit a pleasant one<sup>90</sup>, in the context of the new political system that he had declared as the best possible government<sup>91</sup>. The emperor was in command over the military and over newly created paramilitary forces, he disposed of unprecedented competences (as the *tribunicia potestas* for life since 23 B.C.), he was *pontifex maximus* (since 12 B.C.) and member of other priestly colleges, he controlled the elections of magistrates and the access to the senate, he was the initiator of new laws, he disposed of immense financial means to exercise patronage over soldiers and urban masses alike. The emperors (at least Augustus and his successor Tiberius) still used to ask the senate for advice and undertook certain measures *ex auctoritate senatus*<sup>92</sup> but the senators must

senate – *maiestas* had sometimes been associated with the Roman people, but not with the senate).

<sup>87</sup> Compare Wilhelm Weber, *Princeps. Studien zur Geschichte des Augustus*, Stuttgart 1936, 221.

<sup>88</sup> In a letter to Cicero, Brutus wrote in May 43, that Cicero had now acquired *auctoritas* to the highest degree that was tolerable in a free republic; Cicero, *Epistulae ad Brutum* 1, 4a (12), 2.

<sup>89</sup> Cicero, *De officiis* 2, 2.

<sup>90</sup> The formulation “was neither wholly true, nor wholly false, but it was true enough to be believed by those who had no wish to challenge it”, Frank E. Adcock, A Note on *Res Gestae Divi Augusti* 34, 3, *Journal of Roman Studies* 4, 1952, 12.

<sup>91</sup> Suetonius, *Augustus* 28, 2.

<sup>92</sup> *Res Gestae Divi Augusti* 20, 4; Frontinus, *De aquis urbis Romae* 104.

have felt highly uncomfortable if, in matters of great importance, they had not been unequivocally instructed as to the specific advice that the emperor wanted to hear<sup>93</sup>. Since everybody looked attentively to the emperor's instructions<sup>94</sup>, maintaining the republican façade depended on the ruler's self-restraint.

It is sometimes claimed in the scholarly literature that the Augustan *auctoritas* constituted a charismatic authority in the sense of Max Weber<sup>95</sup>. But this identification is only partly convincing; it was not assumed that, due to supranatural qualities, he was the saviour one needed in a fundamental crisis<sup>96</sup>; rather, the assignment of such qualities followed only after the crisis had been overcome, at first with military means and then by a constitutional settlement which claimed a return to normality<sup>97</sup>.

The sources do not enable us to trace the further development of the notion of *auctoritas* in the post-Augustan *principate*. The assumption of some scholars that it was transformed into a sort of legal definition of the emperor's position<sup>98</sup> is not supported by convincing evidence. We know the Enabling Law that was passed at the accession to the throne<sup>99</sup>. It conferred a

<sup>93</sup> See, for example, Tacitus, *Annales* 1, 74, 5; 2, 35.

<sup>94</sup> Tacitus, *Annales* 1, 4, 1.

<sup>95</sup> See Fritz Schulz, *Prinzipien des römischen Rechts*, München 1934, 123f.

<sup>96</sup> On Weber's concept of charismatic leadership compare Wilfried Nippel, *Charisma und Herrschaft*, in: idem (ed.), *Virtuosen der Macht. Herrschaft und Charisma von Perikles bis Mao*, München 2000, 7-22 and 281-289.

<sup>97</sup> Admittedly, the case of Augustus is complicated due to the fact that Caesar had been officially deified in 42 B.C., henceforth his adoptive son could claim to be *divi filius*.

<sup>98</sup> Anton von Premerstein, *Vom Werden und Wesen des Prinzipats*, München 1937; André Magdelain, *Auctoritas principis*, Paris 1947; compare for criticism Wolfgang Kunkel, *Review of Magdelain*, *Zeitschrift für Rechtsgeschichte. Romanistische Abteilung* 70, 1953, 437-445; Jean Béranger, *Recherches sur l'aspect idéologique du principat*, Basel 1953, 116ff.

<sup>99</sup> An inscription, detected by Cola di Rienzo in 1347, gives the text of the law passed by the popular assembly at the accession of Vespasian in 70 A.D.,

bundle of competences upon the emperor by popular legislation. *Auctoritas* has no place in this legal construction<sup>100</sup>. In later times it was understood that the emperor's will had acquired the force of law: «quod principi placuit, legis habet vigorem», according to the formula recorded in the «Digest»<sup>101</sup>.

All in all, it rather seems that *auctoritas* has lost its emphatic connotation. The often used formula, *ex auctoritae principis*, simply meant that a person or a body acted with a mandate of the emperor, but did not depict the source of legitimation of the emperor himself.

A special form of delegation was the *ius respondendi* that Augustus created. A select number of jurists was now entitled to deliver opinions (*responsa*) *ex auctoritate principis*<sup>102</sup>. Probably, it simply meant «with permission of the Emperor» and did not imply that the Emperor's authority in an emphatic sense was

the *lex de imperio Vespasiani* (in: Michael H. Crawford, ed., *Roman Statutes*, London 1996, vol. I, 549ff.); it refers to similar regulations in favour of former emperors since Augustus; however, it is not clear when such an enabling law was passed for the first time.

<sup>100</sup> *Auctoritas* is mentioned in the *lex de imperio Vespasiani* only in the formulation that the senate could be convened by an order (*ex auctoritate*) of the emperor.

<sup>101</sup> *Digesta* (Ulpianus) 1, 4, 1 pr. The original meaning of the so-called discretionary clause of the *lex de imperio Vespasiani* that the emperor could do anything he thought best for the state is disputed since taken literally it would undermine the whole construction; perhaps it constituted only a sort of emergency power. – The ambivalence of a construction that seemed to confer unlimited power, yet by popular legislation is underlined by the reception in later times; on the one hand it could be seen as a legitimation for absolutism, on the other hand as an expression of popular sovereignty (as Cola di Rienzo wanted to read it).

<sup>102</sup> The criteria for the selection of these privileged jurists are disputed; compare for divergent interpretations Wolfgang Kunkel, *Das Wesen des ius respondendi*, *Zeitschrift für Rechtsgeschichte. Romanistische Abteilung* 66, 1948, 423-457; Franz Wieacker, *Augustus und die Juristen seiner Zeit*, *Tijdschrift voor Rechtsgeschiedenis* 37, 1969, 331-349.

applied to the jurists' opinion. In any case, the new procedure indicates that the social authority of the jurist was no longer considered as a sufficient basis for the interpretation and development of the law. Augustus was apparently disturbed that opposing opinions of jurists shuttered legal security and thus is said to have made this decision out of concern about the authority of the law (*auctoritas iuris*)<sup>103</sup>. This might have led to the jurists' opinions having a major importance in the development of the law<sup>104</sup>. But, at least in the second century A.D., such a trend was stopped; the importance of the *responsa* as sources of law began to decrease because of the numbers of imperial laws, decisions of imperial courts and the instructions the emperor gave to his judges in individual cases, which then became precedents for future ones. Finally, the authority of jurists was stripped of any social dimension by a law of 426 A.D., which ruled that a judge could only consult the writings of five named jurists of the second and early third century, and that in case of disagreement, the majority of quotable authors should be decisive<sup>105</sup>.

In the Roman Empire, the idea of *auctoritas* was also taken over by the church<sup>106</sup>. We can only follow this development with the beginning of a Christian literature in Latin from the late

<sup>103</sup> Digesta (Pomponius) 1, 2, 2, 49.

<sup>104</sup> According to a rule issued by the Emperor Hadrian *responsa* had the force of law if the opinions of jurists agreed; otherwise the judge was free in his decision; Gaius, *Institutiones* 1, 7; however, this rule is far from clear; compare Franz Wieacker, *Respondere ex auctoritate principis*, in: Satura Roberto Feenstra, Fribourg (Suisse) 1985, 71-94.

<sup>105</sup> Codex Theodosianus 1, 4, 3.

<sup>106</sup> Compare Hendrik Wagenvoort / Gerd Tellenbach, "Auctoritas", in: *Reallexikon für Antike und Christentum*, vol. 1 (1950), 902-909; Karl-Heinrich Lütcke, *Auctoritas bei Augustin. Mit einer Einleitung zur römischen Vorgeschichte des Begriffs*, Stuttgart 1968; Thomas Gerhard Ring, *Auctoritas bei Tertullian, Cyprian und Ambrosius*, Würzburg 1975.

second-century onwards. Cyprianus, bishop of Carthage in the mid-third century, depicted the internal government of the church with categories of the Roman political tradition. He insisted on the sole decision-making power of the bishops, which is why he identified the *potestas* and *auctoritas* of a bishop. The bishop's *auctoritas* is an ingredient of the office and thus independent of the personal qualities of its incumbent. Cyprianus was fixed upon the internal stability of the church in view of the great crisis caused by persecutions that undermined ecclesiastical structures. In later times, the relationship between church and state became a point of issue. In the last decade of the fifth century, Pope Gelasius I protested against the emperor's interference with church matters by distinguishing between two powers – the spiritual authority (*auctoritas*) of the Roman See and the temporal power (*potestas*) of the Emperor. Though this opposition between *auctoritas* and *potestas* did not constitute a clear-cut theory in the case of Gelasius<sup>107</sup> it would become fundamental for the controversies about the relationship of church and state during the Middle Ages. The claim of *auctoritas* for the church was backed by invoking the *auctoritas* of God, Christ and of the Bible. And *auctoritas divina* could also be identified with *veritas*.

Thus it was a long and complicated path towards the identification of sovereign power and authority that Hobbes would later propagate. And, of course, neither Hobbes nor Carl Schmitt had the final word on this issue of authority.

<sup>107</sup> Compare Wilhelm Enßlin, *Auctoritas und Potestas. Die Zweigewaltenlehre des Papstes Gelasius I.*, *Historisches Jahrbuch* 74, 1955, 661-668.

## 2. POLITICAL THEOLOGY: THE AUTHORITY OF GOD

### 2.1 *Introduction*

There are two theses that are intimately related to the idea of authority. One is political theology. It is associated with Carl Schmitt. The second is moral theology. It is associated with Elizabeth Anscombe (though she never used the expression «moral theology»). Political theology is the claim that key notions of modern and secular political doctrines are unwittingly moored in theological and teleological world-views. In their secularized version, these notions ultimately make no sense and thus can be validated only from within the kind of theological framework from which they come. «Sovereignty» and «Authority» are paradigmatic cases of such key notions.

Moral theology makes a parallel claim. Key notions in modern moral doctrines are moored in a theological and teleological framework, and depend on it for their meaning. Considered from within a modern secular framework, these doctrines have lost their significance. «Obligation» and «duty» are paradigmatic examples of such notions, as they are anchored in the ancient idea of God the law-giver. Without God the law-giver, these notions make very little sense. Secular morality is like the famous explanation of what is wireless. You know what wire is. It is like a dog. And if you pull its tail in Jerusalem, it will bark in Rome. Now, wireless works in the same way, but without the dog. Morality without God is like wireless without the dog.

I hold a moderate version of political and moral theology. On my account, authority and sovereignty do have a content which stands independently of a religious or theological framework. Still, I see these notions as being in the grip of a theological picture of the world. To be in the grip of a picture is to unconsciously confuse a model of reality with reality itself. There are in fact two tiers to the picture of God. On the ground level, the idea of the theistic God and the authority of God is in the grip of the picture of God as the father or God as the King. But at the second tier, the idea of God the almighty creates a model which greatly intensifies the ideas of authority and sovereignty as models for earthly rulers and states.

So what I would like to do now is explore an idea of authority as it depicted by *a* religious picture (note the indefinite article). It is just a picture and not the picture. Precisely, it is a picture of God as the supreme decision-maker, which does not also depict Him as a deliberator. I shall call this the decisionist picture of God. In this picture, God's authority is based on His absolute Will, and is unhindered by any laws and rules, and in particular by any laws of morality. The decisionist picture of God can also be seen as a fascist picture of God. This is perhaps abusive but not inaccurate. «That there must be», in the language of the 18th-century jurist Blackstone, «a supreme, irresistible, absolute, and uncontrolled authority, in which the... right of sovereignty resides». It is this idea and ideal that I am interested in. Pompously put, I am interested in the genealogy of authority.

## *2.2 Who needs justification of authority?*

Anarchism in political theory has a function comparable to the null hypothesis in science. For political theory to justify authority, any authority, it should first provide cogent argu-



ments against the anarchist claim that there is no justification for any political authority at all.

Let me briefly state an anarchist argument against authority. A familiar idea, expressed in many different ways, is that you can do anything with bayonets except sit on them. Rule by the use of brute force («bayonets») is ultimately unstable (Rousseau argued that even the strongest man has to sleep and then he is vulnerable), hence the need for legitimacy. A legitimate ruler is accepted by its subjects and is thus free from having to constantly oversee them. Rulers' pursuit of legitimacy is a manipulative move to reduce the costs of using force; it is based on indoctrination rather than persuasion. Legitimacy is the use of force by other means. Legitimacy by indoctrination produces the belief that the state has authority. But this is not a justification, in the sense of demonstrating that this belief is true.

The anarchist is willing to accept expert authority. Expert advice, however, is different from authority based on command.

The anarchist argues that authority is a matter of justification and that there is no justification for political authority, except that your own reasons for acting ultimately coincide with the reasons given by the authority in telling you what to do. But such justification has the status of expert advice, rather than command by political authority. Listening to the anarchist argument, one may be tempted to adopt Ramsey's philosophical strategy: if you see a philosophical dispute that goes on for too long without being resolved, see what the opposing sides have in common and deny that.

The decisionist seems to follow Ramsey's strategy. He detects that both the anarchist and the believer in authority think that the issue between them is the issue of justification – the justification of power. The anarchist denies that there is such justification and the believer in authority believes that there is such justification. The decisionist denies the need for and the impor-

tance of justification altogether, in the sense of giving reasons for the use of power. What really matters to the decisionist is the style in which the power is used, rather than the reasons for its use. By style, he means for example the ruler's being resolved and decisive. Justification by style rather than by content can be pretty absurd, as illustrated by the cutting philosophical joke by the scholar who summarized Heidegger's lecture, saying «I am resolved. I just don't know what on». There is a whole style of square jawed politicians who try to assert their authority by being decisive about nothing in particular. But what I have in mind is something far more sinister. Something casts its shadow on the decisionist picture. It is the decisive leader that Schmitt and Heidegger had in mind.

I shall advance my little genealogy of the idea of authority in three stages: first, I will examine the authority of God; second, the authority of God's messengers; and third the authority God's scriptures.

### *2.3. The Authority of God*

There seems to be no need to justify God's authority. One reason is that this authority is correlated with God's three attributes. He is omniscient, omnipotent and supremely benevolent. What better justification could there be than to obey the commandments of such a perfect being?

It takes Lucifer, the fiery fallen angel, to find God's attributes (especially his benevolence) irritating and to try to assert his freedom by rebelling against God's perfection. Lucifer's gesture expresses the Augustinian notion of the will, which includes the possibility of knowing the good and yet doing evil. Augustine's idea was so novel in philosophy and theology because it meant that simply recognizing the maximal attributes of God was not enough to secure actual acceptance of his reign.

But this of course does not mean that the three attributes do not provide justification; indeed these three attributes seem almost self-explanatory. But the God of the three attributes is the God of the philosophers. And the God of the philosophers is not the only picture of God that emerges from the scriptures.

The Gnostic reading of the Bible, particularly of the Old Testament and many parts of the New (the parts ascribed to Paul), points to a very different interpretation. According to the Gnostics, the God of the Bible is a mischievous God who plays nasty tricks on us. This wretched God is the world's jailor, who keeps us from contacting the true God. The Gnostics did not ultimately challenge the authority of God, they only quarreled over which God should have it.

The heretical Gnostic account is interesting in and of itself. Yet for our purposes, the important thing to remember is that the scriptures that are traditionally meant to provide reasons for accepting the authority of God can also be read very differently. The trick lies in switching the light, switching from reading the text in the best light to reading it in the worst one. The traditional reading of the Bible tries to present the God of the scriptures in the best light; the Gnostics present God in the worst light, and thus provide powerful reasons for subverting his authority. So the issue of justifying the authority of God depends on the question of how to describe the God whose authority we accept.

Turning now to the God of the philosophers: there is a tension between two of God's attributes, which should concern us with respect to justifying God's authority. There is a tension between his omnipotence and his benevolence. Now I am not referring to the banal tension between God's omnipotence and benevolence on the one hand, and the evil found in world on the other. The tension that I have in mind is of a different sort: it is how to reconcile God's omnipotence with his benevolence, so as to prevent the omnipotent God from being constrained by

the good. The decisionist holds that God who is constrained by the good is not omnipotent, and hence being constrained by the good diminishes God's absolute sovereignty. On the decisionist account, God's absolute authority rests on his absolute will, namely, on his capacity to decide the way he wants, unhindered by anyone and anything. Any of God's decisions may of course be regarded as good by definition. But this is uninteresting, because if he had decided to do the opposite, that too would have been regarded as good. The goodness of his decision is thus independent of its content. God's will is beyond good and evil. This chain of thoughts with regard to God's omnipotence and sovereignty is what motivates the decisionist picture of God as the One who is supremely capable of making decisions which are absolutely unconstrained, and specifically unconstrained by moral laws.

The particular focus of the decisionist picture is anchored in the view of both the mind and the body as living phenomena. The mind has a psychic force that is exerted on and by its owner to bring about things in the world. This force is the will. The will is what distinguishes individual personalities. According to the theistic view, God has personality without having a body. His will not is the most characteristic trait of his personality, not his reason. God presides over the world in the same way that the mind presides over the body. In both cases, the will is what makes the presiding possible. The will is manifested in the faculty of decision, but it should be regarded as an internal primary force; in the case of God, it is the force to determine the world. In this view, the will is the ability to start a causal chain that can be ascribed to the individual subject of the will. He is the creator of this chain.

God's force of will is so overpowering that there is no way of recognizing it without admiring and thereby surrendering to it. Humans have the will to power; God has the power of the will. Thus the decisionist picture of God provides God's true answer to Job. Admiration should replace justification.

According to the decisionist picture, God's will is, paradoxically, a normative brute force. It is a brute force, in the sense that it is a will that can bring about things without being constrained by any antecedent reasons, since acting for reasons means that independent reasons have power over God and thus undermine God's absolute authority. But God who exercises brute force arbitrarily may have mere coercive power over us but not the legitimacy needed for authority. It may be prudent to obey his will but there is no duty to do so. So the decisionist fantasy also wants us to ascribe a normative character to God's will, and feel a sense of duty in bowing down to it. The decisionist wants to depict God the father and not the Godfather. Whereas God the Godfather is a brute force with no normative quality, God the father is a brute force which also has a normative character. God's will, though ultimately arbitrary, is not necessarily despotic or mischievous. It can be a benign will, like the one we meet in the forgiving God: the act of forgiveness or amnesty is a benevolent act of a sovereign, which is not justified by reasons of law. It is rather a gratuitous act of grace that the sovereign is free to enact. God the father is a forgiving god and not a ferocious oriental despotic god, at least not by temperament. He is the benevolent manifestation of the decisionistic image of God. But God's authority does not hinge on his benevolence. God's benevolence is a bonus, not a condition of his authority.

Carl Schmitt drew an interesting analogy: «the exception in jurisprudence is analogous to the miracle in theology» (*Political Theology*, p. 36). The point of this analogy is that it is precisely when the laws fail to constrain the sovereign that he manifests his full power to decide and hence his authority. Miracles manifest the sovereignty of God. He can bend the laws of nature to his will and thereby create exceptions to the law. For political ruler, it is in the cases of exceptions to the laws, as in times of war and states of emergency, when nothing constrains the will

of the sovereign and his power and authority are exerted in full. This explains why fascists thrive on crisis situations of emergency and why war plays such key role in their thinking. It is not the mere fascination with the excitement of war which is at the center of the fascist picture of politics. It is also the fascination with authority. It is in war and emergency crises that unrestrained and unconstrained decisionism flourishes, and the authority of the sovereign is on full display. But this benighted picture of the sovereign acting outside the law can just as easily be a benign picture of giving amnesty in which the sovereign also acts outside the law.

We may well argue that the human capacity to decide upon an action is a capacity to act for reasons. It follows that the idea of God as a being with a will should also have been based on his capacity to act for reasons – a higher reason to be sure but reasons all the same. Acting for reasons as a manifestation of the will is very much played down in the fascist picture of God, as it is in the secular fascist picture of man. The God of hosts as the supreme commander in the cosmic struggle is the best exemplar of the will that, in the fascist picture, commands respect. Respect here means submission of human will to this overpowering force. Submission of human will does not mean the annihilation of human wants. On the contrary, the more one is inclined to do A the more value is attached to one's not doing it. A famous rabbinical dictum says «I should not say that I do not want pork. I do, but what can I do when my father in heaven commands me not to» (Sifra, Kedusihm). It is God's inexplicable will against individual will, and his is stronger.

Authority lies not in Reason but in the power to take important decisions. The authority of God is based on his matchless power to decide. The corresponding secular principle of the authority of the big decider is terribly grim. It is the *Fuhrerprinzip* that grounds the absolute authority of the leader in his charismatic power as a resolute decider. The fascist pic-

ture of God is far from being the most common picture of God, nor is it the only one. But it would be excessively apologetic to deny its existence. This picture takes the idea of the absolute authority and sovereignty of God as the key concepts in depicting God as the king of kings – the one true king, who is also the lord of hosts. There is another picture of God, which I shall call the feudal picture. The feudal picture casts the lord's authority, and the loyalty owed to him, as earned by favors that he or his ancestors bestowed on his vassals or their ancestors. Here, authority and loyalty are based on gratefulness.

In a similar vein, Judaism teaches that each and every human being should be grateful to God for the gift of creation, and thus obey his will. Jews also have a special obligation of gratefulness for being delivered from Egypt, «the house of slavery». The justification of feudal authority is based not on present or future benefits, but on past ones. In the feudal picture of God, God is both a father and a king, and his authority is both paternal and royal. The father's authority is earned by his giving us our lives. He is our progenitor. In the case of a king, it is usually due to his or his ancestors providing protection when it was most needed.

The feudal picture of God does find the need to justify his authority. His authority is not self-explanatory. But giving life is a good justification for recognizing authority, while acting against the will of the one who gave us life is being ungrateful in the extreme.

There are two trends in political philosophy: one is interested in political power as the main feature of political life, the other in the justification of political power. The first trend tries to avoid the project of justification, but it doesn't altogether. One such justification in the decisionist picture is that stable political power produces stability and order. Stability and order, the negation of anarchy, is a good justification of power. The decisionist picture, though downplaying the need to justify

power, tacitly assumes justification due to stability and order. This justification takes the form of justification by protection, which it partly shares with the feudal justification.

What the decisionist and feudal pictures share can be termed the protectionist model of authority. Authority is justified if it can provide effective protection for its subjects. The idea of God as the best protector of his servants is consistent with this picture. The political theology of «security philosophers» such as Hobbes is very much in the grip of this picture. Security philosophers put a premium on securing life rather than on securing the good life. Security is the only goal worth pursuing in politics. Any power that can secure life is thereby authoritative.

Protection is manifested in order and stability. Any order and stability can justify the power which is effectively capable of imposing it. The content of that stable order is, however, immaterial to the justification of the authority. We should judge use of power by the Sicilian mafia in the same way as we judge the Spanish government's use of power – by the protection it provides. When Carl Schmitt addresses Hobbes' protectionist Leviathan as the expression of a kindred decisionist soul, he endlessly quotes Hobbes' saying: «auctoritas, non veritas». This is the essence of the political order. The essence of *auctoritas* is order, not moral order but any order, be it in heaven or on earth.

So far we have encountered three justifications for the authority of God. All were rooted in rather unflattering pictures: the fascist picture based on sheer decisionism, the feudal picture based on gratefulness and the protectionist («mafia») picture based on protection. These three pictures, and their corresponding justifications for the authority of God, are by no means the most common ones, but it would be a mistake to view them as merely eccentric.



## 2.4. *The Authority of the Messenger*

The word of God is conveyed by a messenger, a prophet. How to distinguish the true messenger from a false one was a major concern of the Bible. The messenger is not a mere postman, nothing but a vehicle for transmitting the word of God. The most interesting contemporary issue of a messenger's authority centers on the prophetic authority of Muhammad. In one sense, he is as close to God's postman as anyone can be, since Islam makes the strong claim that Muhammad received a book, the Koran, filled with both words and meanings. But Muhammad's authority cuts much deeper than that of a passive, though divine, messenger. In one important sense Muhammad is more like Jesus than Moses; he is not only a messenger but he is the message as well.

Unlike Jesus, the Prophet Muhammad does not have two natures, a human and a Divine one. Islam regards imputing God's nature to anyone and anything as idolatry. The Prophet is no exception. But the prophet does have two personae: the human and the prophetic. He is fallible as a human, but in his prophetic mode, he is infallible in both words and deeds.

So apart from the Koran, a book conveying the word of God, Muhammad's deeds and words, as told by an authentic tradition (*sunnat al- nabi*), are another source of authority in Islam. Even the word of God in the Koran can only be understood in the light of the Sunna. In the case of the Koran, there is both phonetic fanaticism and meaning fanaticism. Both the words and the meanings are given by heaven. But in the case of the holy stories about Muhammed (*hadith*), the meaning – the content of the stories – is constant, but there is no phonetic fanaticism with regard to the wording. This differential wording does not however detract from the normative force of an authentic story about the life of Muhammad in Sunni Islam. In Shi'a Islam this status of authority is transferred in part to the messianic

Imams. Imitation of Muhammad is not just a pedagogical ideal of imitating the life of a perfect human being. Muhammad led a normative existence. His life has normative force commanding how Muslims ought to lead their lives. His life is a source of authoritative commandments and not just a fountain of good advice. This amounts to a strong doctrine of the infallibility of the Prophet and his God-like authority.

What does all this have to do with the picture of religious decisionism? A great deal, I believe. Islam's two authentic sources of authority, Koran and *Sunnat al nabi*, can create the impression that decisionism does not hold with respect to Islam, since decisionism assumes that the unity of the will of God is the only legitimate authority. However this impression is wrong. The Prophet as a prophet has no independent will of his own. Muhammad is a Muslim, meaning one who totally surrenders his will to the will of God.

This point calls for further elucidation. The ultimate sin in Islam, as in Judaism, is the sin of idolatry. In Islam, idolatry does not mean the sin of replacing God (Allah) with another (false) god, but rather giving God a partner. To view the Prophet as a partner to God is a terrible blasphemy. This does not mean that God has no servants in his heavenly court – the angels are such servants. What distinguishes a servant from a partner is that he has no will of his own. The great Islamic teacher Al-Gazzali (d. 1111) expressed this point forcefully: «though men, genii, angels and devils might conspire together either to put one simple atom in motion, or cause it to cease its motion, without His will and approbation, they would not be able to do so». This holds true for the prophet as well. As I claim, Muhammad's life is part of God's message, as much as it is the revealed word of God to Muhammad. Hence the authentic stories about his life are authoritative stories that express God's will through the medium of Muhammad's life.

On this account, the authority of Muhammad does not undermine the decisionist picture of Allah but in fact reinforces it.

But the dialectic here is more complicated. Radical political Islam, which plays up Muhammad's authority, especially in political matters, seems to turn quickly from admiration of the prophet to his deification. Modern radical Islamic movements (both conservative and reformist) appealed to the two original sources of authority, the Koran and the *Sunnat al-nabi*, to challenge the authority of the four schools which dominated Islam for hundreds of years. They were even called the people of the Koran and the people of the *Hadith*. There was actually much tension between these two movements, but they had a common enemy in the classical law (*taqlid*), and its learned establishment, the *Ulma*. Thus, in the name of authenticity triumphing over a corrupt tradition, political Islam is aiming towards something like Muhammad's direct rule over the pristine community of the early days. In doing so, its exponents tend to regard the *Sunnat al-nabi* as the primary source of authority. Though Islamists in no way seek to undermine the authority of God, their privileging of the *Sunnat al-nabi* does create a duality of authority, a duality that they themselves would find shocking.

Let me address a question that hovers over my whole discussion and is very much at the center of Islamic thinking.

If, according to the decisionist picture, justification is not the ground for accepting authority, what is?

Let's look first at the motives for human acceptance of God's authority. This is an important religious issue, specifically relative merits and demerits of accepting God's authority out of love or out of fear. Joseph Raz has insightful things to say about the meaning of accepting God's authority out of love. The lover who wants to have the same taste in music as her beloved is not just trying instrumentally to ingratiate herself but instead to be one with him.

The decisionist picture of religion seeks something else: a fusion of fear and love for the veneration of God and the

acceptance of his authority. The fusion of love and fear is what creates ambivalence, according to Freud's account; first, towards the primal despotic father and then towards God the Father. The decisionist is not interested in deep psychology but in effective submission; the combination of the two works best for obtaining submission. Stalin made even his admirers shiver, but many also sobbed bitterly at his funeral. For the decisionist, the combination of tremors of fear and tears of love is just about right. The decisionist picture of God has strong hold on political Islam.

It is directed against another source of authority in Islam, the legalistic authority of the four schools of Islamic law. As a matter of fact, this source of authority was most influential in shaping religious life in the Islamic world. Of course this legalistic source of authority presents itself as derived from the Koran and the Sunna, but it is in fact an independent source of authority.

## *2.5. The Authority of the Scriptures*

For most religious thinkers, God's authority is so obvious that it does not call for any justification. God is posited as the self-justified authority, and other authorities are justified by their relation to the authority of God. Though the authority of God does not pose a problem for many thinkers, what counts as the authoritative Word of God still does. The word of God is authoritative. But who decides what the word of God is? Politically, the authority to determine what is the authoritative word of God is far more relevant than God's authority to begin with.

How does the authority of the word of God fit in with the decisionist picture of God? Let me redraw the outlines of the decisionist picture. God is a personality with no body. The main trait of his personality is his will. It is his will and not his reason

that counts, because reason does not individuate a personality. Reason in principle is shared by all.

The will of God is the individuating principle of God's personality. The will individuates personality in the same way that matter rather than form individuates substances in Aristotelian metaphysics. Matter is corrupt, so it cannot be imputed to God. The immaterial will is thus supposed to do the trick of marking God's uniqueness. The will of God is the unifying principle of his complicated personality. It is a simple will. This is the basic view of the decisionist picture of God.

The will of God is expressed by his commands more than by anything else that he says and does. To be a believer is to accept his authority and obey his command. To be a true servant of God is to achieve the highest religious status. Moses and Muhammad were such servants indeed, or even slaves. To carry out the will of God is to obey his command, and to obey his command requires an interpretation of his words. There are about 6000 verses in the Koran, but only 200 of them are conveyed by imperative sentences. By command, I understand roughly what Hobbes says: «Does this or Does not this, without expecting any other reason than, the Will of him that says it». God is a super commander. But commands call for understanding, an understanding not of the reasons for the command, but an understanding of what to do to execute them. Commands may be baffling. One reason is that they are not always linguistically marked by imperative moods. The epitome of the biblical law is the Ten Commandments, which are for the most part marked by the imperative mood of «you shall not» (kill, steal, covet etc.). But then it is generally accepted that «I am the Lord» is the first commandment and this is given in an indicative statement and does not look like a command. For it to be a command it should already presuppose the authority of God to command. But to believe in God and accept his authority is what the first commandment commands. Roughly speaking

Judaism and Islam are action-centered religions, consistent with the decisionist picture of authority as expressed in commands. Christianity, by contrast, is more of a belief-centered religion (Man is justified by faith).

The prophet Muhammad was the first to coin the very useful expression «people of the book». He meant Jews and Christians. Muslims, through their messenger Muhammad, join this book club too. The idea is that all these religions, unlike the religions of the heathens, are based in scripture. Jews and Christians are entitled to protection under Islamic rule for the very fact that they are people of the book. Being people of the book does not mean that there is primacy of the written word of God over the spoken word. Indeed, for religious purposes, hearing is more important than seeing. Faith after all is, in the language of the famous eleventh chapter of Hebrews, «the conviction of things not seen». But whether the scriptures were handed over as a book or were revealed by a spoken word (and were committed in writing by prophets), there are written canonical texts at the center of each of the three religions. The authority to determine the canon is important to the understanding of religious and political authority. An excellent account of canonization in Judaism can be found in Moshe Halbertal's «People of the Book».

Who the people of the Book are can be a highly contestable matter. Heretics swear in the name of the holy books that they and only they are the «true» people of the book. One may argue that in some peculiar way «the Book» is even more important to heretics and fundamentalists than to the orthodoxy. Appeal to the book is a way to offset the authority of the orthodoxy that counts in fact more on «living traditions» than on the book itself. Paradoxically put, «the people of the book» are the fundamentalists and the heretics who try to undermine traditional religious and political authorities by direct appeal to the authority of the book.

What, according to the decisionist picture of God, is the right interpretation of the scripture? Right interpretation is the interpretation that gets God's intentions right. But this is easier said than explained.

The influential literary theory of the «intentional fallacy» holds that literary interpretation should not pursue the author's intention, but should instead be based on the shared linguistic meanings of the words. Various arguments are advanced to promote the idea of «the intentional fallacy», including a denial of first person authority over her own words.

For the decisionist picture, God's authority over his own words is of great moment. It ties in with another religious picture of God – the creator picture or the creator fallacy. According to this picture, only the creator fully knows what he created. The potter knows everything there is to know about his products and the carpenter knows everything about the tables and cupboards that she produces. God as the creator of the world is the sole being that knows the world. Stories originating in Prague exposed the creator picture as a creator fallacy. First the old story about the Golem and then the new story about the Robots. In both stories, the creator lost control over his products. It is this loss of control over one's artifacts that shaped the modern sensibility of not understanding the world we created around ourselves. In any case, God is the author of his world. He created the world and handed down a book based on his creation (though in Islam there is a doctrine of the eternity of the Koran), so he is in the best position to know everything about the meanings of his words. Moreover he is not constrained by the plain meanings of the words. He is the sovereign. This last claim is actually untenable, since the only theory of meaning that goes with such account is the Humpty Dumpty theory: «when I use a word it means just what I choose it to mean». Remember how Humpty Dumpty famously turns «glory» into «a nice knock down argument».

The decisionist picture of interpretation is pushed into a Humpty Dumpty position. There is no glory in this account and it is nothing but a knock down argument against God's commanding his creatures to obey his will in whatever language he pleases. The point is that a decisive and deciding God who exerts his authority by commanding his creatures should make sure that they understand him. And this can be done if and only if God speaks in the language of his creatures, which puts many strictures on what he can and cannot say. The decisionist can ignore morality but not linguistics. Human understanding is a constraint upon the way God understands himself, even when God is trying to be a decisionist God who is unconstrained by morality.

The decisionist picture of God may not be a coherent picture – a great deal hinges on how we understand God's omnipotence – but this does not stop it from being an influential picture in politics and theology and especially in political theology.



### 3. TRUST IN AUTHORITY

Here is a list of the main points I shall make in what follows:

- that authority can be practical or theoretical and it can be personal or impersonal;
- that there are two formative models of personal authority: paternalistic authority v. expert authority, and that these models inform/affect the case of impersonal (or institutional) authority;
- that trust in an institution is not a necessary condition for sustaining its authority;
- that distrust, by contrast, plays a significant role in eroding the authority of institutions, especially if it is widespread and if there is common knowledge of this;
- that despotic regimes do not need to worry about distrust: they rely on bayonets and on fear;
- that democracies need to worry about institutional distrust;
- that distrust in institutional authority can arise when the institution is seen as partial or corrupt;
- that distrust in institutional authority can also arise when it is seen as non-expert, as lacking special knowledge.  
“Familiarity breeds distrust.”

«In God we trust», proclaims the American dollar. The God in whom we trust is the supreme authority. Does this imply that God is the only authority – that only in God we trust? Bumper stickers in Israel proclaim: «We have no trust except in our heav-

enly father». This is more helpful: it says explicitly that only in God do we trust. It is also helpful in another respect. It explicitly equates God with the father.

Is trust in God to be understood on the model of trusting daddy? Or does God come first?

The question in turn relates to what is the formative picture that has a primary hold on us: is it our trust in God, such that trust in daddy is a derivative of it, or is it the other way around?

God is omniscient; but then, «daddy knows best». Knowing all or knowing best surely affects our trust in either one. But their superior knowledge is not sufficient. They also have to be competent in order for us to trust them; they have to be able to deliver. Well, God is not only omniscient, he is also omnipotent. Daddy may not be – but for the small child he is. And there is also a third requirement. It has to do with benevolence. God is all-good, as well as omniscient and omnipotent. As for daddy, his “knowing best” should be construed as not only knowing most but also as always knowing what is best for me.

Daddy wants and aims at my well-being.

Defining authority as the power to make decisions for others, God and the father are models of authority. They are models both of theoretical (doxastic, epistemic) authority and of practical authority. Theoretical authority tells you what to believe, practical authority tells you what to do. If I am on the receiving end of some authority, it is not the case that the authority merely supplies me with additional reasons for believing that p or for doing x. Rather, it gives me exclusionary reasons (in Raz’s sense) for belief or for action, reasons that are supposed to trump all other reasons. It is practical authority that I want to explore in the main bulk of this paper.

Still, I shall have something to say, at the end, about a specific historical example of a peculiar theoretical-religious authority: I shall present the case of the Teacher of Righteousness of the Dead Sea sect and the unique genre of *pesbarim* that came to

light among the Dead Sea scrolls. This literary genre is associated with a special kind of authority exerted by the Teacher, and by the texts that he is believed to have authored.

### 3.1 *Paternalistic Authority*

Regardless of who is the primary model and who the derivative, both God and the father exemplify what we may term personal authority. Contrasted with personal authority is impersonal authority, which is vested, typically, in a regime or in its institutions and agencies (such as the police or the courts). Personal authority on the model of God or the father is paternalistic. It knows what is best for you, and it wants what is best for you. Or at least this is what you believe – or, sometimes, this is what the authority will make you believe. Furthermore, personal authority makes decisions on your behalf. You should trust this authority and comply with it.

The particular paternalistic pattern of authority involves a relation of near-ownership. The believer “belongs” to God in much the same way that the child belongs to his or her father. This property relation is supposed, in and of itself, to account for the authority exerted by the owner upon the owned. But the ownership here is of a special kind. God and the father own their children *qua* their makers or creators. The authority of makers over their creations supposedly derives from the notion that the maker *qua* maker knows his creation – his child – best, and hence that the maker also knows what is best for his child, and that he wants it.

Personal authority may be paternalistic in an even wider sense than is exemplified by God and the father. The authority of the feudal lord over his vassals is an example. It, too, is based on ownership relations. But here the lord owns his vassals in the sense that they are his property, not in the sense that he is their creator and maker. Further away still from the model of God and father is the authority exercised, for example, by a plantation owner or a sweat-

shop boss over his workers, or by a tyrant over his people (think of a Peron-type or a Papa Doc-type tyrant). Here there is no ownership, strictly speaking, but rather pure subjection.

Such authority relations need not be paternalistic, but they can be. And inasmuch as these authority relations are paternalistic there seems to be a conscious effort on the part of the “pater” to style them on the father model. Typical of such authority relations is the constant invocation of the family metaphor: the workers/subjects are like children; the boss is like their father. It is clearly in the interest of the boss to use this metaphor and to have his subordinates internalize it. He would want them to believe that he cares about them and that he knows what is best for them, and therefore they should expect him to tell them what to do. Their role is to be grateful and to obey. The father’s authority over his children is natural and its legitimacy is not questioned. By exploiting the family metaphor, the idea is that the naturalness and legitimacy of the father’s authority will carry over smoothly to the relationship between master and subordinates, thus assuring their obedience.

In authority relations that are modeled, whether narrowly or broadly, on the paternalistic father/child relationship, trust in the authority is implicit and taken for granted. Of course, such trust is not always justified and it can be betrayed. Gods may fail. The phenomenon of a father who betrays the trust of his children by exploiting or abusing them is both familiar and abhorrent to us, regardless of historical period and social context. In contrast, the exploitation and abuse of subordinates by their masters and rulers, say in feudal or early modern times, is commonplace and almost to be expected. There is much to explore here, regarding the psychological mechanisms that connect fear of a despotic-paternalistic authority with trustful obedience to it. The first link in the putative causal chain is from fear to obedience. This is straightforward. The second more complex link is from obedience to trust, via the machinations of the dependence relation and of both cognitive and emotional dissonance. I shall not pursue these issues here.

### 3.2 *Expert Authority*

In addition to personal authority relations that are paternalistic there are also non-paternalistic relations of personal authority. These are mostly exercised by experts. Expert authority is the second formative model of authority, at the opposite pole of the father/God model.

We defer to experts in a variety of domains and we let them control, to some extent, what we believe and what we do. The tax consultant, the doctor, the home decorator are authorities for us by virtue of their special knowledge and professionalism. They generally know better, and in some cases they know best, and so we take their word for it.

But is not the source of paternalistic authority precisely this, namely that it knows best – or at least that it is supposed to know best? So how is personal authority of the expert variety different from personal authority of the paternalistic variety? Well, in the first place let us recall that «daddy knows best» was only one element in what constitutes the paternalistic authority of the father. In addition to knowledge (or omniscience, in the case of God) there were also the elements of competence (or omnipotence, in the case of God), of benevolence, and of proprietorship. These additional elements are not constitutive of authority relations of the expert kind. On the other hand, the element of knowledge – of special knowledge – is dominant in the case of authority exercised by experts.

Secondly, expert authority relations are contractual in nature, and are typically entered into voluntarily. They are also limited in scope: they concern the patient's knee operation, the customer's tax returns or the client's plan to build an attic. Paternalistic authority relations, in contrast, are non-voluntary and they tend to be of a wide, sometimes all-encompassing scope. The child defers to the father in just about everything, and so does the vassal to his lord and the subject to the tyrant. But the essential point of difference seems to be this. The paternalistic authority is per-

sonal in the strict sense of being *de dicto* and non-substitutable. This particular person is my father and as such my fatherly authority, while the authority exerted upon me by my doctor or by the dean of my faculty is *ex officio, qua* my doctor or my dean, regardless of who the actual person is who happens to sit in that particular chair. What this involves is something neither entirely impersonal nor strictly personal. It is in their social roles or capacities that my doctor or my dean can exert authority over me. Last year it may have been a different doctor, next year the dean will be replaced: the persons exercising this kind of personal authority are in this sense substitutable.

The status of what expert authorities tell us to do is different from the status of what paternalistic authorities tell us to do: it is more in the nature of advice, not command. The price for non-compliance is not external punishment but rather, at worst, having to live with the consequences of wrong decisions. Still, in both cases noncompliance involves a disutility of one sort or another, which has to be taken into account in one's overall practical deliberation. Trust in expert authority differs markedly from trust in paternalistic authority. It depends on the extent to which the authority is believed to possess expert knowledge relevant to the situation at hand, and it is limited to the domain of that expert knowledge. We usually turn to expert authority voluntarily, and we usually turn to the authority we judge to be best and most trustworthy, subject to some obvious constraints such as access, financial resources, time etc. We will normally not turn to an expert authority who we have *prima facie* reasons to distrust. Whether or not the experts turn out to justify the trust bestowed on them is a different matter. Expert authority, as mentioned before, is not limited to practical matters of how to act and what to do.

Expert authority can also be theoretical. We may turn to experts in order to know what to believe. Einstein is an authority for us in matters of physics and Stephen Jay Gould in matters of paleontology. As for the Pope or the Lubavicher Rebbe, well, they are cer-

tainly authorities for many people in matters of belief (even though I hesitate in referring to them as strictly theoretical authorities). I note in passing that religious authorities function not only as authorities for what to believe but often also as authorities for what to do and how to do it. In Judaism, the practical facet of the religious authority is especially pronounced, the rabbi being expected to issue *halakbic* decrees on every aspect of daily life.

### 3.3 The Matrix

The discussion until now concerned two models of personal authority. This will serve me as scaffolding for my main concern, which is impersonal authority within a democratic framework. But before continuing, let me pause for a moment and consider the following classificatory schema:

	<i>practical authority</i>	<i>theoretical authority</i>
<i>personal authority</i>	<p><u>paternalist</u>: father, God lord, tyrant</p> <p><u>non-paternalist</u>: older brother; leader; expert</p>	<p><u>paternalist</u>: God, Pope, rabbi, "eminence"</p> <p>[Teacher of Righteousness? – see last section]</p> <p><u>non-paternalist</u>: expert</p>
<i>impersonal (institutional) authority</i>	<p>state/regime;</p> <p>state institutions (courts, police etc.)</p>	<p>the Church</p>

The discussion thus far belongs mostly in the upper left and upper right cells of this matrix, comprising the paternalist and the non-paternalist models of personal authority – both practical and theoretical. I want now to turn to impersonal authority of the practical kind (the lower left cell). I want to look at institutions that have some control over what we do, and to focus on the question of trust in such institutional authorities. In particular, I want to ask whether the authority of institutions depends on our trusting them. Basically I shall argue for an asymmetry thesis. Namely, that the question of trust does not really come up with regard to institutional authority: it is distrust that counts. The relevant question to ask is when does trust in the authority of institutions in a democracy break down, and what are the consequences.

An etymological digression: the New Collegiate Dictionary lists several distinct meanings for the word “authority”. It has the «power to influence or command thought, opinion, or behavior». Using the terminology used here, this is both theoretical and practical authority. Also: «person in command; specif: government; a governmental agency or corporation, as in “the transit authority”» – namely, personal and institutional authority. In addition, the dictionary includes: «an individual cited or appealed to as an expert». The dictionary does not stop here, however. Among the further entries we find: «a citation used in defense or support; the source from which the citation is drawn; testimony; grounds, warrant». These latter meanings reflect the fact that the word “authority” comes from “author” (Latin: *auctor*), meaning «promoter, originator, author; source».

Now in Hebrew the word for authority (*samchut*) does not derive from authorship. But it does turn up revealing connections. The three-letter root for authority is “s-m-ch”. And when we check the various Hebrew words that derive from this root, we find (*inter alia*): support, lean against, rely on and have confidence in; accreditation and certification; to back or to sup-



port by evidence; reference and documentation; an expert; permission, right and power. Some of these cognates will turn up in what follows.

