Introduction

Domestic sovereignty (the right of a government not to be resisted by its subjects or citizens) and international sovereignty (a state's moral immunity against outside intervention) were once both widely believed to be absolute. This is no longer the case. Few contemporary theorists cling to the view that military intervention in a sovereign state's internal affairs is always impermissible, and even fewer endorse an unqualified ban on rebellion. But international sovereignty has not been eroded to nearly the same extent as domestic sovereignty. There is a reluctance to accept that foreign intervention is even prima facie justified wherever insurrection is. The US-led war to 'liberate the Iraqi people' was widely condemned, but it is inconceivable that efforts by the Iraqi people to liberate themselves would have been met with such opposition. Neo-conservatism seems to have been largely discredited in the public consciousness by its foreign policy of forcible democratisation. But an oppressed people's right to fight for democratic reforms in their own country remains unchallenged, as the international responses to the revolutions in Tunisia, Egypt and Libya illustrate. The prevailing view, then, is that armed intervention is not always justified even where rebellion with similar aims, employing similar means, is acknowledged to be a legitimate option for the victims of tyranny. *Insurrection and Intervention* assesses the moral cogency of this double standard by subjecting to philosophical scrutiny the various arguments that might be advanced in support of it.

INSURRECTION THEN

During the Later Roman Empire the prevailing political arrangements of earthly societies – particularly those that took the form of absolute monarchies – were believed to have been crafted by God in accordance with the ordering of the celestial kingdom. The monarch was divinely empowered, and his subjects were divinely consigned. From the nobleman to the farmer, each individual had been assigned his place by God. To intentionally disrupt these arrangements was therefore tantamount to challenging the Creator's will, and resisting the monarch was on par with resisting God himself. To quote St Paul:

> We should obey the powers that be [because] they are ordained of God and that whosoever resisteth the power resisteth the ordinance of God, and they that shall resist shall receive to themselves eternal damnation.[1]

Martin Luther, though willing to concede a right of passive disobedience in cases where the directives of government contravened the divine law,[2] maintained that the civil authorities were not to be actively resisted or overthrown under any circumstances. For 'even if the princes abuse their power, yet they have it of God, and under their rule the Kingdom of God at least has a chance to exist'.[3] Fellow reformer John Calvin taught that a wicked king was God's way of punishing a sinful people, and that obedience was therefore owed even to tyrants.

But it is in Jean Bodin's *Six Books of the Commonwealth* (1576) that one finds the most thorough condemnation of rebellion based on the doctrine of divine right. According to Bodin the prince is bound neither by his own laws nor by those enacted by his predecessors.[4] As far

[1] Romans 13:1–2.

[2] Martin Luther, 'On Secular Authority', in *Martin Luther: Selections from his Writings*, John Dillenberger (ed.), Garden City: Anchor Books, 1962, p. 399.

[3] Letter of Martin Luther to Nicholas Amsdorf, 25 May 1525. Available online at www.worldfuturefund.org/wffmaster/Reading/Religion/Martin%20Luther.htm, retrieved 23 August 2008.

[4] 'Just as, according to the Canonists, the Pope can never tie his own hands, so the sovereign prince cannot bind himself, even if he wishes'. Bodin, *Six Books of the Commonwealth*, M.J. Tooley (trans. and ed.), Oxford: Basil Blackwell, bk. 1, ch. 8,

as man-made legislation goes, 'the prince is above the law'. Be that as it may, a monarch that violates the principles of justice enshrined in Judeo-Christian scripture is guilty of 'treason and rebellion against God', says Bodin, and exposes himself to legitimate deposition by a foreign power.[5] A 'virtuous prince' is free to proceed against a tyrant either by force of arms or diplomacy.[6] The oppressed subject, however, does not enjoy the same prerogative. 'Not only is the subject guilty of high treason who kills his prince', writes Bodin, 'but also is he who merely attempted it, counselled it, wished it or even considered it'.[7]