### *3.4 Trust in Institutional Authority*

It is taken to be a necessary condition of a well-functioning democracy that its citizens trust its institutional authorities. Social institutions are sometimes seen as trust mediators. In modern mass democracies, in contrast to the intimate city-states of ancient times, no level of general interpersonal familiarity and trust can be assumed. As a result, an important role of institutions is to facilitate social transactions by essentially replacing the need for personal trust among citizens. Consider, for example, the role of legally binding contracts as a replacement for promises. On the other hand, once institutions are in place, in order for them to fulfill their role as trust substitutes it is often supposed that citizens need to trust them. So, for example, in order for contracts between individuals to work it is commonly said that the individuals need to have trust in the country's legal system and in its enforcement mechanisms.

A number of writers seem to diagnose a malaise in many contemporary democracies, where a general decline in the degree of trust in institutional authorities is observed. This relates to both public and private institutions. There is substantial evidence, for example, that institutional trust in the US has been declining for several decades – in federal government, universities, medical institutions and journalism, as well as in several major private companies. These findings are alarming if the authority of an institution is directly linked to its ability to function properly, and if its ability to function properly depends in no small measure upon the public's trust in it.

According to another view, the authority of representative democracy goes hand in hand with a modicum of distrust. «A certain amount of distrust», says Hardin, «may be useful to a society or government. Certainly, large, modern democracies work better if we can be sure that there are professional distrusters or cynics or skeptics, people who act as watchdogs, raise alarms, or provide contrary information». A quick comment on this is that a skeptical attitude is not quite the same as distrust, and while skepticism may be healthy, distrust may be detrimental to the authority of an institution.

Still, how threatening to a democracy are various forms and degrees of distrust in its institutional authorities? Or we could ask, how healthy are they? And is the distrust that one is talking about when arguing that it is threatening the same as the distrust assumed when arguing that it is healthy?

I recently had occasion to come up with a detailed analysis of the notion of personal trust.

It says, roughly, that I trust you when I believe that you have the right intentions toward me. This is a personal, intention-based account of trust. It requires that for me to trust X, I need to entertain certain beliefs about X's intentions, and about what motivates those intentions. Since it is to persons, not institutions, that we attribute intentions and motivations, the analysis does not carry over smoothly to the notion of trust in institutions.

It is often the person who is the figurehead of an institution that embodies for us the institution as a whole. Roderick Kramer cites a speculation that «people may use the behavior of institutional leaders as reference points [for gauging their basic beliefs –] when appraising the trustworthiness of society's institutions in general. In other words, people may draw general inferences about institutional trust from the behavior of highly visible role models». If this is so, then the question of trust in an institutional authority translates into trust in personal authority

– of a paternalist, expert, or any other kind. The question of trust in the authority of the police, say, or the Supreme Court, is translated into the question of trust in the authority of the commissioner of police or the chief justice – and is thus ultimately unpacked in terms of people's beliefs about the intentions and motivations of these personae.

When no such personification of the institution takes place, I believe that talk of trusting an institution is loose talk. It usually amounts to no more than one's reliance on the institution or one's degree of confidence in its competence and performance. This can typically be expressed in the probability one assigns to the institution's doing such-and-such. A caveat here is that only when the goals of the institution accord with our interests do we tend to say, in this loose sense, that we trust the institution. Or at any rate this is the case when the institutional goals do not outright conflict with ours. When there is such conflict, we are unlikely to feel or to say that we trust the institution in question. Indeed, it is possible for me to have confident expectations that an institution will do exactly what it is supposed to do, and to distrust it for that reason, when what it is supposed to do is against my interests.

But more specifically and more crucially, talk of trusting an institution is generally to be construed in terms of our degree of confidence that the institution will continue to pursue its set goals and to achieve them regardless of who staffs the institution. There is a principle of substitutability at work here.

Invoking the idea of substitutability raises the question of what it is that remains constant over the substitution. In the case at hand, when we express trust in an institution we express our belief that, even if the present officeholders in that institution were to be replaced with others, the performance of the institution would remain more or less the same. In other words, so-called trust in an institution is tantamount to a belief in the impersonality of its performance, in addition to the belief that

its goals are compatible with our interests. In contrast, when I trust other individuals, I expect their behavior toward me to be entirely personal: I expect their behavior to reflect the fact that it is I who am affected by it, not just anyone, and that it is precisely because it is me that they behave the way they do. But when I say I trust an institution, I expect its behavior toward me to be impersonal: I expect its rulings and decisions to be unaffected by whether it is I or anyone relevantly similar who stands to be affected by those rulings and decisions.

### *3.5 Distrust of Institutional Authority – Partiality*

Having said something about what trusting an institution may be construed to mean, I now want to consider distrust of institutions. I believe that there is an important asymmetry here. Distrust adversely affects the authority of institutions more than trust positively affects it. I also claim that, in the case of distrust of institutions, we do attribute intentions and motivations to the institutions themselves, and not just to their figureheads.

Consider, for example, the case of the ultra-Orthodox in Israel, who in recent years have expressed their growing distrust of the Israeli Supreme Court. Consider also the case of the Arab Israeli minority, many of whose members have in recent years come to lose whatever trust they had in the Israeli police. In expressing their distrust of the respective institutions, these people are conveying something other than a mere factual prediction that the Court or the police will act against their interests. Their distrust has a surplus element that goes beyond expressing non-reliance or a low degree of confidence in the performance of the institutions. These communities want also to be understood as imputing intentions to the people who staff the respective institutions.

What intentions can these be, given that there is no personal acquaintance and there are no personal relations between the

individuals involved? Fundamentally, I think that the question of our distrust of an institution boils down to our belief in the unfairness of the institution – and to the ancillary belief that the unfairness works against our own interests. When an institution faces a crisis of trust, which is at the same time a crisis of authority and legitimacy, this means that social groups in need of recourse to that institution suspect it of operating in an unfair manner, a manner that goes against their interests *qua* members of those social groups. More specifically, in many cases this means that the members of the social groups in question tend to impute discriminatory intentions quite generally to the office-holders of the institution, at all levels of the institutional hierarchy – for example, to all the judges or to all policemen and policewomen. Such imputed discriminatory intentions may be racist, sexist, homophobic, anti-Semitic or antireligious ones.

The flip side of imputed discriminatory intentions that make some people distrust an institution, is that the very same institution may become highly favored by people with other, opposing, interests. In a city where the police favor the Mafia, or let's say the Sunni Muslims, it may be expected that the general citizenry will distrust the police. Can we say that the members of the Mafia, or of the Sunni segment of the population, trust the police? Well, they sure do, in some sense. But their trust in the police is in the personal sense of trust, not in the institutional sense that is premised on impersonality and substitutability. The trust of these groups in the (favoritistic) police is "bad" trust, if you will: it is the kind of trust that actually serves to undermine the authority of the police with the population at large.

The Mafia's trust in the police cannot be the trust that we value when we reflect upon the authority exerted by institutions in a healthy democracy and, in particular, upon the role of trust in it. The Mafia's trust is a perversion of the trust in institutions that is claimed to be required in order for mass democra-

cy to work. It undermines rather than enhances the authority of the police as far as the general public is concerned. A necessary condition for trust in an institutional authority worthy of its name is confidence in the fairness and impartiality of the institution. When this condition is fulfilled – or, at any rate, when this condition is not flagrantly violated – no personal intentions are imputed to the officeholders of the institution; the principle of substitutability holds.

The point, then, is that in contrast to the case of trust in institutional authorities, distrust of institutional authorities does involve the imputing of intentions. It involves a shared belief among groups of citizens about the personal intentions of the institution's officeholders. These intentions are taken to be operative while the officeholders are executing their official duties. The typical belief here is that the officeholders are infected with discriminatory intentions against members of the relevant groups and that these intentions generally result in unfair practices. The unfair practices are believed to adversely affect the interests of the people who belong to those groups.

Schematically put, the putative chain of events here is this. Belief in discriminatory intentions leads to distrust. When this is true for an increasing number of individuals, a threshold is crossed and the authority of the institution is eroded. This in turn leads to increasing noncompliance. When all of this not only happens, but is also generally known to happen, tipping phenomena and cascades are likely to occur and to amplify the effects.

The likely result: a breakdown of trust in the authority of the institution in question.

When this chain of events is generalized across institutions or governmental agencies, indignation may spread and threaten the authority of the regime.

Institutional distrust may also emerge when there is widespread belief that the institution is corrupt. David Hume sug-

gests that institutions should be designed in such a way that they would work well even if, in his well-known phrase, they were staffed by knaves.

Should the design fail, however, or should the level of the knaves' corruption pass a certain threshold, the institution *qua* institution may be perceived as corrupt. Here, too, people's attitude toward the institution turns in an essential way on their beliefs about the personal motives of the institution's office-holders at its various hierarchical levels. Once the officials' personal motives become suspect – as, for example, when there is a shared belief that they are open to bribes – then distrust in the institution *qua* institution spreads and its authority is eroded.

A difference may be noted between cases in which the erosion of an institution's authority is due to a distrust that relates to partiality and discrimination, and cases in which it is due to a distrust that relates to corruption. The first case of discrimination-related distrust tends to be a case of group distrust, based on membership in groups defined by race, gender, ethnic origin, sexual orientation, and so forth – as in the examples cited above of the Israeli Arabs or ultra-Orthodox. The second case of corruption-related distrust tends to be a case of class distrust. Here the institution is taken to operate in such a way that the rich who can afford to bribe get away with things that the poor cannot get away with (think of driving violations in the case of the police, or tax evasions in the case of the IRS). The two kinds of institutional distrust may of course overlap, and there may be various intermediate cases too. I leave the question open as to which kind of distrust is more detrimental to institutional authority and, ultimately, to the stability of the regime.

So: what we ordinarily mean by saying that we trust an institution is best captured in terms of the high degree of confidence with which we can predict the future steps or decisions that the institution will take. This can often be cast in terms of our confident prediction that the institution will be pursuing its goals.

Also, when we say that we trust an institution we expect the institution to be impersonal, whereas in trusting an individual we expect his or her attitude toward us to be entirely personal. Distrusting an institution, in contrast, is not a matter of confident predictions, and it involves the attribution of intentions. It boils down to our belief that the intentions of the officeholders of the institution are discriminatory (or profit-seeking), and that the institution is consequently unfair (or corrupt) in ways that work against our interests.

### *3.6 Distrust of Institutional Authority – Familiarity*

Ben-Gurion, the mythical and authoritative founding father of the state of Israel and its first prime minister, is often quoted as having said in the 1950s something like the following: «Every Hebrew mother shall know that when she sends her son to enlist in the Israel Defense Forces she is entrusting him to the very best commanding officers». (I do not think Ben-Gurion said «son or daughter» as he should have.). This was meant to instill and to inspire in the general Israeli population a high degree of trust in the country's newly formed armed forces, to the ranks of which there was – and still is – a general duty of conscription.

In promising that the young soldiers would be the charges of «the best» officers, Ben-Gurion was making the case, among other things, that these officers are responsible professionals, that «they know what they are doing». The self-righteousness of Ben-Gurion's statement notwithstanding, I read it as an attempt to base the people's trust in the authority of the army, at least in part, on the attribution to its officers of some relevant expertise, of some sort of special knowledge. (I say “in part” because there is surely an additional, moral aspect to be read into Ben-Gurion's statement.)



In the early decades, the army did indeed command a high degree of respect in the Israeli population and enjoyed its considerable trust. The trust has eroded over the years, however. I believe that this is only partly due to the less-than-exemplary performance of the Israeli armed forces in recent years. My claim is that, in comparison with the past, when parents send their children to become soldiers today they trust the army less because they know the army better. In contrast with parents of the previous generation, today's parents have themselves served in this army, and precisely because they are more familiar with it, they are more suspicious and less trustful of it. The halo and the mystique are gone; the attitude that is summed up in the phrase «they know things we don't: who are we to pass judgment?» no longer prevails. In other words, familiarity may breed distrust.

In a despotic regime, like Stalin's or Saddam's, it is relatively easy to maintain distance between the ruler and the ruled and it is relatively easy to shroud the regime with a halo of omniscience and omnipotence. Authority in such regimes is sustained first and foremost by fear. It is also sustained by the particular kind of trust that is induced by fear from a ruler who is perceived as all-knowing. But in democracies things are different.

Most state agencies or institutions in democracies are in principle supposed to be transparent, accessible and familiar. So long as no widespread suspicions of impartiality and unfairness give rise to distrust in an institution, the effectiveness and authority of the institution can be sustained. Think, for example, of the police or the income-tax authorities in most liberal democracies. Alternatively, the effectiveness and authority of an institution can be sustained so long as the institution succeeds in maintaining a reputation for possessing professional, special or expert knowledge in the relevant area of its activity. Think, for example, of the Supreme Court, the Federal Reserve Bank or the MI-5. We should note, however, that these special-

knowledge institutions are also less transparent and accessible than the institutions of the first category.

There seems indeed to be some delicate balance or tradeoff between fairness and impartiality on the one hand, and expertise on the other, with regard to the degree of trust in an institution. After all, in a democracy many governmental ministries and agencies are staffed by elected officials who may be replaced at the next election and who are not, strictly speaking, professionals in what they do. Still, if the way an agency conducts itself and carries out its duties is perceived as fair, this appears to compensate to some degree for the lack of expertise or special knowledge. The paradox, however, is that the more transparent, accessible and familiar the institutions in a democracy are, the less they are able to maintain the semblance of expert knowledge and to fend off suspicion and distrust.

In sum: despotic authorities do not need to inspire trust; fear will do well enough for them. Still, to the extent that a despotic ruler fashions himself on the model of the «father of the nation», he may inspire the peculiar sort of unquestioning trust that is associated with paternalistic authority. In democracies, paternalistic trust is by and large unavailable.

Some institutions in a democracy, like the court or the central bank, derive their authority from their claim to expertise; they inspire trust inasmuch as they are thought to possess special, expert knowledge. But in general the authority of a democratic regime and its institutions relies less on trust than on the perceived legitimacy of the authority and the proper and generally fair functioning of its institutions. What democratic authority is vulnerable to and cannot afford is the spread of distrust. I have tried to sketch some of the possible sources and causes of such distrust. The spread of distrust may lead to growing indignation, and significant indignation may undermine the authority of the regime and threaten its stability.

### 3.7 Theoretical/Doxastic Authority: *Pesharim*

Going back to the promissory note given at the outset, I now want to briefly present a rather special case of religious authority. This comes out of the discovery of the Dead Sea scrolls in the late 1940s and early 1950s.

Among the sectarian scrolls found at the Dead Sea site of Qumran, several texts constitute a separate genre, referred to as *pesharim* (sing: *pesher*). The word *pesher* means interpretation, and in the *pesharim* scrolls selected biblical texts are applied to the contemporary sectarian setting of the second and first century BCE by means of a special literary technique of interpretation.

A *pesher* takes a biblical composition, usually one of the twelve Minor Prophets, as a starting point. (Thus the longest, most important and best-known *pesharim* found at Qumran are *Pesher Habakkuk* and *Pesher Nahum*.) It proceeds, first, with a direct and explicit citation from the biblical text (the lemma), then an introductory formula such as «its *pesher* is upon...», and then an application of the text to a contemporary reality outside of its original biblical context. The selected text to be interpreted is typically of an eschatological prophetic nature, and the interpretation is typically historical, not theological. It offers a typological version of the history of the sect itself, regarding its own «*Historia Sacra*».

Here is an example, from *Pesher Habakkuk* (col. V, 8-12): «Why do you stare, traitors, and maintain your silence when a wicked person consumes someone more upright than himself? [Hab. 1. 13] Its interpretation is upon the House of Absalom [Alexander Janaeus's younger brother] and the members of his council, who kept silent at the time of the reproach of the Teacher of Righteousness, and did not help him against the Man of Lies, who rejected the Law in the midst of their whole Community».

The Qumran community saw biblical prophecy as coded messages, which might only be unraveled by a specially endowed and divinely inspired individual. The author of the *pesher*, most often the Teacher of Righteousness who was the leader (and possibly the founder) of the Qumran community, deciphers the coded biblical messages and reveals their «true meaning» to the members of his community. In this way the author becomes a theoretical authority to the members of his community: he instructs them about what they are to believe about their reality. (However, the modern reader is «often challenged to identify the historical realities reflected in the allusions found in these interpretations», which are themselves usually couched in veiled terms such as «the Man of Lies» cited above.)

In fact, the Hebrew word *pesher* is related to the root of p-t-r, meaning solution, release or unbinding (*pitaron*) – which, in antiquity, specifically came to denote the unraveling of dreams. Biblical prophecy, then, is here regarded as analogous to a dream whose mysteriously encoded message is in need of decoding. And just as biblical prophecy is divinely revealed, so too is its act of interpretation. It is not the power of scholarly study (or of psychoanalytical training, for that matter) that makes the *pesher* possible: in this respect the *pesher* differs from ordinary, scholarly interpretative endeavor (or *midrash*).

Nor is it mere charisma that enables the leader to come up with the *pesher*. It is by divine revelation that the author of the *pesher* becomes the authoritative decoder of the Holy Scriptures, themselves divinely revealed. Revelation legitimizes the authority of the *peshtarim*.

The literary genre of the *peshtarim* is unique to the corpus of the Dead Sea scrolls. The authority of the leader of the sect, the Teacher of Righteousness, is also unique. It is an intermediary case, between the authority of the prophets on the one hand and the sages on the other: it partakes of both the prophets'

divine inspiration and the sages' interpretative skills. The messages of the Teacher are political, and his authority extends to interpreting for the members of his congregation the concrete political reality in which they live. He is their authority regarding how they are to see the world and what they are to believe.

The worldview of the Dead Sea sectarians, like that of so many other religious and political sects, is Manichean. It is «we» v. «them», or «sons of light» v. «sons of darkness». The latter is indeed the name of one of the more famous Dead Sea scrolls, but it is also an apt epitaph for a mood and for a worldview typical of sects and various isolated extremist groups, ancient and contemporary. Questions relating to the nature of the authority of the leaders of such religious and political sects are therefore relevant, even urgent.

In a noteworthy twist on the scroll community, there are sects around us today – like «Esh Ha-Torah» (in California) and others – who return to the idea of looking to the bible for encoded messages. The latter-day equivalent to the Teacher of Righteousness, the figure endowed with the capacity and authority to reveal the secret messages, seems therefore to be the mathematician-statistician. For certain groups of people, then, computer science may be on its way to replace divine inspiration as the ultimate source of authority.



## 4. NOTES ON AUTHORITY AND COMPLIANCE

### 4.1 *Introduction*

The ideas of *power* and of *authority* (as I understand them) differ in several ways. Only individuals have power, whereas authority can be an attribute of norms and institutions as well as of individuals. The power of an individual rests on his ability make others act in accordance with his desires by means of intentional action directed to that end. Authority, when vested in an individual, rests on the ability to inspire following rather than on the ability to overcome resistance. Jesus had no power, but certainly authority. Hitler had both power and authority («working towards Hitler»). Stalin had power but no authority. Authority, when vested in norms and institutions, rests on material sanctions and on a broad spectrum of emotional reactions.

Power as well as authority may induce *compliance*. The main topic of the present paper is to examine the mechanisms sustaining compliance. I begin in Section II by discussing how powerful and resourceful individuals deploy threats and promises to make others act in accordance with their desires, and why these efforts are sometimes counterproductive. The rest of the paper is devoted to compliance with authority. In Section III I discuss how the *wishes* of an authoritative figure may induce compliance even in the absence of (explicit or implicit) threats and promises. In Section IV I consider the authority of unwritten rules: social norms and conventions. Section V moves on to consider the authority of written rules: laws and constitutions.

## 4.2 *Threats and promises*

Power operates through incentive schemes, based on threats and promises. Considering first the use of threats, the standard view is that people comply with threats when (i) they believe the threat will be carried out if they don't comply and (ii) they prefer complying to the execution of the threat. This statement is ambiguous, however, in that it does not distinguish between pre-threat and post-threat preferences. According to what psychologists describe as "reactance" (Brehm, 1966), or what John Roemer (1985) cites as «the psychology of tyranny», threats may in fact have a dual effect. A threat raises the costs of non-compliance, but can also change the preferences of the person being threatened by making him more willing to suffer these costs. When during World War II German occupiers threatened to kill ten nationals for every German who was killed, the threat (and even more its implementation) often seems to have reinforced hatred of the Germans and induced more rather than fewer killings of Germans. In Palestine today, much seems to indicate that Israeli reprisals are counterproductive for the same reason. Similarly, efforts to make workers make an effort by punishing substandard performance often backfire (Fehr and Gächter, 2000).

Even when threats leave preferences unchanged, so that (ii) above is true, they may still fail to induce compliance, viz. if (i) is false. To be effective, threats have to be credible. An agent who is both all-powerful and (believed by the target to be) all-rational may find that he is powerless, since his threat to punish non-compliers may not be credible. Credibility may thus be enhanced if the target believes the agent to be irrational (Schelling, 1956). It may also be enhanced if the *target* is irrational, due to lack of ability to engage in the kind of reasoning («backwards induction») that is needed to perceive that a given threat lacks credibility (Camerer, 2003). Credibility may also be



enhanced by rational precommitment, such as burning one's bridges or one's ships (Dixit and Nalebuff, 1991). Reputation effects are also important.

Promises, to be effective, must have the same properties: they must leave preferences unaffected and they must be credible. The first condition is not always satisfied: promises may induce preference changes that work against the desires of the promiser. There is evidence that children who are rewarded for good grades lose interest in schoolwork and that incentive schemes in the workplace are similarly counter productive (Kohn, 1993). The same is true about participating in family household work. The child who has been praised or rewarded for doing something nice has learned that the only reason to continue being nice is to get something for it. When there is no longer a goody to be gained, there is no reason for the child to continue helping. Rewards, in other words, can induce a shift from autonomous to instrumental motivations.

The credibility of promises (unlike that of threats) can be enhanced by enlisting the law as a precommitment device. By writing a legally enforceable contract I can persuade other people that I will not renege on my promise to share the profits of a joint venture with them. If this technology is unavailable, reputation effects can be very robust in sustaining the credibility of promises. These may be combined with another piece of precommitment technology, as when I take pains to make my promise known to the largest possible audience. It remains likely, nevertheless, that many promises, that if believed and kept would benefit both parties, would not be credible and hence are not made.

#### 4.3 *Wishes*

To comply with someone's wish is to do what that person desires you to do, assuming (i) that the action in question is not

what you would have done anyway (and ignoring cases in which the other's wish serves as a tiebreaker), and (ii) that there is no implicit or explicit threat or promise. There are several subcases, all of which are frequently observed in the sphere of family relations. When you *love* the other person, it follows almost by definition that you want to satisfy his or her desires. If you *respect* the other, you may take him or her as an authority concerning the appropriate object of desire. If you are in *fear and awe* of the other, you may comply to avoid disapproval or punishment. Although in this last case compliance is motivated by the prospect of the negative consequences of non-compliance, by assumption these are not embodied in explicit or implicit threats.

To comply with a wish, you first have to know what it is. One way of learning it is by the other telling you. But to express a wish may easily induce guilt in the other. (Examples are «I wish you wouldn't work so often in the evenings» or «I wish you'd visit your grandparents more often».) Guilt easily turns into anger at the person who makes one feel guilty. The anger can easily make one refuse to comply with the wish. Expressing wishes may therefore, as the expression of threats and promises, work against the purpose of the speaker. Because people know this, their wishes may remain unstated. Because people know this, they may try to guess what the other might wish. Outside the family and a circle of close friends, this aspect of wish-compliance is probably insignificant.

Charismatic authority rests on all the attitudes enumerated above: love, respect, fear and awe. The mix of attitudes may vary, from Jesus to Hitler, but typically all are present to some extent. A charismatic leader does not stoop to making threats or promises, although he may well issue warnings and make it known that good performance will be rewarded. Rewards and punishments are backward-looking and merit-based, not part of a forward-looking incentive scheme. The leader is also quite

ready to make his wishes known; in fact, he is expected to do so. Compliance in this context takes the form of discipleship. Although the relation of a charismatic leader to the disciples is one of authority, relations *among* the disciples tend to rest on power, with regulation of access to the leader being the most important power base.

Wish-compliance, in the cases discussed so far, rests on pre-existing and intensely personal attitudes in the complier. *Trust* offers a more impersonal mechanism for generating wish-compliance. As often understood, trust must rest on a prior belief that the other person is in fact trustworthy. Trustworthiness may also emerge endogenously, however, through the interaction itself. Montaigne (1991, pp. 1078-79), wrote that «When I am on my travels, whoever has my purse has full charge of it without supervision. He could cheat me just as well if I kept accounts, and, unless he is a devil, by such reckless trust I oblige him to be honest». To meet distrust with distrust and trust with trust seems to be a general propensity of human nature, as shown in many experiments with «Trust Games» (Camerer, 2003).

#### 4.4 *Unwritten rules: norms and conventions*

The authority of individuals is a tangible, incontestable causal fact. The authority of norms, laws and so on seems more obscure. We may want to distinguish between written and unwritten injunctions to act or to refrain from acting. Written documents, by themselves, have no causal efficacy, whence the pejorative phrase «parchment barriers» that is sometimes used about laws and constitutions. To produce an effect they have to be the object of specific desires and beliefs of the citizens. Unwritten norms and conventions, which exist only in the minds of individuals, may be causally efficacious by virtue of affecting their desires or beliefs.

Given that beliefs and desires can lend causal efficacy to written and unwritten injunctions, why use the term “authority” to describe this fact? My answer is that people often comply with rules and norms for the reasons sketched in the first paragraph of Section III. They perceive them as supra-individual social facts which command attitudes of love, respect, fear and awe. This perception is not the only reason for compliance, as we shall see, but I believe it is virtually always one component of the individual’s response and often the most important one. In the rare cases where it is absent, the authority of the rule is diminished.

I shall distinguish between two kinds of unwritten rules, social norms and conventions, the former being sustained by desires and the latter by beliefs. Social norms, as I understand them, are non-consequentialist injunctions to act or to refrain from acting (Elster, 1999, Ch.III.2). Examples include norms against behavior «contrary to nature» (incest, cannibalism), norms of etiquette, norms of revenge, work norms, and many others. Their causal efficacy is due in part to the material sanctions to which norm-violators are subject, and in part to the powerful emotions of shame (in the norm-violator) and contempt (in observers of the violation). Often, the most important aspect of the material sanctions is the cost of sanctioning *to the sanctioner*, since the intensity of his emotional reactions can be inferred from how much he is willing to give up in order to punish the norm-violator (Fehr and Fischbacher, 2003).

In many cases, social norms are utterly arbitrary, yet are experienced as having the weight and authority of objective principles. I do not perceive the person who comments on my improper attire at a dinner party as an interfering busybody, but as the authoritative vehicle of a social judgment. This is the psychological grain of truth in the Durkheimian thesis that norms are social facts. The perceived objectivity of norms has, to be sure, no foundation in reality. «What kind of Good can it be,

which was honoured yesterday but not today and which becomes a crime when you cross a river? What kind of truth can be limited by a range of mountains, becoming a lie for the world on the other side?» (Montaigne, 1991, p. 653). Yet the perception that norms possess some kind of objectivity contributes essentially to their immense motivating power.

The idea of a convention can be taken in two ways. On the one hand, conventions can be coordination equilibria, based on expectations about other people's behavior. The often-cited example of driving on the right or the left side of the road is misleading in that this behavior is also sustained by the fear of legal sanctions. A better example is the Australian and South Korean convention of walking on the left side of the sidewalk. If everyone expects everybody to act in this way, the comic sidewalk ballets that occur in cultures lacking a firm convention in this respect will not occur. Yet even this example is not perfect. In theory, conventions are sustained merely by the annoying consequences incurred by anyone who deviates from them. In practice, as shown by the sidewalk example, they may also be sustained by disapproving remarks by victims of unilateral deviations («Watch where you're going»). Even when not backed up by legal norms, conventions tend to be reinforced by social norms. There are exceptions, such as the Norwegian convention that we all parade in the streets on May 17th, the national holiday. If I don't show up, my absence will only have a marginal effect on the pleasure others derive from the occasion. Moreover, since others have no way of knowing that I wasn't there, they will not express disapproval of my absence. Although my expectation that others will show up is often enough to make me show up too, the element of authority generated by the normative expectations of others towards me is lacking.

On the other hand, there are *constitutional conventions*, that is, unwritten constitutional norms. In several countries, includ-

ing Norway and Canada, there is an unwritten convention to the effect that the government must step down if it loses the support of parliament. In Canada, there is even a convention regulating what should be done if the government violates that convention: the Governor General who is normally (conventionally in fact) lacking in discretionary powers would have to step in to dismiss the Government (Heard, 1991). I doubt whether anyone knows what would happen in a similar situation in Norway. To use a phrase coined by Paul Veyne (1976, p. 279), any politicians who might be tempted to violate the convention are probably deterred by a mix of «precise fear of diffuse sanctions» and «diffuse fear of precise sanctions». Also, the normative authority of the democratic system may be such that the issue does not even arise in their minds.

Other conventions do not have the same degree of intrinsic authority, partly because they do not have a democratic pedigree and partly because they are constantly «open to challenge on the basis of fresh arguments about the precedents that allegedly support them» (Marshall, 2003, p. 39). An example is the convention that the British Prime Minister must always be a member of the House of Commons. Constitutional conventions of this weaker sort are sustained mainly by the fear of political sanctions, such as revolution or electoral losses. The sustaining mechanism is entirely different from that underlying coordination equilibria. Whereas the latter can be represented as normal-form games that model the costs of unilateral deviation, the stability of constitutional conventions must be represented by extensive-form games that model the risk of retaliation.

#### *4.5 Written rules: laws and constitutions*

Compliance with laws depends both on their authoritative character and on the expected punishment for non-compli-

ance. (It may be worth mentioning that citizens are never rewarded for complying with the laws.) For those who believe that punishment is the only aspect that matters, there is no difference between a fine and a price. While this view may be approximately true of parking tickets and other minor offenses, it cannot claim general validity. It presupposes not only that people subject to the law have no respect for it, but also that they are shameless in the sense of being unaffected by what others think about them. Or perhaps the view simply presupposes that others don't care about what their fellow citizens do, as long as they pay the price for wrongdoing stipulated in the law. In either version, the view is self-evidently absurd. Almost everybody would prefer spending a month in hospital to spending a month in jail.

The authority or majesty of the law depends on its impartiality (equality before the law) and on its procedural pedigree. In principle at least, it applies to all and is adopted by a system (majority voting) that is approved by all. Up to a point, the majesty of the law and the fear of stigma induce people to comply with laws they do not agree with, over and above the degree of compliance that may be induced by fear of legal sanctions. Beyond that point, substantive objections can undermine compliance. Many people think that the ban on using marijuana is sufficiently unjustified to justify non-compliance. Lack of majesty, e.g. because of procedural irregularities, may also reduce compliance. My willingness to comply with a tax code that imposes a heavy burden on me might evaporate if I learn that it was adopted to favor special interests rather than the public interest. Draconian sentencing regulations («Three strikes and you're out») may also undermine the respect for the law, leaving nothing but deterrence in its place. As in the case of threats, the net effect on behavior may be indeterminate. Civil disobedience is a special case of non-compliance. Whereas most law violators try to keep their violations secret,

to avoid punishment, it is an important part of the ethics of civil disobedience that it should be public and that the non-compliers should accept punishment. In this case, the aim of non-compliance is to change the law rather than to get away with violating it.

Whereas laws regulate the behavior of individuals, constitutions regulate the behavior of the state and its institutions. At least, this is true of the Anglo-American tradition. In the Continental tradition, some constitutions enumerate individual duties as well as rights against the state. Also, in this tradition some constitutions protect the rights of individuals against other individuals. Here I focus on the (parts of) constitutions that regulate the behavior of state institutions.

Some acts of non-compliance with the constitution are indubitably so. In 1962 it was clear to all that de Gaulle was in non-compliance with the 1958 constitution when he had the direct election of the President approved by referendum. (To be sure, his defenders, including the tame chairman of the Constitutional Council, wove a web of words to justify his action, but nobody was taken in.) The result of the non-compliance was that the constitution was changed, by a constitutional convention, to accommodate the practice.

Often it is not obvious whether a given action constitutes non-compliance with the constitution. The US constitution does not mention the right to privacy, which was the ground for the Supreme Court's decision in *Roe v. Wade* that the state of Texas was in non-compliance with the constitution when it banned abortion. In such cases, which are very frequent, compliance or non-compliance simply means conformity or non-conformity with the Court's *interpretation* of the constitution, that is, with the reading preferred by at least five out of nine members of the Court.

An action may comply with the letter of the law but not with its spirit. Hitler's rise to power did not rest on violations of the



constitution, but of a clever exploitation of its weaknesses. The breakdown of Weimar Germany occurred through the operation of two separate clauses in the constitution, which had not been considered in conjunction by the framers. By Article 48, the President could assume dictatorial powers, subject to an overrule by parliament which was supposed to prevent abuses. By Article 25, however, he could dissolve parliament and hence remove this check on his power. Each of the two clauses by itself might not confer a great deal of power on the President, but their combination did. This being said, the idea of «complying with the spirit of the constitution» is very nebulous. In the following, I restrict myself to determinants of compliance in the more literal sense.

Compliance with «the constitution» can mean two things. First, framers might want their successors to comply with the very document they create. Second, they might want them to comply with the constitution that is in force at any given time, assuming that it derives from the original one by a series of changes each of which has taken place by the rules of the constitution in force at the time of that change. If the framers are motivated by the first goal, they will write very stringent amendment clauses into the constitution. That strategy may, however, induce non-compliance rather than compliance, for two distinct reasons. First, the successors might react to the very idea of being bound, because of something like a reactance mechanism (Tocqueville, 1990, p. 181; Bryce, 1980, p. 56). Second, and more important, they will not comply with an unamendable constitution if it turns into a suicide pact, to use a phrase of Justice Robert Jackson. Farsighted framers, therefore, will aim at the second goal and make the constitution somewhat difficult, but not too difficult, to amend.

Although ease of amendment makes compliance more likely, it does not make it certain. Even if constitutional amendments were as easy to pass as ordinary laws, there might still be

groups who, being unable to change the constitution, would rather overthrow it than abide by it. When this doesn't happen, why doesn't it? A common explanation of political stability is that the system is in an *equilibrium* where no actor or coalition can improve its (expected and discounted) material rewards by non-compliance. In my opinion, this explanation is worthless. In well-functioning democracies, the issue doesn't arise. Heads of state, chiefs of the armed forces and party leaders are not constantly recalculating whether to comply with the constitution. There is no equilibrium because the beliefs and preferences in terms of which it would be defined simply *don't exist*, that is, have no subjective reality.

In ill-functioning democracies, where such calculations may be made, they are shrouded in radical uncertainty. Equilibrium explanations assume that the actors have well-defined beliefs (or subjective probabilities) about each other's behavior as well as other matters, such as their support in the population. They also assume that the actors have stable preferences with well-defined trade-offs among different objectives. We know, however, from theories of bounded rationality and from behavioral economics that these assumptions are fictions. Standard assumptions about time discounting, too, are extremely fragile. Theories of coalition-formation are so numerous that none of them can be trusted. In any case, treating collective actors as if they were individuals raises problems of aggregation that, as we know, can be insurmountable.

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Gloria Origgi

## 5. WHAT DOES IT MEAN TO TRUST IN EPISTEMIC AUTHORITY?

*"There must be a minimal degree of trust in communication for language and action to be more than stabs in the dark"*

Sissela Bok, *Lying*

*"Mais qu'y a-t-il donc de si périlleux dans le fait que les gens parlent, et leurs discours indéfiniment prolifèrent?"*

Michel Foucault, *L'ordre du discours*

*"I learned an enormous amount and accepted it on human authority, and then I found some things confirmed or disconfirmed by my own experience"*

Ludwig Wittgenstein, *On Certainty*

Consider this case. At high-school in Italy many years ago I heard my teacher of Latin say: "Cicero's prose is full of synecdoches"<sup>1</sup>. I had a vague idea of what a synecdoche was, and had ignored until then that one could characterize Cicero's writ-

<sup>1</sup> This example is a reformulation of a Francois Recanati's example in his paper: "Can We Believe What We Do Not Understand?" *Mind and Language*, 1997, that I have discussed at length in another paper: "Croire sans comprendre", *Cahiers de Philosophie de l'Université de Caen*, 2000. The problem of deferential beliefs was originally raised by Dan Sperber in a series of papers: "Apparent Irrational Beliefs", "Intuitive and Reflexive Beliefs" *Mind and Language*, 1997.

ing in this way. Nevertheless, I relied on my teacher's intellectual authority to acquire the belief that Cicero's prose is full of synecdoches, and today have a more precise idea of what my teacher was talking about. Was I justified in any sense in uncritically accepting that pronouncement by deferring to my teacher's authority? Let us have a closer look at the example. Many things were going on in this apparently trivial case of belief acquisition. I was sitting in a classroom, aware of being in a social institution – school – dedicated to knowledge transmission, and I had been properly instructed to believe what people say in school. While listening to the teacher, I was simultaneously learning a fact, that Cicero's prose was full of synecdoches, and acquiring a linguistic concept, that is, the word "synecdoche" (or, if not acquiring it, at least acquiring a rule about its appropriate use, or, better, enriching its meaning). I was learning a fact and learning a language meaning at the same time. My reliance on Italian educational institutions was strong enough to accept this on pure deferential bases. Or consider another example. I was born in Milan on February 8, 1967. I believe this is true because the office of Vital Records in the Milan Municipal Building registered a few days after that date the testimony of my father or my mother that I was indeed born on the 8<sup>th</sup> of February in a hospital in Milan, and delivered a birth certificate with this date on it. This fact concerns me, and of course I was present, but I can access it only through this complex, institution-mediated form of indirect testimony.

Or else: I know that smoking causes cancer, I've been told this and it was enough relevant information to make me quit cigarettes 10 years ago. I don't have the slightest idea of the physiological process that a smoker's body undergoes from inhaling smoke to developing a cellular process that ends in cancer. Nevertheless, the partial character of my understanding of what it really means that smoke causes cancer doesn't stop me from declaring it in conversations and governing my behavior according to this belief.

Our cognitive life is pervaded with partially understood, poorly justified, beliefs. The greater part of our knowledge is acquired from other's people spoken or written words. The floating of other people's words in our minds is the price we pay for thinking. Traditional epistemology warns us of the risks of uncritically relying on other people's authority in acquiring new beliefs. One could view the overall project of classical epistemology – from Plato to the contemporary rationalist perspectives on knowledge – as a normative enterprise aiming at protecting us from credulity and ill-founded opinions. Various criteria, rules and principles on how to conduct our mind have been put forward as a guarantee to preserve the autonomy and freedom of thought necessary for the acquisition of knowledge. Just as an example, a great part of Locke's *Essay concerning Human Understanding* is an attempt to establish principles for the regulation of opinions, stated in terms of obligations on one's own "epistemic conduct", that strengthen our intellectual autonomy. According to Locke, four major sources of false opinions threaten our mind:

- I. Propositions that are not in themselves certain and evident, but doubtful and false, taken up for principles
- II. Received hypotheses
- III. Predominant passions or inclinations
- IV. Authority

*(Locke, Essay, Book 4, XX, 7)*

Reliance on other people's authority is thus viewed as a major threat to the cognitive autonomy that distinguishes us as rational thinkers. Exposure to received beliefs increases our risk of being "infected by falsity", the worst danger, against which the overall epistemological enterprise was built.

Yet, the massive trust of others that permeates our cognitive life calls for an epistemic treatment, and has become a central

issue in contemporary debates in philosophy of knowledge and social epistemology. A number of approaches have been put forward in order to account for the epistemic reliability of the “division of cognitive labour” so typical in contemporary, information-dense societies.

Most analyses that have been recently proposed in social epistemology concentrate on the evidential grounds for trusting in other people’s authority: trusting someone’s authority on a given matter means assessing her trustworthiness on that matter. Trustworthiness depends on both competence and benevolence. In order to assess other people’s trustworthiness one needs evidential criteria of their competence and their benevolence. For example, a scientist who trusts in the authority of a colleague on a certain experimental data grounds her judgment in her knowledge of her colleague’s track record in that scientific domain (such as the number of publications in the relevant reviews of the domain, or the number of patents, etc.) plus the beliefs that she is self-interested in being truthful for the sake of their future collaborative work<sup>2</sup>. Yet, this “reductionist” analysis, which I will detail later, misses some central intuitions about the presumptive character of our trust in others and its motivational dimension. Trust in testimony has a spontaneous dimension that doesn’t seem to be based on a rational assessment of other people’s truthfulness. Also, an evidential analysis of epistemic authority doesn’t account for cases of partial understanding, as in the examples above, in which the overt asymmetry between the epistemic position of the authoritative source and the interlocutors is such that it cannot be treated by appealing to evidential criteria only. Here, my aim is to explore some treatments

<sup>2</sup> Another possible rational motivation to be trustworthy in the case of science is the high cost of cheating in the scientific community and the fear of risking permanent exclusion (see M. Blais [1987]).



of the more familiar notion of trust in the social sciences, moral and political philosophy in order to understand to what extent the notion of epistemic trust may be illuminated by these analyses. I will contrast evidential vs. motivational analyses in the social sciences and claim that motivational analyses can find their places in an epistemology of trust. Motivational analyses have often been described as non-cognitive. Take, for instance Lawrence Becker's distinction between cognitive vs. non cognitive treatments on trust: "Trust is 'cognitive' if it is fundamentally a matter of our beliefs or expectations about others' trustworthiness; it is non-cognitive if it is fundamentally a matter of our having trustful attitudes, affects, emotions, or motivational structures [...] To say that we trust others in a non-cognitive way is to say that we are disposed to be trustful of them independently of our beliefs or expectations about their trustworthiness" [Becker 1996, 44, 60]<sup>3</sup>. I will oppose this distinction by arguing that in the case of epistemic trust a motivational analysis of trust can be cognitive, that is, it can shed some light on our mental processes of acquisition of beliefs and knowledge. In particular, I will try to ground the cognitive bases of our epistemic trust in our communicative practices. My purpose here is to explore a broader notion of epistemic trust, one that could account for what is common in cases as different as the blind trust of the patient in her doctor, the trust needed in collaborative intellectual work and the everyday trust needed to sustain our ordinary conversations.

Intellectual trust is a central question of contemporary epistemological concerns. Yet, most of the debate surrounding this

<sup>3</sup> It is interesting to notice that Becker liquidates much of the recent debate around the epistemic role of motivational trust by introducing *credulity*, as the disposition to believe what another person says and to banish skeptical thoughts, and *reliance*, as a disposition to depend upon other people in some respects (pp. 45-46), both of them that lie outside the reach of a rational motivation to accept other people's intellectual authority.

notion fails to provide a proper analysis of the notion and only superficially connects it to the parallel social, political and moral treatments of trust. The result is a lack of explanatory power of this notion in epistemology. One often has the feeling that talking about trust in epistemology is just a way of evoking the need to varnish our study of knowledge with some moral and social considerations<sup>4</sup>. My belief is that intellectual trust deserves more attention, and its intricate relation with the notion of trust in use in the social sciences needs to be better disentangled.

On the other hand, sociological and moral theories of trust in authority fail to make the distinction between epistemic vs. political authority and present themselves as simultaneously accounting for the two concepts.

There are some obvious parallels between the notion of epistemic trust and that of social and political trust. Trust in authority poses a similar puzzle in both cases. How can someone – an institution or an individual – legitimately impose her/its will on other people and have a right to rule over their conduct? How is this compatible with freedom and autonomy? And why should we trust an authority to impose upon us a duty to obey for our own good?

Much ink has been spilled on this apparent paradoxical relation between trust in authority and freedom. And of course an equivalent puzzle can be reformulated in the case of intellectual trust: how can it ever be rational to surrender our reason and accept what another person says on the basis that she is saying this? What does it mean to grant intellectual authority to other people?

<sup>4</sup> Take for example Hardwig's analysis in his paper: "The Role of Trust in Knowledge". There are exceptions to this criticism, as for example R. Foley's book *Intellectual Trust in Oneself and Others* (Cambridge UP, 2001) in which a detailed analysis of trust in the authority of others is provided in ch.4.

The very notion of ‘authority’ in philosophy is notoriously ambiguous between the authority that someone exercises on other people’s beliefs and the authority that someone exercises on other people’s actions<sup>5</sup>. As Friedman has rightly pointed out: “A person may be said to have authority in two distinct senses: for one, he may be said to be ‘in authority’, meaning that he occupies some office, position or status which entitles him to make decisions about how other people should behave. But, secondly, a person may be said to be ‘an authority’, meaning that his views or utterances are entitled to be believed” [Friedman, 1990, p. 57].

In both cases, the appeal to authority calls for an explanation or a normative justification of the legitimacy of the authoritative source, a legitimacy that must be acknowledged by those who submit to it. Still, I think that trust in epistemic authority and in political authority are two distinct phenomena that deserve a separate treatment.

As I said above, most accounts of epistemic trust ground its legitimacy in the evidential bases we have to assess other people’s trustworthiness. Motivational accounts in the case of knowledge seem desperately unable to avoid the risk of credulity and irrationality that accompanies *prima facie* any *a priori* trust in others as a source of knowledge.

In what follows, I will briefly sketch evidential vs. motivational approaches to trust as they are discussed in the social sciences and then try to use this distinction to gain a better understanding of epistemic trust.