The position rests on an analogy. 'If a father is a murderer, a thief, a betrayer of his country, incestuous, a parricide, a blasphemer or an atheist, though all the punishments imaginable would not be sufficient penalty for him, it is not for his son to play the executioner.'[8] The sovereign–subject relationship, the argument goes, is morally akin to the father–son bond. In fact the prince 'is even more sacred', and should be regarded as more inviolable even than one's own father.[9] Hence it is not the place of subjects to enforce the divine law against their monarch, or to punish his transgressions. From the point of view of the oppressed citizen, the monarch's iniquity is of no practical consequence[10] – a view that would soon be taken up and given a secular, contractarian rationale by Thomas Hobbes in *Leviathan*.

Tracing the authority of government to the persons governed rather than to the supernatural, Hobbes' fable of humankind's escape from the wretched 'state of nature' is much rehearsed. Where there is no power capable of enforcing rules of peaceful cooperation, Hobbes tells us, there is unfettered freedom to promote one's own interests.[11]

available online at www.constitution.org/bodin/bodin_.htm, retrieved 20 June 2008.

[5] *Ibid.* [6] *Ibid.* [7] *Ibid.* [8] *Ibid.* [9] *Ibid.*

[10] Bodin does admit one exception, allowing subjects to overthrow a tyrant whose claim to power is disputed – a usurper. But if the tyrant's authority is 'unquestionably his own', then rebellion is prohibited 'even though [the king] has committed all the evil, impious and cruel deeds imaginable'. Bodin, *Six Books*, bk. 2, chs. 4 and 5.

[11] Thomas Hobbes, *Leviathan*, C.B. Macpherson (ed.), Harmondsworth: Penguin, 1968, ch. 14, pp. 189–90.

The problem is that each individual's exercise of this right (the so-called 'right of nature') results in a state of 'war of every man against every man' in which life tends to be 'solitary, poor, nasty, brutish and short'.[12] The fear of violent death and the desire for commodious living impel the inhabitants of this anarchical condition to seek an escape. This is achieved when they each agree to divest themselves of their right of nature and to transfer it to a sovereign. Henceforth the sovereign alone wields the right of nature, while the contracting parties are bound not to interfere with his exercise of it. In return, the sovereign uses the power vested in him to maintain a peaceful environment that is conducive to the long life and prosperity of his subjects.

But importantly, the sovereign does not make any contractual commitments to his subjects; all promises are made *to him*. ('The right of bearing the person of them all, is given to him they make sovereign, by covenant only of one to another, *and not of him to any of them*'.)[13] This is crucial since, for Hobbes, the non-performance of covenant is the very *definition* of injustice.[14] Insofar as the disobedience of the citizens constitutes a breach of contract, then, it is an injustice on their part. But the tyranny or incompetence of the state can never be classified as such.

This, however, does not necessarily mean that the sovereign can do *no wrong*. We are introduced in *Leviathan* to what Hobbes calls the fundamental 'law of nature', which is to 'seek peace and follow it'. From this fundamental article Hobbes derives a further eighteen 'laws of nature', each of them identified as a means to peace. The

[12] *Ibid*., p. 186.

[13] *Ibid*., p. 230. Emphasis added. Furthermore, 'because every subject is … author of all the actions, and judgements of the sovereign instituted', the actions of a sovereign are not his own, but those of the people that vest authority in him. This also makes it impossible for the sovereign to engage in injustice, since 'to do injury to one's self is impossible'. Moreover, this means that any person who violently resists or punishes the sovereign for perceived misconduct 'punisheth another for the actions committed by himself'. *Ibid*., p. 232.