### *Evidential accounts of trust*

A common view of trust in contemporary social science reduces it to a set of rational expectations about the likely

<sup>5</sup> For an analysis of this ambiguity, cf. R. B. Friedman (1990) “On the Concept of Authority in Political Philosophy” in J. Raz (ed.) *Authority*, New York University Press.

behaviour of others in a future relationship of cooperation with us. Take the definition that Diego Gambetta gives in his influential anthology on trust: "Trust (or, symmetrically, distrust) is a particular level of the subjective probability with which an agent assesses that another agent or group of agents will perform a particular action, both *before* he can monitor such action (or independently of his capacity ever to be able to monitor it) *and* in a context in which it affects *his own* action. When we say we trust someone or that someone is trustworthy, we implicitly mean that the probability that he will perform an action that is beneficial or at least not detrimental to us is high enough for us to consider engaging in some form of cooperation with him. Correspondingly, when we say that someone is untrustworthy, we imply that that probability is low enough for us to refrain from doing so" [Gambetta, 1988, p. 218]. Thus trust is a cognitive notion, a set of beliefs or expectations about the commitment of the trusted in behaving in a determinate way in a context that is relevant to us. Following the literature, I call these analyses *reductive* and *evidential*. They are reductive accounts because they don't set trust as a primitive notion, but reduce it to more fundamental notions such as beliefs and expectations. They are evidential because they make trust depend on the probabilities we assign to our expectations towards other people's actions towards us. I may trust or distrust on the basis of some evidence that I have about someone else's future behaviour. As it has been stressed by contemporary literature on trust in social science, trust must be distinguished from pure reliance. Trust is an interesting notion in social sciences only insofar as it explains the implicit commitment that it imposes on a relationship. If it were just a matter of assessing probabilities of another person's behaviour without taking the effect of her behaviour on our own actions into account, it would not be so different from general inductive reasoning. I trust in a certain level of stability of the social world

around me. I trust the person that I cross when walking on the street not to assault me. This is the minimal level of trust that a society should be able to arrange in order to perpetuate. I need to rely on some regularities of the social world in order to act. But the interest in the notion of trust in the social sciences is that it takes into account not only social regularities but also commitments.

A recent explanation of trust that clearly takes into account expectations about other people's commitment – and not simply regularity – is found in Russell Hardin's analysis of trust as a *encapsulated interest*, that is, trust as belief that it is in the interest of the trusted to attend to the truster's interests in the relevant matter [cf. Hardin 2002].

Thus, evidential accounts of social trust try to reduce it to justified expectations about the objective probability of other people's commitments.

The key aspect of evidential accounts that I would like to contrast with motivational accounts is that trust is viewed as a cognitive attitude, like knowledge or belief, for which we can find a rational justification in terms of the capacity we have to read and assess the commitments of others.

What about evidential accounts of intellectual trust? An evidential theory of intellectual trust assigns probabilities to our expectations about our interlocutors' truthfulness on a particular subject matter. And of course truthfulness is a matter of competence as well as of benevolence. But competence and benevolence are very different things. Competence seems to be a more objective trait than benevolence: I can trust you on your willingness to help me in translating Herodotus even if I don't defer to your competence in Ancient Greek. Competence doesn't depend on your commitment to be trustworthy to me.

Most evidential accounts of intellectual trust explore the dimension of competence more than that of benevolence. The epistemological literature on assessing expertise focuses on the

cognitive strategies that we can adopt in order to assess the reliability of doctors, lawyers, witnesses, journalists, etc. Alvin Goldman argues that there exist “truth-revealing situations”<sup>6</sup> in which a novice can test the competence of the expert even if she doesn’t know how the expert has come to collect her evidence. For example, the weather today is a truth-revealing situation of the expertise of the weather forecast that I read yesterday in the New York Times. If the NYT weather forecast were systematically poorer in predicting the weather than the Yahoo weather forecast, I would have evidence to trust the latter more than the former, even if I don’t have the slightest idea about how a weather forecast is produced. That is the commonsense practice that we use to calibrate our informants’ expertise, even if we are novices in their domain of expertise. If my doctor’s therapy against my stomachache is inefficacious, I am in a truth-revealing situation to assess her competence. Of course, not every domain of expertise admits of truth-revealing situations: large areas of the formal sciences such as mathematics or physics don’t. In these cases, there exist alternative strategies that allow us to assess the reliability of the overall social process that sustains laymen’s epistemic dependence on experts. Such strategies have been investigated by various authors, for example Philip Kitcher, who defines the overall project of describing the strategies of granting expertise to others as *the study of the organisation of cognitive labour*. As he points out: “Once we have recognized that individuals form beliefs by relying on information supplied by others, there are serious issues about the conditions that should be met if the community is to form a consensus on a particular issue – questions about the division of opinion and of cognitive effort within the community and

<sup>6</sup> Cf. A. Goldman “Epistemic Paternalism: Communication Control in Law and Society,” *The Journal of Philosophy* 88 (1991): 113-131.

issues about the proper attribution of authority” [Kitcher, 1994, 114]. For example, I can have methods to track your past records within a particular domain and grant you authority on the basis of your “earned reputation” in this domain<sup>7</sup>. Or I can grant you authority due to your better epistemic position: I call my sister in Milan and she tells me that it is raining there and I believe her because I am able to assess her better epistemic position about the weather in Milan. These accounts underscore the rational bases of our trust in other people’s epistemic authority and appeal to a conceptual framework similar to that of the evidential accounts of trust in the social sciences by using the language of rational decision theory or microeconomics<sup>8</sup>.

Evidential accounts of trust in authority illuminate the reasons why we reliably appeal to experts in specialized domains. But, as I said, trust in epistemic authority seems to involve more than just the assessment of expertise. We don’t always have the choice to trust or distrust. The examples that I give at the beginning of this paper show that it is not always a matter of deciding to defer to other people’s authority: it just happens that the very nature of some of our beliefs is deferential, and that’s not a phenomenon that seems to be captured by these accounts.

### *Motivational accounts of trust*

Many authors in the social sciences and moral philosophy claim that evidential accounts fail to provide an appropriate picture of trust, by appealing only to a set of rational expectations about other people’s motivations to commit to cooperation.

<sup>7</sup> Kitcher [1992] defines this kind of authority: “earned authority”.

<sup>8</sup> Cf. for an example of use of the economics framework A. Goldman and M. Shaked [1991] and P. Kitcher [1993] ch.8.

Our commitment to trust is not only cognitive, that is, based on the degree of our beliefs about the future actions of the trusted. Trust also involves a motivational, non-representational dimension that may depend on our deep moral, emotional or cultural pre-commitments. Thus, in the paper that I have mentioned above, Becker speaks of our trust as non-cognitive if it is a disposition to be trustful towards persons “independently of our beliefs or expectations about their trustworthiness” [p. 50]. In a book entitled *Authority* Richard Sennett defines trust in authority as an emotional commitment. And in a seminal paper, Annette Baier defines trust as the accepted vulnerability to another’s possible but unexpected ill will toward oneself, and explores the varieties of moral, emotional and cultural grounds on which we accept this vulnerability. Along the same lines, Otto Lagerspetz says: “trust is not the fact that one, after calculating the odds, feels no risk: It is feeling no risk without calculating the odds” [1998] These accounts try to capture the idea that in many circumstances our trust in others cannot be converted into subjective estimates of risk, because the margins of ignorance or uncertainty are too broad for such estimates to be possible. Also, as Baier points out, “trust can come with no beginnings, with gradual as well as sudden beginnings and with various degrees of self-consciousness, voluntariness and expressness” [Baier, 1986, p. 240]. That is, the child who trusts her mother, the patient who trusts her doctor, the novice scientist who trusts the truth of the main results in her field without having gone through the details of the proofs, have different degrees of control and thus of choice on their trustful attitude. As the anthropologist Maurice Bloch says in his explanation of the role of deference in rituals: “We are permanently floating in a soup of deference” Most of the time we are not aware of the reason we have to trust. We simply do so<sup>9</sup>.

<sup>9</sup> Bloch explains rituals as a collective moment of awareness of the deference to the tradition. Cf. M. Bloch (2004): “Rituals and Deference”, in H.



The moral philosophical literature on motivational trust tries to establish to what extent such trustful attitudes are morally justified. Baier's conclusion is that they are insofar as there are minimal reasons to think that the trusted who is exerting her authority on us cares about the goods we want her to care about. For example, it is justified to trust our partner in the treatment of our child even if we don't approve of or understand her actions, if we have reasons to think that she cares for the child.

A more empirical literature in social psychology and economics tries to establish the effects of motivational trust on stabilizing cooperation and reliability in negotiations and in everyday life.

What about the epistemic implications of motivational accounts? Do they illuminate in any sense our trust in epistemic authority? At a first glance, motivational accounts seem better equipped to explain a broader spectrum of cases than evidential accounts do. A motivational dimension seems to be involved in the asymmetrical deferential relations of trust in epistemic authority that I've tried to suggest in my previous examples. Indeed, trust in epistemic authority doesn't seem to be a matter of choice in the most straightforward examples: The child who trusts her mother when she tells her that she needs to breathe air to survive – even if she cannot see air and cannot figure out what is the role of oxygen in our survival – doesn't have the choice to be skeptical, as well as the patient who is told by her doctor that she has contracted a potentially lethal disease. Also, we find ourselves committed to trust the intellectual authority of other people just because we are part of the same linguistic and epistemic community, because we share the same institutions and we acknowledge a "division of cogni-

Whitehouse and J. Laidlaw (eds.) *Rituals and Memory: Towards a Comparative Anthropology of Religion*, Altamira Press, London.

tive labour” in our community. But if we accept the principle that a certain amount of “default” trust – or spontaneous trust – is needed to sustain our cognitive life in a social environment, how do we avoid the risk of credulity that such a trustful disposition seems to imply? And if the motivational trust that sustains our social relations may be based on moral, cultural or emotional pre-commitments, what about the pre-commitments underlying the motivational trust that sustains our cognitive relations? Moral commitments to trust in other people’s intellectual authority typically ground the adhesion to the most irrational beliefs. Religious beliefs or allegiance to a guru’s thoughts are often justified in terms of moral or emotional commitments. But these are exactly the kinds of beliefs that an epistemological account of trust should try to exclude in order to avoid the risk of gullibility run by a default trustful attitude towards the words of others.

### *Reidian accounts of epistemic trust*

Another way to argue for the role of motivational trust in knowledge acquisition is to see it as an innate disposition to accept what other people tell us. And indeed many authors have argued that a natural tendency to trust others is the only way to justify testimonial knowledge. The *locus classicus* of this position is Thomas Reid’s defense of trust in testimony: We are justified in believing what other people say because we, as humans have a natural disposition to speak the truth and a natural disposition to accept as true what other people tell us. Reid calls these two principles, “*that tally with each other*”<sup>10</sup>, the *Principle of Veracity* and the *Principle of Credulity*. But the

<sup>10</sup> Cf. Reid [1764] *Inquiry into the Human Mind*, § 24.

relationship between these two principles, which Reid considers self-evident, is far from being clear. The principle of veracity is not well correlated to truth: It just affirms that people are disposed to say what they believe to be true, which does not mean that they say what it is actually true<sup>11</sup>. Thus, an appeal to a natural trustful disposition doesn't suffice to justify our epistemic trust and protect it from credulity.

Reid affirms that if we deny any legitimacy, or at least, naturalness to our trust in others, the result would be skepticism. We believe "by instinct" what our parents and teachers say long before we acquire the capacity to critically judge their competence. But that is just a way of acknowledging the pervasiveness of the lore of inheritance and upbringing in shaping one owns' concepts and beliefs without explaining it. It is a fact that we are influenced by others, not only in infancy but in the acquisition of most of our beliefs. But acknowledging this fact is not a sufficient explanation of why we are justified in complying with our trustful tendencies.

Modern defences of a Reidian epistemology<sup>12</sup> appeal to the existence of natural language as the material proof that the two principles (credulity and veracity) indeed tally with each other: most statements in any public language are testimonial and most statements are true; if they were not, it is difficult to imagine how a public language could have ever stabilized. [cf. Coady, 1992]. The very possibility of a common language presupposes a generally truthful use of speech.

Tyler Burge relies on the "purely preservative character" of linguistic communication to argue that we have an *a priori* jus-

<sup>11</sup> See on this point K. Lehrer: "Testimony, Justification and Coherence", in Matilal & Chakrabarti (eds.) pp. 51-67.

<sup>12</sup> For an overview of contemporary Reidian epistemology, see R. Foley [2001].

tification for relying on what we understand others to be saying. Language, as memory, is a medium of content preservation<sup>13</sup>.

I have discussed these positions elsewhere<sup>14</sup>. Here let me just mention that, although these positions give us some hints of the ‘passive’, non-intentional trust that characterizes our role as cognizers in a social community, their appeal to some structural features of language is less convincing in solving the paradox of epistemic trust, that is, how it is compatible with intellectual autonomy. That is, what concerns us here is: “how intellectual autonomy is possible, given what we know about the power of one’s inheritance and surroundings to shape one’s concepts, opinions and even the way one reasons?” [Foley, 2001: 128]

### *Epistemic trust out of self-trust*

A different line of defense of the legitimacy of trust in others has been recently pursued by Richard Foley in his book on *Intellectual Trust in Oneself and in Others* [Cambridge, 2001]. Foley derives it from the justification we have to trust ourselves. We grant a default authority in our intellectual faculties to provide us with reliable information about the world. This is our only way out of skepticism. But if we have this basic trust in our intellectual faculties, why should we withhold it from others? We acknowledge the influence that others had in shaping our thoughts and opinions in the past. If acknowledging this fact doesn’t prevent us from granting authority to ourselves, it should not prevent us from granting authority to others, given

<sup>13</sup> Cf. T. Burge: “Content Preservation”, *Philosophical Review*, 102, pp. 457-487.

<sup>14</sup> Cf. G. Origgi [2004] “Is Trust an Epistemological Notion?”, *Episteme*, vol. 1, n. 1, pp. 1-12.

that our opinions wouldn't be reliable today if theirs were not in the past. And even in cases of the interaction of people from different cultures whose influence upon our thinking is poor or nonexistent, we can rely on the general fact that our cognitive mechanisms are largely similar to extend our self-trust to them [cf. Foley 2004, ch. 4]. This strategy of simulation of other minds leads Foley to a sort of "modest epistemic universalism" according to which "It is trust in myself that creates for me a presumption in favor of other people's opinions, even if I know little about them"<sup>15</sup> [cf. *ibidem* p. 108].

I find Foley's position attractive as it preserves intellectual autonomy and ends in justifying just the minimal trust necessary to sustain our epistemic life, and avoiding the "deferential incontinence" and thus gullibility that is imputed to Reidian solutions. But Foley's analysis lacks the motivational dimension that I think an explanation of epistemic trust should include in order to account for very heterogeneous cases such as deliberate deference to an intellectual authority, passive trust in the authority of our cultural heritage and default trust that we grant to others in spontaneous conversation. What his account misses is the idea that in many contexts trusting others doesn't seem to be depend on what we *know* or *discover* about them, as for instance that they are similar to us. Rather, trusting others is a matter of commitment to their trustworthiness in the social as well as in the epistemic cases. One could go further, and suggest that we owe this kind of commitment even to self-trust, that is, that the authority on my own mental states does not depend on something that I discover about myself. Self-trust is the product of a responsible and deliberative commitment about the consequences of assuming some beliefs as my

<sup>15</sup> As Foley says, a stronger epistemic universalism would imply that other people's opinions are necessarily *prima facie* credible. Cf. *ibidem*, p. 107.

beliefs. Richard Moran defends this line in his recent book, *Authority and Estrangement*<sup>16</sup>. According to Moran, this act of commitment is *constitutive* of my self-knowledge. I would not expand further, but I think it shows how problematic is to ground our trust in authority in self-trust. How can we capture the motivational dimension of epistemic trust we need to have a full-fledged notion of trust in authority? As we have seen, we cannot follow moral/social accounts of trust and ground a motivational account in emotional or moral pre-commitments, because this would unavoidably lead to irrationality. Still, grounding it in some innate dispositions or deriving it from self-trust misses the whole point of understanding the nature of our commitment to trust in other people's authority.

In the last section, I will explore a different strategy, and consider one on the most straightforward contexts in which commitment, trust and knowledge bloom together, that is, human communication.

### *Conversation, trust and communication*

One fundamental fact about the social transmission of knowledge that is surprisingly under-exploited in the epistemological literature on intellectual authority is that every social contagion of beliefs goes through a process of communication that ranges from street-level conversation to more institutionalized settings of information exchange. Our almost permanent immersion in talks and direct or indirect conversations is the major source of cognitive vulnerability to other people beliefs and reports, even when the exchange is not particularly

<sup>16</sup> Cf. R. Moran [2001] *Authority and Estrangement*, Princeton University Press, especially ch. 2.

focused on knowledge acquisition<sup>17</sup>. Communication is a voluntary act. Each time we speak we are intentionally seeking the attention of our interlocutors and thus presenting what we have to say as potentially relevant for them. Each time we listen, we intentionally engage in an interpretation of what has been said, and expand cognitive effort in order to make sense of what our interlocutor had in mind. In this last section of my paper, I will argue that it is the intentional, voluntary character of human communication that guarantees our intellectual autonomy even in those cases in which our epistemic position obliges us to defer to other people's authority. And the making and breaking of epistemic trust is related in many ways to our conversational practices.

There are many different styles of discourse that imply different degrees of reciprocal trust. Of course, the set of norms and assumptions that we tacitly accept when engaging in intellectual conversation<sup>18</sup> are not the same we endorse in a party conversation where the common aim we tacitly share with our interlocutors is entertaining and social contact. Still, a basic reciprocal commitment, I will claim, has to take place in any genuine case of communication. And the cognitive dimension of this basic commitment has interesting consequences for our reciprocal trust.

Intentional analyses of communication have been a major contribution to the philosophy of language and pragmatics in

<sup>17</sup> On the fortuitous character of lot of our knowledge, cf. R. Hardin: "If it Rained Knowledge", *Philosophy of the Social Sciences*, 33, pp. 3-24; and [2004] "Why Know?" manuscript. Cf. also Jennifer Lackey: "Knowledge is not necessarily transmitted via testimony, but testimony can itself generate knowledge" [Jennifer Lackey (1999) "Testimonial Knowledge and Transmission", *The Philosophical Quarterly*, 199, p. 490, vol. 49 n. 197].

<sup>18</sup> For an analysis of the mutually accepted norms that rule intellectual conversations, see P. Pettit and M Smith [1996] "Freedom in Belief and Desire", *The Journal of Philosophy*, 93, 9, pp. 429-449.

the last 40 years. We owe to Paul Grice<sup>19</sup> the modern pragmatic analysis of linguistic interpretation as the reconstruction of the speaker's intentions. Simply decoding the linguistic meaning of the words conveyed in an act of communication is not enough to make sense of what the speaker wanted to tell us. Successful communication involves cooperation among interlocutors, even when the ultimate aim of one of the parties is to deceive the other: without at least a common aim of mutual understanding, communication would not be possible. Thus communication is a much richer and constructive activity than simply decoding a linguistic signal. According to Grice, we infer what the speaker says on the tacit assumption that she is conforming to the same set of rules and maxims that guide our cooperative effort to understand each other. Among these maxims, two of them are worth considering for the present purposes: one is a maxim of quality of the information conveyed: "Do not say what you believe to be false" that Grice considers as most important. This doesn't mean that the participants in a conversation are actually truthful. But they act as if they were telling the truth, that is, they conform to the maxim, otherwise the minimal common aim of understanding each other would not be realized. So they need to at least pretend to be cooperative. On the hearer's side, the presumption that the speaker is conforming to the maxim doesn't imply that the hearer comes automatically to believe what the speaker says. She interprets the speaker on the presumption that the speaker is conforming to the maxims, and that leads her to infer what she meant, even if, later, she may be led to revise her presumption on the basis of what she already knows or what she has come to believe in the course of the conversation.

The other maxim that I would like to consider is that of relevance. Contemporary pragmatic theories have developed a

<sup>19</sup> Cf. P. Grice [1957] *Meaning*, ...



notion of relevance as the key notion that guides our interpretations. For example Sperber and Wilson's pragmatic approach, known as *Relevance Theory*, says that each act of communication communicates a presumption of its own relevance. A relevant piece of information, in a given context, is one that optimizes the balance between the cognitive effort I have to invest to process it and the benefits I gain by entertaining it in my mind. A potential communicator presents herself as having something to say that is relevant for us, otherwise we would not even engage in conversation. Communication is a very special case of behavior. It is always intentional and to be successful it needs to be recognized as intentional. I don't automatically give attention to every cognitive stimulus that is potentially relevant for me, but I cannot refrain from allocating at least a minimal attention to an overt act of communication that is addressed to me, because the very fact that it is addressed to me is a cue that it worth attention. The presumption of relevance that accompanies every act of intentional communication is what grounds our spontaneous trust in others. I trust a communicator who intentionally asks for my attention to convey something that is relevant for me, and I adopt a stance of trust that will guide me to a relevant interpretation of what she has said (that is, an interpretation that satisfies my expectations given what she says and what she may assume we are sharing as common ground contextual information). In this rich and constructive process of building new representations and hypotheses on the presumption that they will be relevant to me, the speaker and the hearer are both responsible for the set of thoughts they generate in conversation, that is, what Sperber and Wilson call their "mutual cognitive environment". But the hearer doesn't automatically accept as true the whole set of common ground thoughts that have been activated in the conversation. She may decide to entertain them in her mind for the sake of conversation, and trust the speaker that this is relevant information for her. Our

mutual cognitive environments, that is, the set of hypotheses and representations that we activate in our mind when we communicate in order to understand each other, do not overlap with the set of what we actually believe. In conversation, our interior landscape enriches itself with new representations that have been created on the presumption of their relevance for us, a presumption we are justified in having because we have been intentionally addressed by our interlocutor. We trust our interlocutor's willingness to share a mutually relevant cognitive environment, that is, to build a common ground that maximizes understanding and favors the emergence of new, relevant thoughts. But our previous knowledge and a more fine-grained check of the content communicated can lead us to reject much of what has been said. Trusting in relevance of what other people say is the cognitive vulnerability that we accept in order to activate in our mind new thoughts and hypotheses that are shared with our interlocutors. There is never an automatic transfer of beliefs from one person's head to another's. The "floating of other men's opinions in our brains"<sup>20</sup> is mediated by a process of interpretation that makes us activate a number of hypotheses on the presumption, guided by the hearer, that they will be relevant for us. These online thoughts that serve the purposes of conversation are not accepted by default as new beliefs. They are worth considering, given the trust we have in our interlocutors. They may even be worth repeating without further checking because of their relevant effects in certain conversational contexts. But they can be easily dismissed if their probability is too low given what we know about the world or what we have come to know about the interlocutor. We trust our interlocutors to be relevant enough to be worth

<sup>20</sup> Cf. J. Locke, *An Essay Concerning Human Understanding*, ed. John W. Yolton, London 1961, 1, p. 58.

our attention. Our trust is both fundamental and fragile: it is fundamental because I need to trust in other people's willingness to be relevant for me in order to make sense of what they are saying. It is fragile because a further check can lead me to abandon most of the hypotheses I generated in conversation and withdraw credibility from my interlocutor.

Our mental life is populated by a bric-à-brac of drafty, sketchy semi-propositional representations that we need in order to sustain our interpretations of the thousands of discourses to which we are permanently exposed. We accept some of them as beliefs, we use others in our inferences and we throw a lot of them out as pure noise. This doesn't make us gullible beings: we trust others to cooperate in generating relevant sets of representations, and we share with them the responsibility for these representations. Of course, our epistemic strategies vary in the course of our life. The trust of a child in the relevance of what her parents say may lead her to automatically believe in the content of what is said, that is, understanding and believing may be simultaneous processes in early childhood<sup>21</sup>. As we grow up, we develop strategies of checking and filtering information.

A presumption of trust in other people's willingness to give us relevant information is thus the minimal default trust we are justified in having towards testimony. This stance of trust leads often enough to an epistemic improvement of our cognitive life<sup>22</sup>.

<sup>21</sup> Interesting recent results in developmental psychology show that even young children are not gullible and have strategies for filtering information. See F. Clément, P. Harris, M. Koenig (2004) "The Ontogenesis of Trust", *Mind&Language*, vol. 19, 4, pp. 360-379.

<sup>22</sup> D. Sperber and D. Wilson have explained the details of the correlation between relevance and truth in D. Sperber, D. Wilson (2002): "Truthfulness and Relevance" *Mind*,

But our efforts at interpretation are not always rewarded. Trust in relevance guides our process of interpretation and may lead us to invest supplementary effort in trying to make sense of what our interlocutor is talking about. It is on the basis of our default trust that we often invest too many resources, with only the aim of making sense what the other person is talking about. Sometimes my supplementary efforts are rewarded, sometimes they end up in a too generous interpretation of what I was told. The overconfidence people sometimes have in the relevance of esoteric discourse depends on the direct proportionality between the effort people invest in interpreting others and the trust they have of receiving relevant information. Trust in relevance may act as a bias that leads us to over-interpret or excessively rationalize what others say.

In a beautiful novel by Jerzy Kosinsky, *Being There*, adapted as the perhaps better known film with Peter Sellers, Chance Gardiner is a mentally impaired gardener who becomes an heir to the throne of a Wall Street tycoon, a presidential policy adviser and a media icon just by pronouncing few, enigmatic sentences about gardening.

As a result of a series of fortuitous accidents, Chance finds himself living in the house of Mr. Rand, a Wall Street tycoon and a close friend of the President of United States. In a dialogue with the President visiting Mr. Rand's house, when asked to comment about the bad season at Wall Street, Chance says: "In a garden, growth has its season. There are spring and summer, but there are also fall and winter. And then spring and summer again. As long as the roots are not severed all is well and will be well" (p. 54). Looking for a relevant interpretation, and trusting (in this case mistakenly) in Chance's willingness to be relevant, the President interprets it as an important statement about the fundamental symmetry between nature and society, and quotes him on television the day after.

We all have experiences of over-trust generated out of an over-investment in interpretation. And, conversely, an exces-

sive investment in interpreting what a person says that proves ill-founded may make our withdraw of trust more definitive.

Trust and comprehension are thus intimately related. An epistemology of trust should account for this relation. Our first epistemic objective in acquiring knowledge from others is to understand what they say and make sense of their thoughts within the context of our own. We are never passively infected by other people's beliefs: we take the responsibility to interpret what they say and share with them a series of commitments on the quality of the exchange. The social dimension of knowledge is grounded in our cognitive activity as interpreters, an activity we always share with others.

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## 6. THE AUTHORITY OF NON-ELECTED AUTHORITIES: WHY DO PEOPLE OBEY CONSTITUTIONAL COURTS?

### 6.1 *Fragestellung*

Contemporary political theory claims that the (legitimate) *authority* of public *authorities*/officials comes from a simple and clear circumstance: citizens have the right to choose the individuals who are going to occupy positions of authority, and, even more importantly, they have the legal capability to fire them and replace them with others, if they find the officials to be inadequate in performing their job. This is what the Founding Fathers of modern democracy called a “republic” (Madison) or a “representative government” (Sieyes). Notice that by “authority”, in the first sense (*Herrschaft*), I mean the “recognized” competence to impose the choices of **a.** = the ruling elite upon **b.** = the members of a political community. By *authorities*, in the second occurrence, I simply mean the ruling elites. By *legitimate*, I refer to the fact that the first authority is not imposed simply by force or accepted only because of an instinct of self-preservation.

The essential core of my claim can be summed up in the following way: the legitimacy of the authorities I’m speaking about here (the ruling political elite), as well as their claim to obedience, finds its origin and rationale in the “electoral principle”. This corresponds with the absence of *tenure* for those who govern, and the dependence of their mandate, and its

renewal, on the periodical choice of the governed. This holds true at least in the modern or contemporary societies that we call “democratic”. Yet, considering that an increasing number of important public decisions in most of these democratic societies are made by authorities who are not elected or, more specifically, who are not “accountable to the voters,” we can and ought to wonder where the legitimacy of those decisions – and of the agents who take them – comes from. Or, looking at the other side of the same coin, we can ask, why do citizens (but also the accountable political actors or organs of the state) comply with the decisions of authorities they didn’t choose and with respect to whom they have no direct power of political sanction, like recall or non-renewal of the mandate.

## 6.2 *Analytic of authority*

Independently from the electoral principle that seems to be connected with the principle of individual autonomy (a point made not very persuasively by Hans Kelsen) or, more convincingly, with the principle of limited government, it has been often remarked (I have Jon Elster’s paper in mind here) that citizens’ obedience can be explained largely by the *habit* of obeying [L. Hart], and also by the *costs* of disobedience, thus by the *interest* in obedience on the part of those who offer it. To this it is added that since *obœdientia facit imperantem* [Spinoza], in explaining why citizens obey public powers, we can also make sense of the authority of those public powers!

Now the *habit* of obedience can certainly explain a certain amount of compliance behavior towards public authorities. But it doesn’t explain all cases of compliance, notably the behavior of those who are able to disobey; we have numerous examples of such subjects in any type of society, and *a fortiori* in democratic societies. Regarding their *interest*, much depends on the

meaning we attribute to this polysemic word. *Stricto sensu*, I believe that by interest we often mean the calculus of costs and benefits that informs the decision to take an action. Now obedience to a command of a public authority corresponds with the interest of the person who obeys, if he has good reason to believe that the disobedience will produce a punishment or sanction more exacting than the cost of obedience.

Once we think more seriously about it, I think we can discover a “paralogism” in this argument: presupposing the existence of the authority whose existence and *raison d’être* we claim to be explaining [we find the same problem in the vulgar interpretation of Hobbes’ political philosophy – it is a different point to explain why and under which conditions it may be rational to obey an existent authority]. I am troubled by the underlying analytical problem here. If we think that authority comes from obedience, and we add that obedience (O) depends on the ability of the authority (A) to punish those who disobey (X), then it is actually this ability (X) that explains the authority in the first place, rather than obedience.

$X \rightarrow O \rightarrow A$ ; but X is A or a quality of A; so, it is not  $O \rightarrow A$ , but  $X \rightarrow A$ , and in fact  $A+X$  [= the agent or the agency characterized by X]  $\rightarrow O$  [ $\rightarrow$  = generates or is the cause of].

Let me restate my argument. The authority cannot be both the *explanandum* and the *explanans*. We cannot explain the authority of public authorities by obedience, nor the obedience by the existence of an authority which is able to punish and reward. It follows that it is this quality of the authority, and not the obedience as such, that explains why we obey it. So it seems to me that we have to abandon Spinoza’s hypothesis according to which *obœdientia facit imperantem*. In any event, we ought to abandon it as an explicative hypothesis and look for a different one instead. One possibility is that the obedience to authority is produced by some automatisms, like habit or some even more basic structure. Or, for example, that it is pro-

duced by the *belief* in the legitimacy of a given authority. Which raises the further question (very likely the question asked by Max Weber): what is the content of this belief and where does it come from? Also, what are the qualities of A that produce obedience and where do they come from?

**Brief historical excursus.** In a social or collective context, this quality cannot be identified with force *tout court*, since those who command are few and those who obey, multitudes. It will be objected that the *few* may have considerable military force at their disposal. But this is still not an answer since we have to explain why soldiers obey generals. Here is just one example to clarify what I have in mind. At the very beginning of the French Revolution, when the Third Estate seceded from the Estates General, the Conte d'Artois ordered the army to shoot at the representatives of the Third Estate. It did not obey. Clearly, some of the “generals” – like Clermont-Tonnerre – did not agree with Artois. The example shows that something like prestige or persuasion matters more than arms. This is because *arma silent* only in the presence of a recognized authority.

### 6.3 *Redefining the problem*

Let me try to qualify the scope of my inquiry. We saw that in my field of analysis, contemporary political and constitutional theory, the democratic ideology or doctrine answers the question, “why do citizens obey political authority?” by saying “because of elections”, thus making use of such quasi-philosophical paraphernalia as individual autonomy, limitation of power, and so on. And, up to a certain point, I believe that this works. But this still leaves open the question of why governments, which have electoral legitimacy and dispose of public force, obey constitutional courts, which are neither elected nor politically accountable [*responsables devant le suffrage*] and

have moreover no independent means for concretely enforcing their decisions. Let me pique your attention with a quote. Speaking of the American Supreme Court (in his *Democracy in America*, éd. Folio, vol. I, pt. I, ch. 8, p. 234), Tocqueville noted that “its power is immense, but it is a power of opinion” [a *pouvoir d’opinion*] [which we should translate as a “spiritual power”]. The judges of this court – added Tocqueville – “are almighty if the people accept to obey the law [their interpretation of the law]; they have instead no power if the people have contempt for it.”

So I’m back to my square one: where does the authority of unelected officials come from?! In the case of *Bush v. Gore* (2000), the “*pouvoir d’opinion*”, to speak with Tocqueville, went so far in the United States as to choose the president that the American citizens should have chosen themselves! I am thus going to speak only of the power/authority of these courts.

Let me start by rejecting the modern myth of the judge who limits himself to the mere application of the law, acting like an automaton, a machine reproducing “practical” syllogisms, or as a sheer “*bouche de la loi*” [Montesquieu]. I do not actually believe that this myth is completely meaningless. But my question is somewhat different. I want to reflect on how judges decide conflicts by virtue of their own authority and without further appeal (think of the function that the German Constitution refers to as *Organstreit*). Like Solomon, such judges impose their decision on those who turn to them. This is illustrated by the conflict between supreme state organs inside a constitutional *Rechtsstaat* or conflicts between the families of an ancient city, like the judgment that Homer describes in one of the most fascinating scenes of in the *Iliad* about Achilles’ shield.

But we first have to ask the question: “who obeys”? (so, contrary to what Hobbes thought, it is not enough to ask *quis iudicabitur?*). When we are dealing with a court, those who obey

are the parties to a dispute, who turn to the judge to adjudicate the conflict. When we speak of constitutional courts the parties may be of a different type. Simplifying a bit, we may have an individual asking for the protection of his own rights vis-à-vis a decision of a public authority (a statute, an administrative act or even a judicial decision); this is the German model of the Verfassungsbeschwerde, which is a constitutional complaint or “*recours direct*”. But parties can also be branches of the central government or subunits in a federal state, involved in a conflict in which they need adjudication. For instance: a region, or a *Land* vs. the central government, the executive vs. the legislative branch, or – like in France – the opposition in the Parliament against the majority, meaning the government. Once this has been clarified, my question – who obeys constitutional courts? – can be rephrased in the following way: Why – if we take the French case – does the majority accept that its will be bent because of the intervention of the CC [constitutional court] on the request of the minority? (It would also be interesting to consider cases of non-compliance: Bavaria and the crucifix; the Southern states in the US opposing the Warren Court’s civil rights decisions).

The legal positivist will answer: because it is written in the constitution. And it is perfectly true that the French Constitution – to stick to my example – requires the parties to accept the decision [*l’arrêt*] of the *Conseil Constitutionnel*. But this answer, perhaps adequate for a School of Law, is not enough for me. One can put forward the argument that an explicit violation of the constitution is a “cost” for a political actor, including the majority, which derives its powers from the constitution itself. But this consideration just reinforces my question. Why did the political class introduce this provision (constitutional control) into the constitution in the first place? It is easy to suggest, as I do elsewhere [*Ratio Juris*], that constitutional provisions introducing constitutional adjudication can be considered as an

insurance mechanism for those who are defeated in the electoral race. This is what Giscard's justice minister, Lecanuet, said in 1974 when the *saisine parlementaire* was introduced in France: since we are probably going to lose the elections, let's try not to lose everything. In fact, the conservatives lost the elections in 1981 and the Constitutional Council canceled part of the nationalization measures enacted by the socialist government. So, in this context, the CC is a mechanism of moderation vis-à-vis the majority.

In addition to this, I would also like to draw your attention to two additional considerations: 1. the constitutional expansion or the "constitutionalization" of what we refer to in France as "administrative law"; 2. the (possible) way for CCs to justify their authority to themselves and to the other actors in the political and constitutional system.

**1.** The first point is slightly technical and I will be brief. The *état de droit* or *stato di diritto* – the French and Italian equivalents of the German *Rechtsstaat* – is based on the principle (not identical with the electoral principle) that any concerned citizen should be allowed to sue a public authority if she thinks that it has abused its legal competences. This is one of the paramount definitions that Dicey gave of the concept of "rule of law". France, as is well known, invented a special jurisdiction to adjudicate conflicts between citizens and the state or the public administration: the administrative courts and the administrative judges. I can't speak here of the fascinating story of this institution that was invented to protect the public administration and ended up protecting, at least sometimes, citizens' rights, both in France and on the continent. I just want to recall that post-war Germany charged the BVerfG (the Federal Constitutional Court) with the adjudication of conflicts between citizens and the public administration having a constitutional rank or dignity.

To rephrase my original question again (what I'm really trying to do is formulate the right question): why does the state

obey a court (lacking in democratic legitimacy), which condemns it in favor of a simple, isolated and sometimes weak citizen? I'd like to put forward the following hypothesis: in our stable democratic societies, the legitimacy originating in the electoral principle is drying up! It played a crucial role during the long period beginning on the European continent with the French Revolution: a period that can be characterized by the integration of the members of the society (the citizens) into the state. First the middle class, then the working class and then women were given the franchise. Electoral legitimacy allows for the peaceful rotation of political elites in power as well as the integration produced by universal suffrage (democrats vs. republicans in Germany during the *Vormärz* – W. Conze, *Geschichtliche Grundbegriffe*) and mass political parties. Having attained the integration of national citizens (the excluded now are immigrants from outside the European Union), political authority (political elites) is forced to move forward and grant to the single, isolated citizen as such a right to complain. The political elites have to concede a *recurso de amparo* – as the Spaniards call it – a final right of appeal against the democratic authority itself. This is an appeal in which the constitutional court is the final arbiter.

This is a way for organized political actors to prevent the loss of elections from becoming a radical, crushing defeat; it also increases the legitimacy of representative governments, especially those ashamed of their authoritarian pasts. Thus we can see the beginnings of my answer.

**2. Typology of justification.** To conclude, I'd like to say a few words about the ideology that may justify the power or authority of the constitutional court. I'm going to do it using a typology based on fragments from the history of ideas and institutions, the *Montesquieu-Coke-Hobbes* model. This three-part model can likewise be conceived in terms of: the null power, expertise, impartiality.



The first bit of my triadic model is well known: it produced the weakest and yet the most widespread image of the constitutional court. It says that we have to obey the (constitutional court) since, like any agency with the judicial function, it has no power, and no will. It is nothing but the “mouth of the constitution,” articulating practical syllogisms and just enforcing the will of the constituent power of the people. It is even possible to build a quaint metaphysical theory of this constituent power, in which the constitutional court would be its “expression.” I shall skip all this, even though there are interesting things to say, notably concerning the practical, institutional consequences of such an ideology.

The second figure of the triptych is slightly less known. I name it after Sir Edward Coke in honor of the chief justice of the Common Law Courts of England at the beginning of the 17<sup>th</sup> century. It was Coke who convinced the Stuart King James I that his majesty should not adjudicate all the conflicts: the King of England certainly had the sovereign power, but he had not the expertise, meaning the knowledge of the laws of his kingdom, which requires a long study in the Inns of Court. The power or the authority of the judge – so said Sir Edward – comes from this knowledge, competence or expertise. It is knowledge, not power, that makes the judge a source of authority. After all, professors, doctors, plumbers, generals are not chosen by elections. We can choose some of them sometimes in this way, but we cannot thereby make them competent. In this context, think of the rule introduced by Hans Kelsen (and accepted by all contemporary post-authoritarian constitutions, with the exception of France), according to which only law professors, lawyers and judges, thus only experts, can sit on constitutional courts. This provision clearly contrasts with the normal democratic ideology, where the possibility of being popularly elected has nothing to do with a special expertise of the representative.

Finally, I want to introduce the third *masque* of the judicial authority – actually the oldest one, at least in Western society – according to the Homeric account: impartiality. It seems that there is no better way to produce the authority that the judge needs in order to be obeyed than for him to be independent from the conflicting parties and “impartial” – *super partes* – in relation to them. This is an impossible challenge and thus an illusion, say the realists, who are so smart that they claim to show how stupid or at least how naive we are. By “we,” I mean those who believe in the value of impartiality and its inevitably imperfect practicability.

Surprisingly enough in the genealogy of the impartiality of the judicial power, we find a remarkable text of a political philosopher who supported the absolute power and opposed Sir Edward Coke: Thomas Hobbes. In chapter 26 of his *Leviathan*, he presented a theory of the judicial power that rejects the thesis of expertise and derives the judicial authority instead from certain MORAL qualities, which are presented in the following way:

“The things that make a good Judge, [...] are, first, *A right understanding* of the principal Law of Nature called *Equity*; which depend[...] not on the reading of other men’s Writings, but on the goodness of a mans own natural Reason<sup>1</sup>, [...] Secondly, *contempt of unnecessary Riches*, and Preferments. Thirdly, *To be able in judgment to divest himself of all fear, anger, hatred, love, and compassion*. Fourthly, and lastly, *Patience to hear; diligent attention in hearing; and memory to retain, digest and apply what he hath heard.*”

<sup>1</sup> “Though it be true”, Hobbes added in the *Dialogue*, W. Molesworth (ed.), *English Works*, Vol. VI (London, J. Bohn, 1840), p. 14, “that no man is born with the use of reason, yet all men may grow up to it as well as lawyers; and when they have applied their reason to laws [...] may be as fit for and capable of judicature as Sir Edward Coke himself, who whether he had more or less use of reason, was not thereby a judge, but because the King made him so” [!].

Impartiality is a challenge, to be sure, but not illusion. At least under certain conditions, which do not of course exist everywhere (certainly in China hardly at all and very little in the United States). To the objection that “all you need to do to be impartial is to look impartial,” we can answer, as Dan Sperber has called to my attention, that the easiest and least costly way to *look* impartial is to *be* impartial, at least most of the time. For otherwise, since we are not as naive as the realists think, the belief in the court’s authority loses its function and dissipates.

Some sort of mix of these three ideologies is what is normally appealed to in order to establish the authority of the constitutional court to adjudicate the conflicts of which I spoke earlier.

## PREFACE

This volume brings together the papers presented at a conference held at the Fondazione Adriano Olivetti, March 19-20, 2004.

The topic of the conference – the concept of authority – lent itself particularly well to its multi-disciplinary approach. Different forms of authority play decisive roles, and ought to be examined not only in the political sphere but also in the areas of social relations more generally and education.

Organized collective life would be impossible without forms of authority, however legitimate. It is thus difficult to imagine constructing a shared knowledge without thinking critically about “authority,” even though we simultaneously need it to focus our criticism. Without authority, knowledge itself would become completely subjective, unstructured, incommunicable and unable to build upon itself.

From the cognitive sciences to political and legal philosophy, the subject discussed in this volume remains one of the most fascinating areas of research and analysis in the humanities. In the interest of providing the reader with a wide spectrum of disciplinary perspectives, we thought it important to begin with the study of the origin of the concept: the *auctoritas partum* which, together with *potestas* and *majestas*, capture in the language of the political institutions of ancient Rome what we now regard vaguely as “power.”

The goal of this volume is to stimulate thought and further study, in drawing from the contributions of scholars of diverse cultural and disciplinary origins, who are themselves recognized “authorities.”

*Pasquale Pasquino*

## 1. THE ROMAN NOTION OF AUCTORITAS

«Auctoritas, non veritas facit legem», reads a famous sentence in the Latin version of Thomas Hobbes' «Leviathan». Or, as Hobbes said elsewhere, «It is not wisdom but authority that makes a law». Hobbes is often quoted by Carl Schmitt, who takes this dictum as a basis for his theory that a decision of the sovereign originates from a normative void<sup>1</sup>. Whether Schmitt offers an adequate interpretation of Hobbes is, of course, not my question and, anyway, beyond my competence. I just want to make the point that an understanding of *auctoritas* as implying the idea of a top-down command and its forceful implementation, if necessary, is a far cry from the original Roman notion.

However, it is impossible to give a straightforward definition of the Roman term. Its implications have to be inferred from an embarrassing variety of usage in legal and literary texts<sup>2</sup>. Thus, the title of my paper should better read: «Roman notions of auctoritas», and not: «*The* Roman notion of auctoritas».

I should state from the outset that my discussion is an exercise in the history of social and political concepts

<sup>1</sup> Compare Martin Rhonheimer, «Auctoritas non veritas facit legem». Thomas Hobbes, Carl Schmitt und die Idee des Verfassungsstaates, *Archiv für Rechts- und Sozialphilosophie* 86, 2000, 484-498.

<sup>2</sup> Compare André Magdelain, De l'«auctoritas patrum» à l'«auctoritas senatus», in: idem, *Jus, Imperium, Auctoritas. Études de droit romain*, Paris 1990, 385-403.

(«Begriffsgeschichte»)<sup>3</sup>. It thus seeks to examine the usages of the very term *auctoritas* and to explain its political and social connotations; it is not an attempt to define a universally applicable ideal-type of «authority» and then to ask to which social and political phenomena in the Roman world it might properly be applied.

In the 1920s and 1930s, German classical philologists in particular understood *auctoritas* – in connection with such terms as *dignitas*, honor, *gloria*, *gravitas*, *fides*, *pietas*, *iustitia* and *mos maiorum* – as the core of an ensemble of so-called Roman virtues that allegedly made up the peculiar national spirit of the Romans<sup>4</sup>. A seminal article on *auctoritas* by Richard Heinze was later republished in a volume of Heinze's collected essays with the title, «Vom Geist des Römertums»<sup>5</sup>. Heinze pointed out that

<sup>3</sup> That means the approach practised in Otto Brunner / Werner Conze / Reinhart Koselleck (eds.), *Geschichtliche Grundbegriffe*, 8 vls., Stuttgart 1972-1997; compare Horst Rabe, «Autorität», *ibid.*, vol. I (1972), 382-406.

<sup>4</sup> Compare the articles collected in Hans Oppermann (ed.), *Römertum. Ausgewählte Aufsätze und Arbeiten aus den Jahren 1921 bis 1961*, Darmstadt 1962; *idem* (ed.), *Römische Wertbegriffe*, Darmstadt 1967. On Oppermann and his ideological stance in the Nazi period compare Jürgen Malitz, *Römertum im "Dritten Reich": Hans Oppermann*, in: *Imperium Romanum. Studien zu Geschichte und Rezeption. Festschrift für Karl Christ zum 75. Geburtstag*, Stuttgart 1998, 519-543. – The Italian equivalent was the cult of *romanità* in the fascist era which included the praise of a new *impero* allegedly based on the Augustan model; its manifestations include the "Mostra Augustea della Romanità" and the reconstruction of the Augustus Mausoleum on occasion of the 2000<sup>th</sup> anniversary of Augustus' birthday in 1937. Compare Mariella Cagnetta, *Il mito di Augusto e la "rivoluzione" fascista*, *Quaderni di Storia* 3, 1976, 139-181; Friedemann Scriba, *Augustus im Schwarzhemd? Die "Mostra Augustea della Romanità" in Rom 1937/38*, Frankfurt am Main 1995; and various articles (in Italian) in: Beat Näf (ed.), *Antike und Altertumswissenschaft in der Zeit von Faschismus und Nationalsozialismus*, Mandelbachtal 2001.

<sup>5</sup> Richard Heinze, *Auctoritas*, *Hermes* 60, 1925, 348-366, reprinted in: *idem*, *Vom Geist des Römertums* (1938), 4<sup>th</sup> ed., Darmstadt 1972, 43-58. Inspired by Heinze are works like Joseph C. Plümpe, *Wesen und Wirkung der auctoritas*

there was no Greek equivalent that could properly render the Roman term *auctoritas*<sup>6</sup>. This stress on Roman «values» was partly due to a yearning for a strong state based more on political leadership and national unity than on a constitutional system, as was the case with the Weimar Republic<sup>7</sup>. But the special interest in *auctoritas* was also stimulated by the contemporary discovery that the first Roman emperor, Augustus, had described his position with this very term; I shall come back to this point later.

It seems probable that *auctoritas* originated in the sphere of private law, and is derived from *augere*, to augment, in the sense that the expressed will of certain categories of persons needed an approbation by their superiors in order to gain a legal quality. *Auctoritas patris* designated the consent of a *pater familias* to the marriage of his daughter<sup>8</sup>. *Auctoritas tutoris* meant the guardian's affirmation of a ward's act; only in this way did it acquire legal validity<sup>9</sup>. And the seller of a certain good had to take responsibility (*auctoritas*) that he was its legal owner<sup>10</sup>.

In the public sphere, *auctoritas* is primarily associated with the role of the Roman senate. There are various technical meanings, as well as more general ones. *Patrum auctoritas* depicted the patrician senators' ratification of the decisions by the popu-

maiorum bei Cicero, Dissertation Münster 1932; Fritz Fürst, Die Bedeutung der auctoritas im privaten und öffentlichen Leben der römischen Republik, Dissertation Marburg 1934.

<sup>6</sup> Heinze, Auctoritas, in: Vom Geist des Römertums, 56.

<sup>7</sup> Heinze, Von der Ursache der Größe Roms (1921), in: Vom Geist des Römertums, 9-27. Compare Alessandro Perutelli, Richard Heinze e i Wertbegriffe, Quaderni di storia 6, 1977, 51-66.

<sup>8</sup> Compare Max Kaser, Das römische Privatrecht, vol. I, München 2<sup>nd</sup> ed. 1971, 76.

<sup>9</sup> Compare Kaser, Das römische Privatrecht, vol. I, 87.

<sup>10</sup> Compare Kaser, Das römische Privatrecht, vol. I, 132.

lar assembly concerning legislation and elections of magistrates; only thus did the assembly's votes become legally binding<sup>11</sup>. The rule applied only to the older type of the popular assembly, the *comitia centuriata* (and the archaic *comitia curiata*), and not to the assemblies of the Roman plebs<sup>12</sup>. The ratification was performed only by the patrician senators, even at the time when the senate was already composed of plebeian senators as well<sup>13</sup>. Starting in 339 B.C., the assent was given in advance<sup>14</sup> and thus did no longer imply an effective control. However, we do not really know its original function; whether it had been understood as a possible check on the content of laws or just an approbation of correct procedure in accordance with the rituals of sacral law<sup>15</sup>; and there is no evidence that the assent was denied in an actual case<sup>16</sup>. That *patrum auctoritas* remained a privilege of patrician senators is one of many features of the development of the Roman political system that made certain rules obsolete in any practical sense without formally abolishing them<sup>17</sup>. (In this respect, the parallel with the

<sup>11</sup> Cicero, *De re publica* 2, 56.

<sup>12</sup> Digesta (Pomponius) 1, 2, 2, 12; Gaius, *Institutiones* 1, 3.

<sup>13</sup> It has often been assumed that since the middle republic this right of ratification was transferred to the senate as a whole (compare for example Pierre Willems, *Le sénat de la république romaine*, vol. II, Louvain 1883, 38ff.; Vincenzo Mannino, *L'auctoritas patrum*, Milano 1979) but Cicero, *De domo sua* 38 is decisive on the point that it remained exclusively with the patrician senators.

<sup>14</sup> The law of 339 applied to legislation; Livius 8, 12, 15; the same procedure was extended to elections by a later law, probably of the third century; the exact date is not known; Cicero, *Brutus* 55.

<sup>15</sup> For an interpretation in the latter sense compare Theodor Mommsen, *Der Patriciersenat der Republik*, in: idem, *Römische Forschungen* vol. I, Berlin 1864, 243f.; Adalberto Giovannini, *Auctoritas patrum*, *Museum Helveticum* 42, 1985, 28-36.

<sup>16</sup> Theodor Mommsen, *Römisches Staatsrecht* (1871-1888), reprinted Graz 1955, vol. III/2, 1041 with n. 1.

<sup>17</sup> Compare Livius 1, 17, 9 for the survival of the procedure in Augustan times.



English constitution is obvious; consider in particular the royal assent to acts of Parliament which in theory is still necessary, even though such assent has not been refused since 1707).

According to Theodor Mommsen, *patrum auctoritas* can be seen in the light of *auctoritas tutoris*; the people is considered as an assembly of minors who cannot legally act without the consent of the fathers<sup>18</sup>. But the political function would probably have been aimed more at controlling the magistrates, who might initiate legislation, than controlling the people, who passed almost any law the magistrates proposed. Anyway, it is difficult, if not impossible, to derive the further usage of *auctoritas* from this allegedly primary meaning.

*Auctoritas patrum* as a privilege of the patrician members is to be distinguished from the *auctoritas* of the senate as a whole. In the later republic, *auctoritas senatus* had different meanings. It could be used alternately with *senatus consultum*, the senate's formal decree<sup>19</sup>. In a technical sense, it designated a resolution of the senate which was passed and even recorded in the journal of the senate, but remained invalid because it was vetoed by a tribune of the people or because of some procedural irregularity<sup>20</sup>. Under certain circumstances, referring to *auctoritas senatus* in this sense might imply an exhortation to magistrates and citizens to comply nevertheless with the expressed will of the senate and to trust in this body's backing in the case of ensuing conflicts<sup>21</sup>.

That something was done *ex auctoritate senatus* could mean, on the one hand, that the senate supported a particular step, for example that magistrates initiated a law to be passed

<sup>18</sup> Mommsen, *Römisches Staatsrecht*, vol. III/2, 1038f.

<sup>19</sup> For example, Cicero, *Epistulae ad Atticum* 1, 16, 2.

<sup>20</sup> Cicero, *Epistulae ad familiares* 1, 2, 4; 8, 8, 4-8; Cassius Dio 55, 3, 5; compare Mommsen, *Römisches Staatsrecht*, vol. I, 281f.; vol. III/2, 997f.

<sup>21</sup> For example, Livius 4, 57, 5.

by the popular assembly<sup>22</sup>; on the other hand it could simply mean a delegation of powers, for example to envoys who needed a certain room for negotiations<sup>23</sup>.

In most cases, however, *auctoritas senatus* referred to the role of the senate in a more general sense. It meant that the magistrates were supposed to present all issues of public importance to the senate and then follow the advice given to them by the senate<sup>24</sup>. It is impossible to define whether this advice was binding in a *de iure* or a *de facto* sense; that corresponds to the general difficulty in defining the relation between *ius* and *mos* in the sense of a distinct hierarchy of sources of law<sup>25</sup>. Or, as Mommsen put it: «auctoritas as a term which evades any strict definition corresponds to the senate's powerful position which is very effective on the one hand but cannot be defined in legal terms on the other hand. Auctoritas is more advice than command but it is advice that one cannot properly avoid»<sup>26</sup>.

The senate's central position was due to the fact that it consisted of members for life who were admitted to the body after having obtained one of the annual magistratures. They repre-

<sup>22</sup> For example, Livius 4, 49, 6; 9, 46, 7. Compare in general Jochen Bleicken, *Lex Publica. Gesetz und Recht in der römischen Republik*, Berlin 1975, 304ff.

<sup>23</sup> For example, Cicero, *Epistulae ad Atticum* 1, 19, 2.

<sup>24</sup> Compare [Cicero], *Rhetorica ad Herennium* 4, 47.

<sup>25</sup> Compare Dietmar Schanbacher, *Ius und mos: Zum Verhältnis rechtlicher und sozialer Normen*, in: Maximilian Braun et alii (eds.), *Moribus antiquis res stat Romana. Römische Werte und römische Literatur im 3. und 2. Jh. v. Chr.*, München 2000, 353-371.

<sup>26</sup> Mommsen, *Römisches Staatsrecht*, vol. III/2, 1034. – Mommsen's position was heavily criticized by Wolfgang Kunkel, *Magistratische Gewalt und Senats Herrschaft*, in: *Aufstieg und Niedergang der römischen Welt*, vol. I/4, Berlin 1972, 3-22, who, however, also could not solve the riddle of how to adequately define the senate's competence with respect to the magistrates.

sented the political and military élite of the republic and disposed of a social power that any individual office-holder could not ignore and they guaranteed the continuity of policy despite of the permanent change with respect to individual office-holders.

And the leading members were, as a rule, scions of families that could boast of having provided magistrates for generations. As an institution, the senate stood for the continuity of the political system over the centuries, from the very beginning. Its legitimacy derived from the origins of Rome, thus it could be understood as being grounded in the *auctoritas maiorum*. This authority of the ancestors was invoked in order to argue that a peculiar decision had to be taken in accordance with long-established practice<sup>27</sup>.

But the political system had developed over centuries and combined an extraordinary stability of its basic structures with an astonishing flexibility in adapting to new requirements<sup>28</sup>. It was based on undisputed primordial rules and institutions, new regulations based on laws passed at a given time (and sometimes repealed later), decisions of the senate, new practices introduced at one time and accepted after they had proved appropriate, and on precedents that had been created with decisions in disputed cases. The heritage of the ancestors, so Cicero once claimed, included their insight that new circumstances required the recourse to new measures<sup>29</sup>.

In such a system, one could refer neither to the intentions of a distinct generation of founding fathers and, of course, nor to a constitutional charter they had created<sup>30</sup>. There was no clear-

<sup>27</sup> Cicero, *In Verrem* 2, 1, 38; 2, 5, 85; *Pro Balbo* 31.

<sup>28</sup> Livius 4, 4, 1ff.

<sup>29</sup> Cicero, *De lege Manilia* 60.

<sup>30</sup> See Cicero, *De re publica* 2, 2 for the contrast between the great Greek lawgivers and the Roman development through centuries.

cut hierarchy with respect to rules that had originated in different times and diverse sources. This can be seen in a passage of an oration of Cicero. Here Cicero tries to define the fundamental features of the constitution. He mentions the sacral laws, the competence (*potestas*) of the magistrates, *senatus auctoritas*, the laws, *mos maiorum*, the courts and other elements, but he can only do this in form of an enumeration<sup>31</sup>. *Mos maiorum*, and accordingly *auctoritas maiorum*, were extremely flexible concepts that needed authoritative interpretation in peculiar instances<sup>32</sup>. The senate was the only institution that was or should be acknowledged as being able to offer such an exegesis of the tradition<sup>33</sup>. That would necessarily imply a certain amount of arbitrariness and fiction. That was also due to the fact that this tradition was understood as man-made and was not ascribed to a transcendental authority – and this seems indeed to be a Roman peculiarity<sup>34</sup>.

The somewhat fictitious character of this reference to tradition is also indicated by Cicero. In *De Legibus*, a tract which constituted a mixture of long-established rules and some programmatic demands for reforms<sup>35</sup>, he said he would formulate the set of rules in an archaic language in order to enhance the *auctoritas* of the rules he put down in a single text<sup>36</sup>. But his

<sup>31</sup> Cicero, *Pro Sestio* 98.

<sup>32</sup> Compare Cicero, *De legibus* 2, 40.

<sup>33</sup> Compare Cicero, *Pro Sestio* 140.

<sup>34</sup> Compare Ton Hol, Authority, Law and the Roman Experience, in: *Viva vox iuris Romani. Essays in Honour of Johannes Emil Spruit*, Amsterdam 2002, 39-49.

<sup>35</sup> Compare Gustav Adolf Lehmann, Politische Reformvorschläge in der Krise der späten römischen Republik. Cicero *De legibus* III und Sallusts Sendschreiben an Caesar, Meisenheim/Glan 1980; Elizabeth Rawson, The Interpretation of Cicero's *De legibus*, in: *Aufstieg und Niedergang der römischen Welt*, vol. I/4, Berlin 1973, 334-356; Andrew R. Dyck, *A Commentary on Cicero, De legibus*, Ann Arbor 2004.

<sup>36</sup> Cicero, *De legibus* 2, 18.

very attempt to write down a sort of constitutional charter demonstrates that in fact the senate was no longer the undisputed interpreter of the constitution. That could easily be shown in an analysis of the late Republic's constitutional disputes on which I cannot embark here.

That the senate's authority in a general sense should constitute the cornerstone of the political system is pointed out by Cicero, who often associated the senate's authority with its role as the institution that really governed the state and that should be regarded as the guardian of the constitution<sup>37</sup>. In *De re publica*, Cicero declares that a well-balanced constitution depends on the magistrates having enough *potestas*, the senate enough *auctoritas* and the people enough *libertas*<sup>38</sup>. (Cicero also contrasted the *auctoritas* of the senate and the *potestas* of the people<sup>39</sup>; *postestas* then stood for the institutionalized competence of the popular assemblies which otherwise could also be depicted as *maiestas*). Ideally, the magistrates should execute their formal competences in compliance with the senate's advice<sup>40</sup>, the people should follow the senate's lead. To submit themselves to the will of a body that represented the collective political wisdom of the Romans neither diminishes the role of the public officials nor detracts from the people's freedom<sup>41</sup>. That is why Cicero in his political orations would claim that disregarding the senate's authority meant endangering the people's liberty<sup>42</sup>.

In *De Legibus*, a fictitious dialogue between himself and his younger brother Quintus, Cicero presents Quintus' polemics

<sup>37</sup> Cicero, *Pro Sestio* 137: The senate as *custos rei publicae*.

<sup>38</sup> Cicero, *De re publica* 2, 57; compare 1, 69.

<sup>39</sup> Cicero, *De legibus* 3, 28.

<sup>40</sup> In this sense they were "in auctoritate senatus"; Mommsen, *Staatsrecht* III/2, 1034, n. 2.

<sup>41</sup> Cicero, *De legibus* 3, 25.

<sup>42</sup> Cicero, *De domo sua* 130; Cicero, *Philippica* 10, 23.

against the introduction of the secret ballot, which was in place in popular assemblies since the late second century B.C. and was praised as an expression of *libertas populi*<sup>43</sup>. Quintus argues that this procedure had destroyed the *auctoritas* of the ruling élite. Cicero replied that one could not abolish a symbol of political freedom, but should allow the citizens to pay respect to the authority of the leading citizens by voluntarily showing them their voting tablets<sup>44</sup>.

The tension between *potestas* and *auctoritas* does not only apply to the relationship between magistrates and senate but also to the performance of magistrates and other leading politicians. *Potestas* is the competence any incumbent of a public office has in his official capacity. A man's *auctoritas* can be seen as deriving from the public office (especially the consulship) that he holds<sup>45</sup>, but also as a personal quality that he has to acquire and maintain, and which under certain circumstances can be more effective than the execution of *potestas*. In this sense, the authority of a consul does not only emanate from his office, but also depends on his personal conduct and the public trust it creates<sup>46</sup>. Roman magistrates lacked an effective enforcement agency, a sort of police apparatus; thus in situations of public disturbances it was a matter of their personal reputation and rhetorical skills whether they were able to

<sup>43</sup> Compare Bruce A. Marshall, *Libertas populi*. The introduction of secret ballot at Rome and its depiction on coinage, *Antichthon* 31, 1997, 54-72; Ursula Hall, *Species libertatis: Voting Procedure in the Late Roman Republic*, in: Michel Austin et alii (eds.), *Modus Operandi. Essays in Honour of Geoffrey Rickman*, London 1998, 15-30.

<sup>44</sup> Cicero, *De legibus* 3, 34-39. – Montesquieu (*De l'Esprit des Lois*, Book II, chapter 2) shared Quintus' position. – The "voluntarily" open voting reminds of the practice in the German Democratic Republic though it was there (and elsewhere) surely not inspired by recourse to Roman sources.

<sup>45</sup> Cicero, *De lege agraria* 1, 24; *Pro Rabirio Perduellionis* 22.

<sup>46</sup> Cicero, *De lege agraria* 1, 27; *Epistulae ad Atticum* 1, 16, 6.

enforce their will<sup>47</sup>. Magistrates who were successful in quelling riots by their appearance on the spot were praised for their *auctoritas*<sup>48</sup>. In 138 B.C. a consul addressed a crowd that demanded measures against an increase in corn prices by declaring that he understood the public good better than they did. The crowd fell silent «paying more regard to his authority [auctoritas] than to their own nutriment»<sup>49</sup>. In 61 B.C. a consul-designate, who was technically a private person before entering his office, was able to make a crowd comply with a decision of the senate; Cicero stressed that this person acted in virtue of his *auctoritas* and not a magistrate's *potestas*<sup>50</sup>. The same holds true for great generals. Pompeius or Caesar enjoyed the loyalty of their troops not only due to their formal competence as bearers of a military *imperium* and their military ability, but because of a personal authority that was of much greater importance, at least in critical situations<sup>51</sup>.

The standing of a senator within the ranks of the senate could also be a question of his personal authority. Though all members had one vote and the decisions were taken by the majority of votes, the senate was ordered hierarchically. The senators were classified according to the magistrature they had last occupied; the former incumbents of the highest office, the ex-consuls, were asked to give their opinion first, and thus could considerably influence the process of decision-making. But sometimes members of the lower ranks might attain an importance that was higher than their status, especially when the top

<sup>47</sup> Compare Wilfried Nippel, *Public Order in Ancient Rome*, Cambridge 1995.

<sup>48</sup> Cicero, *Pro Sestio* 62; Valerius Maximus 7, 5, 2.

<sup>49</sup> Valerius Maximus 3, 7, 3.

<sup>50</sup> Cicero, *In Pisonem* 8.

<sup>51</sup> Cicero, *De lege Manilia* 28; *Epistulae ad Atticum* 7, 7, 6. Compare Cornelius Nepos, *Chabrias* 4, 1.

ranks shrank from committing themselves in a controversial question. Thus Cicero in some cases ascribes a *consularis auctoritas* to members who had not yet reached the ranks of the ex-consuls, but made an impact on decisions as if they had already done so<sup>52</sup>.

In Cicero's writings one can also find references to the *auctoritas principum*<sup>53</sup>. Those *principes* were understood as the leading citizens who formed the senate's inner circle, especially the ex-consuls ( though probably not all of them)<sup>54</sup>. But Cicero's insistence on their importance also indicates his perception that during the crisis of the late republic, the senate as a body was often divided over questions of fundamental importance and thus was no longer able to exercise the authority it was supposed to<sup>55</sup>.

The increasing use of the popular assemblies to achieve decisions against the will of the senate entailed that the rhetorical abilities of politicians in addressing crowds would become a new source of authority and thus undermine the traditional basis of political influence<sup>56</sup>. Some one hundred and fifty years later, Tacitus, looking back to crisis of the late republic, spoke of orators who as private persons had been able to influence political decisions because of their individual *auctoritas*<sup>57</sup>.

In other spheres of social and political life authority was a quality that was ascribed to leading experts in a certain disci-

<sup>52</sup> Compare Frank X. Ryan, The Meaning of "consularis auctoritas" in Cicero, *Mnemosyne* 47, 1994, 681-685.

<sup>53</sup> Cicero, *De re publica* 2, 56; compare *De legibus* 2, 30.

<sup>54</sup> Compare Matthias Gelzer, Die Nobilität der römischen Republik (1912), reprinted in: idem, *Kleine Schriften*, vol. I, Wiesbaden 1962, 53ff.; Alfred Gwosdz, Der Begriff des römischen princeps, Dissertation Breslau 1933, 24ff.

<sup>55</sup> For example, Cicero, *Epistulae ad Atticum* 1, 18, 3.

<sup>56</sup> Flattering the popular assembly could imply speaking of the *auctoritas populi Romani* in opposition to the opinions of *principes* as Cicero himself had done in 66 B.C.; *De lege Manilia* 64.

<sup>57</sup> Tacitus, *Dialogus de oratoribus* 36.



pline in relation to others of a lesser reputation or with regard to laymen. Cicero acknowledged Plato's overarching importance in philosophy by claiming that he would follow Plato's *auctoritas* even if Plato gave no reasons for his opinion<sup>58</sup>. Or, Quintilianus said that Cicero's statements in court displayed such an *auctoritas* that one would blush to disagree<sup>59</sup>. In philosophical and rhetorical contexts, however, there are also statements that, in case of a collision between *auctoritas* and rationality, reason should prevail<sup>60</sup>.

The idea that the recognized specialist is not expected to base his opinion on arguments which other people would not understand anyway is particularly relevant to the role of the Roman jurists. In Republican times, the jurists were experts who acted not in an official capacity but as private persons, «Honoratioren» in the sense of Max Weber. Their authority was based on their giving legal advice – free of charge and only oriented to the objective legal situation – to any party who asked them, as well as to magistrates and judges<sup>61</sup>. They gave opinions (*responsa*) on matters of law, not matters of fact and, as a rule, they did this without giving grounds for their position<sup>62</sup>. But judges, who were themselves laymen, based their decisions with respect to legally-disputed points on those statements, though they were not strictly bound to do so. A problem arose, of course, if opposite statements by two jurists were presented.

<sup>58</sup> Cicero, *Tusculanae Disputationes* 1, 49; compare *De officiis* 2, 10 on the authority of philosophers.

<sup>59</sup> Quintilianus, *Institutio oratoria* 10, 1, 111.

<sup>60</sup> [Cicero], *Rhetorica ad Herennium* 4, 4; Cicero, *De natura deorum* 1, 10; *Academica* 2, 60; *De legibus* 1, 36f.

<sup>61</sup> Cicero, *De oratore* 1, 198 and 239; *Pro Murena* 9.

<sup>62</sup> Seneca, *Epistulae ad Lucilium* 94, 27; compare Wolfgang Kunkel, *Herkunft und soziale Stellung der römischen Juristen*, Weimar 1952, 282, n. 597. – Max Weber, *Wirtschaft und Gesellschaft*, 5<sup>th</sup> ed., Tübingen 1976, drew the comparison with the “fatwa” of Islamic religious authorities.

The judge would then have to decide who was the expert with the higher reputation<sup>63</sup>. At the same time, a judgment grounded in the *auctoritas* of a well-known jurist might become a precedent for future decisions<sup>64</sup>, especially since *responsa* were no longer given orally but were submitted in writing<sup>65</sup>. In the jury courts that decided primarily on political crimes, the outcome was ascribed to the respective *auctoritas* of the speakers who acted as counsel for the prosecution and the defence, and also to the *auctoritas* of witnesses on both sides<sup>66</sup>.

*Responsa* were also issued by various bodies of priests – *pontifices*, *augures*, *haruspices* – that were responsible for declaring that a public act was performed in accordance with sacral law or, on the contrary, that it was void and should be repeated. They addressed their advice to the senate (or the magistrates), and the senate, as a rule, followed the *auctoritas* of these bodies of specialists<sup>67</sup> in taking its decision. This procedure did not diminish the position of senate and officials since those experts were themselves members of the ruling élite<sup>68</sup> (though not all priests were senators)<sup>69</sup> and since they based their advice on citing precedents that were recorded in the files of their respective boards<sup>70</sup>.

<sup>63</sup> Cicero, *Pro Caecina* 69.

<sup>64</sup> Cicero, *Topica* 28; Digesta (Papinianus) 1, 1, 7.

<sup>65</sup> Compare Detlef Liebs, *Römische Rechtsgutachten und "Responsorum libri"*, in: Gregor Vogt-Spira (ed.), *Strukturen der Mündlichkeit in der römischen Literatur*, Tübingen 1990, 83-94.

<sup>66</sup> Cicero, *Pro Murena* 58f.

<sup>67</sup> Cicero, *De haruspicum responsum* 14; *De divinatione* 2, 70; *De legibus* 2, 31.

<sup>68</sup> Cicero, *De domo sua* 1f.

<sup>69</sup> Cicero, *Epistulae ad Atticum* 4, 2, 4.

<sup>70</sup> Cicero, *De domo sua* 33 and 136f.; compare in general Georg Wissowa, *Religion und Kultus der Römer*, 2<sup>nd</sup> ed. 1912, reprinted München 1971, 513-515; Jerzy Linderski, *The Augural Law*, in: *Aufstieg und Niedergang der Römischen Welt*, vol. II/16, 3, Berlin 1986, 2146-2312.

Some exceptions notwithstanding, *auctoritas* in Roman Republican usage denoted a socially legitimized power that did not amount to binding commands and did not rely on means of enforcement. It presumed a likely obedience to social superiors (or acknowledged experts) in a society that presupposed a hierarchical order in all its segments, an obedience that emanated from the bottom-up.

The implications of *auctoritas* changed with the establishment of a new type of monarchy by Augustus, from 27 B.C. onwards. Octavian, the great nephew and (by testament) adoptive son of Caesar, had started with an illegal command that was later legalized by a decree of the senate<sup>71</sup>. Since 43 B.C., his constitutional position had been based on an Enabling Law (for the triumvirate Octavian, Antonius and Lepidus) that was later prolonged but then expired<sup>72</sup> in 32 B.C. Thereafter his control of the state, which surpassed the competence of his annual consulship, was based on the constitutional puzzle of a *consensus universorum*<sup>73</sup> which had been expressed by the oath of allegiance that the Italians and Western provincials had sworn on the eve of the war against Antonius and Cleopatra<sup>74</sup>. In January of the year 27, he declared that, after having restored

<sup>71</sup> In this sense Cicero pleaded in late 44 B.C. that the senate should give *auctoritas* to Octavian lest his then fight against Antonius should no longer be based on his private initiative; Cicero, *Philippica* 3, 5.

<sup>72</sup> For the constitutional niceties compare Klaus Bringmann, Das zweite Triumvirat. Bemerkungen zu Mommsens Lehre von der außerordentlichen konstituierenden Gewalt, in: Alte Geschichte und Wissenschaftsgeschichte. Festschrift Karl Christ, Darmstadt 1988, 22-38; Jochen Bleicken, Zwischen Republik und Prinzipat. Zum Charakter des Zweiten Triumvirats, Göttingen 1990.

<sup>73</sup> Res Gestae Divi Augusti 34, 1; compare Karl-Ernst Petzold, Die Bedeutung des Jahres 32 für die Entstehung des Prinzipats, *Historia* 18, 1969, 334-351.

<sup>74</sup> Res Gestae Divi Augusti 25, 2.

the peace and unity of the Roman people, he would give up all power except his post as a consul within the year. In return the senate asked him to keep in control over the troops stationed in provinces which were not yet fully pacified and it conferred a corresponding command upon him. And only then did he receive, by a resolution of the senate, the honorary title of Augustus. This title (and the additional honours that acknowledged his virtues<sup>75</sup>) gave him a sacral nimbus; its connotations and a possible allusion to *auctoritas* are, however, far from clear<sup>76</sup>.

A key document for the new official ideology is the *Res Gestae Divi Augusti*. Old Augustus had ordered that this record of his deeds and achievements be publicly displayed as an inscription on his Mausoleum at Rome. The original is lost; the text has been known since 1555 from a bilingual copy – in Latin and Greek – which had been discovered at Ancyra (now the Turkish capital). The crucial passage in which Augustus described his constitutional position after the so-called restoration of the republic in 27 B.C. had survived only in the Greek version. The Greek term *axioma* was translated by Mommsen as *dignitas*<sup>77</sup>, which corresponded with Mommsen's theory that the *principate* should be considered like a republican magistrature<sup>78</sup>. The hierarchy of magistrates corresponded to different degrees of dignity. In 1914 and 1924 fragments of another copy which had only the Latin text were found in Antiochia, another city in modern Anatolia. It turned out that the crucial term must

<sup>75</sup> *Res Gestae Divi Augusti* 34, 2.

<sup>76</sup> Suetonius, *Augustus* 7, 2; Ovid, *Fasti* 1, 607ff.; Cassius Dio 53, 16, 8; compare Dietmar Kienast, *Augustus. Prinzeps und Monarch*, Darmstadt 1982, 80, n. 47; Edwin S. Ramage, *The Nature and Purpose of Augustus "Res Gestae"*, Stuttgart 1987, 100ff.

<sup>77</sup> In his edition of the inscription, Berlin 1865; 2<sup>nd</sup> ed. 1883.

<sup>78</sup> Mommsen, *Staatsrecht* II/2, 749ff.

read *auctoritas*<sup>79</sup>. This detection fostered the boom of scholarly works on this concept in the 1920s and 1930s which I had mentioned earlier.

The key sentence now reads: «After this time [that is, the settlement of 27 B.C.] I excelled all in authority [*auctoritas*], but I possessed no more power [*potestas*] than the others who were my colleagues in each magistracy»<sup>80</sup>.

Two sentences earlier, Augustus had said that he had «transferred the republic from my power [*potestas*] to the dominion of the senate and people of Rome»<sup>81</sup>. We see that, as in Republican times, *auctoritas* is contrasted with *potestas*<sup>82</sup>, the competence of magistrates; it is the authority of the one and only *princeps* (as Augustus styled himself<sup>83</sup>) and not of the senate or of a smaller circle of leading senators. Augustus wanted to stress that he no longer had any extra-constitutional power in comparison to the other magistrates<sup>84</sup> (and contrary to the *mos maiorum*<sup>85</sup>) and that his dominant position emanated from the exercise and acceptance of his *auctoritas* in a traditional sense. This was part of his strategy to present the new system as a restoration of the republic<sup>86</sup> and to veil his position and leave it

<sup>79</sup> Compare Ernst Schoenbauer, *Wesen und Ursprung des römischen Prinzipats*, *Zeitschrift für Rechtsgeschichte. Romanistische Abteilung* 47, 1927, 264-318.

<sup>80</sup> *Res Gestae Divi Augusti* 34, 3.

<sup>81</sup> *Res Gestae Divi Augusti* 34, 1.

<sup>82</sup> In 2 B.C., Augustus received the title *pater patriae*, father of the fatherland. That he mentions this title at the very end of his *Res Gestae* underlines that he considered it as the highest honour that had been conferred on him. A Roman father had *auctoritas* but also *potestas* in a legal sense over the members of his family.

<sup>83</sup> *Res Gestae Divi Augusti* 13; 30; 32, 3; compare Tacitus, *Annales* 1, 9, 5.

<sup>84</sup> That is why he did not accept the offer of a dictatorship in 22 B.C; *Res Gestae Divi Augusti* 5, 1.

<sup>85</sup> *Res Gestae Divi Augusti* 6, 1.

<sup>86</sup> Compare Velleius Paterculus 2, 89, 3f. (with the rather strange formulation that Augustus restored the *auctoritas* of the courts and the *maiestas* of the

to others to interpret it<sup>87</sup>. However, the republic had not known a monopoly of *auctoritas* in the political sphere<sup>88</sup>. The domination of one man, who took his decisions behind closed doors and with the help of a kitchen cabinet, gives no room for *auctoritas* and *consilium*, as Cicero had remarked in 44 with respect to Caesar<sup>89</sup>.

In the case of Augustus, the idea of a voluntary acceptance of *auctoritas* was reduced to a fiction, albeit a pleasant one<sup>90</sup>, in the context of the new political system that he had declared as the best possible government<sup>91</sup>. The emperor was in command over the military and over newly created paramilitary forces, he disposed of unprecedented competences (as the *tribunicia potestas* for life since 23 B.C.), he was *pontifex maximus* (since 12 B.C.) and member of other priestly colleges, he controlled the elections of magistrates and the access to the senate, he was the initiator of new laws, he disposed of immense financial means to exercise patronage over soldiers and urban masses alike. The emperors (at least Augustus and his successor Tiberius) still used to ask the senate for advice and undertook certain measures *ex auctoritate senatus*<sup>92</sup> but the senators must

senate – *maiestas* had sometimes been associated with the Roman people, but not with the senate).

<sup>87</sup> Compare Wilhelm Weber, *Princeps. Studien zur Geschichte des Augustus*, Stuttgart 1936, 221.

<sup>88</sup> In a letter to Cicero, Brutus wrote in May 43, that Cicero had now acquired *auctoritas* to the highest degree that was tolerable in a free republic; Cicero, *Epistulae ad Brutum* 1, 4a (12), 2.

<sup>89</sup> Cicero, *De officiis* 2, 2.

<sup>90</sup> The formulation “was neither wholly true, nor wholly false, but it was true enough to be believed by those who had no wish to challenge it”, Frank E. Adcock, A Note on *Res Gestae Divi Augusti* 34, 3, *Journal of Roman Studies* 4, 1952, 12.

<sup>91</sup> Suetonius, *Augustus* 28, 2.

<sup>92</sup> *Res Gestae Divi Augusti* 20, 4; Frontinus, *De aquis urbis Romae* 104.

have felt highly uncomfortable if, in matters of great importance, they had not been unequivocally instructed as to the specific advice that the emperor wanted to hear<sup>93</sup>. Since everybody looked attentively to the emperor's instructions<sup>94</sup>, maintaining the republican façade depended on the ruler's self-restraint.

It is sometimes claimed in the scholarly literature that the Augustan *auctoritas* constituted a charismatic authority in the sense of Max Weber<sup>95</sup>. But this identification is only partly convincing; it was not assumed that, due to supranatural qualities, he was the saviour one needed in a fundamental crisis<sup>96</sup>; rather, the assignment of such qualities followed only after the crisis had been overcome, at first with military means and then by a constitutional settlement which claimed a return to normality<sup>97</sup>.

The sources do not enable us to trace the further development of the notion of *auctoritas* in the post-Augustan *principate*. The assumption of some scholars that it was transformed into a sort of legal definition of the emperor's position<sup>98</sup> is not supported by convincing evidence. We know the Enabling Law that was passed at the accession to the throne<sup>99</sup>. It conferred a

<sup>93</sup> See, for example, Tacitus, *Annales* 1, 74, 5; 2, 35.

<sup>94</sup> Tacitus, *Annales* 1, 4, 1.

<sup>95</sup> See Fritz Schulz, *Prinzipien des römischen Rechts*, München 1934, 123f.

<sup>96</sup> On Weber's concept of charismatic leadership compare Wilfried Nippel, *Charisma und Herrschaft*, in: idem (ed.), *Virtuosen der Macht. Herrschaft und Charisma von Perikles bis Mao*, München 2000, 7-22 and 281-289.

<sup>97</sup> Admittedly, the case of Augustus is complicated due to the fact that Caesar had been officially deified in 42 B.C., henceforth his adoptive son could claim to be *divi filius*.

<sup>98</sup> Anton von Premerstein, *Vom Werden und Wesen des Prinzipats*, München 1937; André Magdelain, *Auctoritas principis*, Paris 1947; compare for criticism Wolfgang Kunkel, *Review of Magdelain*, *Zeitschrift für Rechtsgeschichte. Romanistische Abteilung* 70, 1953, 437-445; Jean Béranger, *Recherches sur l'aspect idéologique du principat*, Basel 1953, 116ff.

<sup>99</sup> An inscription, detected by Cola di Rienzo in 1347, gives the text of the law passed by the popular assembly at the accession of Vespasian in 70 A.D.,

bundle of competences upon the emperor by popular legislation. *Auctoritas* has no place in this legal construction<sup>100</sup>. In later times it was understood that the emperor's will had acquired the force of law: «quod principi placuit, legis habet vigorem», according to the formula recorded in the «Digest»<sup>101</sup>.

All in all, it rather seems that *auctoritas* has lost its emphatic connotation. The often used formula, *ex auctoritae principis*, simply meant that a person or a body acted with a mandate of the emperor, but did not depict the source of legitimation of the emperor himself.

A special form of delegation was the *ius respondendi* that Augustus created. A select number of jurists was now entitled to deliver opinions (*responsa*) *ex auctoritate principis*<sup>102</sup>. Probably, it simply meant «with permission of the Emperor» and did not imply that the Emperor's authority in an emphatic sense was

the *lex de imperio Vespasiani* (in: Michael H. Crawford, ed., *Roman Statutes*, London 1996, vol. I, 549ff.); it refers to similar regulations in favour of former emperors since Augustus; however, it is not clear when such an enabling law was passed for the first time.

<sup>100</sup> *Auctoritas* is mentioned in the *lex de imperio Vespasiani* only in the formulation that the senate could be convened by an order (*ex auctoritate*) of the emperor.

<sup>101</sup> *Digesta* (Ulpianus) 1, 4, 1 pr. The original meaning of the so-called discretionary clause of the *lex de imperio Vespasiani* that the emperor could do anything he thought best for the state is disputed since taken literally it would undermine the whole construction; perhaps it constituted only a sort of emergency power. – The ambivalence of a construction that seemed to confer unlimited power, yet by popular legislation is underlined by the reception in later times; on the one hand it could be seen as a legitimation for absolutism, on the other hand as an expression of popular sovereignty (as Cola di Rienzo wanted to read it).

<sup>102</sup> The criteria for the selection of these privileged jurists are disputed; compare for divergent interpretations Wolfgang Kunkel, *Das Wesen des ius respondendi*, *Zeitschrift für Rechtsgeschichte. Romanistische Abteilung* 66, 1948, 423-457; Franz Wieacker, *Augustus und die Juristen seiner Zeit*, *Tijdschrift voor Rechtsgeschiedenis* 37, 1969, 331-349.



applied to the jurists' opinion. In any case, the new procedure indicates that the social authority of the jurist was no longer considered as a sufficient basis for the interpretation and development of the law. Augustus was apparently disturbed that opposing opinions of jurists shuttered legal security and thus is said to have made this decision out of concern about the authority of the law (*auctoritas iuris*)<sup>103</sup>. This might have led to the jurists' opinions having a major importance in the development of the law<sup>104</sup>. But, at least in the second century A.D., such a trend was stopped; the importance of the *responsa* as sources of law began to decrease because of the numbers of imperial laws, decisions of imperial courts and the instructions the emperor gave to his judges in individual cases, which then became precedents for future ones. Finally, the authority of jurists was stripped of any social dimension by a law of 426 A.D., which ruled that a judge could only consult the writings of five named jurists of the second and early third century, and that in case of disagreement, the majority of quotable authors should be decisive<sup>105</sup>.

In the Roman Empire, the idea of *auctoritas* was also taken over by the church<sup>106</sup>. We can only follow this development with the beginning of a Christian literature in Latin from the late

<sup>103</sup> Digesta (Pomponius) 1, 2, 2, 49.

<sup>104</sup> According to a rule issued by the Emperor Hadrian *responsa* had the force of law if the opinions of jurists agreed; otherwise the judge was free in his decision; Gaius, *Institutiones* 1, 7; however, this rule is far from clear; compare Franz Wieacker, *Respondere ex auctoritate principis*, in: Satura Roberto Feenstra, Fribourg (Suisse) 1985, 71-94.

<sup>105</sup> Codex Theodosianus 1, 4, 3.

<sup>106</sup> Compare Hendrik Wagenvoort / Gerd Tellenbach, "Auctoritas", in: *Reallexikon für Antike und Christentum*, vol. 1 (1950), 902-909; Karl-Heinrich Lütcke, *Auctoritas bei Augustin. Mit einer Einleitung zur römischen Vorgeschichte des Begriffs*, Stuttgart 1968; Thomas Gerhard Ring, *Auctoritas bei Tertullian, Cyprian und Ambrosius*, Würzburg 1975.

second-century onwards. Cyprianus, bishop of Carthage in the mid-third century, depicted the internal government of the church with categories of the Roman political tradition. He insisted on the sole decision-making power of the bishops, which is why he identified the *potestas* and *auctoritas* of a bishop. The bishop's *auctoritas* is an ingredient of the office and thus independent of the personal qualities of its incumbent. Cyprianus was fixed upon the internal stability of the church in view of the great crisis caused by persecutions that undermined ecclesiastical structures. In later times, the relationship between church and state became a point of issue. In the last decade of the fifth century, Pope Gelasius I protested against the emperor's interference with church matters by distinguishing between two powers – the spiritual authority (*auctoritas*) of the Roman See and the temporal power (*potestas*) of the Emperor. Though this opposition between *auctoritas* and *potestas* did not constitute a clear-cut theory in the case of Gelasius<sup>107</sup> it would become fundamental for the controversies about the relationship of church and state during the Middle Ages. The claim of *auctoritas* for the church was backed by invoking the *auctoritas* of God, Christ and of the Bible. And *auctoritas divina* could also be identified with *veritas*.

Thus it was a long and complicated path towards the identification of sovereign power and authority that Hobbes would later propagate. And, of course, neither Hobbes nor Carl Schmitt had the final word on this issue of authority.

<sup>107</sup> Compare Wilhelm Enßlin, *Auctoritas und Potestas. Die Zweigewaltenlehre des Papstes Gelasius I.*, *Historisches Jahrbuch* 74, 1955, 661-668.

## 2. POLITICAL THEOLOGY: THE AUTHORITY OF GOD

### 2.1 *Introduction*

There are two theses that are intimately related to the idea of authority. One is political theology. It is associated with Carl Schmitt. The second is moral theology. It is associated with Elizabeth Anscombe (though she never used the expression «moral theology»). Political theology is the claim that key notions of modern and secular political doctrines are unwittingly moored in theological and teleological world-views. In their secularized version, these notions ultimately make no sense and thus can be validated only from within the kind of theological framework from which they come. «Sovereignty» and «Authority» are paradigmatic cases of such key notions.

Moral theology makes a parallel claim. Key notions in modern moral doctrines are moored in a theological and teleological framework, and depend on it for their meaning. Considered from within a modern secular framework, these doctrines have lost their significance. «Obligation» and «duty» are paradigmatic examples of such notions, as they are anchored in the ancient idea of God the law-giver. Without God the law-giver, these notions make very little sense. Secular morality is like the famous explanation of what is wireless. You know what wire is. It is like a dog. And if you pull its tail in Jerusalem, it will bark in Rome. Now, wireless works in the same way, but without the dog. Morality without God is like wireless without the dog.

I hold a moderate version of political and moral theology. On my account, authority and sovereignty do have a content which stands independently of a religious or theological framework. Still, I see these notions as being in the grip of a theological picture of the world. To be in the grip of a picture is to unconsciously confuse a model of reality with reality itself. There are in fact two tiers to the picture of God. On the ground level, the idea of the theistic God and the authority of God is in the grip of the picture of God as the father or God as the King. But at the second tier, the idea of God the almighty creates a model which greatly intensifies the ideas of authority and sovereignty as models for earthly rulers and states.

So what I would like to do now is explore an idea of authority as it depicted by *a* religious picture (note the indefinite article). It is just a picture and not the picture. Precisely, it is a picture of God as the supreme decision-maker, which does not also depict Him as a deliberator. I shall call this the decisionist picture of God. In this picture, God's authority is based on His absolute Will, and is unhindered by any laws and rules, and in particular by any laws of morality. The decisionist picture of God can also be seen as a fascist picture of God. This is perhaps abusive but not inaccurate. «That there must be», in the language of the 18th-century jurist Blackstone, «a supreme, irresistible, absolute, and uncontrolled authority, in which the... right of sovereignty resides». It is this idea and ideal that I am interested in. Pompously put, I am interested in the genealogy of authority.

## *2.2 Who needs justification of authority?*

Anarchism in political theory has a function comparable to the null hypothesis in science. For political theory to justify authority, any authority, it should first provide cogent argu-

ments against the anarchist claim that there is no justification for any political authority at all.

Let me briefly state an anarchist argument against authority. A familiar idea, expressed in many different ways, is that you can do anything with bayonets except sit on them. Rule by the use of brute force («bayonets») is ultimately unstable (Rousseau argued that even the strongest man has to sleep and then he is vulnerable), hence the need for legitimacy. A legitimate ruler is accepted by its subjects and is thus free from having to constantly oversee them. Rulers' pursuit of legitimacy is a manipulative move to reduce the costs of using force; it is based on indoctrination rather than persuasion. Legitimacy is the use of force by other means. Legitimacy by indoctrination produces the belief that the state has authority. But this is not a justification, in the sense of demonstrating that this belief is true.

The anarchist is willing to accept expert authority. Expert advice, however, is different from authority based on command.

The anarchist argues that authority is a matter of justification and that there is no justification for political authority, except that your own reasons for acting ultimately coincide with the reasons given by the authority in telling you what to do. But such justification has the status of expert advice, rather than command by political authority. Listening to the anarchist argument, one may be tempted to adopt Ramsey's philosophical strategy: if you see a philosophical dispute that goes on for too long without being resolved, see what the opposing sides have in common and deny that.

The decisionist seems to follow Ramsey's strategy. He detects that both the anarchist and the believer in authority think that the issue between them is the issue of justification – the justification of power. The anarchist denies that there is such justification and the believer in authority believes that there is such justification. The decisionist denies the need for and the impor-

tance of justification altogether, in the sense of giving reasons for the use of power. What really matters to the decisionist is the style in which the power is used, rather than the reasons for its use. By style, he means for example the ruler's being resolved and decisive. Justification by style rather than by content can be pretty absurd, as illustrated by the cutting philosophical joke by the scholar who summarized Heidegger's lecture, saying «I am resolved. I just don't know what on». There is a whole style of square jawed politicians who try to assert their authority by being decisive about nothing in particular. But what I have in mind is something far more sinister. Something casts its shadow on the decisionist picture. It is the decisive leader that Schmitt and Heidegger had in mind.

I shall advance my little genealogy of the idea of authority in three stages: first, I will examine the authority of God; second, the authority of God's messengers; and third the authority God's scriptures.

### *2.3. The Authority of God*

There seems to be no need to justify God's authority. One reason is that this authority is correlated with God's three attributes. He is omniscient, omnipotent and supremely benevolent. What better justification could there be than to obey the commandments of such a perfect being?