[14] 'When a covenant is made then to break it is unjust: and the definition of injustice is no other than the non-performance of covenant'. *Ibid*., p. 202.

fourth law of nature, for instance, demands that individuals repay their debts of gratitude.[15] Whether a sovereign can do wrong despite being incapable of injustice depends on the nature of these laws. Are they merely precepts of reason, telling people what they should do if they want to minimise their chances of violent death? Or are they moral requirements in their own right? Is the 'ought' in the fundamental law of nature a moral ought, or is it no more than the 'ought of rationality'?[16] Are the laws of nature hypothetical, or categorical imperatives? Admittedly one finds support for both interpretations in *Leviathan*, but Hobbes' exaltation of the law of nature as 'the eternal law of God' suggests that it is understood to be a divinely promulgated moral requirement.

If this is right then there is for Hobbes a morality *beyond* justice; a morality that does not presuppose or depend upon the existence of a social contract.[17] By violating any one of the laws of nature a sovereign can be charged with wrongdoing, despite not failing to honour the terms of any covenant.[18] Yet Hobbes is at pains to stress that wrongs of this order do not make a sovereign liable to rebellion or deposition. This makes sense once we notice that it is God who is wronged when the laws of nature are transgressed, not the people. The sovereign 'is obliged by the law of nature, and to render an account thereof to God, the author of that law, *and to none but him*'.[19] In the Latin version of *Leviathan*, which differs somewhat from the English, Hobbes is even more explicit: 'he who has the supreme power … can do no injury to his citizens, even though, by iniquity, he can be injurious to God'. Of King David's killing of Uriah, Hobbes writes that 'King David acted inequitably, and gravely sinned against God', but did no injury to Uriah himself.[20]

[15] *Ibid.*, p. 209.
[16] David Gauthier, 'Hobbes: The Laws of Nature', *Pacific Philosophical Quarterly*, 82(3–4), September 2001, p. 265.
[17] See Tom Sorell, 'Hobbes and the Morality Beyond Justice', *Pacific Philosophical Quarterly*, 82(3–4), 2001, pp. 227–42.
[18] See Sorell, 'Hobbes and the Morality Beyond Justice', p. 241. Indeed Hobbes states explicitly that the sovereign ruler is 'the subject of God and bound thereby to observe the laws of nature'. Hobbes, *Leviathan*, p. 265.
[19] Emphasis added. Hobbes, *Leviathan*, p. 376.
[20] See Gauthier, 'Hobbes: The Laws of Nature', pp. 272–3.

This is crucial since, as A.J. Simmons notes, 'your having a right to resist involves the idea that a wrong has been done to you; there is a claim to be pressed, a debt to be paid. Where there are no rights holders (other than God), there are no justified complaints (except from God)'.[21] This puts oppressed subjects in quite a predicament. Even though their ruler can do wrong, he can do no wrong *to them*. Yet, *they* wrong *him* by resisting his authority or deposing him. In this way, Hobbes denies the victims of tyranny the moral high ground from which to engage in legitimate resistance.[22]

Immanuel Kant takes an alternative route to the same conclusion. Unlike Hobbes, Kant is adamant that the subject does have rights against the sovereign. Unfortunately for victims of abusive regimes, however, these rights are not 'coercive'; that is, the duties that correspond to the rights are not enforceable.[23] To the oppressed citizen Kant delivers his moral instructions bluntly and without qualification: 'there is nothing to be done about it but obey'. The ban on active resistance is unconditional:

> Resistance on the part of the people to the supreme legislative power of the state is in no case legitimate … Hence there is no right of sedition, and still less of rebellion, belonging to the people. And least of all, when the supreme power is embodied in an individual monarch, is there any justification, under the pretext of his abuse of power, for seizing his person or taking away his life. The slightest attempt of this kind is high treason, and a traitor of this sort who aims at the overthrow of his country may be punished, as a political parricide,

[21] Anthony John Simmons, *On the Edge of Anarchy: Locke, Consent and the Limits of Society*, Princeton University Press, 1993, p. 149.