It takes Lucifer, the fiery fallen angel, to find God's attributes (especially his benevolence) irritating and to try to assert his freedom by rebelling against God's perfection. Lucifer's gesture expresses the Augustinian notion of the will, which includes the possibility of knowing the good and yet doing evil. Augustine's idea was so novel in philosophy and theology because it meant that simply recognizing the maximal attributes of God was not enough to secure actual acceptance of his reign.

But this of course does not mean that the three attributes do not provide justification; indeed these three attributes seem almost self-explanatory. But the God of the three attributes is the God of the philosophers. And the God of the philosophers is not the only picture of God that emerges from the scriptures.

The Gnostic reading of the Bible, particularly of the Old Testament and many parts of the New (the parts ascribed to Paul), points to a very different interpretation. According to the Gnostics, the God of the Bible is a mischievous God who plays nasty tricks on us. This wretched God is the world's jailor, who keeps us from contacting the true God. The Gnostics did not ultimately challenge the authority of God, they only quarreled over which God should have it.

The heretical Gnostic account is interesting in and of itself. Yet for our purposes, the important thing to remember is that the scriptures that are traditionally meant to provide reasons for accepting the authority of God can also be read very differently. The trick lies in switching the light, switching from reading the text in the best light to reading it in the worst one. The traditional reading of the Bible tries to present the God of the scriptures in the best light; the Gnostics present God in the worst light, and thus provide powerful reasons for subverting his authority. So the issue of justifying the authority of God depends on the question of how to describe the God whose authority we accept.

Turning now to the God of the philosophers: there is a tension between two of God's attributes, which should concern us with respect to justifying God's authority. There is a tension between his omnipotence and his benevolence. Now I am not referring to the banal tension between God's omnipotence and benevolence on the one hand, and the evil found in world on the other. The tension that I have in mind is of a different sort: it is how to reconcile God's omnipotence with his benevolence, so as to prevent the omnipotent God from being constrained by

the good. The decisionist holds that God who is constrained by the good is not omnipotent, and hence being constrained by the good diminishes God's absolute sovereignty. On the decisionist account, God's absolute authority rests on his absolute will, namely, on his capacity to decide the way he wants, unhindered by anyone and anything. Any of God's decisions may of course be regarded as good by definition. But this is uninteresting, because if he had decided to do the opposite, that too would have been regarded as good. The goodness of his decision is thus independent of its content. God's will is beyond good and evil. This chain of thoughts with regard to God's omnipotence and sovereignty is what motivates the decisionist picture of God as the One who is supremely capable of making decisions which are absolutely unconstrained, and specifically unconstrained by moral laws.

The particular focus of the decisionist picture is anchored in the view of both the mind and the body as living phenomena. The mind has a psychic force that is exerted on and by its owner to bring about things in the world. This force is the will. The will is what distinguishes individual personalities. According to the theistic view, God has personality without having a body. His will not is the most characteristic trait of his personality, not his reason. God presides over the world in the same way that the mind presides over the body. In both cases, the will is what makes the presiding possible. The will is manifested in the faculty of decision, but it should be regarded as an internal primary force; in the case of God, it is the force to determine the world. In this view, the will is the ability to start a causal chain that can be ascribed to the individual subject of the will. He is the creator of this chain.

God's force of will is so overpowering that there is no way of recognizing it without admiring and thereby surrendering to it. Humans have the will to power; God has the power of the will. Thus the decisionist picture of God provides God's true answer to Job. Admiration should replace justification.



According to the decisionist picture, God's will is, paradoxically, a normative brute force. It is a brute force, in the sense that it is a will that can bring about things without being constrained by any antecedent reasons, since acting for reasons means that independent reasons have power over God and thus undermine God's absolute authority. But God who exercises brute force arbitrarily may have mere coercive power over us but not the legitimacy needed for authority. It may be prudent to obey his will but there is no duty to do so. So the decisionist fantasy also wants us to ascribe a normative character to God's will, and feel a sense of duty in bowing down to it. The decisionist wants to depict God the father and not the Godfather. Whereas God the Godfather is a brute force with no normative quality, God the father is a brute force which also has a normative character. God's will, though ultimately arbitrary, is not necessarily despotic or mischievous. It can be a benign will, like the one we meet in the forgiving God: the act of forgiveness or amnesty is a benevolent act of a sovereign, which is not justified by reasons of law. It is rather a gratuitous act of grace that the sovereign is free to enact. God the father is a forgiving god and not a ferocious oriental despotic god, at least not by temperament. He is the benevolent manifestation of the decisionistic image of God. But God's authority does not hinge on his benevolence. God's benevolence is a bonus, not a condition of his authority.

Carl Schmitt drew an interesting analogy: «the exception in jurisprudence is analogous to the miracle in theology» (*Political Theology*, p. 36). The point of this analogy is that it is precisely when the laws fail to constrain the sovereign that he manifests his full power to decide and hence his authority. Miracles manifest the sovereignty of God. He can bend the laws of nature to his will and thereby create exceptions to the law. For political ruler, it is in the cases of exceptions to the laws, as in times of war and states of emergency, when nothing constrains the will

of the sovereign and his power and authority are exerted in full. This explains why fascists thrive on crisis situations of emergency and why war plays such key role in their thinking. It is not the mere fascination with the excitement of war which is at the center of the fascist picture of politics. It is also the fascination with authority. It is in war and emergency crises that unrestrained and unconstrained decisionism flourishes, and the authority of the sovereign is on full display. But this benighted picture of the sovereign acting outside the law can just as easily be a benign picture of giving amnesty in which the sovereign also acts outside the law.

We may well argue that the human capacity to decide upon an action is a capacity to act for reasons. It follows that the idea of God as a being with a will should also have been based on his capacity to act for reasons – a higher reason to be sure but reasons all the same. Acting for reasons as a manifestation of the will is very much played down in the fascist picture of God, as it is in the secular fascist picture of man. The God of hosts as the supreme commander in the cosmic struggle is the best exemplar of the will that, in the fascist picture, commands respect. Respect here means submission of human will to this overpowering force. Submission of human will does not mean the annihilation of human wants. On the contrary, the more one is inclined to do A the more value is attached to one's not doing it. A famous rabbinical dictum says «I should not say that I do not want pork. I do, but what can I do when my father in heaven commands me not to» (Sifra, Kedusihm). It is God's inexplicable will against individual will, and his is stronger.

Authority lies not in Reason but in the power to take important decisions. The authority of God is based on his matchless power to decide. The corresponding secular principle of the authority of the big decider is terribly grim. It is the *Fuhrerprinzip* that grounds the absolute authority of the leader in his charismatic power as a resolute decider. The fascist pic-

ture of God is far from being the most common picture of God, nor is it the only one. But it would be excessively apologetic to deny its existence. This picture takes the idea of the absolute authority and sovereignty of God as the key concepts in depicting God as the king of kings – the one true king, who is also the lord of hosts. There is another picture of God, which I shall call the feudal picture. The feudal picture casts the lord's authority, and the loyalty owed to him, as earned by favors that he or his ancestors bestowed on his vassals or their ancestors. Here, authority and loyalty are based on gratefulness.

In a similar vein, Judaism teaches that each and every human being should be grateful to God for the gift of creation, and thus obey his will. Jews also have a special obligation of gratefulness for being delivered from Egypt, «the house of slavery». The justification of feudal authority is based not on present or future benefits, but on past ones. In the feudal picture of God, God is both a father and a king, and his authority is both paternal and royal. The father's authority is earned by his giving us our lives. He is our progenitor. In the case of a king, it is usually due to his or his ancestors providing protection when it was most needed.

The feudal picture of God does find the need to justify his authority. His authority is not self-explanatory. But giving life is a good justification for recognizing authority, while acting against the will of the one who gave us life is being ungrateful in the extreme.

There are two trends in political philosophy: one is interested in political power as the main feature of political life, the other in the justification of political power. The first trend tries to avoid the project of justification, but it doesn't altogether. One such justification in the decisionist picture is that stable political power produces stability and order. Stability and order, the negation of anarchy, is a good justification of power. The decisionist picture, though downplaying the need to justify

power, tacitly assumes justification due to stability and order. This justification takes the form of justification by protection, which it partly shares with the feudal justification.

What the decisionist and feudal pictures share can be termed the protectionist model of authority. Authority is justified if it can provide effective protection for its subjects. The idea of God as the best protector of his servants is consistent with this picture. The political theology of «security philosophers» such as Hobbes is very much in the grip of this picture. Security philosophers put a premium on securing life rather than on securing the good life. Security is the only goal worth pursuing in politics. Any power that can secure life is thereby authoritative.

Protection is manifested in order and stability. Any order and stability can justify the power which is effectively capable of imposing it. The content of that stable order is, however, immaterial to the justification of the authority. We should judge use of power by the Sicilian mafia in the same way as we judge the Spanish government's use of power – by the protection it provides. When Carl Schmitt addresses Hobbes' protectionist Leviathan as the expression of a kindred decisionist soul, he endlessly quotes Hobbes' saying: «auctoritas, non veritas». This is the essence of the political order. The essence of *auctoritas* is order, not moral order but any order, be it in heaven or on earth.

So far we have encountered three justifications for the authority of God. All were rooted in rather unflattering pictures: the fascist picture based on sheer decisionism, the feudal picture based on gratefulness and the protectionist («mafia») picture based on protection. These three pictures, and their corresponding justifications for the authority of God, are by no means the most common ones, but it would be a mistake to view them as merely eccentric.

## 2.4. *The Authority of the Messenger*

The word of God is conveyed by a messenger, a prophet. How to distinguish the true messenger from a false one was a major concern of the Bible. The messenger is not a mere postman, nothing but a vehicle for transmitting the word of God. The most interesting contemporary issue of a messenger's authority centers on the prophetic authority of Muhammad. In one sense, he is as close to God's postman as anyone can be, since Islam makes the strong claim that Muhammad received a book, the Koran, filled with both words and meanings. But Muhammad's authority cuts much deeper than that of a passive, though divine, messenger. In one important sense Muhammad is more like Jesus than Moses; he is not only a messenger but he is the message as well.

Unlike Jesus, the Prophet Muhammad does not have two natures, a human and a Divine one. Islam regards imputing God's nature to anyone and anything as idolatry. The Prophet is no exception. But the prophet does have two personae: the human and the prophetic. He is fallible as a human, but in his prophetic mode, he is infallible in both words and deeds.

So apart from the Koran, a book conveying the word of God, Muhammad's deeds and words, as told by an authentic tradition (*sunnat al- nabi*), are another source of authority in Islam. Even the word of God in the Koran can only be understood in the light of the Sunna. In the case of the Koran, there is both phonetic fanaticism and meaning fanaticism. Both the words and the meanings are given by heaven. But in the case of the holy stories about Muhammed (*hadith*), the meaning – the content of the stories – is constant, but there is no phonetic fanaticism with regard to the wording. This differential wording does not however detract from the normative force of an authentic story about the life of Muhammad in Sunni Islam. In Shi'a Islam this status of authority is transferred in part to the messianic

Imams. Imitation of Muhammad is not just a pedagogical ideal of imitating the life of a perfect human being. Muhammad led a normative existence. His life has normative force commanding how Muslims ought to lead their lives. His life is a source of authoritative commandments and not just a fountain of good advice. This amounts to a strong doctrine of the infallibility of the Prophet and his God-like authority.

What does all this have to do with the picture of religious decisionism? A great deal, I believe. Islam's two authentic sources of authority, Koran and *Sunnat al nabi*, can create the impression that decisionism does not hold with respect to Islam, since decisionism assumes that the unity of the will of God is the only legitimate authority. However this impression is wrong. The Prophet as a prophet has no independent will of his own. Muhammad is a Muslim, meaning one who totally surrenders his will to the will of God.

This point calls for further elucidation. The ultimate sin in Islam, as in Judaism, is the sin of idolatry. In Islam, idolatry does not mean the sin of replacing God (Allah) with another (false) god, but rather giving God a partner. To view the Prophet as a partner to God is a terrible blasphemy. This does not mean that God has no servants in his heavenly court – the angels are such servants. What distinguishes a servant from a partner is that he has no will of his own. The great Islamic teacher Al-Gazzali (d. 1111) expressed this point forcefully: «though men, genii, angels and devils might conspire together either to put one simple atom in motion, or cause it to cease its motion, without His will and approbation, they would not be able to do so». This holds true for the prophet as well. As I claim, Muhammad's life is part of God's message, as much as it is the revealed word of God to Muhammad. Hence the authentic stories about his life are authoritative stories that express God's will through the medium of Muhammad's life.

On this account, the authority of Muhammad does not undermine the decisionist picture of Allah but in fact reinforces it.

But the dialectic here is more complicated. Radical political Islam, which plays up Muhammad's authority, especially in political matters, seems to turn quickly from admiration of the prophet to his deification. Modern radical Islamic movements (both conservative and reformist) appealed to the two original sources of authority, the Koran and the *Sunnat al-nabi*, to challenge the authority of the four schools which dominated Islam for hundreds of years. They were even called the people of the Koran and the people of the *Hadith*. There was actually much tension between these two movements, but they had a common enemy in the classical law (*taqlid*), and its learned establishment, the *Ulma*. Thus, in the name of authenticity triumphing over a corrupt tradition, political Islam is aiming towards something like Muhammad's direct rule over the pristine community of the early days. In doing so, its exponents tend to regard the *Sunnat al-nabi* as the primary source of authority. Though Islamists in no way seek to undermine the authority of God, their privileging of the *Sunnat al-nabi* does create a duality of authority, a duality that they themselves would find shocking.

Let me address a question that hovers over my whole discussion and is very much at the center of Islamic thinking.

If, according to the decisionist picture, justification is not the ground for accepting authority, what is?

Let's look first at the motives for human acceptance of God's authority. This is an important religious issue, specifically relative merits and demerits of accepting God's authority out of love or out of fear. Joseph Raz has insightful things to say about the meaning of accepting God's authority out of love. The lover who wants to have the same taste in music as her beloved is not just trying instrumentally to ingratiate herself but instead to be one with him.

The decisionist picture of religion seeks something else: a fusion of fear and love for the veneration of God and the

acceptance of his authority. The fusion of love and fear is what creates ambivalence, according to Freud's account; first, towards the primal despotic father and then towards God the Father. The decisionist is not interested in deep psychology but in effective submission; the combination of the two works best for obtaining submission. Stalin made even his admirers shiver, but many also sobbed bitterly at his funeral. For the decisionist, the combination of tremors of fear and tears of love is just about right. The decisionist picture of God has strong hold on political Islam.

It is directed against another source of authority in Islam, the legalistic authority of the four schools of Islamic law. As a matter of fact, this source of authority was most influential in shaping religious life in the Islamic world. Of course this legalistic source of authority presents itself as derived from the Koran and the Sunna, but it is in fact an independent source of authority.

## *2.5. The Authority of the Scriptures*

For most religious thinkers, God's authority is so obvious that it does not call for any justification. God is posited as the self-justified authority, and other authorities are justified by their relation to the authority of God. Though the authority of God does not pose a problem for many thinkers, what counts as the authoritative Word of God still does. The word of God is authoritative. But who decides what the word of God is? Politically, the authority to determine what is the authoritative word of God is far more relevant than God's authority to begin with.

How does the authority of the word of God fit in with the decisionist picture of God? Let me redraw the outlines of the decisionist picture. God is a personality with no body. The main trait of his personality is his will. It is his will and not his reason



that counts, because reason does not individuate a personality. Reason in principle is shared by all.

The will of God is the individuating principle of God's personality. The will individuates personality in the same way that matter rather than form individuates substances in Aristotelian metaphysics. Matter is corrupt, so it cannot be imputed to God. The immaterial will is thus supposed to do the trick of marking God's uniqueness. The will of God is the unifying principle of his complicated personality. It is a simple will. This is the basic view of the decisionist picture of God.

The will of God is expressed by his commands more than by anything else that he says and does. To be a believer is to accept his authority and obey his command. To be a true servant of God is to achieve the highest religious status. Moses and Muhammad were such servants indeed, or even slaves. To carry out the will of God is to obey his command, and to obey his command requires an interpretation of his words. There are about 6000 verses in the Koran, but only 200 of them are conveyed by imperative sentences. By command, I understand roughly what Hobbes says: «Does this or Does not this, without expecting any other reason than, the Will of him that says it». God is a super commander. But commands call for understanding, an understanding not of the reasons for the command, but an understanding of what to do to execute them. Commands may be baffling. One reason is that they are not always linguistically marked by imperative moods. The epitome of the biblical law is the Ten Commandments, which are for the most part marked by the imperative mood of «you shall not» (kill, steal, covet etc.). But then it is generally accepted that «I am the Lord» is the first commandment and this is given in an indicative statement and does not look like a command. For it to be a command it should already presuppose the authority of God to command. But to believe in God and accept his authority is what the first commandment commands. Roughly speaking

Judaism and Islam are action-centered religions, consistent with the decisionist picture of authority as expressed in commands. Christianity, by contrast, is more of a belief-centered religion (Man is justified by faith).

The prophet Muhammad was the first to coin the very useful expression «people of the book». He meant Jews and Christians. Muslims, through their messenger Muhammad, join this book club too. The idea is that all these religions, unlike the religions of the heathens, are based in scripture. Jews and Christians are entitled to protection under Islamic rule for the very fact that they are people of the book. Being people of the book does not mean that there is primacy of the written word of God over the spoken word. Indeed, for religious purposes, hearing is more important than seeing. Faith after all is, in the language of the famous eleventh chapter of Hebrews, «the conviction of things not seen». But whether the scriptures were handed over as a book or were revealed by a spoken word (and were committed in writing by prophets), there are written canonical texts at the center of each of the three religions. The authority to determine the canon is important to the understanding of religious and political authority. An excellent account of canonization in Judaism can be found in Moshe Halbertal's «People of the Book».

Who the people of the Book are can be a highly contestable matter. Heretics swear in the name of the holy books that they and only they are the «true» people of the book. One may argue that in some peculiar way «the Book» is even more important to heretics and fundamentalists than to the orthodoxy. Appeal to the book is a way to offset the authority of the orthodoxy that counts in fact more on «living traditions» than on the book itself. Paradoxically put, «the people of the book» are the fundamentalists and the heretics who try to undermine traditional religious and political authorities by direct appeal to the authority of the book.

What, according to the decisionist picture of God, is the right interpretation of the scripture? Right interpretation is the interpretation that gets God's intentions right. But this is easier said than explained.

The influential literary theory of the «intentional fallacy» holds that literary interpretation should not pursue the author's intention, but should instead be based on the shared linguistic meanings of the words. Various arguments are advanced to promote the idea of «the intentional fallacy», including a denial of first person authority over her own words.

For the decisionist picture, God's authority over his own words is of great moment. It ties in with another religious picture of God – the creator picture or the creator fallacy. According to this picture, only the creator fully knows what he created. The potter knows everything there is to know about his products and the carpenter knows everything about the tables and cupboards that she produces. God as the creator of the world is the sole being that knows the world. Stories originating in Prague exposed the creator picture as a creator fallacy. First the old story about the Golem and then the new story about the Robots. In both stories, the creator lost control over his products. It is this loss of control over one's artifacts that shaped the modern sensibility of not understanding the world we created around ourselves. In any case, God is the author of his world. He created the world and handed down a book based on his creation (though in Islam there is a doctrine of the eternity of the Koran), so he is in the best position to know everything about the meanings of his words. Moreover he is not constrained by the plain meanings of the words. He is the sovereign. This last claim is actually untenable, since the only theory of meaning that goes with such account is the Humpty Dumpty theory: «when I use a word it means just what I choose it to mean». Remember how Humpty Dumpty famously turns «glory» into «a nice knock down argument».

The decisionist picture of interpretation is pushed into a Humpty Dumpty position. There is no glory in this account and it is nothing but a knock down argument against God's commanding his creatures to obey his will in whatever language he pleases. The point is that a decisive and deciding God who exerts his authority by commanding his creatures should make sure that they understand him. And this can be done if and only if God speaks in the language of his creatures, which puts many strictures on what he can and cannot say. The decisionist can ignore morality but not linguistics. Human understanding is a constraint upon the way God understands himself, even when God is trying to be a decisionist God who is unconstrained by morality.

The decisionist picture of God may not be a coherent picture – a great deal hinges on how we understand God's omnipotence – but this does not stop it from being an influential picture in politics and theology and especially in political theology.

### 3. TRUST IN AUTHORITY

Here is a list of the main points I shall make in what follows:

- that authority can be practical or theoretical and it can be personal or impersonal;
- that there are two formative models of personal authority: paternalistic authority v. expert authority, and that these models inform/affect the case of impersonal (or institutional) authority;
- that trust in an institution is not a necessary condition for sustaining its authority;
- that distrust, by contrast, plays a significant role in eroding the authority of institutions, especially if it is widespread and if there is common knowledge of this;
- that despotic regimes do not need to worry about distrust: they rely on bayonets and on fear;
- that democracies need to worry about institutional distrust;
- that distrust in institutional authority can arise when the institution is seen as partial or corrupt;
- that distrust in institutional authority can also arise when it is seen as non-expert, as lacking special knowledge. “Familiarity breeds distrust.”

«In God we trust», proclaims the American dollar. The God in whom we trust is the supreme authority. Does this imply that God is the only authority – that only in God we trust? Bumper stickers in Israel proclaim: «We have no trust except in our heav-

enly father». This is more helpful: it says explicitly that only in God do we trust. It is also helpful in another respect. It explicitly equates God with the father.

Is trust in God to be understood on the model of trusting daddy? Or does God come first?

The question in turn relates to what is the formative picture that has a primary hold on us: is it our trust in God, such that trust in daddy is a derivative of it, or is it the other way around?

God is omniscient; but then, «daddy knows best». Knowing all or knowing best surely affects our trust in either one. But their superior knowledge is not sufficient. They also have to be competent in order for us to trust them; they have to be able to deliver. Well, God is not only omniscient, he is also omnipotent. Daddy may not be – but for the small child he is. And there is also a third requirement. It has to do with benevolence. God is all-good, as well as omniscient and omnipotent. As for daddy, his “knowing best” should be construed as not only knowing most but also as always knowing what is best for me.

Daddy wants and aims at my well-being.

Defining authority as the power to make decisions for others, God and the father are models of authority. They are models both of theoretical (doxastic, epistemic) authority and of practical authority. Theoretical authority tells you what to believe, practical authority tells you what to do. If I am on the receiving end of some authority, it is not the case that the authority merely supplies me with additional reasons for believing that p or for doing x. Rather, it gives me exclusionary reasons (in Raz’s sense) for belief or for action, reasons that are supposed to trump all other reasons. It is practical authority that I want to explore in the main bulk of this paper.

Still, I shall have something to say, at the end, about a specific historical example of a peculiar theoretical-religious authority: I shall present the case of the Teacher of Righteousness of the Dead Sea sect and the unique genre of *pesbarim* that came to

light among the Dead Sea scrolls. This literary genre is associated with a special kind of authority exerted by the Teacher, and by the texts that he is believed to have authored.

### 3.1 *Paternalistic Authority*

Regardless of who is the primary model and who the derivative, both God and the father exemplify what we may term personal authority. Contrasted with personal authority is impersonal authority, which is vested, typically, in a regime or in its institutions and agencies (such as the police or the courts). Personal authority on the model of God or the father is paternalistic. It knows what is best for you, and it wants what is best for you. Or at least this is what you believe – or, sometimes, this is what the authority will make you believe. Furthermore, personal authority makes decisions on your behalf. You should trust this authority and comply with it.

The particular paternalistic pattern of authority involves a relation of near-ownership. The believer “belongs” to God in much the same way that the child belongs to his or her father. This property relation is supposed, in and of itself, to account for the authority exerted by the owner upon the owned. But the ownership here is of a special kind. God and the father own their children *qua* their makers or creators. The authority of makers over their creations supposedly derives from the notion that the maker *qua* maker knows his creation – his child – best, and hence that the maker also knows what is best for his child, and that he wants it.

Personal authority may be paternalistic in an even wider sense than is exemplified by God and the father. The authority of the feudal lord over his vassals is an example. It, too, is based on ownership relations. But here the lord owns his vassals in the sense that they are his property, not in the sense that he is their creator and maker. Further away still from the model of God and father is the authority exercised, for example, by a plantation owner or a sweat-

shop boss over his workers, or by a tyrant over his people (think of a Peron-type or a Papa Doc-type tyrant). Here there is no ownership, strictly speaking, but rather pure subjection.

Such authority relations need not be paternalistic, but they can be. And inasmuch as these authority relations are paternalistic there seems to be a conscious effort on the part of the “pater” to style them on the father model. Typical of such authority relations is the constant invocation of the family metaphor: the workers/subjects are like children; the boss is like their father. It is clearly in the interest of the boss to use this metaphor and to have his subordinates internalize it. He would want them to believe that he cares about them and that he knows what is best for them, and therefore they should expect him to tell them what to do. Their role is to be grateful and to obey. The father’s authority over his children is natural and its legitimacy is not questioned. By exploiting the family metaphor, the idea is that the naturalness and legitimacy of the father’s authority will carry over smoothly to the relationship between master and subordinates, thus assuring their obedience.

In authority relations that are modeled, whether narrowly or broadly, on the paternalistic father/child relationship, trust in the authority is implicit and taken for granted. Of course, such trust is not always justified and it can be betrayed. Gods may fail. The phenomenon of a father who betrays the trust of his children by exploiting or abusing them is both familiar and abhorrent to us, regardless of historical period and social context. In contrast, the exploitation and abuse of subordinates by their masters and rulers, say in feudal or early modern times, is commonplace and almost to be expected. There is much to explore here, regarding the psychological mechanisms that connect fear of a despotic-paternalistic authority with trustful obedience to it. The first link in the putative causal chain is from fear to obedience. This is straightforward. The second more complex link is from obedience to trust, via the machinations of the dependence relation and of both cognitive and emotional dissonance. I shall not pursue these issues here.



### 3.2 *Expert Authority*

In addition to personal authority relations that are paternalistic there are also non-paternalistic relations of personal authority. These are mostly exercised by experts. Expert authority is the second formative model of authority, at the opposite pole of the father/God model.

We defer to experts in a variety of domains and we let them control, to some extent, what we believe and what we do. The tax consultant, the doctor, the home decorator are authorities for us by virtue of their special knowledge and professionalism. They generally know better, and in some cases they know best, and so we take their word for it.

But is not the source of paternalistic authority precisely this, namely that it knows best – or at least that it is supposed to know best? So how is personal authority of the expert variety different from personal authority of the paternalistic variety? Well, in the first place let us recall that «daddy knows best» was only one element in what constitutes the paternalistic authority of the father. In addition to knowledge (or omniscience, in the case of God) there were also the elements of competence (or omnipotence, in the case of God), of benevolence, and of proprietorship. These additional elements are not constitutive of authority relations of the expert kind. On the other hand, the element of knowledge – of special knowledge – is dominant in the case of authority exercised by experts.

Secondly, expert authority relations are contractual in nature, and are typically entered into voluntarily. They are also limited in scope: they concern the patient's knee operation, the customer's tax returns or the client's plan to build an attic. Paternalistic authority relations, in contrast, are non-voluntary and they tend to be of a wide, sometimes all-encompassing scope. The child defers to the father in just about everything, and so does the vassal to his lord and the subject to the tyrant. But the essential point of difference seems to be this. The paternalistic authority is per-

sonal in the strict sense of being *de dicto* and non-substitutable. This particular person is my father and as such my fatherly authority, while the authority exerted upon me by my doctor or by the dean of my faculty is *ex officio, qua* my doctor or my dean, regardless of who the actual person is who happens to sit in that particular chair. What this involves is something neither entirely impersonal nor strictly personal. It is in their social roles or capacities that my doctor or my dean can exert authority over me. Last year it may have been a different doctor, next year the dean will be replaced: the persons exercising this kind of personal authority are in this sense substitutable.

The status of what expert authorities tell us to do is different from the status of what paternalistic authorities tell us to do: it is more in the nature of advice, not command. The price for non-compliance is not external punishment but rather, at worst, having to live with the consequences of wrong decisions. Still, in both cases noncompliance involves a disutility of one sort or another, which has to be taken into account in one's overall practical deliberation. Trust in expert authority differs markedly from trust in paternalistic authority. It depends on the extent to which the authority is believed to possess expert knowledge relevant to the situation at hand, and it is limited to the domain of that expert knowledge. We usually turn to expert authority voluntarily, and we usually turn to the authority we judge to be best and most trustworthy, subject to some obvious constraints such as access, financial resources, time etc. We will normally not turn to an expert authority who we have *prima facie* reasons to distrust. Whether or not the experts turn out to justify the trust bestowed on them is a different matter. Expert authority, as mentioned before, is not limited to practical matters of how to act and what to do.

Expert authority can also be theoretical. We may turn to experts in order to know what to believe. Einstein is an authority for us in matters of physics and Stephen Jay Gould in matters of paleontology. As for the Pope or the Lubavicher Rebbe, well, they are cer-

tainly authorities for many people in matters of belief (even though I hesitate in referring to them as strictly theoretical authorities). I note in passing that religious authorities function not only as authorities for what to believe but often also as authorities for what to do and how to do it. In Judaism, the practical facet of the religious authority is especially pronounced, the rabbi being expected to issue *halakbic* decrees on every aspect of daily life.

### 3.3 The Matrix

The discussion until now concerned two models of personal authority. This will serve me as scaffolding for my main concern, which is impersonal authority within a democratic framework. But before continuing, let me pause for a moment and consider the following classificatory schema:

	<i>practical authority</i>	<i>theoretical authority</i>
<i>personal authority</i>	<p><u>paternalist</u>: father, God lord, tyrant</p> <p><u>non-paternalist</u>: older brother; leader; expert</p>	<p><u>paternalist</u>: God, Pope, rabbi, "eminence"</p> <p>[Teacher of Righteousness? – see last section]</p> <p><u>non-paternalist</u>: expert</p>
<i>impersonal (institutional) authority</i>	<p>state/regime;</p> <p>state institutions (courts, police etc.)</p>	<p>the Church</p>

The discussion thus far belongs mostly in the upper left and upper right cells of this matrix, comprising the paternalist and the non-paternalist models of personal authority – both practical and theoretical. I want now to turn to impersonal authority of the practical kind (the lower left cell). I want to look at institutions that have some control over what we do, and to focus on the question of trust in such institutional authorities. In particular, I want to ask whether the authority of institutions depends on our trusting them. Basically I shall argue for an asymmetry thesis. Namely, that the question of trust does not really come up with regard to institutional authority: it is distrust that counts. The relevant question to ask is when does trust in the authority of institutions in a democracy break down, and what are the consequences.

An etymological digression: the New Collegiate Dictionary lists several distinct meanings for the word “authority”. It has the «power to influence or command thought, opinion, or behavior». Using the terminology used here, this is both theoretical and practical authority. Also: «person in command; specif: government; a governmental agency or corporation, as in “the transit authority”» – namely, personal and institutional authority. In addition, the dictionary includes: «an individual cited or appealed to as an expert». The dictionary does not stop here, however. Among the further entries we find: «a citation used in defense or support; the source from which the citation is drawn; testimony; grounds, warrant». These latter meanings reflect the fact that the word “authority” comes from “author” (Latin: *auctor*), meaning «promoter, originator, author; source».

Now in Hebrew the word for authority (*samchut*) does not derive from authorship. But it does turn up revealing connections. The three-letter root for authority is “s-m-ch”. And when we check the various Hebrew words that derive from this root, we find (*inter alia*): support, lean against, rely on and have confidence in; accreditation and certification; to back or to sup-

port by evidence; reference and documentation; an expert; permission, right and power. Some of these cognates will turn up in what follows.

### *3.4 Trust in Institutional Authority*

It is taken to be a necessary condition of a well-functioning democracy that its citizens trust its institutional authorities. Social institutions are sometimes seen as trust mediators. In modern mass democracies, in contrast to the intimate city-states of ancient times, no level of general interpersonal familiarity and trust can be assumed. As a result, an important role of institutions is to facilitate social transactions by essentially replacing the need for personal trust among citizens. Consider, for example, the role of legally binding contracts as a replacement for promises. On the other hand, once institutions are in place, in order for them to fulfill their role as trust substitutes it is often supposed that citizens need to trust them. So, for example, in order for contracts between individuals to work it is commonly said that the individuals need to have trust in the country's legal system and in its enforcement mechanisms.

A number of writers seem to diagnose a malaise in many contemporary democracies, where a general decline in the degree of trust in institutional authorities is observed. This relates to both public and private institutions. There is substantial evidence, for example, that institutional trust in the US has been declining for several decades – in federal government, universities, medical institutions and journalism, as well as in several major private companies. These findings are alarming if the authority of an institution is directly linked to its ability to function properly, and if its ability to function properly depends in no small measure upon the public's trust in it.

According to another view, the authority of representative democracy goes hand in hand with a modicum of distrust. «A certain amount of distrust», says Hardin, «may be useful to a society or government. Certainly, large, modern democracies work better if we can be sure that there are professional distrusters or cynics or skeptics, people who act as watchdogs, raise alarms, or provide contrary information». A quick comment on this is that a skeptical attitude is not quite the same as distrust, and while skepticism may be healthy, distrust may be detrimental to the authority of an institution.

Still, how threatening to a democracy are various forms and degrees of distrust in its institutional authorities? Or we could ask, how healthy are they? And is the distrust that one is talking about when arguing that it is threatening the same as the distrust assumed when arguing that it is healthy?

I recently had occasion to come up with a detailed analysis of the notion of personal trust.

It says, roughly, that I trust you when I believe that you have the right intentions toward me. This is a personal, intention-based account of trust. It requires that for me to trust X, I need to entertain certain beliefs about X's intentions, and about what motivates those intentions. Since it is to persons, not institutions, that we attribute intentions and motivations, the analysis does not carry over smoothly to the notion of trust in institutions.

It is often the person who is the figurehead of an institution that embodies for us the institution as a whole. Roderick Kramer cites a speculation that «people may use the behavior of institutional leaders as reference points [for gauging their basic beliefs –] when appraising the trustworthiness of society's institutions in general. In other words, people may draw general inferences about institutional trust from the behavior of highly visible role models». If this is so, then the question of trust in an institutional authority translates into trust in personal authority

– of a paternalist, expert, or any other kind. The question of trust in the authority of the police, say, or the Supreme Court, is translated into the question of trust in the authority of the commissioner of police or the chief justice – and is thus ultimately unpacked in terms of people's beliefs about the intentions and motivations of these personae.

When no such personification of the institution takes place, I believe that talk of trusting an institution is loose talk. It usually amounts to no more than one's reliance on the institution or one's degree of confidence in its competence and performance. This can typically be expressed in the probability one assigns to the institution's doing such-and-such. A caveat here is that only when the goals of the institution accord with our interests do we tend to say, in this loose sense, that we trust the institution. Or at any rate this is the case when the institutional goals do not outright conflict with ours. When there is such conflict, we are unlikely to feel or to say that we trust the institution in question. Indeed, it is possible for me to have confident expectations that an institution will do exactly what it is supposed to do, and to distrust it for that reason, when what it is supposed to do is against my interests.

But more specifically and more crucially, talk of trusting an institution is generally to be construed in terms of our degree of confidence that the institution will continue to pursue its set goals and to achieve them regardless of who staffs the institution. There is a principle of substitutability at work here.

Invoking the idea of substitutability raises the question of what it is that remains constant over the substitution. In the case at hand, when we express trust in an institution we express our belief that, even if the present officeholders in that institution were to be replaced with others, the performance of the institution would remain more or less the same. In other words, so-called trust in an institution is tantamount to a belief in the impersonality of its performance, in addition to the belief that

its goals are compatible with our interests. In contrast, when I trust other individuals, I expect their behavior toward me to be entirely personal: I expect their behavior to reflect the fact that it is I who am affected by it, not just anyone, and that it is precisely because it is me that they behave the way they do. But when I say I trust an institution, I expect its behavior toward me to be impersonal: I expect its rulings and decisions to be unaffected by whether it is I or anyone relevantly similar who stands to be affected by those rulings and decisions.

### *3.5 Distrust of Institutional Authority – Partiality*

Having said something about what trusting an institution may be construed to mean, I now want to consider distrust of institutions. I believe that there is an important asymmetry here. Distrust adversely affects the authority of institutions more than trust positively affects it. I also claim that, in the case of distrust of institutions, we do attribute intentions and motivations to the institutions themselves, and not just to their figureheads.

Consider, for example, the case of the ultra-Orthodox in Israel, who in recent years have expressed their growing distrust of the Israeli Supreme Court. Consider also the case of the Arab Israeli minority, many of whose members have in recent years come to lose whatever trust they had in the Israeli police. In expressing their distrust of the respective institutions, these people are conveying something other than a mere factual prediction that the Court or the police will act against their interests. Their distrust has a surplus element that goes beyond expressing non-reliance or a low degree of confidence in the performance of the institutions. These communities want also to be understood as imputing intentions to the people who staff the respective institutions.

What intentions can these be, given that there is no personal acquaintance and there are no personal relations between the



individuals involved? Fundamentally, I think that the question of our distrust of an institution boils down to our belief in the unfairness of the institution – and to the ancillary belief that the unfairness works against our own interests. When an institution faces a crisis of trust, which is at the same time a crisis of authority and legitimacy, this means that social groups in need of recourse to that institution suspect it of operating in an unfair manner, a manner that goes against their interests *qua* members of those social groups. More specifically, in many cases this means that the members of the social groups in question tend to impute discriminatory intentions quite generally to the office-holders of the institution, at all levels of the institutional hierarchy – for example, to all the judges or to all policemen and policewomen. Such imputed discriminatory intentions may be racist, sexist, homophobic, anti-Semitic or antireligious ones.

The flip side of imputed discriminatory intentions that make some people distrust an institution, is that the very same institution may become highly favored by people with other, opposing, interests. In a city where the police favor the Mafia, or let's say the Sunni Muslims, it may be expected that the general citizenry will distrust the police. Can we say that the members of the Mafia, or of the Sunni segment of the population, trust the police? Well, they sure do, in some sense. But their trust in the police is in the personal sense of trust, not in the institutional sense that is premised on impersonality and substitutability. The trust of these groups in the (favoritistic) police is "bad" trust, if you will: it is the kind of trust that actually serves to undermine the authority of the police with the population at large.

The Mafia's trust in the police cannot be the trust that we value when we reflect upon the authority exerted by institutions in a healthy democracy and, in particular, upon the role of trust in it. The Mafia's trust is a perversion of the trust in institutions that is claimed to be required in order for mass democra-

cy to work. It undermines rather than enhances the authority of the police as far as the general public is concerned. A necessary condition for trust in an institutional authority worthy of its name is confidence in the fairness and impartiality of the institution. When this condition is fulfilled – or, at any rate, when this condition is not flagrantly violated – no personal intentions are imputed to the officeholders of the institution; the principle of substitutability holds.

The point, then, is that in contrast to the case of trust in institutional authorities, distrust of institutional authorities does involve the imputing of intentions. It involves a shared belief among groups of citizens about the personal intentions of the institution's officeholders. These intentions are taken to be operative while the officeholders are executing their official duties. The typical belief here is that the officeholders are infected with discriminatory intentions against members of the relevant groups and that these intentions generally result in unfair practices. The unfair practices are believed to adversely affect the interests of the people who belong to those groups.

Schematically put, the putative chain of events here is this. Belief in discriminatory intentions leads to distrust. When this is true for an increasing number of individuals, a threshold is crossed and the authority of the institution is eroded. This in turn leads to increasing noncompliance. When all of this not only happens, but is also generally known to happen, tipping phenomena and cascades are likely to occur and to amplify the effects.

The likely result: a breakdown of trust in the authority of the institution in question.

When this chain of events is generalized across institutions or governmental agencies, indignation may spread and threaten the authority of the regime.

Institutional distrust may also emerge when there is widespread belief that the institution is corrupt. David Hume sug-

gests that institutions should be designed in such a way that they would work well even if, in his well-known phrase, they were staffed by knaves.

Should the design fail, however, or should the level of the knaves' corruption pass a certain threshold, the institution *qua* institution may be perceived as corrupt. Here, too, people's attitude toward the institution turns in an essential way on their beliefs about the personal motives of the institution's office-holders at its various hierarchical levels. Once the officials' personal motives become suspect – as, for example, when there is a shared belief that they are open to bribes – then distrust in the institution *qua* institution spreads and its authority is eroded.

A difference may be noted between cases in which the erosion of an institution's authority is due to a distrust that relates to partiality and discrimination, and cases in which it is due to a distrust that relates to corruption. The first case of discrimination-related distrust tends to be a case of group distrust, based on membership in groups defined by race, gender, ethnic origin, sexual orientation, and so forth – as in the examples cited above of the Israeli Arabs or ultra-Orthodox. The second case of corruption-related distrust tends to be a case of class distrust. Here the institution is taken to operate in such a way that the rich who can afford to bribe get away with things that the poor cannot get away with (think of driving violations in the case of the police, or tax evasions in the case of the IRS). The two kinds of institutional distrust may of course overlap, and there may be various intermediate cases too. I leave the question open as to which kind of distrust is more detrimental to institutional authority and, ultimately, to the stability of the regime.

So: what we ordinarily mean by saying that we trust an institution is best captured in terms of the high degree of confidence with which we can predict the future steps or decisions that the institution will take. This can often be cast in terms of our confident prediction that the institution will be pursuing its goals.

Also, when we say that we trust an institution we expect the institution to be impersonal, whereas in trusting an individual we expect his or her attitude toward us to be entirely personal. Distrusting an institution, in contrast, is not a matter of confident predictions, and it involves the attribution of intentions. It boils down to our belief that the intentions of the officeholders of the institution are discriminatory (or profit-seeking), and that the institution is consequently unfair (or corrupt) in ways that work against our interests.

### *3.6 Distrust of Institutional Authority – Familiarity*

Ben-Gurion, the mythical and authoritative founding father of the state of Israel and its first prime minister, is often quoted as having said in the 1950s something like the following: «Every Hebrew mother shall know that when she sends her son to enlist in the Israel Defense Forces she is entrusting him to the very best commanding officers». (I do not think Ben-Gurion said «son or daughter» as he should have.). This was meant to instill and to inspire in the general Israeli population a high degree of trust in the country's newly formed armed forces, to the ranks of which there was – and still is – a general duty of conscription.

In promising that the young soldiers would be the charges of «the best» officers, Ben-Gurion was making the case, among other things, that these officers are responsible professionals, that «they know what they are doing». The self-righteousness of Ben-Gurion's statement notwithstanding, I read it as an attempt to base the people's trust in the authority of the army, at least in part, on the attribution to its officers of some relevant expertise, of some sort of special knowledge. (I say “in part” because there is surely an additional, moral aspect to be read into Ben-Gurion's statement.)

In the early decades, the army did indeed command a high degree of respect in the Israeli population and enjoyed its considerable trust. The trust has eroded over the years, however. I believe that this is only partly due to the less-than-exemplary performance of the Israeli armed forces in recent years. My claim is that, in comparison with the past, when parents send their children to become soldiers today they trust the army less because they know the army better. In contrast with parents of the previous generation, today's parents have themselves served in this army, and precisely because they are more familiar with it, they are more suspicious and less trustful of it. The halo and the mystique are gone; the attitude that is summed up in the phrase «they know things we don't: who are we to pass judgment?» no longer prevails. In other words, familiarity may breed distrust.

In a despotic regime, like Stalin's or Saddam's, it is relatively easy to maintain distance between the ruler and the ruled and it is relatively easy to shroud the regime with a halo of omniscience and omnipotence. Authority in such regimes is sustained first and foremost by fear. It is also sustained by the particular kind of trust that is induced by fear from a ruler who is perceived as all-knowing. But in democracies things are different.

Most state agencies or institutions in democracies are in principle supposed to be transparent, accessible and familiar. So long as no widespread suspicions of impartiality and unfairness give rise to distrust in an institution, the effectiveness and authority of the institution can be sustained. Think, for example, of the police or the income-tax authorities in most liberal democracies. Alternatively, the effectiveness and authority of an institution can be sustained so long as the institution succeeds in maintaining a reputation for possessing professional, special or expert knowledge in the relevant area of its activity. Think, for example, of the Supreme Court, the Federal Reserve Bank or the MI-5. We should note, however, that these special-

knowledge institutions are also less transparent and accessible than the institutions of the first category.

There seems indeed to be some delicate balance or tradeoff between fairness and impartiality on the one hand, and expertise on the other, with regard to the degree of trust in an institution. After all, in a democracy many governmental ministries and agencies are staffed by elected officials who may be replaced at the next election and who are not, strictly speaking, professionals in what they do. Still, if the way an agency conducts itself and carries out its duties is perceived as fair, this appears to compensate to some degree for the lack of expertise or special knowledge. The paradox, however, is that the more transparent, accessible and familiar the institutions in a democracy are, the less they are able to maintain the semblance of expert knowledge and to fend off suspicion and distrust.

In sum: despotic authorities do not need to inspire trust; fear will do well enough for them. Still, to the extent that a despotic ruler fashions himself on the model of the «father of the nation», he may inspire the peculiar sort of unquestioning trust that is associated with paternalistic authority. In democracies, paternalistic trust is by and large unavailable.

Some institutions in a democracy, like the court or the central bank, derive their authority from their claim to expertise; they inspire trust inasmuch as they are thought to possess special, expert knowledge. But in general the authority of a democratic regime and its institutions relies less on trust than on the perceived legitimacy of the authority and the proper and generally fair functioning of its institutions. What democratic authority is vulnerable to and cannot afford is the spread of distrust. I have tried to sketch some of the possible sources and causes of such distrust. The spread of distrust may lead to growing indignation, and significant indignation may undermine the authority of the regime and threaten its stability.

### 3.7 Theoretical/Doxastic Authority: *Pesharim*

Going back to the promissory note given at the outset, I now want to briefly present a rather special case of religious authority. This comes out of the discovery of the Dead Sea scrolls in the late 1940s and early 1950s.

Among the sectarian scrolls found at the Dead Sea site of Qumran, several texts constitute a separate genre, referred to as *pesharim* (sing: *pesher*). The word *pesher* means interpretation, and in the *pesharim* scrolls selected biblical texts are applied to the contemporary sectarian setting of the second and first century BCE by means of a special literary technique of interpretation.

A *pesher* takes a biblical composition, usually one of the twelve Minor Prophets, as a starting point. (Thus the longest, most important and best-known *pesharim* found at Qumran are *Pesher Habakkuk* and *Pesher Nahum*.) It proceeds, first, with a direct and explicit citation from the biblical text (the lemma), then an introductory formula such as «its *pesher* is upon...», and then an application of the text to a contemporary reality outside of its original biblical context. The selected text to be interpreted is typically of an eschatological prophetic nature, and the interpretation is typically historical, not theological. It offers a typological version of the history of the sect itself, regarding its own «*Historia Sacra*».

Here is an example, from *Pesher Habakkuk* (col. V, 8-12): «Why do you stare, traitors, and maintain your silence when a wicked person consumes someone more upright than himself? [Hab. 1. 13] Its interpretation is upon the House of Absalom [Alexander Janaeus's younger brother] and the members of his council, who kept silent at the time of the reproach of the Teacher of Righteousness, and did not help him against the Man of Lies, who rejected the Law in the midst of their whole Community».

The Qumran community saw biblical prophecy as coded messages, which might only be unraveled by a specially endowed and divinely inspired individual. The author of the *pesher*, most often the Teacher of Righteousness who was the leader (and possibly the founder) of the Qumran community, deciphers the coded biblical messages and reveals their «true meaning» to the members of his community. In this way the author becomes a theoretical authority to the members of his community: he instructs them about what they are to believe about their reality. (However, the modern reader is «often challenged to identify the historical realities reflected in the allusions found in these interpretations», which are themselves usually couched in veiled terms such as «the Man of Lies» cited above.)

In fact, the Hebrew word *pesher* is related to the root of p-t-r, meaning solution, release or unbinding (*pitaron*) – which, in antiquity, specifically came to denote the unraveling of dreams. Biblical prophecy, then, is here regarded as analogous to a dream whose mysteriously encoded message is in need of decoding. And just as biblical prophecy is divinely revealed, so too is its act of interpretation. It is not the power of scholarly study (or of psychoanalytical training, for that matter) that makes the *pesher* possible: in this respect the *pesher* differs from ordinary, scholarly interpretative endeavor (or *midrash*).

Nor is it mere charisma that enables the leader to come up with the *pesher*. It is by divine revelation that the author of the *pesher* becomes the authoritative decoder of the Holy Scriptures, themselves divinely revealed. Revelation legitimizes the authority of the *peshtarim*.

The literary genre of the *peshtarim* is unique to the corpus of the Dead Sea scrolls. The authority of the leader of the sect, the Teacher of Righteousness, is also unique. It is an intermediary case, between the authority of the prophets on the one hand and the sages on the other: it partakes of both the prophets'



divine inspiration and the sages' interpretative skills. The messages of the Teacher are political, and his authority extends to interpreting for the members of his congregation the concrete political reality in which they live. He is their authority regarding how they are to see the world and what they are to believe.

The worldview of the Dead Sea sectarians, like that of so many other religious and political sects, is Manichean. It is «we» v. «them», or «sons of light» v. «sons of darkness». The latter is indeed the name of one of the more famous Dead Sea scrolls, but it is also an apt epitaph for a mood and for a worldview typical of sects and various isolated extremist groups, ancient and contemporary. Questions relating to the nature of the authority of the leaders of such religious and political sects are therefore relevant, even urgent.

In a noteworthy twist on the scroll community, there are sects around us today – like «Esh Ha-Torah» (in California) and others – who return to the idea of looking to the bible for encoded messages. The latter-day equivalent to the Teacher of Righteousness, the figure endowed with the capacity and authority to reveal the secret messages, seems therefore to be the mathematician-statistician. For certain groups of people, then, computer science may be on its way to replace divine inspiration as the ultimate source of authority.

## 4. NOTES ON AUTHORITY AND COMPLIANCE

### 4.1 *Introduction*

The ideas of *power* and of *authority* (as I understand them) differ in several ways. Only individuals have power, whereas authority can be an attribute of norms and institutions as well as of individuals. The power of an individual rests on his ability make others act in accordance with his desires by means of intentional action directed to that end. Authority, when vested in an individual, rests on the ability to inspire following rather than on the ability to overcome resistance. Jesus had no power, but certainly authority. Hitler had both power and authority («working towards Hitler»). Stalin had power but no authority. Authority, when vested in norms and institutions, rests on material sanctions and on a broad spectrum of emotional reactions.

Power as well as authority may induce *compliance*. The main topic of the present paper is to examine the mechanisms sustaining compliance. I begin in Section II by discussing how powerful and resourceful individuals deploy threats and promises to make others act in accordance with their desires, and why these efforts are sometimes counterproductive. The rest of the paper is devoted to compliance with authority. In Section III I discuss how the *wishes* of an authoritative figure may induce compliance even in the absence of (explicit or implicit) threats and promises. In Section IV I consider the authority of unwritten rules: social norms and conventions. Section V moves on to consider the authority of written rules: laws and constitutions.

## 4.2 *Threats and promises*

Power operates through incentive schemes, based on threats and promises. Considering first the use of threats, the standard view is that people comply with threats when (i) they believe the threat will be carried out if they don't comply and (ii) they prefer complying to the execution of the threat. This statement is ambiguous, however, in that it does not distinguish between pre-threat and post-threat preferences. According to what psychologists describe as "reactance" (Brehm, 1966), or what John Roemer (1985) cites as «the psychology of tyranny», threats may in fact have a dual effect. A threat raises the costs of non-compliance, but can also change the preferences of the person being threatened by making him more willing to suffer these costs. When during World War II German occupiers threatened to kill ten nationals for every German who was killed, the threat (and even more its implementation) often seems to have reinforced hatred of the Germans and induced more rather than fewer killings of Germans. In Palestine today, much seems to indicate that Israeli reprisals are counterproductive for the same reason. Similarly, efforts to make workers make an effort by punishing substandard performance often backfire (Fehr and Gächter, 2000).

Even when threats leave preferences unchanged, so that (ii) above is true, they may still fail to induce compliance, viz. if (i) is false. To be effective, threats have to be credible. An agent who is both all-powerful and (believed by the target to be) all-rational may find that he is powerless, since his threat to punish non-compliers may not be credible. Credibility may thus be enhanced if the target believes the agent to be irrational (Schelling, 1956). It may also be enhanced if the *target* is irrational, due to lack of ability to engage in the kind of reasoning («backwards induction») that is needed to perceive that a given threat lacks credibility (Camerer, 2003). Credibility may also be

enhanced by rational precommitment, such as burning one's bridges or one's ships (Dixit and Nalebuff, 1991). Reputation effects are also important.

Promises, to be effective, must have the same properties: they must leave preferences unaffected and they must be credible. The first condition is not always satisfied: promises may induce preference changes that work against the desires of the promiser. There is evidence that children who are rewarded for good grades lose interest in schoolwork and that incentive schemes in the workplace are similarly counter productive (Kohn, 1993). The same is true about participating in family household work. The child who has been praised or rewarded for doing something nice has learned that the only reason to continue being nice is to get something for it. When there is no longer a goody to be gained, there is no reason for the child to continue helping. Rewards, in other words, can induce a shift from autonomous to instrumental motivations.

The credibility of promises (unlike that of threats) can be enhanced by enlisting the law as a precommitment device. By writing a legally enforceable contract I can persuade other people that I will not renege on my promise to share the profits of a joint venture with them. If this technology is unavailable, reputation effects can be very robust in sustaining the credibility of promises. These may be combined with another piece of precommitment technology, as when I take pains to make my promise known to the largest possible audience. It remains likely, nevertheless, that many promises, that if believed and kept would benefit both parties, would not be credible and hence are not made.

#### 4.3 *Wishes*

To comply with someone's wish is to do what that person desires you to do, assuming (i) that the action in question is not

what you would have done anyway (and ignoring cases in which the other's wish serves as a tiebreaker), and (ii) that there is no implicit or explicit threat or promise. There are several subcases, all of which are frequently observed in the sphere of family relations. When you *love* the other person, it follows almost by definition that you want to satisfy his or her desires. If you *respect* the other, you may take him or her as an authority concerning the appropriate object of desire. If you are in *fear and awe* of the other, you may comply to avoid disapproval or punishment. Although in this last case compliance is motivated by the prospect of the negative consequences of non-compliance, by assumption these are not embodied in explicit or implicit threats.

To comply with a wish, you first have to know what it is. One way of learning it is by the other telling you. But to express a wish may easily induce guilt in the other. (Examples are «I wish you wouldn't work so often in the evenings» or «I wish you'd visit your grandparents more often».) Guilt easily turns into anger at the person who makes one feel guilty. The anger can easily make one refuse to comply with the wish. Expressing wishes may therefore, as the expression of threats and promises, work against the purpose of the speaker. Because people know this, their wishes may remain unstated. Because people know this, they may try to guess what the other might wish. Outside the family and a circle of close friends, this aspect of wish-compliance is probably insignificant.

Charismatic authority rests on all the attitudes enumerated above: love, respect, fear and awe. The mix of attitudes may vary, from Jesus to Hitler, but typically all are present to some extent. A charismatic leader does not stoop to making threats or promises, although he may well issue warnings and make it known that good performance will be rewarded. Rewards and punishments are backward-looking and merit-based, not part of a forward-looking incentive scheme. The leader is also quite

ready to make his wishes known; in fact, he is expected to do so. Compliance in this context takes the form of discipleship. Although the relation of a charismatic leader to the disciples is one of authority, relations *among* the disciples tend to rest on power, with regulation of access to the leader being the most important power base.

Wish-compliance, in the cases discussed so far, rests on pre-existing and intensely personal attitudes in the complier. *Trust* offers a more impersonal mechanism for generating wish-compliance. As often understood, trust must rest on a prior belief that the other person is in fact trustworthy. Trustworthiness may also emerge endogenously, however, through the interaction itself. Montaigne (1991, pp. 1078-79), wrote that «When I am on my travels, whoever has my purse has full charge of it without supervision. He could cheat me just as well if I kept accounts, and, unless he is a devil, by such reckless trust I oblige him to be honest». To meet distrust with distrust and trust with trust seems to be a general propensity of human nature, as shown in many experiments with «Trust Games» (Camerer, 2003).

#### 4.4 *Unwritten rules: norms and conventions*

The authority of individuals is a tangible, incontestable causal fact. The authority of norms, laws and so on seems more obscure. We may want to distinguish between written and unwritten injunctions to act or to refrain from acting. Written documents, by themselves, have no causal efficacy, whence the pejorative phrase «parchment barriers» that is sometimes used about laws and constitutions. To produce an effect they have to be the object of specific desires and beliefs of the citizens. Unwritten norms and conventions, which exist only in the minds of individuals, may be causally efficacious by virtue of affecting their desires or beliefs.

Given that beliefs and desires can lend causal efficacy to written and unwritten injunctions, why use the term “authority” to describe this fact? My answer is that people often comply with rules and norms for the reasons sketched in the first paragraph of Section III. They perceive them as supra-individual social facts which command attitudes of love, respect, fear and awe. This perception is not the only reason for compliance, as we shall see, but I believe it is virtually always one component of the individual’s response and often the most important one. In the rare cases where it is absent, the authority of the rule is diminished.

I shall distinguish between two kinds of unwritten rules, social norms and conventions, the former being sustained by desires and the latter by beliefs. Social norms, as I understand them, are non-consequentialist injunctions to act or to refrain from acting (Elster, 1999, Ch.III.2). Examples include norms against behavior «contrary to nature» (incest, cannibalism), norms of etiquette, norms of revenge, work norms, and many others. Their causal efficacy is due in part to the material sanctions to which norm-violators are subject, and in part to the powerful emotions of shame (in the norm-violator) and contempt (in observers of the violation). Often, the most important aspect of the material sanctions is the cost of sanctioning *to the sanctioner*, since the intensity of his emotional reactions can be inferred from how much he is willing to give up in order to punish the norm-violator (Fehr and Fischbacher, 2003).

In many cases, social norms are utterly arbitrary, yet are experienced as having the weight and authority of objective principles. I do not perceive the person who comments on my improper attire at a dinner party as an interfering busybody, but as the authoritative vehicle of a social judgment. This is the psychological grain of truth in the Durkheimian thesis that norms are social facts. The perceived objectivity of norms has, to be sure, no foundation in reality. «What kind of Good can it be,

which was honoured yesterday but not today and which becomes a crime when you cross a river? What kind of truth can be limited by a range of mountains, becoming a lie for the world on the other side?» (Montaigne, 1991, p. 653). Yet the perception that norms possess some kind of objectivity contributes essentially to their immense motivating power.

The idea of a convention can be taken in two ways. On the one hand, conventions can be coordination equilibria, based on expectations about other people's behavior. The often-cited example of driving on the right or the left side of the road is misleading in that this behavior is also sustained by the fear of legal sanctions. A better example is the Australian and South Korean convention of walking on the left side of the sidewalk. If everyone expects everybody to act in this way, the comic sidewalk ballets that occur in cultures lacking a firm convention in this respect will not occur. Yet even this example is not perfect. In theory, conventions are sustained merely by the annoying consequences incurred by anyone who deviates from them. In practice, as shown by the sidewalk example, they may also be sustained by disapproving remarks by victims of unilateral deviations («Watch where you're going»). Even when not backed up by legal norms, conventions tend to be reinforced by social norms. There are exceptions, such as the Norwegian convention that we all parade in the streets on May 17th, the national holiday. If I don't show up, my absence will only have a marginal effect on the pleasure others derive from the occasion. Moreover, since others have no way of knowing that I wasn't there, they will not express disapproval of my absence. Although my expectation that others will show up is often enough to make me show up too, the element of authority generated by the normative expectations of others towards me is lacking.

On the other hand, there are *constitutional conventions*, that is, unwritten constitutional norms. In several countries, includ-



ing Norway and Canada, there is an unwritten convention to the effect that the government must step down if it loses the support of parliament. In Canada, there is even a convention regulating what should be done if the government violates that convention: the Governor General who is normally (conventionally in fact) lacking in discretionary powers would have to step in to dismiss the Government (Heard, 1991). I doubt whether anyone knows what would happen in a similar situation in Norway. To use a phrase coined by Paul Veyne (1976, p. 279), any politicians who might be tempted to violate the convention are probably deterred by a mix of «precise fear of diffuse sanctions» and «diffuse fear of precise sanctions». Also, the normative authority of the democratic system may be such that the issue does not even arise in their minds.

Other conventions do not have the same degree of intrinsic authority, partly because they do not have a democratic pedigree and partly because they are constantly «open to challenge on the basis of fresh arguments about the precedents that allegedly support them» (Marshall, 2003, p. 39). An example is the convention that the British Prime Minister must always be a member of the House of Commons. Constitutional conventions of this weaker sort are sustained mainly by the fear of political sanctions, such as revolution or electoral losses. The sustaining mechanism is entirely different from that underlying coordination equilibria. Whereas the latter can be represented as normal-form games that model the costs of unilateral deviation, the stability of constitutional conventions must be represented by extensive-form games that model the risk of retaliation.

#### *4.5 Written rules: laws and constitutions*

Compliance with laws depends both on their authoritative character and on the expected punishment for non-compli-

ance. (It may be worth mentioning that citizens are never rewarded for complying with the laws.) For those who believe that punishment is the only aspect that matters, there is no difference between a fine and a price. While this view may be approximately true of parking tickets and other minor offenses, it cannot claim general validity. It presupposes not only that people subject to the law have no respect for it, but also that they are shameless in the sense of being unaffected by what others think about them. Or perhaps the view simply presupposes that others don't care about what their fellow citizens do, as long as they pay the price for wrongdoing stipulated in the law. In either version, the view is self-evidently absurd. Almost everybody would prefer spending a month in hospital to spending a month in jail.

The authority or majesty of the law depends on its impartiality (equality before the law) and on its procedural pedigree. In principle at least, it applies to all and is adopted by a system (majority voting) that is approved by all. Up to a point, the majesty of the law and the fear of stigma induce people to comply with laws they do not agree with, over and above the degree of compliance that may be induced by fear of legal sanctions. Beyond that point, substantive objections can undermine compliance. Many people think that the ban on using marijuana is sufficiently unjustified to justify non-compliance. Lack of majesty, e.g. because of procedural irregularities, may also reduce compliance. My willingness to comply with a tax code that imposes a heavy burden on me might evaporate if I learn that it was adopted to favor special interests rather than the public interest. Draconian sentencing regulations («Three strikes and you're out») may also undermine the respect for the law, leaving nothing but deterrence in its place. As in the case of threats, the net effect on behavior may be indeterminate. Civil disobedience is a special case of non-compliance. Whereas most law violators try to keep their violations secret,

to avoid punishment, it is an important part of the ethics of civil disobedience that it should be public and that the non-compliers should accept punishment. In this case, the aim of non-compliance is to change the law rather than to get away with violating it.

Whereas laws regulate the behavior of individuals, constitutions regulate the behavior of the state and its institutions. At least, this is true of the Anglo-American tradition. In the Continental tradition, some constitutions enumerate individual duties as well as rights against the state. Also, in this tradition some constitutions protect the rights of individuals against other individuals. Here I focus on the (parts of) constitutions that regulate the behavior of state institutions.

Some acts of non-compliance with the constitution are indubitably so. In 1962 it was clear to all that de Gaulle was in non-compliance with the 1958 constitution when he had the direct election of the President approved by referendum. (To be sure, his defenders, including the tame chairman of the Constitutional Council, wove a web of words to justify his action, but nobody was taken in.) The result of the non-compliance was that the constitution was changed, by a constitutional convention, to accommodate the practice.

Often it is not obvious whether a given action constitutes non-compliance with the constitution. The US constitution does not mention the right to privacy, which was the ground for the Supreme Court's decision in *Roe v. Wade* that the state of Texas was in non-compliance with the constitution when it banned abortion. In such cases, which are very frequent, compliance or non-compliance simply means conformity or non-conformity with the Court's *interpretation* of the constitution, that is, with the reading preferred by at least five out of nine members of the Court.

An action may comply with the letter of the law but not with its spirit. Hitler's rise to power did not rest on violations of the

constitution, but of a clever exploitation of its weaknesses. The breakdown of Weimar Germany occurred through the operation of two separate clauses in the constitution, which had not been considered in conjunction by the framers. By Article 48, the President could assume dictatorial powers, subject to an overrule by parliament which was supposed to prevent abuses. By Article 25, however, he could dissolve parliament and hence remove this check on his power. Each of the two clauses by itself might not confer a great deal of power on the President, but their combination did. This being said, the idea of «complying with the spirit of the constitution» is very nebulous. In the following, I restrict myself to determinants of compliance in the more literal sense.

Compliance with «the constitution» can mean two things. First, framers might want their successors to comply with the very document they create. Second, they might want them to comply with the constitution that is in force at any given time, assuming that it derives from the original one by a series of changes each of which has taken place by the rules of the constitution in force at the time of that change. If the framers are motivated by the first goal, they will write very stringent amendment clauses into the constitution. That strategy may, however, induce non-compliance rather than compliance, for two distinct reasons. First, the successors might react to the very idea of being bound, because of something like a reactance mechanism (Tocqueville, 1990, p. 181; Bryce, 1980, p. 56). Second, and more important, they will not comply with an unamendable constitution if it turns into a suicide pact, to use a phrase of Justice Robert Jackson. Farsighted framers, therefore, will aim at the second goal and make the constitution somewhat difficult, but not too difficult, to amend.

Although ease of amendment makes compliance more likely, it does not make it certain. Even if constitutional amendments were as easy to pass as ordinary laws, there might still be

groups who, being unable to change the constitution, would rather overthrow it than abide by it. When this doesn't happen, why doesn't it? A common explanation of political stability is that the system is in an *equilibrium* where no actor or coalition can improve its (expected and discounted) material rewards by non-compliance. In my opinion, this explanation is worthless. In well-functioning democracies, the issue doesn't arise. Heads of state, chiefs of the armed forces and party leaders are not constantly recalculating whether to comply with the constitution. There is no equilibrium because the beliefs and preferences in terms of which it would be defined simply *don't exist*, that is, have no subjective reality.

In ill-functioning democracies, where such calculations may be made, they are shrouded in radical uncertainty. Equilibrium explanations assume that the actors have well-defined beliefs (or subjective probabilities) about each other's behavior as well as other matters, such as their support in the population. They also assume that the actors have stable preferences with well-defined trade-offs among different objectives. We know, however, from theories of bounded rationality and from behavioral economics that these assumptions are fictions. Standard assumptions about time discounting, too, are extremely fragile. Theories of coalition-formation are so numerous that none of them can be trusted. In any case, treating collective actors as if they were individuals raises problems of aggregation that, as we know, can be insurmountable.

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Gloria Origgi

## 5. WHAT DOES IT MEAN TO TRUST IN EPISTEMIC AUTHORITY?

*"There must be a minimal degree of trust in communication for language and action to be more than stabs in the dark"*

Sissela Bok, *Lying*

*"Mais qu'y a-t-il donc de si périlleux dans le fait que les gens parlent, et leurs discours indéfiniment prolifèrent?"*

Michel Foucault, *L'ordre du discours*

*"I learned an enormous amount and accepted it on human authority, and then I found some things confirmed or disconfirmed by my own experience"*

Ludwig Wittgenstein, *On Certainty*

Consider this case. At high-school in Italy many years ago I heard my teacher of Latin say: "Cicero's prose is full of synecdoches"<sup>1</sup>. I had a vague idea of what a synecdoche was, and had ignored until then that one could characterize Cicero's writ-

<sup>1</sup> This example is a reformulation of a Francois Recanati's example in his paper: "Can We Believe What We Do Not Understand?" *Mind and Language*, 1997, that I have discussed at length in another paper: "Croire sans comprendre", *Cahiers de Philosophie de l'Université de Caen*, 2000. The problem of deferential beliefs was originally raised by Dan Sperber in a series of papers: "Apparent Irrational Beliefs", "Intuitive and Reflexive Beliefs" *Mind and Language*, 1997.

ing in this way. Nevertheless, I relied on my teacher's intellectual authority to acquire the belief that Cicero's prose is full of synecdoches, and today have a more precise idea of what my teacher was talking about. Was I justified in any sense in uncritically accepting that pronouncement by deferring to my teacher's authority? Let us have a closer look at the example. Many things were going on in this apparently trivial case of belief acquisition. I was sitting in a classroom, aware of being in a social institution – school – dedicated to knowledge transmission, and I had been properly instructed to believe what people say in school. While listening to the teacher, I was simultaneously learning a fact, that Cicero's prose was full of synecdoches, and acquiring a linguistic concept, that is, the word "synecdoche" (or, if not acquiring it, at least acquiring a rule about its appropriate use, or, better, enriching its meaning). I was learning a fact and learning a language meaning at the same time. My reliance on Italian educational institutions was strong enough to accept this on pure deferential bases. Or consider another example. I was born in Milan on February 8, 1967. I believe this is true because the office of Vital Records in the Milan Municipal Building registered a few days after that date the testimony of my father or my mother that I was indeed born on the 8<sup>th</sup> of February in a hospital in Milan, and delivered a birth certificate with this date on it. This fact concerns me, and of course I was present, but I can access it only through this complex, institution-mediated form of indirect testimony.

Or else: I know that smoking causes cancer, I've been told this and it was enough relevant information to make me quit cigarettes 10 years ago. I don't have the slightest idea of the physiological process that a smoker's body undergoes from inhaling smoke to developing a cellular process that ends in cancer. Nevertheless, the partial character of my understanding of what it really means that smoke causes cancer doesn't stop me from declaring it in conversations and governing my behavior according to this belief.



Our cognitive life is pervaded with partially understood, poorly justified, beliefs. The greater part of our knowledge is acquired from other's people spoken or written words. The floating of other people's words in our minds is the price we pay for thinking. Traditional epistemology warns us of the risks of uncritically relying on other people's authority in acquiring new beliefs. One could view the overall project of classical epistemology – from Plato to the contemporary rationalist perspectives on knowledge – as a normative enterprise aiming at protecting us from credulity and ill-founded opinions. Various criteria, rules and principles on how to conduct our mind have been put forward as a guarantee to preserve the autonomy and freedom of thought necessary for the acquisition of knowledge. Just as an example, a great part of Locke's *Essay concerning Human Understanding* is an attempt to establish principles for the regulation of opinions, stated in terms of obligations on one's own "epistemic conduct", that strengthen our intellectual autonomy. According to Locke, four major sources of false opinions threaten our mind:

- I. Propositions that are not in themselves certain and evident, but doubtful and false, taken up for principles
- II. Received hypotheses
- III. Predominant passions or inclinations
- IV. Authority

*(Locke, Essay, Book 4, XX, 7)*

Reliance on other people's authority is thus viewed as a major threat to the cognitive autonomy that distinguishes us as rational thinkers. Exposure to received beliefs increases our risk of being "infected by falsity", the worst danger, against which the overall epistemological enterprise was built.

Yet, the massive trust of others that permeates our cognitive life calls for an epistemic treatment, and has become a central

issue in contemporary debates in philosophy of knowledge and social epistemology. A number of approaches have been put forward in order to account for the epistemic reliability of the “division of cognitive labour” so typical in contemporary, information-dense societies.

Most analyses that have been recently proposed in social epistemology concentrate on the evidential grounds for trusting in other people’s authority: trusting someone’s authority on a given matter means assessing her trustworthiness on that matter. Trustworthiness depends on both competence and benevolence. In order to assess other people’s trustworthiness one needs evidential criteria of their competence and their benevolence. For example, a scientist who trusts in the authority of a colleague on a certain experimental data grounds her judgment in her knowledge of her colleague’s track record in that scientific domain (such as the number of publications in the relevant reviews of the domain, or the number of patents, etc.) plus the beliefs that she is self-interested in being truthful for the sake of their future collaborative work<sup>2</sup>. Yet, this “reductionist” analysis, which I will detail later, misses some central intuitions about the presumptive character of our trust in others and its motivational dimension. Trust in testimony has a spontaneous dimension that doesn’t seem to be based on a rational assessment of other people’s truthfulness. Also, an evidential analysis of epistemic authority doesn’t account for cases of partial understanding, as in the examples above, in which the overt asymmetry between the epistemic position of the authoritative source and the interlocutors is such that it cannot be treated by appealing to evidential criteria only. Here, my aim is to explore some treatments

<sup>2</sup> Another possible rational motivation to be trustworthy in the case of science is the high cost of cheating in the scientific community and the fear of risking permanent exclusion (see M. Blais [1987]).

of the more familiar notion of trust in the social sciences, moral and political philosophy in order to understand to what extent the notion of epistemic trust may be illuminated by these analyses. I will contrast evidential vs. motivational analyses in the social sciences and claim that motivational analyses can find their places in an epistemology of trust. Motivational analyses have often been described as non-cognitive. Take, for instance Lawrence Becker's distinction between cognitive vs. non cognitive treatments on trust: "Trust is 'cognitive' if it is fundamentally a matter of our beliefs or expectations about others' trustworthiness; it is non-cognitive if it is fundamentally a matter of our having trustful attitudes, affects, emotions, or motivational structures [...] To say that we trust others in a non-cognitive way is to say that we are disposed to be trustful of them independently of our beliefs or expectations about their trustworthiness" [Becker 1996, 44, 60]<sup>3</sup>. I will oppose this distinction by arguing that in the case of epistemic trust a motivational analysis of trust can be cognitive, that is, it can shed some light on our mental processes of acquisition of beliefs and knowledge. In particular, I will try to ground the cognitive bases of our epistemic trust in our communicative practices. My purpose here is to explore a broader notion of epistemic trust, one that could account for what is common in cases as different as the blind trust of the patient in her doctor, the trust needed in collaborative intellectual work and the everyday trust needed to sustain our ordinary conversations.

Intellectual trust is a central question of contemporary epistemological concerns. Yet, most of the debate surrounding this

<sup>3</sup> It is interesting to notice that Becker liquidates much of the recent debate around the epistemic role of motivational trust by introducing *credulity*, as the disposition to believe what another person says and to banish skeptical thoughts, and *reliance*, as a disposition to depend upon other people in some respects (pp. 45-46), both of them that lie outside the reach of a rational motivation to accept other people's intellectual authority.

notion fails to provide a proper analysis of the notion and only superficially connects it to the parallel social, political and moral treatments of trust. The result is a lack of explanatory power of this notion in epistemology. One often has the feeling that talking about trust in epistemology is just a way of evoking the need to varnish our study of knowledge with some moral and social considerations<sup>4</sup>. My belief is that intellectual trust deserves more attention, and its intricate relation with the notion of trust in use in the social sciences needs to be better disentangled.

On the other hand, sociological and moral theories of trust in authority fail to make the distinction between epistemic vs. political authority and present themselves as simultaneously accounting for the two concepts.

There are some obvious parallels between the notion of epistemic trust and that of social and political trust. Trust in authority poses a similar puzzle in both cases. How can someone – an institution or an individual – legitimately impose her/its will on other people and have a right to rule over their conduct? How is this compatible with freedom and autonomy? And why should we trust an authority to impose upon us a duty to obey for our own good?

Much ink has been spilled on this apparent paradoxical relation between trust in authority and freedom. And of course an equivalent puzzle can be reformulated in the case of intellectual trust: how can it ever be rational to surrender our reason and accept what another person says on the basis that she is saying this? What does it mean to grant intellectual authority to other people?

<sup>4</sup> Take for example Hardwig's analysis in his paper: "The Role of Trust in Knowledge". There are exceptions to this criticism, as for example R. Foley's book *Intellectual Trust in Oneself and Others* (Cambridge UP, 2001) in which a detailed analysis of trust in the authority of others is provided in ch.4.

The very notion of ‘authority’ in philosophy is notoriously ambiguous between the authority that someone exercises on other people’s beliefs and the authority that someone exercises on other people’s actions<sup>5</sup>. As Friedman has rightly pointed out: “A person may be said to have authority in two distinct senses: for one, he may be said to be ‘in authority’, meaning that he occupies some office, position or status which entitles him to make decisions about how other people should behave. But, secondly, a person may be said to be ‘an authority’, meaning that his views or utterances are entitled to be believed” [Friedman, 1990, p. 57].

In both cases, the appeal to authority calls for an explanation or a normative justification of the legitimacy of the authoritative source, a legitimacy that must be acknowledged by those who submit to it. Still, I think that trust in epistemic authority and in political authority are two distinct phenomena that deserve a separate treatment.

As I said above, most accounts of epistemic trust ground its legitimacy in the evidential bases we have to assess other people’s trustworthiness. Motivational accounts in the case of knowledge seem desperately unable to avoid the risk of credulity and irrationality that accompanies *prima facie* any *a priori* trust in others as a source of knowledge.

In what follows, I will briefly sketch evidential vs. motivational approaches to trust as they are discussed in the social sciences and then try to use this distinction to gain a better understanding of epistemic trust.

### *Evidential accounts of trust*

A common view of trust in contemporary social science reduces it to a set of rational expectations about the likely

<sup>5</sup> For an analysis of this ambiguity, cf. R. B. Friedman (1990) “On the Concept of Authority in Political Philosophy” in J. Raz (ed.) *Authority*, New York University Press.

behaviour of others in a future relationship of cooperation with us. Take the definition that Diego Gambetta gives in his influential anthology on trust: "Trust (or, symmetrically, distrust) is a particular level of the subjective probability with which an agent assesses that another agent or group of agents will perform a particular action, both *before* he can monitor such action (or independently of his capacity ever to be able to monitor it) *and* in a context in which it affects *his own* action. When we say we trust someone or that someone is trustworthy, we implicitly mean that the probability that he will perform an action that is beneficial or at least not detrimental to us is high enough for us to consider engaging in some form of cooperation with him. Correspondingly, when we say that someone is untrustworthy, we imply that that probability is low enough for us to refrain from doing so" [Gambetta, 1988, p. 218]. Thus trust is a cognitive notion, a set of beliefs or expectations about the commitment of the trusted in behaving in a determinate way in a context that is relevant to us. Following the literature, I call these analyses *reductive* and *evidential*. They are reductive accounts because they don't set trust as a primitive notion, but reduce it to more fundamental notions such as beliefs and expectations. They are evidential because they make trust depend on the probabilities we assign to our expectations towards other people's actions towards us. I may trust or distrust on the basis of some evidence that I have about someone else's future behaviour. As it has been stressed by contemporary literature on trust in social science, trust must be distinguished from pure reliance. Trust is an interesting notion in social sciences only insofar as it explains the implicit commitment that it imposes on a relationship. If it were just a matter of assessing probabilities of another person's behaviour without taking the effect of her behaviour on our own actions into account, it would not be so different from general inductive reasoning. I trust in a certain level of stability of the social world

around me. I trust the person that I cross when walking on the street not to assault me. This is the minimal level of trust that a society should be able to arrange in order to perpetuate. I need to rely on some regularities of the social world in order to act. But the interest in the notion of trust in the social sciences is that it takes into account not only social regularities but also commitments.

A recent explanation of trust that clearly takes into account expectations about other people's commitment – and not simply regularity – is found in Russell Hardin's analysis of trust as a *encapsulated interest*, that is, trust as belief that it is in the interest of the trusted to attend to the truster's interests in the relevant matter [cf. Hardin 2002].

Thus, evidential accounts of social trust try to reduce it to justified expectations about the objective probability of other people's commitments.

The key aspect of evidential accounts that I would like to contrast with motivational accounts is that trust is viewed as a cognitive attitude, like knowledge or belief, for which we can find a rational justification in terms of the capacity we have to read and assess the commitments of others.

What about evidential accounts of intellectual trust? An evidential theory of intellectual trust assigns probabilities to our expectations about our interlocutors' truthfulness on a particular subject matter. And of course truthfulness is a matter of competence as well as of benevolence. But competence and benevolence are very different things. Competence seems to be a more objective trait than benevolence: I can trust you on your willingness to help me in translating Herodotus even if I don't defer to your competence in Ancient Greek. Competence doesn't depend on your commitment to be trustworthy to me.

Most evidential accounts of intellectual trust explore the dimension of competence more than that of benevolence. The epistemological literature on assessing expertise focuses on the

cognitive strategies that we can adopt in order to assess the reliability of doctors, lawyers, witnesses, journalists, etc. Alvin Goldman argues that there exist “truth-revealing situations”<sup>6</sup> in which a novice can test the competence of the expert even if she doesn’t know how the expert has come to collect her evidence. For example, the weather today is a truth-revealing situation of the expertise of the weather forecast that I read yesterday in the New York Times. If the NYT weather forecast were systematically poorer in predicting the weather than the Yahoo weather forecast, I would have evidence to trust the latter more than the former, even if I don’t have the slightest idea about how a weather forecast is produced. That is the commonsense practice that we use to calibrate our informants’ expertise, even if we are novices in their domain of expertise. If my doctor’s therapy against my stomachache is inefficacious, I am in a truth-revealing situation to assess her competence. Of course, not every domain of expertise admits of truth-revealing situations: large areas of the formal sciences such as mathematics or physics don’t. In these cases, there exist alternative strategies that allow us to assess the reliability of the overall social process that sustains laymen’s epistemic dependence on experts. Such strategies have been investigated by various authors, for example Philip Kitcher, who defines the overall project of describing the strategies of granting expertise to others as *the study of the organisation of cognitive labour*. As he points out: “Once we have recognized that individuals form beliefs by relying on information supplied by others, there are serious issues about the conditions that should be met if the community is to form a consensus on a particular issue – questions about the division of opinion and of cognitive effort within the community and

<sup>6</sup> Cf. A. Goldman “Epistemic Paternalism: Communication Control in Law and Society,” *The Journal of Philosophy* 88 (1991): 113-131.



issues about the proper attribution of authority” [Kitcher, 1994, 114]. For example, I can have methods to track your past records within a particular domain and grant you authority on the basis of your “earned reputation” in this domain<sup>7</sup>. Or I can grant you authority due to your better epistemic position: I call my sister in Milan and she tells me that it is raining there and I believe her because I am able to assess her better epistemic position about the weather in Milan. These accounts underscore the rational bases of our trust in other people’s epistemic authority and appeal to a conceptual framework similar to that of the evidential accounts of trust in the social sciences by using the language of rational decision theory or microeconomics<sup>8</sup>.

Evidential accounts of trust in authority illuminate the reasons why we reliably appeal to experts in specialized domains. But, as I said, trust in epistemic authority seems to involve more than just the assessment of expertise. We don’t always have the choice to trust or distrust. The examples that I give at the beginning of this paper show that it is not always a matter of deciding to defer to other people’s authority: it just happens that the very nature of some of our beliefs is deferential, and that’s not a phenomenon that seems to be captured by these accounts.

### *Motivational accounts of trust*

Many authors in the social sciences and moral philosophy claim that evidential accounts fail to provide an appropriate picture of trust, by appealing only to a set of rational expectations about other people’s motivations to commit to cooperation.

<sup>7</sup> Kitcher [1992] defines this kind of authority: “earned authority”.

<sup>8</sup> Cf. for an example of use of the economics framework A. Goldman and M. Shaked [1991] and P. Kitcher [1993] ch.8.

Our commitment to trust is not only cognitive, that is, based on the degree of our beliefs about the future actions of the trusted. Trust also involves a motivational, non-representational dimension that may depend on our deep moral, emotional or cultural pre-commitments. Thus, in the paper that I have mentioned above, Becker speaks of our trust as non-cognitive if it is a disposition to be trustful towards persons “independently of our beliefs or expectations about their trustworthiness” [p. 50]. In a book entitled *Authority* Richard Sennett defines trust in authority as an emotional commitment. And in a seminal paper, Annette Baier defines trust as the accepted vulnerability to another’s possible but unexpected ill will toward oneself, and explores the varieties of moral, emotional and cultural grounds on which we accept this vulnerability. Along the same lines, Otto Lagerspetz says: “trust is not the fact that one, after calculating the odds, feels no risk: It is feeling no risk without calculating the odds” [1998] These accounts try to capture the idea that in many circumstances our trust in others cannot be converted into subjective estimates of risk, because the margins of ignorance or uncertainty are too broad for such estimates to be possible. Also, as Baier points out, “trust can come with no beginnings, with gradual as well as sudden beginnings and with various degrees of self-consciousness, voluntariness and expressness” [Baier, 1986, p. 240]. That is, the child who trusts her mother, the patient who trusts her doctor, the novice scientist who trusts the truth of the main results in her field without having gone through the details of the proofs, have different degrees of control and thus of choice on their trustful attitude. As the anthropologist Maurice Bloch says in his explanation of the role of deference in rituals: “We are permanently floating in a soup of deference” Most of the time we are not aware of the reason we have to trust. We simply do so<sup>9</sup>.

<sup>9</sup> Bloch explains rituals as a collective moment of awareness of the deference to the tradition. Cf. M. Bloch (2004): “Rituals and Deference”, in H.

The moral philosophical literature on motivational trust tries to establish to what extent such trustful attitudes are morally justified. Baier's conclusion is that they are insofar as there are minimal reasons to think that the trusted who is exerting her authority on us cares about the goods we want her to care about. For example, it is justified to trust our partner in the treatment of our child even if we don't approve of or understand her actions, if we have reasons to think that she cares for the child.

A more empirical literature in social psychology and economics tries to establish the effects of motivational trust on stabilizing cooperation and reliability in negotiations and in everyday life.

What about the epistemic implications of motivational accounts? Do they illuminate in any sense our trust in epistemic authority? At a first glance, motivational accounts seem better equipped to explain a broader spectrum of cases than evidential accounts do. A motivational dimension seems to be involved in the asymmetrical deferential relations of trust in epistemic authority that I've tried to suggest in my previous examples. Indeed, trust in epistemic authority doesn't seem to be a matter of choice in the most straightforward examples: The child who trusts her mother when she tells her that she needs to breathe air to survive – even if she cannot see air and cannot figure out what is the role of oxygen in our survival – doesn't have the choice to be skeptical, as well as the patient who is told by her doctor that she has contracted a potentially lethal disease. Also, we find ourselves committed to trust the intellectual authority of other people just because we are part of the same linguistic and epistemic community, because we share the same institutions and we acknowledge a "division of cogni-

Whitehouse and J. Laidlaw (eds.) *Rituals and Memory: Towards a Comparative Anthropology of Religion*, Altamira Press, London.

tive labour” in our community. But if we accept the principle that a certain amount of “default” trust – or spontaneous trust – is needed to sustain our cognitive life in a social environment, how do we avoid the risk of credulity that such a trustful disposition seems to imply? And if the motivational trust that sustains our social relations may be based on moral, cultural or emotional pre-commitments, what about the pre-commitments underlying the motivational trust that sustains our cognitive relations? Moral commitments to trust in other people’s intellectual authority typically ground the adhesion to the most irrational beliefs. Religious beliefs or allegiance to a guru’s thoughts are often justified in terms of moral or emotional commitments. But these are exactly the kinds of beliefs that an epistemological account of trust should try to exclude in order to avoid the risk of gullibility run by a default trustful attitude towards the words of others.

### *Reidian accounts of epistemic trust*

Another way to argue for the role of motivational trust in knowledge acquisition is to see it as an innate disposition to accept what other people tell us. And indeed many authors have argued that a natural tendency to trust others is the only way to justify testimonial knowledge. The *locus classicus* of this position is Thomas Reid’s defense of trust in testimony: We are justified in believing what other people say because we, as humans have a natural disposition to speak the truth and a natural disposition to accept as true what other people tell us. Reid calls these two principles, “*that tally with each other*”<sup>10</sup>, the *Principle of Veracity* and the *Principle of Credulity*. But the

<sup>10</sup> Cf. Reid [1764] *Inquiry into the Human Mind*, § 24.

relationship between these two principles, which Reid considers self-evident, is far from being clear. The principle of veracity is not well correlated to truth: It just affirms that people are disposed to say what they believe to be true, which does not mean that they say what it is actually true<sup>11</sup>. Thus, an appeal to a natural trustful disposition doesn't suffice to justify our epistemic trust and protect it from credulity.

Reid affirms that if we deny any legitimacy, or at least, naturalness to our trust in others, the result would be skepticism. We believe "by instinct" what our parents and teachers say long before we acquire the capacity to critically judge their competence. But that is just a way of acknowledging the pervasiveness of the lore of inheritance and upbringing in shaping one owns' concepts and beliefs without explaining it. It is a fact that we are influenced by others, not only in infancy but in the acquisition of most of our beliefs. But acknowledging this fact is not a sufficient explanation of why we are justified in complying with our trustful tendencies.

Modern defences of a Reidian epistemology<sup>12</sup> appeal to the existence of natural language as the material proof that the two principles (credulity and veracity) indeed tally with each other: most statements in any public language are testimonial and most statements are true; if they were not, it is difficult to imagine how a public language could have ever stabilized. [cf. Coady, 1992]. The very possibility of a common language presupposes a generally truthful use of speech.

Tyler Burge relies on the "purely preservative character" of linguistic communication to argue that we have an *a priori* jus-

<sup>11</sup> See on this point K. Lehrer: "Testimony, Justification and Coherence", in Matilal & Chakrabarti (eds.) pp. 51-67.

<sup>12</sup> For an overview of contemporary Reidian epistemology, see R. Foley [2001].

tification for relying on what we understand others to be saying. Language, as memory, is a medium of content preservation<sup>13</sup>.

I have discussed these positions elsewhere<sup>14</sup>. Here let me just mention that, although these positions give us some hints of the ‘passive’, non-intentional trust that characterizes our role as cognizers in a social community, their appeal to some structural features of language is less convincing in solving the paradox of epistemic trust, that is, how it is compatible with intellectual autonomy. That is, what concerns us here is: “how intellectual autonomy is possible, given what we know about the power of one’s inheritance and surroundings to shape one’s concepts, opinions and even the way one reasons?” [Foley, 2001: 128]

### *Epistemic trust out of self-trust*

A different line of defense of the legitimacy of trust in others has been recently pursued by Richard Foley in his book on *Intellectual Trust in Oneself and in Others* [Cambridge, 2001]. Foley derives it from the justification we have to trust ourselves. We grant a default authority in our intellectual faculties to provide us with reliable information about the world. This is our only way out of skepticism. But if we have this basic trust in our intellectual faculties, why should we withhold it from others? We acknowledge the influence that others had in shaping our thoughts and opinions in the past. If acknowledging this fact doesn’t prevent us from granting authority to ourselves, it should not prevent us from granting authority to others, given

<sup>13</sup> Cf. T. Burge: “Content Preservation”, *Philosophical Review*, 102, pp. 457-487.

<sup>14</sup> Cf. G. Origgi [2004] “Is Trust an Epistemological Notion?”, *Episteme*, vol. 1, n. 1, pp. 1-12.

that our opinions wouldn't be reliable today if theirs were not in the past. And even in cases of the interaction of people from different cultures whose influence upon our thinking is poor or nonexistent, we can rely on the general fact that our cognitive mechanisms are largely similar to extend our self-trust to them [cf. Foley 2004, ch. 4]. This strategy of simulation of other minds leads Foley to a sort of "modest epistemic universalism" according to which "It is trust in myself that creates for me a presumption in favor of other people's opinions, even if I know little about them"<sup>15</sup> [cf. *ibidem* p. 108].

I find Foley's position attractive as it preserves intellectual autonomy and ends in justifying just the minimal trust necessary to sustain our epistemic life, and avoiding the "deferential incontinence" and thus gullibility that is imputed to Reidian solutions. But Foley's analysis lacks the motivational dimension that I think an explanation of epistemic trust should include in order to account for very heterogeneous cases such as deliberate deference to an intellectual authority, passive trust in the authority of our cultural heritage and default trust that we grant to others in spontaneous conversation. What his account misses is the idea that in many contexts trusting others doesn't seem to be depend on what we *know* or *discover* about them, as for instance that they are similar to us. Rather, trusting others is a matter of commitment to their trustworthiness in the social as well as in the epistemic cases. One could go further, and suggest that we owe this kind of commitment even to self-trust, that is, that the authority on my own mental states does not depend on something that I discover about myself. Self-trust is the product of a responsible and deliberative commitment about the consequences of assuming some beliefs as my

<sup>15</sup> As Foley says, a stronger epistemic universalism would imply that other people's opinions are necessarily *prima facie* credible. Cf. *ibidem*, p. 107.

beliefs. Richard Moran defends this line in his recent book, *Authority and Estrangement*<sup>16</sup>. According to Moran, this act of commitment is *constitutive* of my self-knowledge. I would not expand further, but I think it shows how problematic is to ground our trust in authority in self-trust. How can we capture the motivational dimension of epistemic trust we need to have a full-fledged notion of trust in authority? As we have seen, we cannot follow moral/social accounts of trust and ground a motivational account in emotional or moral pre-commitments, because this would unavoidably lead to irrationality. Still, grounding it in some innate dispositions or deriving it from self-trust misses the whole point of understanding the nature of our commitment to trust in other people's authority.