[22] *Ibid*. I should point out that Hobbes, too, allows for some exceptions to the rule. In *Six Books on Commonwealth*, Bodin, whose account closely resembles that of Hobbes in many respects, concludes that 'one must … suffer death rather than attempt anything against [the prince's] life or his honour'. Bodin, *Six Books*, chs. 4 and 5. This is something that Hobbes does not accept, maintaining that a contract not to defend one's own life is necessarily void. This is the inalienable prerogative of each individual. Thus self-defence against the sovereign's attempt on one's life does not constitute a breach of contract.

[23] Immanuel Kant, 'On the Common Saying "That May be Correct in Theory, but is of No Use in Practice"', in Kant, *Practical Philosophy*, Mary J. Gregor (trans. and ed.), Cambridge University Press, 1996, p. 302. See also H.S. Reiss, 'Kant on the Right of Rebellion', *Journal of the History of Ideas*, 17(2), April 1956, p. 185.

even with death. It is the duty of the people to bear any abuse of the supreme power, even then though it should be considered to be unbearable.[24]

Kant's rationale is that rebellion perverts the relationship between the rulers and the ruled. Where subjects protest that they are being abused or maltreated, their government can be expected to disagree, or at least to insist that its conduct is a response to the unjust disobedience and disorder of the people. In such cases, who is to decide which party is in the right? Kant answers: 'only he who possesses the supreme administration of public right can do so, and that is precisely the head of state'.[25] In other words if the sovereign is the supreme authority then he, not the people, must have the final say on such matters. To concede this right to the governed is to grant them sovereignty over the sovereign.[26]

The common thread here is not that all states are legitimate, or that the rights and moral immunities of the state are unforfeitable. Rather, it is that the question of state legitimacy has no practical significance from the point of view of the subject. In this connection John Locke represented a radical break with the past. D.A. Lloyd Thomas explains:

> For Locke to claim that there was a way in which a state could come to have genuine authority was hardly extraordinary to his contemporaries. What was extraordinary was to argue that the very grounds for holding that a state had legitimate authority (given that it satisfied certain conditions) were also grounds for rebellion (if it failed to satisfy those conditions).[27]

For Locke, legitimate political authority and justified rebellion are opposite sides of the same coin. A state wields legitimate authority if it is owed obedience, and a right to obedience obviously entails a right not to be violently resisted or overthrown. On the other hand where there is no moral duty to obey the state's directives (no

[24] Kant, *The Science of Right*, Second Part, 'Public Right', available online at http://ebooks.adelaide.edu.au/k/kant/immanuel/k16sr/, retrieved 22 December 2010.
[25] Kant, 'On the Common Saying', p. 299
[26] *Ibid*., p. 298
[27] D.A. Lloyd Thomas, *Locke on Government*, London and New York: Routledge, 1995, pp. 57–8.

'political obligation' as we now call it), resistance is justified, at least in principle.[28]

In Locke's version of the pre-institutional state of nature we each enjoy natural moral rights to life, liberty and property, as well as a second order right to defend ourselves against and to punish breaches of our natural rights. The need for a sovereign power arises because the private exercise of this second order right – the 'executive right of the law of nature' – causes certain 'inconveniences': excessively severe punishment of violators and endless disputes over whether or not a natural right has in fact been infringed on any given occasion. The transition from the state of nature to the sovereign state involves two steps. First, individuals contract to join together to form a 'people'. Each individual transfers his 'executive right' in the process, such that the collective becomes the sole possessor of this right. Thus, contracting members give up to the community their freedom to enforce the natural law and to punish infractions as they see fit. Once the community is formed and invested with the collectivised rights of its members, then 'the people' – by majority rule – entrust a government of their choosing to use this power in the pursuit of the common good and the protection of natural rights. Each individual that consented to join the society and to throw his or her rights into the pool is henceforth bound to obey the government entrusted by the majority.