In the last section, I will explore a different strategy, and consider one on the most straightforward contexts in which commitment, trust and knowledge bloom together, that is, human communication.

### *Conversation, trust and communication*

One fundamental fact about the social transmission of knowledge that is surprisingly under-exploited in the epistemological literature on intellectual authority is that every social contagion of beliefs goes through a process of communication that ranges from street-level conversation to more institutionalized settings of information exchange. Our almost permanent immersion in talks and direct or indirect conversations is the major source of cognitive vulnerability to other people beliefs and reports, even when the exchange is not particularly

<sup>16</sup> Cf. R. Moran [2001] *Authority and Estrangement*, Princeton University Press, especially ch. 2.



focused on knowledge acquisition<sup>17</sup>. Communication is a voluntary act. Each time we speak we are intentionally seeking the attention of our interlocutors and thus presenting what we have to say as potentially relevant for them. Each time we listen, we intentionally engage in an interpretation of what has been said, and expand cognitive effort in order to make sense of what our interlocutor had in mind. In this last section of my paper, I will argue that it is the intentional, voluntary character of human communication that guarantees our intellectual autonomy even in those cases in which our epistemic position obliges us to defer to other people's authority. And the making and breaking of epistemic trust is related in many ways to our conversational practices.

There are many different styles of discourse that imply different degrees of reciprocal trust. Of course, the set of norms and assumptions that we tacitly accept when engaging in intellectual conversation<sup>18</sup> are not the same we endorse in a party conversation where the common aim we tacitly share with our interlocutors is entertaining and social contact. Still, a basic reciprocal commitment, I will claim, has to take place in any genuine case of communication. And the cognitive dimension of this basic commitment has interesting consequences for our reciprocal trust.

Intentional analyses of communication have been a major contribution to the philosophy of language and pragmatics in

<sup>17</sup> On the fortuitous character of lot of our knowledge, cf. R. Hardin: "If it Rained Knowledge", *Philosophy of the Social Sciences*, 33, pp. 3-24; and [2004] "Why Know?" manuscript. Cf. also Jennifer Lackey: "Knowledge is not necessarily transmitted via testimony, but testimony can itself generate knowledge" [Jennifer Lackey (1999) "Testimonial Knowledge and Transmission", *The Philosophical Quarterly*, 199, p. 490, vol. 49 n. 197].

<sup>18</sup> For an analysis of the mutually accepted norms that rule intellectual conversations, see P. Pettit and M Smith [1996] "Freedom in Belief and Desire", *The Journal of Philosophy*, 93, 9, pp. 429-449.

the last 40 years. We owe to Paul Grice<sup>19</sup> the modern pragmatic analysis of linguistic interpretation as the reconstruction of the speaker's intentions. Simply decoding the linguistic meaning of the words conveyed in an act of communication is not enough to make sense of what the speaker wanted to tell us. Successful communication involves cooperation among interlocutors, even when the ultimate aim of one of the parties is to deceive the other: without at least a common aim of mutual understanding, communication would not be possible. Thus communication is a much richer and constructive activity than simply decoding a linguistic signal. According to Grice, we infer what the speaker says on the tacit assumption that she is conforming to the same set of rules and maxims that guide our cooperative effort to understand each other. Among these maxims, two of them are worth considering for the present purposes: one is a maxim of quality of the information conveyed: "Do not say what you believe to be false" that Grice considers as most important. This doesn't mean that the participants in a conversation are actually truthful. But they act as if they were telling the truth, that is, they conform to the maxim, otherwise the minimal common aim of understanding each other would not be realized. So they need to at least pretend to be cooperative. On the hearer's side, the presumption that the speaker is conforming to the maxim doesn't imply that the hearer comes automatically to believe what the speaker says. She interprets the speaker on the presumption that the speaker is conforming to the maxims, and that leads her to infer what she meant, even if, later, she may be led to revise her presumption on the basis of what she already knows or what she has come to believe in the course of the conversation.

The other maxim that I would like to consider is that of relevance. Contemporary pragmatic theories have developed a

<sup>19</sup> Cf. P. Grice [1957] *Meaning*, ...

notion of relevance as the key notion that guides our interpretations. For example Sperber and Wilson's pragmatic approach, known as *Relevance Theory*, says that each act of communication communicates a presumption of its own relevance. A relevant piece of information, in a given context, is one that optimizes the balance between the cognitive effort I have to invest to process it and the benefits I gain by entertaining it in my mind. A potential communicator presents herself as having something to say that is relevant for us, otherwise we would not even engage in conversation. Communication is a very special case of behavior. It is always intentional and to be successful it needs to be recognized as intentional. I don't automatically give attention to every cognitive stimulus that is potentially relevant for me, but I cannot refrain from allocating at least a minimal attention to an overt act of communication that is addressed to me, because the very fact that it is addressed to me is a cue that it worth attention. The presumption of relevance that accompanies every act of intentional communication is what grounds our spontaneous trust in others. I trust a communicator who intentionally asks for my attention to convey something that is relevant for me, and I adopt a stance of trust that will guide me to a relevant interpretation of what she has said (that is, an interpretation that satisfies my expectations given what she says and what she may assume we are sharing as common ground contextual information). In this rich and constructive process of building new representations and hypotheses on the presumption that they will be relevant to me, the speaker and the hearer are both responsible for the set of thoughts they generate in conversation, that is, what Sperber and Wilson call their "mutual cognitive environment". But the hearer doesn't automatically accept as true the whole set of common ground thoughts that have been activated in the conversation. She may decide to entertain them in her mind for the sake of conversation, and trust the speaker that this is relevant information for her. Our

mutual cognitive environments, that is, the set of hypotheses and representations that we activate in our mind when we communicate in order to understand each other, do not overlap with the set of what we actually believe. In conversation, our interior landscape enriches itself with new representations that have been created on the presumption of their relevance for us, a presumption we are justified in having because we have been intentionally addressed by our interlocutor. We trust our interlocutor's willingness to share a mutually relevant cognitive environment, that is, to build a common ground that maximizes understanding and favors the emergence of new, relevant thoughts. But our previous knowledge and a more fine-grained check of the content communicated can lead us to reject much of what has been said. Trusting in relevance of what other people say is the cognitive vulnerability that we accept in order to activate in our mind new thoughts and hypotheses that are shared with our interlocutors. There is never an automatic transfer of beliefs from one person's head to another's. The "floating of other men's opinions in our brains"<sup>20</sup> is mediated by a process of interpretation that makes us activate a number of hypotheses on the presumption, guided by the hearer, that they will be relevant for us. These online thoughts that serve the purposes of conversation are not accepted by default as new beliefs. They are worth considering, given the trust we have in our interlocutors. They may even be worth repeating without further checking because of their relevant effects in certain conversational contexts. But they can be easily dismissed if their probability is too low given what we know about the world or what we have come to know about the interlocutor. We trust our interlocutors to be relevant enough to be worth

<sup>20</sup> Cf. J. Locke, *An Essay Concerning Human Understanding*, ed. John W. Yolton, London 1961, 1, p. 58.

our attention. Our trust is both fundamental and fragile: it is fundamental because I need to trust in other people's willingness to be relevant for me in order to make sense of what they are saying. It is fragile because a further check can lead me to abandon most of the hypotheses I generated in conversation and withdraw credibility from my interlocutor.

Our mental life is populated by a bric-à-brac of drafty, sketchy semi-propositional representations that we need in order to sustain our interpretations of the thousands of discourses to which we are permanently exposed. We accept some of them as beliefs, we use others in our inferences and we throw a lot of them out as pure noise. This doesn't make us gullible beings: we trust others to cooperate in generating relevant sets of representations, and we share with them the responsibility for these representations. Of course, our epistemic strategies vary in the course of our life. The trust of a child in the relevance of what her parents say may lead her to automatically believe in the content of what is said, that is, understanding and believing may be simultaneous processes in early childhood<sup>21</sup>. As we grow up, we develop strategies of checking and filtering information.

A presumption of trust in other people's willingness to give us relevant information is thus the minimal default trust we are justified in having towards testimony. This stance of trust leads often enough to an epistemic improvement of our cognitive life<sup>22</sup>.

<sup>21</sup> Interesting recent results in developmental psychology show that even young children are not gullible and have strategies for filtering information. See F. Clément, P. Harris, M. Koenig (2004) "The Ontogenesis of Trust", *Mind&Language*, vol. 19, 4, pp. 360-379.

<sup>22</sup> D. Sperber and D. Wilson have explained the details of the correlation between relevance and truth in D. Sperber, D. Wilson (2002): "Truthfulness and Relevance" *Mind*,

But our efforts at interpretation are not always rewarded. Trust in relevance guides our process of interpretation and may lead us to invest supplementary effort in trying to make sense of what our interlocutor is talking about. It is on the basis of our default trust that we often invest too many resources, with only the aim of making sense what the other person is talking about. Sometimes my supplementary efforts are rewarded, sometimes they end up in a too generous interpretation of what I was told. The overconfidence people sometimes have in the relevance of esoteric discourse depends on the direct proportionality between the effort people invest in interpreting others and the trust they have of receiving relevant information. Trust in relevance may act as a bias that leads us to over-interpret or excessively rationalize what others say.

In a beautiful novel by Jerzy Kosinsky, *Being There*, adapted as the perhaps better known film with Peter Sellers, Chance Gardiner is a mentally impaired gardener who becomes an heir to the throne of a Wall Street tycoon, a presidential policy adviser and a media icon just by pronouncing few, enigmatic sentences about gardening.

As a result of a series of fortuitous accidents, Chance finds himself living in the house of Mr. Rand, a Wall Street tycoon and a close friend of the President of United States. In a dialogue with the President visiting Mr. Rand's house, when asked to comment about the bad season at Wall Street, Chance says: "In a garden, growth has its season. There are spring and summer, but there are also fall and winter. And then spring and summer again. As long as the roots are not severed all is well and will be well" (p. 54). Looking for a relevant interpretation, and trusting (in this case mistakenly) in Chance's willingness to be relevant, the President interprets it as an important statement about the fundamental symmetry between nature and society, and quotes him on television the day after.

We all have experiences of over-trust generated out of an over-investment in interpretation. And, conversely, an exces-

sive investment in interpreting what a person says that proves ill-founded may make our withdraw of trust more definitive.

Trust and comprehension are thus intimately related. An epistemology of trust should account for this relation. Our first epistemic objective in acquiring knowledge from others is to understand what they say and make sense of their thoughts within the context of our own. We are never passively infected by other people's beliefs: we take the responsibility to interpret what they say and share with them a series of commitments on the quality of the exchange. The social dimension of knowledge is grounded in our cognitive activity as interpreters, an activity we always share with others.

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## 6. THE AUTHORITY OF NON-ELECTED AUTHORITIES: WHY DO PEOPLE OBEY CONSTITUTIONAL COURTS?

### 6.1 *Fragestellung*

Contemporary political theory claims that the (legitimate) *authority* of public *authorities*/officials comes from a simple and clear circumstance: citizens have the right to choose the individuals who are going to occupy positions of authority, and, even more importantly, they have the legal capability to fire them and replace them with others, if they find the officials to be inadequate in performing their job. This is what the Founding Fathers of modern democracy called a “republic” (Madison) or a “representative government” (Sieyes). Notice that by “authority”, in the first sense (*Herrschaft*), I mean the “recognized” competence to impose the choices of **a.** = the ruling elite upon **b.** = the members of a political community. By *authorities*, in the second occurrence, I simply mean the ruling elites. By *legitimate*, I refer to the fact that the first authority is not imposed simply by force or accepted only because of an instinct of self-preservation.

The essential core of my claim can be summed up in the following way: the legitimacy of the authorities I’m speaking about here (the ruling political elite), as well as their claim to obedience, finds its origin and rationale in the “electoral principle”. This corresponds with the absence of *tenure* for those who govern, and the dependence of their mandate, and its

renewal, on the periodical choice of the governed. This holds true at least in the modern or contemporary societies that we call “democratic”. Yet, considering that an increasing number of important public decisions in most of these democratic societies are made by authorities who are not elected or, more specifically, who are not “accountable to the voters,” we can and ought to wonder where the legitimacy of those decisions – and of the agents who take them – comes from. Or, looking at the other side of the same coin, we can ask, why do citizens (but also the accountable political actors or organs of the state) comply with the decisions of authorities they didn’t choose and with respect to whom they have no direct power of political sanction, like recall or non-renewal of the mandate.

## 6.2 *Analytic of authority*

Independently from the electoral principle that seems to be connected with the principle of individual autonomy (a point made not very persuasively by Hans Kelsen) or, more convincingly, with the principle of limited government, it has been often remarked (I have Jon Elster’s paper in mind here) that citizens’ obedience can be explained largely by the *habit* of obeying [L. Hart], and also by the *costs* of disobedience, thus by the *interest* in obedience on the part of those who offer it. To this it is added that since *obœdientia facit imperantem* [Spinoza], in explaining why citizens obey public powers, we can also make sense of the authority of those public powers!

Now the *habit* of obedience can certainly explain a certain amount of compliance behavior towards public authorities. But it doesn’t explain all cases of compliance, notably the behavior of those who are able to disobey; we have numerous examples of such subjects in any type of society, and *a fortiori* in democratic societies. Regarding their *interest*, much depends on the

meaning we attribute to this polysemic word. *Stricto sensu*, I believe that by interest we often mean the calculus of costs and benefits that informs the decision to take an action. Now obedience to a command of a public authority corresponds with the interest of the person who obeys, if he has good reason to believe that the disobedience will produce a punishment or sanction more exacting than the cost of obedience.

Once we think more seriously about it, I think we can discover a “paralogism” in this argument: presupposing the existence of the authority whose existence and *raison d'être* we claim to be explaining [we find the same problem in the vulgar interpretation of Hobbes' political philosophy – it is a different point to explain why and under which conditions it may be rational to obey an existent authority]. I am troubled by the underlying analytical problem here. If we think that authority comes from obedience, and we add that obedience (O) depends on the ability of the authority (A) to punish those who disobey (X), then it is actually this ability (X) that explains the authority in the first place, rather than obedience.

$X \rightarrow O \rightarrow A$ ; but X is A or a quality of A; so, it is not  $O \rightarrow A$ , but  $X \rightarrow A$ , and in fact  $A+X$  [= the agent or the agency characterized by X]  $\rightarrow O$  [ $\rightarrow$  = generates or is the cause of].

Let me restate my argument. The authority cannot be both the *explanandum* and the *explanans*. We cannot explain the authority of public authorities by obedience, nor the obedience by the existence of an authority which is able to punish and reward. It follows that it is this quality of the authority, and not the obedience as such, that explains why we obey it. So it seems to me that we have to abandon Spinoza's hypothesis according to which *obcedientia facit imperantem*. In any event, we ought to abandon it as an explicative hypothesis and look for a different one instead. One possibility is that the obedience to authority is produced by some automatisms, like habit or some even more basic structure. Or, for example, that it is pro-

duced by the *belief* in the legitimacy of a given authority. Which raises the further question (very likely the question asked by Max Weber): what is the content of this belief and where does it come from? Also, what are the qualities of A that produce obedience and where do they come from?

**Brief historical excursus.** In a social or collective context, this quality cannot be identified with force *tout court*, since those who command are few and those who obey, multitudes. It will be objected that the *few* may have considerable military force at their disposal. But this is still not an answer since we have to explain why soldiers obey generals. Here is just one example to clarify what I have in mind. At the very beginning of the French Revolution, when the Third Estate seceded from the Estates General, the Conte d'Artois ordered the army to shoot at the representatives of the Third Estate. It did not obey. Clearly, some of the “generals” – like Clermont-Tonnerre – did not agree with Artois. The example shows that something like prestige or persuasion matters more than arms. This is because *arma silent* only in the presence of a recognized authority.

### 6.3 *Redefining the problem*

Let me try to qualify the scope of my inquiry. We saw that in my field of analysis, contemporary political and constitutional theory, the democratic ideology or doctrine answers the question, “why do citizens obey political authority?” by saying “because of elections”, thus making use of such quasi-philosophical paraphernalia as individual autonomy, limitation of power, and so on. And, up to a certain point, I believe that this works. But this still leaves open the question of why governments, which have electoral legitimacy and dispose of public force, obey constitutional courts, which are neither elected nor politically accountable [*responsables devant le suffrage*] and

have moreover no independent means for concretely enforcing their decisions. Let me pique your attention with a quote. Speaking of the American Supreme Court (in his *Democracy in America*, éd. Folio, vol. I, pt. I, ch. 8, p. 234), Tocqueville noted that “its power is immense, but it is a power of opinion” [a *pouvoir d’opinion*] [which we should translate as a “spiritual power”]. The judges of this court – added Tocqueville – “are almighty if the people accept to obey the law [their interpretation of the law]; they have instead no power if the people have contempt for it.”

So I’m back to my square one: where does the authority of unelected officials come from?! In the case of *Bush v. Gore* (2000), the “*pouvoir d’opinion*”, to speak with Tocqueville, went so far in the United States as to choose the president that the American citizens should have chosen themselves! I am thus going to speak only of the power/authority of these courts.

Let me start by rejecting the modern myth of the judge who limits himself to the mere application of the law, acting like an automaton, a machine reproducing “practical” syllogisms, or as a sheer “*bouche de la loi*” [Montesquieu]. I do not actually believe that this myth is completely meaningless. But my question is somewhat different. I want to reflect on how judges decide conflicts by virtue of their own authority and without further appeal (think of the function that the German Constitution refers to as *Organstreit*). Like Solomon, such judges impose their decision on those who turn to them. This is illustrated by the conflict between supreme state organs inside a constitutional *Rechtsstaat* or conflicts between the families of an ancient city, like the judgment that Homer describes in one of the most fascinating scenes of in the *Iliad* about Achilles’ shield.

But we first have to ask the question: “who obeys”? (so, contrary to what Hobbes thought, it is not enough to ask *quis iudicabitur?*). When we are dealing with a court, those who obey

are the parties to a dispute, who turn to the judge to adjudicate the conflict. When we speak of constitutional courts the parties may be of a different type. Simplifying a bit, we may have an individual asking for the protection of his own rights vis-à-vis a decision of a public authority (a statute, an administrative act or even a judicial decision); this is the German model of the Verfassungsbeschwerde, which is a constitutional complaint or “*recours direct*”. But parties can also be branches of the central government or subunits in a federal state, involved in a conflict in which they need adjudication. For instance: a region, or a *Land* vs. the central government, the executive vs. the legislative branch, or – like in France – the opposition in the Parliament against the majority, meaning the government. Once this has been clarified, my question – who obeys constitutional courts? – can be rephrased in the following way: Why – if we take the French case – does the majority accept that its will be bent because of the intervention of the CC [constitutional court] on the request of the minority? (It would also be interesting to consider cases of non-compliance: Bavaria and the crucifix; the Southern states in the US opposing the Warren Court’s civil rights decisions).

The legal positivist will answer: because it is written in the constitution. And it is perfectly true that the French Constitution – to stick to my example – requires the parties to accept the decision [*l’arrêt*] of the *Conseil Constitutionnel*. But this answer, perhaps adequate for a School of Law, is not enough for me. One can put forward the argument that an explicit violation of the constitution is a “cost” for a political actor, including the majority, which derives its powers from the constitution itself. But this consideration just reinforces my question. Why did the political class introduce this provision (constitutional control) into the constitution in the first place? It is easy to suggest, as I do elsewhere [*Ratio Juris*], that constitutional provisions introducing constitutional adjudication can be considered as an

insurance mechanism for those who are defeated in the electoral race. This is what Giscard's justice minister, Lecanuet, said in 1974 when the *saisine parlementaire* was introduced in France: since we are probably going to lose the elections, let's try not to lose everything. In fact, the conservatives lost the elections in 1981 and the Constitutional Council canceled part of the nationalization measures enacted by the socialist government. So, in this context, the CC is a mechanism of moderation vis-à-vis the majority.

In addition to this, I would also like to draw your attention to two additional considerations: 1. the constitutional expansion or the "constitutionalization" of what we refer to in France as "administrative law"; 2. the (possible) way for CCs to justify their authority to themselves and to the other actors in the political and constitutional system.

**1.** The first point is slightly technical and I will be brief. The *état de droit* or *stato di diritto* – the French and Italian equivalents of the German *Rechtsstaat* – is based on the principle (not identical with the electoral principle) that any concerned citizen should be allowed to sue a public authority if she thinks that it has abused its legal competences. This is one of the paramount definitions that Dicey gave of the concept of "rule of law". France, as is well known, invented a special jurisdiction to adjudicate conflicts between citizens and the state or the public administration: the administrative courts and the administrative judges. I can't speak here of the fascinating story of this institution that was invented to protect the public administration and ended up protecting, at least sometimes, citizens' rights, both in France and on the continent. I just want to recall that post-war Germany charged the BVerfG (the Federal Constitutional Court) with the adjudication of conflicts between citizens and the public administration having a constitutional rank or dignity.

To rephrase my original question again (what I'm really trying to do is formulate the right question): why does the state



obey a court (lacking in democratic legitimacy), which condemns it in favor of a simple, isolated and sometimes weak citizen? I'd like to put forward the following hypothesis: in our stable democratic societies, the legitimacy originating in the electoral principle is drying up! It played a crucial role during the long period beginning on the European continent with the French Revolution: a period that can be characterized by the integration of the members of the society (the citizens) into the state. First the middle class, then the working class and then women were given the franchise. Electoral legitimacy allows for the peaceful rotation of political elites in power as well as the integration produced by universal suffrage (democrats vs. republicans in Germany during the *Vormärz* – W. Conze, *Geschichtliche Grundbegriffe*) and mass political parties. Having attained the integration of national citizens (the excluded now are immigrants from outside the European Union), political authority (political elites) is forced to move forward and grant to the single, isolated citizen as such a right to complain. The political elites have to concede a *recurso de amparo* – as the Spaniards call it – a final right of appeal against the democratic authority itself. This is an appeal in which the constitutional court is the final arbiter.

This is a way for organized political actors to prevent the loss of elections from becoming a radical, crushing defeat; it also increases the legitimacy of representative governments, especially those ashamed of their authoritarian pasts. Thus we can see the beginnings of my answer.

**2. Typology of justification.** To conclude, I'd like to say a few words about the ideology that may justify the power or authority of the constitutional court. I'm going to do it using a typology based on fragments from the history of ideas and institutions, the *Montesquieu-Coke-Hobbes* model. This three-part model can likewise be conceived in terms of: the null power, expertise, impartiality.

The first bit of my triadic model is well known: it produced the weakest and yet the most widespread image of the constitutional court. It says that we have to obey the (constitutional court) since, like any agency with the judicial function, it has no power, and no will. It is nothing but the “mouth of the constitution,” articulating practical syllogisms and just enforcing the will of the constituent power of the people. It is even possible to build a quaint metaphysical theory of this constituent power, in which the constitutional court would be its “expression.” I shall skip all this, even though there are interesting things to say, notably concerning the practical, institutional consequences of such an ideology.

The second figure of the triptych is slightly less known. I name it after Sir Edward Coke in honor of the chief justice of the Common Law Courts of England at the beginning of the 17<sup>th</sup> century. It was Coke who convinced the Stuart King James I that his majesty should not adjudicate all the conflicts: the King of England certainly had the sovereign power, but he had not the expertise, meaning the knowledge of the laws of his kingdom, which requires a long study in the Inns of Court. The power or the authority of the judge – so said Sir Edward – comes from this knowledge, competence or expertise. It is knowledge, not power, that makes the judge a source of authority. After all, professors, doctors, plumbers, generals are not chosen by elections. We can choose some of them sometimes in this way, but we cannot thereby make them competent. In this context, think of the rule introduced by Hans Kelsen (and accepted by all contemporary post-authoritarian constitutions, with the exception of France), according to which only law professors, lawyers and judges, thus only experts, can sit on constitutional courts. This provision clearly contrasts with the normal democratic ideology, where the possibility of being popularly elected has nothing to do with a special expertise of the representative.

Finally, I want to introduce the third *masque* of the judicial authority – actually the oldest one, at least in Western society – according to the Homeric account: impartiality. It seems that there is no better way to produce the authority that the judge needs in order to be obeyed than for him to be independent from the conflicting parties and “impartial” – *super partes* – in relation to them. This is an impossible challenge and thus an illusion, say the realists, who are so smart that they claim to show how stupid or at least how naive we are. By “we,” I mean those who believe in the value of impartiality and its inevitably imperfect practicability.

Surprisingly enough in the genealogy of the impartiality of the judicial power, we find a remarkable text of a political philosopher who supported the absolute power and opposed Sir Edward Coke: Thomas Hobbes. In chapter 26 of his *Leviathan*, he presented a theory of the judicial power that rejects the thesis of expertise and derives the judicial authority instead from certain MORAL qualities, which are presented in the following way:

“The things that make a good Judge, [...] are, first, *A right understanding* of the principal Law of Nature called *Equity*; which depend[...] not on the reading of other men’s Writings, but on the goodness of a mans own natural Reason<sup>1</sup>, [...] Secondly, *contempt of unnecessary Riches*, and Preferments. Thirdly, *To be able in judgment to divest himself of all fear, anger, hatred, love, and compassion*. Fourthly, and lastly, *Patience to hear; diligent attention in hearing; and memory to retain, digest and apply what he hath heard.*”

<sup>1</sup> “Though it be true”, Hobbes added in the *Dialogue*, W. Molesworth (ed.), *English Works*, Vol. VI (London, J. Bohn, 1840), p. 14, “that no man is born with the use of reason, yet all men may grow up to it as well as lawyers; and when they have applied their reason to laws [...] may be as fit for and capable of judicature as Sir Edward Coke himself, who whether he had more or less use of reason, was not thereby a judge, but because the King made him so” [!].

Impartiality is a challenge, to be sure, but not illusion. At least under certain conditions, which do not of course exist everywhere (certainly in China hardly at all and very little in the United States). To the objection that “all you need to do to be impartial is to look impartial,” we can answer, as Dan Sperber has called to my attention, that the easiest and least costly way to *look* impartial is to *be* impartial, at least most of the time. For otherwise, since we are not as naive as the realists think, the belief in the court’s authority loses its function and dissipates.

Some sort of mix of these three ideologies is what is normally appealed to in order to establish the authority of the constitutional court to adjudicate the conflicts of which I spoke earlier.

## 7. THE GURU EFFECT

Obscurity of expression is considered a flaw. Not so, however, in the speech or writing of intellectual gurus<sup>1</sup>. It is not just that insufficiently competent readers refrain, as they should, from passing judgment on what they don't understand. All too often, what readers do is judge profound what they have failed to grasp. Obscurity inspires awe, a fact I have been only too aware of, living as I have been in the Paris of Sartre, Lacan, Derrida and other famously hard to interpret *maîtres à penser*. Here I try to explain this “guru effect.”

### 7.1 *Believing and trusting*

There are two ways of holding beliefs in one's mind. Holding a belief may be experienced – to the extent that it is experienced at all – as plain awareness of a fact, without awareness of reasons to take it to be a fact. So are held most of our ordinary beliefs. They are delivered by our spontaneous cognitive processes, the reliability of which we take for granted without examination. I believe that it is sunny because I see that it is; I believe that it rained yesterday because I remember that it did;

<sup>1</sup> I am using here the English word “guru,” not the Sanskrit word from which it is derived.

and I believe that you are in a good mood because this is how I spontaneously interpret the expression on your face. Here, “because” introduces not reasons I might have weighted in forming these beliefs, but the causal processes through which I come to have them. Such beliefs are “intuitive” in the sense that they impose themselves on us without our being aware of the process through which they do so.

Other beliefs I hold because I also believe there is a good reason to hold them. I believe that it will be sunny tomorrow because so said the weather report, and I find its next-day predictions reliable enough. I believe that you just made up with your friend on the phone because this is the best explanation I can find for your suddenly improved mood. In these cases, “because” introduces a reason for my belief. Such beliefs are “reflective” in the sense that we entertain them together with the reasons we have to accept them<sup>2</sup>.

Entertaining a reason is as much a cognitive process as is perceiving, remembering or mood-sensing. Conversely, the fact that perception, memory and mood-sensing are reliable cognitive processes would give us a reason, if we cared for one, to accept the beliefs they generate. The contrast I want to draw between “reflective” and “intuitive beliefs” is not between beliefs held because of a cause and beliefs held because of a reason, but between beliefs held with or without *mentally represented* reasons.

Reasons to accept a belief may be “internal,” that is, have to do with the *content* of the belief: I believe some proposition because I accept an argument from which this proposition follows. Such an argument may be based on evidence: I believe that the cake in the oven is properly baked because the knife

<sup>2</sup> For the distinction between intuitive and reflective beliefs, see Sperber 1997.

blade I inserted in it came out dry. The argument may be purely formal: I believe that there is no greatest prime number because, given any prime number however large, I know how a prime number greater than this one can be computed.

Reasons to accept a belief may also be “external,” that is, have to do with the *source* of the belief: I believe that what I have been told or what I read because I judge the source to be reliable. I believe my friend Mary will come to dinner tonight because she said she would and I trust her. I believe that there are tensions between the President and the Prime Minister because so says *Le Monde*, a newspaper I find reliable on such issues. Catholics believe that the Father, the Son, and the Holy Spirit are one because they trust the priests who tell them so.

The belief that a friend, the newspaper or the priest is trustworthy may itself be held intuitively or reflectively. I intuitively trust my friend Mary, without having ever reflected on her trustworthiness. When, on the other hand, a belief in a source’s trustworthiness is held in a reflective manner, it may, just as other reflective beliefs, be based on internal reasons having to do with the content of the belief or on external reasons having to do with the source of the belief. Christian children may believe the priest is trustworthy because their parents (whom they trust intuitively) told them he is – an external reason. I believe that *Le Monde* is, on the whole, trustworthy because I have had much direct evidence of this trustworthiness – an internal reason.

We may initially accept a person’s authority on the basis of her reputation – an external reason –, and then update our degree of trust on the basis of her record – an internal reason. I first went to doctor Z because she was warmly recommended to me. Now I keep going – and I myself recommend her to others – because, in my experience, her diagnoses and advice have been confirmed, and have heightened my confidence in her.

## 7.2 *Trusting and interpreting*

Updating the strength of one's trust in an authority figure may be affected by what, in the psychological literature on reasoning, is known as a "confirmation bias"<sup>3</sup>: under some conditions, confidence in their beliefs cause believers to pay more attention to confirming than disconfirming evidence, thereby increasing their initial confidence. Internal evidence of trustworthiness is typically interpreted on the basis of prior trust. I followed doctor Z's prescription and got well in a week when I had hoped to be cured in three or four days. Still, I trust her and take the fact that I was cured as further evidence of her trustworthiness. If my trust in doctor Z had been wavering, I might have taken the fact that it took me a whole week to get well when it seemed reasonable to hope for a more rapid recovery as a reason to question doctor Z's trustworthiness.

The more the evidence is open to a variety of construals, the greater the risk of a confirmation bias. Few things better lend themselves to divergent construals than obscure statements. It is not surprising then often to find that their interpretation is strongly biased by the prior authority granted to their source. Divination practices around the world provide the best illustrations of this kind of interpretive charity: consultants interpret pithy statements – and the Pithia's own, in her time – in a way that is relevant to them and confirms the powers they attribute to the diviner:

*Fortune-teller*: I see a tall man...I see a bird...people you care about are in pain... *Consultant*: Amazing! Yes, everybody was sick after Thanksgiving, and the guy who sold me the turkey was very tall indeed.

<sup>3</sup> See Wason 1960.



Interpretive charity is not, however, an odd departure from normal interpretive practices, and not only pithy statements but all utterances leave room for interpretation. Quite generally, sentences vastly underdetermine their interpretation. Typically, they contain referring expressions the referent of which is not linguistically determined, they are multiply ambiguous, and they are open to a whole range of construals going from literal, to loose, to figurative. An utterance never fully encodes the speaker's meaning. Rather, it provides a richly structured piece of evidence from which the hearer (or the reader) can infer the speaker's (or the writer's) meaning. In this inferential process, hearers are helped by considerations of relevance. Utterances raise expectations of relevance that guide the comprehension process towards an interpretation that satisfies these expectations<sup>4</sup>. So, for instance, if John arriving late tells me, "I missed the bus," I understand him to refer to the bus that could have brought him in time, and to mean "miss" in the sense of *fail to arrive in time to board* and not of *feel sad about the absence of*, or *fail to hit with a projectile*. In fact, typically, I home in on the contextually relevant interpretation without being aware of alternatives.

We expect what people tell us to be relevant, and we interpret it in a way that confirms this expectation. To the extent that speaker themselves expect us to home in on an optimally relevant interpretation of their utterances and produces utterances the optimally relevant interpretation of which is the very one they intended, what could be seen as an instance of the confirmation bias is, in this case, a rational way to achieve coordination and understanding.

Relevance itself has two aspects: everything else being equal, the greater the cognitive effects derived from the processing of

<sup>4</sup> This is a central claim of Relevance Theory (Sperber & Wilson 1995).

an utterance (or, for that matter, any other type of information), the greater its relevance. For instance, if you want to know at what time is the next train to Manchester, it would be more relevant for you to be told "it is at 5:16" than to be told "it is sometimes after 5." The more precise statement not only entails all the consequences of the vaguer one, but it also entails further consequences that you are likely to pay attention to: more cognitive effect, more relevance. The second aspect of relevance has to do not with cognitive effect but with processing effort. Everything else being equal, the greater the effort needed to process an utterance, the *lesser* its relevance. It would be more relevant for you to be told of the next train to Manchester, "it is at 5:16" than to be told, "it is twenty-two minutes after 4:54" (unless, of course, the lapse between 4:54 and the departure of the train is of special relevance to you) although the two statements are synonymous and carry exactly the same consequences. The second, more convoluted statement requires greater processing effort: more effort, less relevance.

So, we expect what we are told or what we read to be relevant, that is, to carry sufficient effect to be worth our attention and to do so without causing us unnecessary effort of comprehension. Of course, speakers or writers tend to overestimate the relevance of what they have to say, and hearers' or readers' expectations of relevance are frequently disappointed. In particular, when people of no particular authority express their thoughts in an obscure manner, we often revise down our already moderate expectations of relevance to a level where trying to make sense of what they say is not even worth the effort. On the other hand, when we trust that what we are told is relevant, the fact that some stretch of discourse or text requires more effort leads to the expectation it will carry more effect (extra effort being a price paid for extra effect, thus maintaining the overall level of relevance).

In fact, departing from plain and easy formulation is often a way of signalling that something other than plain meaning is

intended. I cannot resist using a famous if somewhat exaggerated examples of Paul Grice. He writes:

Compare the remarks:

(a) *Miss X sang "Home Sweet Home."*

(b) *Miss X produced a series of sounds that corresponded closely with the score of "Home Sweet Home."*

Suppose that a reviewer has chosen to utter (b) rather than (a). (Gloss: Why has he selected that rigmarole in place of the concise and nearly synonymous *sang*? Presumably to indicate some striking difference between Miss X's performance and those to which the word *singing* is usually applied. The most obvious supposition is that Miss X's performance suffered from some hideous defect. The reviewer knows that this supposition is what is likely to spring to mind, so that that is what he is implicating). (Grice 1989: 37)

This example illustrates how a deliberately opaque formulation directs one towards a richer interpretation.

In other cases, comprehending an utterance may involve extra effort but in a way that was not intended, or at least not overtly intended. It is as if the speaker or writer had no easier way to express herself or as if she expected greater ease of comprehension on the part of her hearers that they are actually capable of. Even so, if the speaker or writer chose to go ahead and express a thought hard for her audience to understand, she is thereby suggesting that the thought in question is relevant enough to be worth the effort.

As children we were often told things that we didn't quite understand but were clearly intended to. Little Lucy is told by her teacher that cucumbers are 95% water (an example I borrow from Andrew Woodfield). She thinks of water as a liquid. Now, cucumbers are solid, not liquid objects; water does not flow out of them; so what could the teacher mean? Accepting, however, the authority of the teacher, Lucy now believes, without fully understanding it, that, somehow, cucumbers are 95% water. The very difficulty of grasping this idea indicates to her

that this is a relevant piece of information, worth remembering and thinking about until she can make better sense of it.

Lucy was also told by her parents and at Sunday school that God is everywhere. This too she believes with only partial comprehension. Whereas many children end up understanding how solid bodies such as cucumbers can mostly be made of water, the belief that God is everywhere remains impossible to fully comprehend. This mysteriousness is, if anything, even better recognized by theologians than by children. Given that, for the faithful, the relevance of the belief is beyond question, its very mysteriousness is a strong indication of its significance. Impenetrability indicates profundity.

In front of religious mysteries (divine omnipresence, the Trinity), believers stand in awe. They may derive some relatively unproblematic consequences from these beliefs (e.g., divine omnipresence implies that there is no place to hide from God) but it takes theologians to aim at sophisticated interpretations that, anyhow, are never final. For most believers, the existence of mysteries is, in fact, more relevant than their actual content. Because of the authority they grant religion, believers are convinced that the content of mysteries would be extraordinarily relevant to them if only they could grasp it. The fragmentary interpretations of mysteries that lay and clerical believers arrive at are wholly guided by this certainty of relevance. The existence of barely glimpsed hyper-relevant content is yet another confirmation of the supreme authority of religion.

The writing of many philosophers, especially but not uniquely in the so-called continental tradition, is full of hard-to-understand passages where difficulty is presented as pertaining not to expression but to content itself, as being not a rhetorical device but a direct and unavoidable aspect of sophisticated thinking. Here are a few characteristic quotes (which, being cited out of context, are not here to be judged, let alone sneered at; still, no contextualisation would make them simple and easy to understand):

- "Beauty is a fateful gift of the essence of truth, and here truth means the disclosure of what keeps itself concealed." Martin Heidegger (1968:19)
- "Consciousness is a being, the nature of which is to be conscious of the nothingness of its being." Jean Paul Sartre (1948:86)
- "In a culture like ours, long accustomed to splitting and dividing all things as a means of control, it is sometimes a bit of a shock to be reminded that, in operational and practical fact, the medium is the message." Marshall McLuhan (1964:7)
- "If *différance* ~~is~~ (and I also cross out the ~~'is'~~) what makes possible the presentation of the being-present, it is never presented as such. It is never offered to the present. Or to anyone. Reserving itself, not exposing itself, in regular fashion it exceeds the order of truth at a certain precise point, but without dissimulating itself as something, as a mysterious being, in the occult of a non-knowledge or in a hole with indeterminable borders (for example, in a topology of castration)." Jacques Derrida (1982:7)

The point I am trying to illustrate is independent of the quality and clarity of what the authors had in mind when writing these passages. Maybe, each and every one of them had in mind an important thought that could not be expressed in any simpler way. Maybe some readers (including, possibly readers of the present essay) have grasped these thoughts and been illuminated by them. The fact is that, for most if not all readers, the interpretation of such statements is highly problematic. Still, the very effort required tends to be seen as an indication of high relevance and to favour interpretations consistent with this indication. If they cannot come to any clear and plausible interpretation, readers may nevertheless seek fragmentary and tentative interpretive hypotheses that go in the expected direction. Even if these statements remain hopelessly opaque, readers may take their very opacity as evidence of their depth.

Faced with an inordinately recondite statement, readers have the choice between a negative judgment: the author had no good reason to be obscure, and a positive explanation: the

author wanted to convey a thought too deep for plain and simple expression. With a prior high confidence in the intellectual worth of the author, negative judgment is almost ruled out and depth can be inferred, even if no satisfactory interpretation of the statement in question is ever arrived at. Prior appreciation of an author justifies a positive construal of difficult passage. So far, so good. Things may go wrong if, in a viciously circular manner, this construal is taken as further justification for the appreciation.

### *7.3 Authority and argumentation*

Suppose there is a claim that you won't accept just on my authority, I may still try to convince you by providing a reasoned argument, starting from premises that you are willing to accept (because you already believe them or because, for them, my authority is sufficient), going through a series of steps the validity of each you can judge by yourself, and concluding with the claim I want you to accept. The logical force of an argument does not depend on the authority of whoever puts it forward. A mathematical proof expounded by a known swindler may be convincing all the same. While there is no sure way to tell by mere inspection a true statement from a false one (unless the false statement is self-contradictory or contradicts what is already known to be true), competent examination is enough to tell a valid from an invalid argument. Thus, when authority fails to provide a sufficient external reason for accepting a claim, argumentation may provide an appropriate internal reason.

Authority and argumentation seem to be two quite different paths to persuasion, and, to a large extent, they are. From an evolutionary point of view, the capacity to produce and evaluate arguments might have emerged as a way of partially over-

coming the risk of deception and manipulation involved in accepting the authority of communicators<sup>5</sup>. Historically, the transition to modernity can be described as the replacement of authority by argument as the main basis of justified beliefs. In intellectual style, there is often a clear opposition between those who trust more authority than argument, and those who trust more argument than authority. Nevertheless, in communicative practices, what we find is not a dichotomy between appeal to authority and appeal to reason, but a variety of interactions and overlaps between the two forms.

To begin with, trivially, authority can be argued for. For instance, in John, 14: 11, Jesus says: "Believe me when I say that I am in the Father and the Father is in me; or at least believe on the evidence of the miracles themselves." Jesus gives a reason to accept his authority to those who would not spontaneously do so.

More interestingly, trust in authority may give us a reason to accept the validity of an argument without examining its steps, or even without quite comprehending it. Bobby fails to understand the math teacher's demonstration that there is no greatest prime number, but the very fact that the teacher presents what she claims is a proof causes Bobby to accept as a proven fact that there is no greatest prime number – and he is right, of course! This extends to non-demonstrative arguments. For example, people looking for an effective weight loss program may stumble on the following argument: "Where is the scientific evidence that eating the controlled carb way is healthy? By adhering to a controlled carbohydrate nutritional approach, an individual who chooses to eat nutrient-dense foods ... is more likely to meet his nutritional needs, promoting good health, than he would by following a calorie-restricted, fat-deficient

<sup>5</sup> See Sperber 2001.

diet. ... For studies that support the health benefits of a controlled carbohydrate nutritional approach, [click here](#). All these studies confirm that not only is controlling carbohydrate consumption effective, it actually results in improved health parameters" (<http://atkins.com>). Even if they do not fully comprehend the argument or are not able to weigh its force and cannot be bothered to click and look at the additional evidence proposed, people may be swayed by the fact that what looks like a forceful argument is being put forward for their consideration.

Suppose that you accept on trust some argument of mine as valid and its premises as true. Then, of course, you also will accept as true the conclusion of the argument. Given however that you are just relying on my authority, should the fact that I have argued for this conclusion give you a better reason to accept it than if I has merely asserted it? After all, if you are willing to take my word for the soundness of an argument, why not just take it directly for the truth of its conclusion? Well, the very fact that I produced an argument, even if you are unable to assess its validity, or cannot be bothered, is of relevance to the evaluation of its conclusion. To argue is to make an effort in order to appeal to one's audience's reason. It can be seen as a mark of respect for one's audience (just as to refuse to argue is a mark of disrespect). A valid argument is harder to fake than a true statement. To argue is to expose oneself to critical examination. So, the very fact that I made the effort and took the risk involved in arguing may contribute to the believability of my conclusion, even if the argument remains unexamined.

When paying with a check, you may offer to present some identification: sometimes, this very offer will be seen as evidence of your trustworthiness and will be declined just because it was made, while, if not spontaneously offered, identification would have been requested. Of course, swindlers know this too and can use apparent forthrightness to achieve devious



goals. Similarly, the apparently honest display of argumentation can be used to impress, browbeat, or even deceive one's audience, and had been developed as a rhetorical technique by the Sophists depicted in Platonic dialogues.

My interest here, however, is in honest rather than dishonest gurus. Honest gurus are not trying to deceive their audience. Nevertheless, they may produce arguments that will persuade most of their readers not by their logical force, but by their very difficulty. A recent illustration is provided by *The Emperor's New Mind* by the eminent physicist Roger Penrose. As summarized by the blurb of the book, Penrose "argues that there are facets of human thinking, of human imagination, that can never be emulated by a machine. Exploring a dazzling array of topics – complex numbers, black holes, entropy, quasicrystals, the structure of the brain, and the physical processes of consciousness – Penrose *demonstrates* that laws even more wondrously complex than those of quantum mechanics are essential for the operation of a mind" (my italics). Given the wealth of premises from different fields of knowledge and the complexity of the argument, I doubt that most readers are in a position to evaluate what, if anything, Penrose demonstrates. Still, coming from such an authoritative source, the very elaborateness of the argument is enough to suggest that it can withstand a level of scrutiny that most readers would be quite unable to provide, and that Penrose is offering a hard-to-grasp but plausible and highly relevant perspective on the relationship between fundamental physics and human psychology<sup>6</sup>.

#### 7.4 *Runaway trust in authority*

A possible explanation of the obscurity of a statement made by an authoritative source may be that it expresses some impor-

<sup>6</sup> For doubts that it is so, see Dennett 1989.

tant thought that could not be formulated in a simpler way. Similarly, a possible explanation of the difficulty of an argument may be that there is no simpler way to justify its conclusion. When my only alternative is to question the otherwise well-established authority of the source just because I have trouble understanding it, these explanations may be the best I can come up with, and, if so, I should accept them. Such “inferences to the best explanation” may in turn justify my accepting a statement as true or an argument as valid, even though I don’t quite understand them. On the other hand, how could my failure to fully understand a statement or an argument ever justify me in granting even more authority to its source? Obscurity need not be held against an author – after all, it may just reflect the limits of my own understanding –, but how could it be held in her favour? An obvious risk in upgrading the authority of a source because of the obscurity of its pronouncements is that of running into the vicious circle I mentioned: the favourable interpretation I give of an obscure text is based on the prior authority I grant its source; if I then use this interpretation to value up this authority, and then this enhanced authority to interpret even more favourably the next obscure text from the same source, a string of obscure texts (or, for that matter, reinterpretations of just one of them) might cause me to grant near-absolute authority to a source just because I don’t understand it. Are individuals *on their own* predisposed to commit this kind of fallacy? I see no reason to believe they are, or at least, not systematically. On the other hand something of the sort happens in the collective recognition of authorities.

Authority is social relationship that involves at least two individuals, and typically many more. Authority in a group goes with reputation. The reputation of a person is the more or less consensual view of her competence and reliability that spreads through repeated acts of communication across a social group. Individuals may just state that So-and-so is knowledgeable or

wise, or they may give examples of this knowledge and wisdom. They may also discuss the interpretation and the value of specific pronouncements. Clear statements and easy arguments may become the objects of a collective evaluation, but only obscure statements and difficult arguments are likely to become the objects of a collective endeavour of interpretation.

As long as the interpretation of a text is not settled, its evaluation is likely to be based on external rather than internal criteria. We don't know what X meant in making some obscure statement, but, given the authority we recognise him, we have reasons to think that he was expressing a very important idea. In fact, if we did not think this, we would not be involved in trying to comprehend that statement. Participating in a collective process of interpretation amounts to publicly vouching for the value of what is being interpreted. Moreover, it *seems* sensible to take the amount of attention paid to thinkers and their thought as a rough indication of their importance – and it *would* be sensible if it were not for the fact that these individual evaluations build on one another and together spiral into ever greater devotion.

Participants in a collective process of interpretation have a double stake in the value of the text they are working on and in the authority of its author. The greater this value and this authority, the more they are justified in joining the process, and the less the tentative and partial character of their interpretations can be seen as a negative reflection on their own intellectual abilities. Moreover, participating in such a collective process involves not just an intellectual but also – and more surely – a social benefit, that of belonging, of getting recognition as a person in the know, capable of appreciating the importance of a difficult great thinker. Not participating, on the other hand, may involve the cost of being marginalised and of appearing intellectually stale and flat.

Here emerges a collective dynamics typical of intellectual schools and sects, where the obscurity of respected masters is

not just a sign of the depth of their thinking, but a proof of their genius. Left on their own, admiring readers interpret one rec-  
ondite passage after another in a way that may slowly rein-  
forces their admiration (or else render them wary). Now shar-  
ing their interpretations and impressions with other admirers,  
readers find in the admiration, in the trust that other have for  
the master, reasons to consider their own interpretations as fail-  
ing to do justice to the genius of the interpreted text. In turn  
these readers become disciples and proselytes. Where we had  
the slow back-and-forth of solitary reading between favourable  
interpretation and increased confidence in authority, now we  
have a competition among disciples for an interpretation that  
best displays the genius of the master, an interpretation that, for  
this purpose, may be just as obscure as the thought it is meant  
to interpret. Thus a thinker is made into a guru and her best dis-  
ciples in gurus-apprentices.

Unlike the people in Andersen's tale pretending to admire  
the emperor's non-existent clothes, participants in the collec-  
tive dynamics of guruification need not be, and generally are  
not in bad faith: they have strong external reasons for their  
appreciation – reasons that they provide one another –, which  
in turn lead them to favourable interpretations that provide  
them with further internal reasons. Moreover they need not  
even be wrong: human intellectual history is full of challenging  
propositions and arguments that turned out to be true and  
important. Still the epidemiological mechanism<sup>7</sup> I have briefly  
sketched explains how many obscure texts and their authors  
come to be overestimated, often ridiculously so, not in spite but  
because of their very obscurity.

<sup>7</sup> See Sperber 1996.

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## 8. LEGITIMATE AUTHORITY: AN INTRODUCTION

The problem of authority is a problem of the possible justification for subjecting one's will to that of another, and of the legitimacy of demands to do so. The account of authority which I offered, many years ago, under the title of the service conception of authority, was addressed to this issue, and assumed that all others are subsumed under it. I will briefly restate the service conception of authority and then try to defend it against a few objections.

The notion to be explained is the concept of authority which we use in discussion of political authorities, though it applies to others as well. There may be other notions of authority around, used in different contexts or for different senses, they are – most likely – related in a variety of ways to the concept I am discussing, but they need not be considered here. As is common, I will distinguish between *de facto* and legitimate authority. Roughly speaking, a legitimate authority is one which has a right to rule. A mere *de facto* authority, i.e. one which exercises power over its subjects, but lacks the right to it, involves that of legitimacy. What makes mere *de facto* authorities different from people or groups who exert naked power, e.g. power through terrorising a population, is that mere *de facto* authorities claim, and those who have naked power do not, to have a right to rule those subject to their power. They claim legitimacy. They act, as I say, under the guise of legitimacy. If that is right then the concept of legitimate authority has explanatory

priority over that of a mere *de facto* authority. The latter presupposes the former but not the other way round. From here on «authority» refers to legitimate authority.

### 8.1 *The service conception in brief*

The service conception is driven by two problems, one theoretical and one moral. Starting with the common thought, which broadly speaking and with appropriate qualifications and amplifications I endorse, that authority is a right to rule or to command, the first question is how to understand the standing of an authoritative directive (as I shall call the product of the exercise of the right to rule)? If issued by someone who has a right to rule, a right to command, then its recipient is bound to obey. The command, the directive, is binding on him and he is duty bound to obey it. But how could it be that the say-so of one person constitutes a reason, a duty, for another? Is it that easy to manufacture duties out of thin air?

The moral question is how can it ever be that one has a duty to subject one's will and judgement to those of another? Of course, we are affected by others and by the actions of others in innumerable ways. We often act to induce others to help or not to hinder us, to collaborate with us in common enterprises, to avoid hurting us or to turn their actions to our advantage. But the case of authority is special. Directives issued by authority aim to constitute reasons for their subjects and are binding on their subjects because they are meant to be so binding. If we recognise a duty to obey them we recognise that they have a right to command us, not only to affect the circumstances which shape our opportunities and the obstacles on our path. Authorities tell us what to intend, with the aim of achieving whatever goals they pursue through commanding our will. Can one human being ever have such justified power over another?

Can it ever be right to acknowledge such power over oneself in another?

The theoretical problem is similar to the one which promises (and all voluntary undertakings) present. By promising we impose on ourselves obligations which we did not have before, and we do so simply by expressing an intention to do so. In exercising authority we impose on others duties, which they did not have before, and we do so simply by expressing an intention to do so. How can actions expressing intentions to create reasons or obligations (for ourselves or others) do so just because they express these intentions?

The answer is that fundamentally there is nothing special in such a case. Various of our actions incur obligations. Conceiving and giving birth to a child is often assumed to be one such case. Infringing other people's rights is another (it generates an obligation to make amends, etc.). Claims that we have an obligation because of what we did, or because of how we acted are true, if they are, in virtue of general reasons for people who acted in certain ways to have certain reasons or obligations. There are, it is assumed, general reasons for anyone if he or she has a child to look after it, a general reason for anyone, if he or she violates another's right, to compensate them, and so on.

Promises and authorities are no exception. Not every time someone acts with the intention of undertaking an obligation towards someone does he or she make a binding promise. A promise is binding only if the promised action is of a class regarding which there are sufficient reasons to hold the promisor bound by his promise. That means that to be binding promises must meet many conditions: the promisor must be capable of knowing the meaning of his action, he must be capable of having a reasonable understanding of its likely consequences, and, and most importantly, the act promised belongs to a class of actions such that it enhances people's control over



their life to be able to make such promises, and the act must not be grossly immoral, etc. A promise to be a slave is not binding, nor a promise to make someone else a slave, and so on.

The theoretical question regarding the nature of authority is answered in similar fashion. A person can have authority over another only if there are sufficient reasons for the latter to be subject to duties at the say so of the former. That, of course, while probably right does not tell us when one person has authority over another. It does not establish even that anyone can ever have authority. But it states what has to be the case if some people have authority over others. That is all that one can ask of a general account of authority, namely that it establish what it takes for there to be legitimate authority, rather than that it should show who has authority over whom and regarding what. That latter task is a matter for evaluating individual cases. But of course, a general account of authority can, while still not establishing who actually has authority, say much more about the conditions under which people are subject to authority. In particular we would expect it to address the moral problem about authority I alluded to earlier, namely how can it be consistent with a person's standing as a person to be subject to the will of another in the way one is when subject to the authority of another?

The suggestion of the service conception is that the moral question is answered when two conditions are met, and regarding those matters with respect to which they are met: First, that the subject would better conform to reasons which apply to him anyway (that is to reasons other than the directives of the authority) if he intends to be guided by the authority's directives than if he does not. Second, that the matters regarding which the first condition is met are such that with respect to them it is better to conform to reason than to decide for oneself, unaided by authority.

Simple examples of regulations to do with dangerous activities or materials illustrate the point. I can best avoid endanger-

ing myself and others by conforming to the law regarding the dispensation and use of pharmaceutical products. I can rely on the experts whose advice it reflects to know what is dangerous in these matters better than I can judge for myself, a fact which is reinforced by my reliance on other people's conformity to the law, which enables me to act with safety in ways which otherwise I would not be able to do. Of course, none of this is necessarily so. The law may reflect the interests of pharmaceutical companies, and not those of consumers. If that is so it may lack authority over me because it fails to meet the first condition. But if it does meet the first condition it is likely to meet the second as well. Decisions about the safety of pharmaceutical products are not the sort of personal decisions regarding which I should decide for myself rather than follow authority. They do not require me to use any drugs, etc., and in that they are unlike decisions about undergoing a course of medication or treatment where we may well feel that I should decide for myself, rather than be dictated to by authority. As recent disputes about the way to test drugs which may help fight Aids show, the distinction between determining which courses of treatment are impermissible, a matter taken over by authority, and determining whether a course of treatment is permissible, and the decision about it be left to individuals can be and often is a difficult and a contentious one. The purpose of the observations above was not to come to any determination, but to frame the decision, to describe in abstract terms the considerations on which it should turn.

I said that the two conditions solve the moral question about authority. But in what sense do they do so? Several objections can be anticipated. The second condition, it may be objected, merely restates the problem and does not help with its solution. The whole point of the moral problem is that acting by oneself is more important than anything. What advance is there in stating that authority is legitimate only where acting by oneself is less important than conforming to reason?

Another objection to the second condition has it that it suggests that one can compare the importance of conforming to reason with the importance of deciding for oneself, independently of authority. But this, says the objection, cannot be done: the two are very different concerns which are incommensurable. There is never an answer to the question which of the two is more important. I doubt that this objection is valid. It seems to be premised on the thought that the concerns which underlie reasons with which we should conform and those which underlie the reason to act independently of authority have nothing to do with each other. But that is not so.

Some of the reasons for relying on one's own judgement derive from the need to cultivate the ability to be self-reliant, simply because often one has no one else to rely on. The clearest case is the way parents should allow their children freedom to decide for themselves on a gradually expanding range of matters, in spite of knowing that they, the parents, would do better for their children were they to take over deciding on those matters. This is the way children learn how to decide for themselves, and become self-reliant. There are other reasons to decide for oneself. Certain matters are, by the social forms of various cultures, to be decided by oneself. For example, while in some forms of marriage parents choose the partners, in others parents are not expected to have any say in the matter. In such cases one cannot have the relationship, or engage in the good or the activity unless one does so oneself, not through an agent, nor by following a superior.

The former case for self-reliance is instrumental where the end is to secure what conformity with reason will, in the long run, secure; the latter case depends on the fact that there are reasons which can only be satisfied by independent action. Both of them trace the concerns behind independence back to concerns with satisfying reasons. The thought that the two concerns never meet and must be incommensurate is unjustified.

There are other, perhaps more fundamental considerations at stake. We are not fully ourselves if too many of our decisions are not taken by us, but by agents, automata, or superiors. On the other side, sometimes it is our duty, our moral duty if you like, to accept authority. In some accident situations co-ordination, which in the circumstances requires recognising someone as being in charge of the rescue, is essential if lives are to be saved. We must yield to the authority, where there is one. There are in the political sphere many less dramatic analogues of such situations, where a substantial good is at stake, a good which we have moral reasons to secure for ourselves and for others but which can in the circumstances be best secured by yielding to a co-ordinating authority. These cases justify giving up deciding for oneself, and pose no threat to the authenticity of one's life, or to one's ability to lead a self-reliant and self-fulfilling life. None of this denies that often the two concerns, one satisfied by conformity with reasons the other with acting on one's own judgment, may be radically different and the cases for conformity or independence may be incommensurate.

The other objection to the second condition cannot be dismissed that easily. It should be met not by a refutation but by a deflection. Indeed, the second condition does little to solve the problem. That is not its task. It merely frames the question. Part of the answer to the moral challenge to all authority is in the first condition, which says that authority can be legitimate if conformity with it improves one's conformity with reason. It provides the key to the justification of authority: it helps our rational capacity whose function is to secure conformity with reason. It allows it to achieve its purpose more successfully. These observations express a way of understanding our general capacity to guide our conduct (and our life more broadly) by our own judgement. The point of this general capacity is to enable us to conform to the reasons which confront us at any given time. It is conformity achieved by the exercise of one's

judgment. We value the ability to exercise one's judgment and to rely on it in action, but it is a capacity we value because of its purpose, which is – by its very nature – to secure conformity with reason. The point is perfectly general. The value of many of our capacities should not be reduced to the value of their use. But it depends on the value of their successful use, even if it reflects also the value of the freedom to use it or not.

The value of our rational capacity, i.e. our capacity to form a view of our situation in the world and to act in light of it, derives from the fact that there are reasons which we should satisfy, and that that capacity enables us to do so. It is not, however, our only way of satisfying reason. We are, e.g., hard wired to be alert to certain dangers and react to them instinctively and without deliberation, as we react to fire, or to sudden movement in our immediate vicinity. In other contexts we do better to follow our emotions than to reason our way to action. These examples suggest that the primary value of our general ability to act by our own judgment derives from the concern in satisfying reason, and that concern can be met in a variety of ways. It is not therefore surprising that we find it met also in ways which come closer to obeying authority, such as making vows, taking advice, binding oneself to others, long before the time for action, with a promise to act in certain ways, or relying on technical devices to «take decisions for us», as when setting alarm clocks, speed limiters, etc.

Both being guided by our emotions and being guided by our judgement (not necessarily mutually exclusive conditions) are constituents of some valuable activities and relationships which are valuable in themselves, resulting in those cases where the second condition of legitimacy is not satisfied. By the same token, there can be other forms of activities, joint activities and enterprises, which are valuable in themselves and which inherently involve yielding to decisions taken by others. The conditions of legitimacy are open to different views about what is

and what is not valuable and worthwhile. They merely state how conclusions on such issues bear on the question of authority.

In postulating that authorities are legitimate only if their directives enable their subjects to better conform to reason we see authority for what it is. Not a denial of people's capacity for rational action, but simply one device, one method, through the use of which people can achieve the goal (telos) of their capacity for rational action, albeit not through its direct use. That way of understanding matters is reinforced by the fact that in following authority, just as in following advice, or being guided by any of the technical devices, one's ultimate self-reliance is preserved, for it is one's own judgment which directs one to recognise the authority of another, just as it directs one to keep one's promises, follow advice, use technical devices and the like.

Of course, authority is special in the way in which it restricts one's ability to act independently. The service conception expresses that thought by the thesis that authoritative directives pre-empt the reasons against the conduct that they require that the authority was meant to take into account in deciding to issue its directives. Those subject to the authority are not allowed to second guess the wisdom or advisability of the authority's directives. A simplified description of typical situations explains the point. There are reasons with which we should all conform, say regarding safe driving. In the absence of the law (or other authoritative directives) telling us how to drive (by imposing speed restrictions, traffic lights, road signs, etc.) we would have tried to drive as safely as we can. The law of the road is meant to enable us to drive more safely (i.e. to conform better to the background reasons) and it does so by directing us to do things which otherwise we might not have done. Where the law leaves driving decisions to us we are still guided by those background considerations. But where it intervenes to require certain ways of driving we are bound to obey

it, and are not allowed to question its force, even while we are of course allowed to question its wisdom and advocate its reform. This is, roughly, what I mean when I say that legitimate laws and the directives of legitimate authorities generally, pre-empt the background reasons which militate against the authoritative directives, and replace them with their own requirements.

The pre-emptive force of authority is part and parcel of its nature. It cannot achieve its purpose, i.e. improve our conformity with reason, if it does not pre-empt the background reasons. Its function is to improve our conformity with those background reasons by making us try to follow its instructions rather than them. It cannot do so without making us act differently than we would have done without it, and that means that it must stop us from acting for reasons which conflict with authoritative demands. Pre-emption is what it is about. How much is pre-empted? What count as background reasons? They are among the reasons which the authority was meant to consider in issuing its directives, provided of course that it acts within its legitimate power, i.e. on matters and for reasons regarding which trying to follow it will improve our conformity to the background considerations which should inform its decisions.

The pre-emptive standing of authoritative directives shows why the moral question about the law is a serious one. It shows what truth there is in the saying that in accepting authority we surrender our judgement to the authority. At the same time the solution of the theoretical problem shows that in spite of its special character authority, when subjected to the two conditions, is just another case of the world confronting us with reasons for action. The theoretical puzzle was «how can people create reasons by acting with the intention of doing so?» The answer is that this is so when considerations which are independent of human will make it so.

Yet again we see the analogy (as well as the difference) between authority and promises. Both yield reasons generated by action designed to do so, a fact which gives both of them their puzzling air, and both can do so because of considerations independent of the human will which validate such creation of reasons. Therefore, in following both we follow reason, and thus exercise our judgment, though in both cases we do it at one remove, by accepting, through our judgment, the binding force of acts (promises, directives) which pre-empt our freedom to act for some of the background reasons. It is true that only authority involves accepting the directives of another. But if the two conditions are right, even authoritative directives, just like promises, are binding only because and where they improve our powers by enabling us to conform to reason better than we could without them.

## *8.2 Some refinements and elaborations*

So far I tried to sketch the outlines of the service conception, and to explain how it contends with two basic problems about authority. Its success in dealing with them is the main case for believing that it is along the right lines. But to establish itself the account has to deal with a whole host of additional difficulties. In this section I will briefly look at a range of them, reflection on which leads to refining the account, as well as displaying some of its strengths. The following sections will discuss at greater length some more troubling objections.

### *a) Reason and knowability*

It is a matter of dispute whether a factor not known by some agents, or not knowable by them, can nevertheless constitute a reason for those agents. Whatever is the truth on that general question there are independent reasons for thinking that some-



one can be an authority only if the fact that the two conditions (or some alternative sufficient condition) are met can be known to its subjects. The point of being under an authority is that it opens a way of improving one's conformity with reason. One achieves that by conforming to the authority's directives, and, special circumstances apart, one can reliably conform only if one has reliable beliefs regarding who has legitimate authority, and what are its directives. If one cannot have trustworthy beliefs that a certain body meets the conditions for legitimacy then one's belief in its authority is haphazard, and cannot (again special circumstances apart) be reliable. Therefore, to fulfil its function the legitimacy of an authority must be knowable to its subjects.

In stating this argument I assumed that regarding the conditions for legitimacy whenever one can form reliable beliefs that they are met one can also have knowledge of that fact. I was also relying on the fact that generally speaking the only reliable way of conforming to authority is through having a reliable belief that it is an authority, and therefore should be obeyed. This assumption helps with defining more precisely what has to be the case for the legitimacy to be knowable. Since the point is to improve conformity with reason there is at least a rough measure of how important such improvement is. We engage in such assessments every day of the week. We regularly need to decide how far to pursue an inquiry in the hope of coming to a more reliable or more nuanced conclusion about what is the right course of action on various occasions. When the issue is of importance we extend our inquiries and deliberations well beyond what we do when the matter is relatively trifling. The same kind of consideration applies to establishing the existence of authorities. How much it can be expected to improve our conformity to reason, and how important the matter is, establish what inquiry is reasonable to undertake. When reasonable inquiry will not reveal the case for authority, that case, if it exists

at all, is unknowable. It follows that people are not subject to any authority regarding those matters.

This argument is used here to derive not merely that it is not rational, or not worth while to carry on with the inquiry about the existence of certain reasons, but that those reasons, authoritative directives, do not exist. There is no authority over the matter, because to exist authorities must be knowable. This extension of the argument is not surprising. The service conception makes the legitimacy of authorities turn primarily on their value in achieving something beyond them, i.e. conformity to background reasons existing independently of them.

In general we have no reason to pursue the means to the ends they serve unless they are worth pursuing given the cost of doing so relative to the importance of the ends. To give one simple example: I suppose that I can get you to give me five pounds by giving you ten pounds on condition that you give me five pounds in return. But (special circumstances apart) I have no reason to pursue this means to that end, no reason at all. It is not merely the case that I have a reason which is defeated by the cost of pursuing the means. The case of authority is not exactly the same, but it is analogous: obeying Jane, let us say, would help me better to conform with reasons which apply to me. However, I cannot know that without pursuing an inquiry which it would be irrational to pursue. It follows that I have no reason to obey Jane, and it follows from that that Jane has no authority over me.

### *b) Burdens of inquiry and decision*

The second condition of legitimacy is premised on the thought that it is important that people decide for themselves how to conduct their life, and that especially in some areas they should do so with only limited reliance on direct advice, let alone commands, from others. We do not fully live as autonomous persons if we do not decide for ourselves. It does

not follow, of course, that we always enjoy doing so. Some people find the burden of decision hard to bear. They prevaricate, get depressed, feel oppressed and pressurised, and of course often decide unwisely, often deciding almost arbitrarily in order to relieve themselves of the burden of decision.

Not everyone suffers from an aversion to taking decisions and assuming responsibility, though most people feel the burden. We are tempted to think that one is not a responsible agent if one does not, as it shows a lack of seriousness about one's actions. Let this be as it may, everyone has to carry the burden of inquiry. It makes demands on our attention, energy, time and resources. It may impose a strain on our relations with others, and so on. To be sure, the process of purposeful inquiry, of working one's way towards a decision, can also be enjoyable and rewarding in its own right. But given that its primary purpose and justification is instrumental, that is to contribute to a good decision, one cannot expect the rewards to match the burdens, and often the burdens far exceed the rewards.

There are ways of reducing the burdens of decision and inquiry, and some of them involve ways of shifting the burden on to others. The practice of relying on professional advice has grown in recent times, perhaps in parallel with a decline in the family as a source of advice and support in decision making. Submitting to authority is one way of reducing the burdens. It can be justified only if it is consistent with the second condition of legitimacy (though when the psychological vulnerability to the burden is extreme it may be justified to mitigate the condition to relieve the burden). The first condition, however, is better understood broadly to allow that meeting the burdens of decision and inquiry is one of the benefits authorities can bring.

### *c) Respect and other reasons*

We can accommodate the burdens of decision and inquiry in an account of legitimate authority either through an appropri-

ate reading of the two conditions, or by recognising these burdens as additional factors bearing on legitimacy, which modify or add to the two conditions. I do not believe that it is possible to enumerate exhaustively the considerations which can bear on the legitimacy of authority, or for that matter on the justification of any other normative institution which is widely accepted and is enshrined in social practices. Such institutions do sometimes have a core purpose, but once they are recognised and are followed in practice they become enmeshed in other practices and concerns, which lead them, without deflecting from their primary justification, to accrue additional purposes and justifying reasons. They reveal different meanings and purposes which they can serve in societies or communities where they are widely recognised.

One such factor arises out of the way in which in many societies some authorities become the primary visible expression of institutions to which they belong, and in the name of which they function. Political and legal institutions with legal authority are a case in point. In many countries superior legal authorities are identified with the state or the country or the nation and speak in their name. Where this is so respect for and identification with the state, country or nation may express themselves in respect for legal authority, and that in turn takes the form (among others) of trusting these institutions, taking it on trust that they have authority, not questioning their conduct too closely to see whether they exceed their authority, etc. Trust is a general mark of respect, and a natural one. If respect for the state, country or nation is desirable, which sometimes it is, and if it is appropriate, given the circumstances of the society in question, for it to express itself through respect and trust for its legal institutions, then a certain slackening of vigilance regarding the two conditions of legitimacy is also acceptable. That is, in such cases while the conditions themselves are unaffected, people would be justified in maintaining that the government

has authority on evidence which would not be sufficient to reach such conclusions but for the trust they have in the government.

I do not maintain that people have a duty to trust and respect their government in that way. That would be like claiming that they have a duty to have someone as their friend. The respect we are concerned with here is not the basic respect we owe every person. It is respect arising out of identification with the country, and there is no duty on anyone to identify with any country. The claim is simply that that is, sometimes, when certain moral conditions are met, an appropriate attitude to have.

Does it show that sometimes people who trust the government are justified in believing that the government has authority when it does not, or does it show that sometimes the government has authority over such people even though it does not have authority or has only a more limited authority over people who do not trust it? One can argue either way. On the one hand it may be thought desirable to separate epistemic from substantive considerations, and to have an account which tends to make governmental authority independent of individually variable factors such as trust resulting from identification with the country. On the other hand, as we saw, the service conception does incorporate epistemic elements into the conditions of authority, and, as we shall see, it allows for considerable variability in the extent of governmental authority over the population over which it claims authority. So it may be that the better view is to regard identification as affecting the conditions of legitimacy and not merely the occasions in which it is justified to believe that they are met. This way the account is closer to people's rational attitudes to authority.

#### *d) Pre-existing reasons and concretisation*

The account may appear unduly restrictive. It may appear to exclude any power for governments to improve the economic

conditions of their citizens. After all, the authority may do so by imposing taxes, and using the revenue to subsidise training which is useful for full employment and for economic development. Neither I nor other inhabitants have reason to impose taxes or subsidise training in the country. But that is a misperception. To the extent that the inhabitants of a country have reason to improve their own economic situation they will have reason to do so through a common authority in those matters where that authority will be capable of achieving that goal better than they can do so by acting independently of it. Does it mean that I do have reason to raise taxes? No, but the objection, or puzzle, stems from overlooking the fact that typically reasons do not come singly, rather they are nested. Typically we have one reason because conforming to it is a way of advancing another reason. The more general reasons apply as a standard background to our activities, and are less affected by changing circumstances, whereas the more specific reasons which nest in them tend to apply to shorter periods, and depend on conditions which are often liable to change every so often. My reason to improve my economic situation is an example of a relatively general reason, not likely to disappear until my retirement or even later, though its urgency and force may change over time. My reason to change employment may derive from it. I should change employment in order to improve my economic condition. But it is a more short term reason which may disappear if for example I am offered promotion by my current employer, or through other circumstances.

People assigned the task of helping us do so by conforming to or realising some reasons which apply to us, reasons we have ourselves. These reasons have others nested in them and setting out ways of realising them. But those nested reasons need not be reasons for us. That is, those helping us may have good grounds for pursuing the goals set by reasons which apply to us in ways which are not open to us. Indeed, as the

service conception of authority illustrates, they may be assigned the task of helping us precisely because of that.

*e) Co-ordination and meta co-ordination*

A major, if not the main, factor in establishing the legitimacy of political authorities is their ability to secure co-ordination. Some writers, commenting on this fact, went further and argued: (*a*) that the sole (or only major) function of political authorities is to co-ordinate the conduct of those subject to them for the achievement of some goods; (*b*) that co-ordination being secured via a Lewis-type convention does not require an authority with a right to rule. All it requires is the ability to make certain coordinative outcomes salient; (*c*) that it follows that political authorities, as such, do not enjoy a right to rule.

Such views overlook quite a number of facts central to the functioning of legitimate political authorities. First, that they can satisfy the normal justification thesis not only by securing coordination, but also by having more reliable judgement regarding the best options, given the circumstances, and that in their normal activities expertise and coordination are inextricably mixed. Second, that the coordination which political authorities should secure and often do is rarely the sort of coordination resulting from the solution to a Lewis-type coordination problem. Coordinating the actions of many agents means nothing more than making them act in such a way that they all play diverse roles in some possible plan of action which is likely to yield some sought-after results. Third, this kind of coordination cannot generally be achieved via a Lewis-type convention. Fourth, one reason for that is that the need for coordination and the means for achieving it are not necessarily generally known, and are often a matter of controversy. Fifth, that since the goals people actually have need not be desirable, coordination aimed at securing these goals need not be desirable either. The coordinated schemes of action which political authorities should

pursue are those to which people should be committed, or those needed to secure goals which people should have. Sixth, that typically, when the political authority is otherwise legitimate and reasonably successful it will also be rightly taken, at least in some areas, to be an authority on when coordination is in place.

### 8.3 *The Qualification Objection*

One possible reaction to the service conception is that it misses its target. It describes the conditions under which an authority is a good enough authority. It articulates the tests of success for authorities, but it does not explain what it is to be an authority. It describes the conditions which have to hold if an authority is capable of successfully discharging its tasks, but it is not and cannot be the case that everyone who can discharge a task well has that task. Not everyone who can be a good prime minister of a country is the prime minister of that country, not everyone who can be a good teacher in the primary school of my neighbourhood is a teacher in that school. Moreover, no one is a prime minister or a teacher just in virtue of the fact that they can perform the task well. Something else has to happen to give them the task, to make it their task.

To evaluate this point we should contrast theoretical and practical authority. Theoretical authorities are experts whose knowledge and understanding of the matter on which they are authorities is both exceptionally extensive and remarkably systematic and secure, making them reliable guides on those matters. Their word is a reason for holding certain beliefs and discarding others. Once their authority as experts is established it follows that our non-expert evaluations of the same evidence cannot reliably challenge theirs. I see the piece of meat at the butchers, and its colour makes me think that it is not fresh. But



I do not have experience or theory to back me up. My expert friend reassures me that the meat is fresh, and I just yield. If I accept my friend's expertise, relative to me, I have no choice. Theoretical advice pre-empts the reasons for belief which I would have relied upon otherwise. Just as with any practical authority, the point of a theoretical authority is that it enables me to conform to reason, this time reasons for belief, better than I would otherwise be able to do. This requires taking the expert advice, and allowing it to override my own assessment of the evidence. If I do not do that I do not benefit from it.

Theoretical authority resembles practical authority in its point (to improve conformity with reason) and in being pre-emptive, as well as in being relational both regarding who has to take an authority's word as authoritative, and on what matters: it is possible that I should take this expert's word as authoritative, because he knows much more than I do, but you have no reason to do the same, as you know as much as he does on these matters.

These similarities notwithstanding there are significant differences between theoretical and practical authorities. Some expertise can be the basis of predicting future events. But it cannot change anything. Practical authorities can change things, create duties and rights, leading to other changes in the world. That explains why the ability to co-ordinate plays a major role in establishing the legitimacy of practical authorities, and none at all regarding theoretical authorities, whose authority depends entirely on expertise, on secure knowledge and understanding.

Furthermore, and it hardly needs saying, theoretical authorities, experts, cannot order us to believe one thing or another, and cannot impose duties to believe – the nature of belief and belief formation excludes such duties. Belief formation, just like actions, is responsive to reasons, but only actions, and not the formation of beliefs, involve the will.

These points are associated with important differences of idiom. For example, some people are authorities on 18<sup>th</sup>C farming methods, but they do not have authority over anyone. I know nothing about 18<sup>th</sup>C farming methods and should take what they say as authoritative, but they are not authorities over me. Similarly the notion of legitimate authority is confined to practical authority. People may or may not be experts in or authorities on 18<sup>th</sup>C farming methods. But they cannot be de facto authorities, or legitimate authorities on the subject. Finally, only regarding practical matters can we say that someone has authority, or lacks it. In theoretical matters someone either is or is not an authority, but no one has authority.

What have these points to do with the critique of the service conception, with the claim that it mistakes an analysis of when an authority is good at what it is doing with an analysis of what it is to be an authority? At first blush, they may suggest that the critique is correct regarding practical authorities, but mistaken about theoretical authorities. They do not require an additional condition beyond those of the service conception. If they are qualified as authorities they are authorities. The greatest expert on 18<sup>th</sup>C farming methods may be a solitary scholar unknown to the academic community, and unrecognised by anyone. He is still an authority, just in virtue of his knowledge of his subject. Nothing more is needed. So the objection fails regarding theoretical authorities. Practical authorities, on the other hand, impose duties on people. They have authority over people. They have normative powers over people. To be authorities they need more than the capacity to function well. They need to be made authorities, not necessarily by being appointed to the job, but something like an appointment has to be there.

The admission that the objection fails regarding theoretical authorities seems to me to establish that it fails altogether. It is implausible to think that what is a successful analysis of what it is to be an authority in theoretical matters is no contribution at

all to an understanding of the notion of authority, of what it is to have practical authority. Possibly, the differences between the two kinds of authority mean that it is a successful analysis of one kind, and only a partial analysis of the other. But it is implausible to claim that it has nothing to do with the analysis of the other. There is another reason to doubt the objection. It seems implausible to think that one can be a legitimate authority however bad one is at acting as an authority. If the primary point of authority, practical authority included, is to improve conformity with reason, it is implausible to think that someone who contributes not at all in that respect, someone who in fact make us act more against reason than we would do had we not tried to follow him, can have legitimate authority.

We can therefore reject the objection. But another more modest objection is just round the corner. It says that regarding practical authorities, given their ability to change things, to impose duties and confer rights, the service conception furnishes only part of their analysis. It states a necessary condition for being an authority, but not a sufficient one. This objection is more plausible. But to succeed it needs to meet one doubt: the differences between theoretical and practical authorities may lead to differences in what has to be established to confirm that they do meet the service conception's criteria for legitimate authority. Would not those differences be sufficient to show that not everyone who can be a good authority has practical authority?

Confining the discussion to political authorities, we know that a major part of their role, improving public services, personal safety, security of contracts and other commercial transactions, requires them to be successful in co-ordinating the conduct of large number of people. That ability is not enough for the performance of such tasks, but it is necessary for it. It follows that only bodies which enjoy *de facto* authority, i.e. which are in fact followed or at least conformed with by considerable

segments of the population, can have legitimate authority over all these matters. Hence there cannot be an unknown political authority. Similarly, there cannot be a political authority which does not exercise its authority, i.e. does not issue directives which impose duties, confer rights, etc. We can contrast this with theoretical authority: our expert in 18<sup>th</sup>C farming methods may never give any advice, or express any opinions on the matter. It is enough that he could, for his authority depends on his knowledge, not on his power over people, his ability to make them modify their behaviour to conform to his directives, as does the legitimacy of political authorities.

Finally, but most importantly, given how things are in our world, governments of the kind we are familiar with can only succeed in meeting the conditions of legitimacy (according to the service conception) if they have the authority to use and are successful in the use of force against those who flout certain of their directives. No need now to establish what are the general conditions for the rightful use of force by governments. For our purposes it is enough that such a right must exist for a government to meet the conditions of legitimacy, and that it must be effectively used. This is an additional double obstacle on the road to the possession of legitimate governmental authority. It is a normative obstacle: justifying the possession of a moral right to use force, and a factual obstacle: being *de facto* able to use it effectively. No such conditions need be met by theoretical authorities. Does not the existence of these conditions show that the service conception explains not who would be good had he been given authority, but who really has authority? At the very least they show that the service conception recognises and has some account of the difference between being qualified to hold authority, and having authority. The question is whether its account is adequate. That question is still open. But the accusation that it simply confused qualification for authority with authority fails.

## 8.4 *Consent*

Let us examine one contender for this missing element: the consent of the subjects. On the view to be considered, the conditions of the service conception need to be met for consent to confer authority on anyone. To have authority a person or body must meet the necessary qualifications for holding authority. The two conditions of the service conception state what the qualifications are, and therefore to qualify for having authority anyone must meet them. But actually to have authority over another requires the consent of that other as well.

The claim that all authority derives from consent can be, and is commonly, seen by its advocates as deriving from other considerations, independent of the preceding argument. To use the familiar slogans, it cannot be – people say – that one person is subject to the will of another except by his own choosing, expressed by his consent to be subject to that authority.

We assume that there can be duties without the consent of the person bound. I have a duty to respect others which does not depend on my consent to respect others, let alone on my consent to an obligation to do so. The claim is, presumably, that no one can intentionally impose an obligation on a person without the consent of its subject. This idea is supposed to tie up with the ideal of personal autonomy.

Do you have the impression that we have come full circle? Have we not considered that precise point? Was it not the moral question which was answered earlier? If that answer was good, and nothing was said to indicate otherwise, why are we back with it? Presumably there is a residual feeling that the earlier reply did not cover all aspects of the moral problem. What is left? How are we to find it? The way to an answer was indicated earlier. We saw that consent is a source of obligation only when some considerations, themselves independent of consent, vindicate its being such a source. And those considera-

tions would also determine what kind of consent is required to legitimise the authority and over what matters it will reign.

Oddly, it is this test which I find no way of meeting. The moral question was about the legitimacy of one person being subject to the will of another. But that problem cannot be solved by consent. Suppose you say to me: «I impose on you an obligation to come to my party tomorrow» (and you may add: «provided of course that you agree»), and I reply: «I agree». I definitely consented to come to your party. I may even have promised to do so. But clearly whatever you said, you did not impose an obligation on me. The obligation is entirely my own creation. You may have invited me in a funny way, or expressed a strong desire that I should come, again in a funny way. But you did not obligate me to come.

Now suppose you say to me: «You will have an obligation to do whatever I tell you to do», or: «Whenever I tell you to do something which in my judgment you should do anyway, you will have a duty to do it, provided you now agree to this», if you tell me something like that and I agree, then while until I agreed, and at the moment of agreeing I was not subject to your will, once I agree I am subject to your will. It is analogous to becoming a slave. I was free, and I lost my freedom. Here, I was independent of your will, and now I am subject to your will. Of course it is not the case that I am subject to your will because I want to be. I may have wanted it when I consented. But once I consented what I want becomes immaterial. I am subject to your will whether I want to or not. Does not that raise the moral problem, rather than answer it?

Still, as I said the feeling persists that the solution to the moral question given before left some of our concerns unanswered. It saw the issue as one having some other person decide for one, rather than deciding for oneself. The emphasis was on «not deciding for oneself». It showed that there is no objection to that, that we should approve of that when it makes us conform

better with reason. The argument drew analogies between authorities, agents, mechanical devices, and so on. And that is where it falls short. It did not notice that while they are all cases of not deciding for oneself there is a difference between these cases and that of authority, for only it involves subjecting our will to that of another, and that is not merely a matter of not deciding for oneself.

Let us concede for the sake of argument that the problem exists, that perhaps the solution offered so far ignores it. It remains the fact that consent does not solve the problem. It can solve the problem only when there is a reason for such a consent to bind us, and there is none, other than the one which dispenses with consent, i.e. that the authority will make us better conform to reason. Perhaps, however, the popularity of consent-based explanations of authority has something to tell us. Perhaps while being mistaken it points in the right direction. The question is a question of appropriation. The aspect of the moral problem we are confronting is not the limits to one's freedom which the law or other authoritative directives pose. It is that the limits are imposed deliberately, and that they are imposed by another. They are not limits set by me. Consent explanations appeal because they seek to make the limits the agent's own. They are chimerical because they fail to do that. They remain imposed limits, deliberately imposed by another. My historical consent cannot have the significance placed on it; it cannot make the limits my own.

What we need, you may think, is another way of explaining appropriation, of explaining how the commands of authority can lose the character of subjection of one person to the will of another. That is where the search for collective identities begins.

### 8.5 *Collective identities*

A rule or directive may be neither imposed on me by another nor made by me. It could be made by «us», by a collectivity

of which I am a part. The simplest and least controversial examples derive from limited collective enterprises. We, six friends, may go on an adventure trip together, or organise a party or a conference together. And we may decide, by mutual consultation, what to do in pursuing our joint venture, decisions which bind each and all of us. While none of them is made by me, none of them is imposed on me by the will of another. They are made by us. Is it not an additional necessary condition of the legitimacy of authority that it acts for a collectivity so that its directives are not imposed on members of that group, but are their decisions, collectively taken, perhaps through their agents or representatives?

I have no general reason to think that there are no practical authorities, i.e. authorities with a right to command, which are not the organs of collectivities, such as parents being part of families, and governments being the organs of countries or of states. But it may well be that cases in which authorities act for collectivities and are organs of collectivities are typical. They may be the paradigm in relation to which we understand all authorities. So let us allow that point, necessary for the success of the thought that the answer to the moral problem is that authorities' actions are our actions.

This is not the place to investigate the nature of collective action. But one aspect of such an investigation is important for our purpose: is it the case that a university, a country, a government, or whatever other collectivity, is my university, country or government only if I identify with it?

The notion of identification is both important and obscure, but I think that there can be no doubt that the answer to the question is negative. Oxford University is my University whether I identify with it or not. Your country is your country whether you like it or not, and this government is the government of all the people of this country however much they hate it. There were times in the past when the Anglo-Irish did not



identify with Eire and its government as their state or their government. They did not regard it as their state and their government. But Eire was their state, and its government was their government. Not infrequently we find in a country individuals or groups which do not and cannot bring themselves to identify with their country or to regard its government as their own. They will not use the language of «we», as in «we just changed the law to make it harder for asylum seekers to stay in the country». Their refusal, often their inability to use such locutions is highly significant but it does not change the fact that that is their country, their law, and their government.

The fact that people can be alienated from their countries, that they may refuse to talk of what «we» did when talking of their countries, raises severe doubts on the contention that the answer to the moral problem is that the commands of authorities are our commands, even while we are their subjects. Tell this to the people who are alienated from their country, or from their regime. Tell them that it is they who passed the laws which they regard as anathema, etc. It is a sad form of trickery to think that it being the authority of their country makes its command their command in any sense which solves the moral problem.

One response to this point is to say that an authority's action is «our» action, the action of its subjects only if they identify with it. The question is: does this mean that the legitimate power of authorities is limited to people who so identify with the collectivities they represent? Does it mean, for example, that the Anglo-Irish who did not identify with Eire and its government were not subject to its authority, that they were not subject to the law of Eire?

The problem of the limits of the state's authority is more far reaching. We tend to believe that states have some extra-territorial jurisdiction, and that in any case they have territorial jurisdiction over all people within the boundaries of the state. But we do not expect visitors to identify with the state or the

regime, or to feel that its laws are their laws. It may be a good thing if the population of a country identifies with it, and with its regime. But there is no reasonable argument to deny that where the state has any legitimate authority at all its authority reaches beyond ruling those who identify with her.

This brief argument relies on the fact that people, including us, who believe that political authorities can ever be legitimate, hold true views about their legitimacy in many concrete cases which cannot be reconciled with the view that political bodies have legitimate authority only over people who identify with them, or with the regimes for which they act. It is open to some to maintain that the views are not true, that we should revise our beliefs about the scope of authority. My sense is that that would be a mistake. The problem of appropriation to which identification is supposed to be the answer, is a misguided question. It is not part of our normal understanding of authority that its actions are the actions of its subjects. On the contrary, the normal understanding is that authority involves a hierarchical relationship, that it involves an imposition on the subject. The service conception explains how and when such power can be justified, at least in the sense of being for the good. The quest for a solution to the appropriation problem is perhaps best seen as an aspirational ideal: it would be good, desirable, to have the bulk of those subject to a political authority identify with the regime for which it acts. But identification should not be thought of as a condition of legitimacy.

1. Bartezzaghi, Della Rocca, *Impresa, gruppi professionali e sindacato nella progettazione delle tecnologie informatiche*. (Esaurito)
2. D'Alimonte, Reischauer, Thompson, Ysander, *Finanza pubblica e processo di bilancio nelle democrazie occidentali*. (Esaurito)
3. Ciborra, *Organizzazione del lavoro e progettazione dei sistemi informativi*. (Esaurito)
4. Giuntella, Zucconi, *Fabbrica, Comunità, Democrazia. Testimonianze su Adriano Olivetti e il Movimento Comunità*. (Esaurito)
5. Della Rocca, *L'innovazione tecnologica e le relazioni industriali in Italia*. (Esaurito)
6. Ciborra, *Gli accordi sulle nuove tecnologie. Casi e problemi di applicazione in Norvegia*. (Esaurito)
7. Pisauro, *Programmazione e controllo della spesa pubblica nel Regno Unito*. (Esaurito)
8. Perulli, *Modello high tech in USA*. (Esaurito)
9. Centro Studi della Fondazione A. Olivetti (a cura del), *Le relazioni industriali nella società dell'informazione*. (Esaurito)
10. Martini, Oshat, *Per una memoria storica delle comunità locali*. (Esaurito)
11. Schneider, *La partecipazione al cambiamento tecnologico*. (Esaurito)
12. Bechelloni, *Guida ragionata alle riviste di informatica*.
13. Artoni, Bettinelli, *Povertà e Stato*. (Esaurito)

14. Santamaita, *Educazione, Comunità, Sviluppo. L'impegno educativo di Adriano Olivetti.*
15. Fabbri, Greco, *La comunità concreta: progetto e immagine.*
16. Fabbri, Pastore, *Architetture per il Terzo Millennio. Una seconda rivoluzione urbana?*
17. Schneider, Schneider, *Les fondations culturelles en Europe.*
18. Bechelloni, Buonanno, *Lavoro intellettuale e cultura informatica.*
19. Celsi, Falvo, *I mercati della notizia.*
20. Luciani, *La finanza americana fra euforia e crisi.* (Esaurito)
21. il Campo, *La professione giornalistica in Italia. Anno primo: 1988-1989.* (Esaurito)
22. Sartoris, *Tempo dell'Architettura – Tempo dell'Arte.*
23. Bassanini, Ranci, *Non per profitto. Il settore dei soggetti che erogano servizi di interesse collettivo senza fine di lucro.*
24. Maglione, Michelsons, Rossi, *Economie locali tra grande e piccola impresa.* (Esaurito)
25. Cuzzolaro, Frighi, *Reazioni umane alle catastrofi.*
26. D'Amicis, Fulvi, *Conversando con Gino Martinoli.*
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