There are three important points worth stressing here. First, although one can be bound to obey a government whose entrustment he did not assent to on this picture, one cannot be bound to obey any government without having freely agreed to join the society that it governs. Because people are 'by nature free, equal and independent', writes Locke, 'no man can be put out of his estate and subject to the political power of another without his own consent'.[29] Second, in Locke's version of the state of nature (unlike in Hobbes'), individuals are bound by moral constraints; they do not possess a 'right of nature', but must respect the life, liberty and property of those

[28] John Locke, *Two Treatises of Government*, Peter Laslett (ed.), 2nd edition, Cambridge University Press, 1967, II: 239.
[29] *Ibid.*, II: 95.

around them. Since political power is simply 'that power which every man, having in the state of nature, has given up into the hands of the society, and therein to governors', any government created by the people must be similarly constrained.[30] It follows that there are certain kinds of regimes that the majority is not at liberty to empower (for Locke, democracy, monarchy and oligarchy are all acceptable options, but the same cannot be said for tyranny and absolute dictatorship). Finally there is only one social contract, not two. Each individual consents to join civil society and to partly relinquish his or her rights to the collective. This is the social contract. Subsequently the community *entrusts* a government of its choice. The difference is not merely terminological. A trust conveys more of a privilege than a claim, such that the people may withdraw the trust at any time without injury to the trustee. Moreover the people are the judge of when and whether the trustee has acted contrary to the trust, whereas disputes over breach of contract must typically be resolved by a third party.[31]

This sets the bar relatively high. Only if he/she has registered consent, and the state lives up to a certain standard of justice – something at least approximating liberal democracy – is the citizen obliged to obey the state's directives and to refrain from active resistance. A survey of contemporary literature reveals just how deeply entrenched this position has now become. Today, the prevailing view is very much in line with Locke's, and is in many respects even more demanding.

INSURRECTION NOW

Locke is most commonly situated in the consent tradition of political obligation. According to consent theory an individual can bind himself to obedience only by freely submitting to the authority of the law-maker, either explicitly or tacitly. Locke, as we have seen, maintains that one cannot validly consent to a regime that violates the rights to life, liberty and property. To this, contemporary theorists

[30] *Ibid.*, II: 171.
[31] Simmons, *On the Edge of Anarchy*, p. 72.

have added that in order for consent to be free and voluntary it must be registered within a liberal democratic setting. In *A Theory of Justice* Rawls declares that 'unjust social arrangements are themselves a kind of extortion, even violence, and consent to them does not bind'.[32] Michael Walzer raises doubts as to whether consent can possibly be fully informed in the context of an illiberal state, likening consent given under unfree conditions to the loyalty pledged by slaves that have grown to 'love their servitude'. Since the history of his loyalty 'is a history of coercion', writes Walzer, the slave is free to resist 'even if [his] loyalty itself is freely given'.[33] For the same reason, the subject of an illiberal government cannot commit himself to obedience even if he emphatically consents to its authority. It follows that whichever act or forbearance is identified as that through which consent is given, it can only be binding if performed in a society that allows for 'civil liberty of the most extensive sort'.

For many of today's consent theorists, moreover, Locke's concession that democracy is not strictly necessary fails to withstand philosophical scrutiny. Locke tells us that consent to join a society is registered simply by residence within its boundaries. But the fatal errors of this view are by now well documented. For an act or omission to signify consent the agent performing it must be aware of the moral significance of what he or she is doing. One cannot submit to authority and be bound unknowingly.[34] Furthermore, the agent must have the opportunity to withhold consent, and doing so must not come at too great a personal cost. Residence fails to meet these criteria. An alternative token of consent has thus been identified: democratic participation, or voting in free and fair elections.

Two versions of democratic consent theory can be distinguished. According to the weak version, to vote for a candidate in an election is to consent to his appointment to a position of political authority, and therefore to commit oneself to obedience should that candidate's

[32] John Rawls, *A Theory of Justice*, Oxford University Press, 1972, p. 343.
[33] Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship*, Cambridge, MA: Harvard University Press, 1970, pp. xii–xiii.
[34] Anthony John Simmons, *Moral Principles and Political Obligations*, Princeton University Press, 1979, p. 64.