



Emergencies and Politics

In this book, Tom Sorell argues that emergencies can justify types of action that would normally be regarded as wrong. Beginning with the ethics of emergencies facing individuals, he explores the range of effective and legitimate private emergency response and its relation to public institutions, such as national governments. He develops a theory of the response of governments to public emergencies which indicates the possibility of a democratic politics that is liberal but that takes seriously threats to life and limb from public disorder, crime or terrorism. Informed by Hobbes, Schmitt and Walzer but departing substantially from them, the book widens the justification for recourse to normally forbidden measures, without resorting to illiberal politics. This book will interest students of politics, philosophy, international relations and law.

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Emergencies and Politics

A Sober Hobbesian Approach

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For Brenda and Conor McHugh

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Preface

Emergencies are situations, often unforeseen, in which there is a risk of great harm or loss, and a need to act quickly and decisively if the harm or loss is to be averted or minimized. An agent may be faced with a risk of great harm or loss to himself, or great harm or loss to others, sometimes a whole citizenry. The agent may be an individual, acting in an unofficial capacity, or a government or public agency. Is it morally permissible for agents of any of these kinds to avert harm or loss by means that morality or liberal politics would normally prohibit? Should they always intervene? And when they can successfully avert or limit the harm, are they permitted to do so at all costs, including moral costs? If the only way of saving many lives is by lying, or stealing, or resorting to violence, should the relevant agents lie, steal, or resort to violence? Are there certain things, such as the infliction of torture, that are unthinkable means of saving even large numbers of lives? Finally, are there certain things that institutional agents may do in coping with a public emergency that individuals are never permitted to do in confronting a private emergency? These are among the normative moral and political questions raised in this book.

With many other writers, I argue that emergencies can justify types of action that would normally be regarded as wrong. Especially where what is at stake is life or lives, and there is no other way, the moral overridingness of saving life makes lying or stealing or resorting to violence to save a life permissible, and sometimes obligatory – other things being equal (Chapter 1). The escape clause is necessary because there are emergencies and emergencies. If the reason one is faced with the demand to save a life is that one has negligently put that life in danger, then the need for doubtful means to bring off a rescue is partly of the agent's own making. In that case, the usual excusability of the wrong that has to be done to meet the emergency may be undercut altogether or at least reduced. In general, emergencies just waiting to happen because they have negligently been allowed to develop excuse

less wrongdoing than unavoidable emergencies. Emergencies that have been allowed to develop include emergencies that have been sought out, e.g., by devotees of ‘extreme’ sports, or by people who like fighting.

The overridingness of saving life and of not putting life in jeopardy creates a presumption in favour not only of intervening in an emergency but also of preventing it altogether. There is also a presumption in favour of what I call ‘domesticating’ emergencies, at least in many cases (Chapter 1). Emergencies are domesticated when types of routine are developed for *containing* the more familiar types of imminent harm or loss efficiently rather than preventing them. In the case of public emergencies in developed countries, these routines are the responsibility of specialized emergency services. The repeatedly rehearsed techniques of firefighters and drills by the rest of us have succeeded in minimizing the effects of conflagrations in factories, schools and hotels, for example, and comparable procedures of ambulance personnel now prevent deaths from heart attacks.

The worse an avoidable emergency is, the more stringent the obligation to prevent or domesticate it. The worst of the avoidable emergencies are what can be called ‘public emergencies’ – threats to life facing significant numbers of people or whole populations. The reasons these are the worst emergencies are that they involve significant harm to large numbers of people and that they can trigger a general descent into ruthlessness that I call a moral ‘black hole’. This is a situation in which most of a large number of people behave as if everything is permitted. Although public emergencies are more likely to give rise to black holes than private ones, black holes do not *necessarily* attend public emergencies, and their relative rarity in fact makes them weak reasons for avoiding emergencies. Still, the large-scale harm threatened by public emergencies is by itself a reason to domesticate them or prevent them. Another is that public emergencies multiply private emergencies to which individuals are often unequal, and in which they sometimes have to play God.

Chapter 1 discusses the ethics of private emergency – emergency facing individuals – and indicates a connection between effective and legitimate private emergency response and the existence of public, including political, institutions. Chapters 2 to 5 develop a theory of the response of governments to public emergencies. In an earlier version of the book, I tried to bring the full range of public emergencies within the scope of the theory, but to make it manageable, the discussion is

now mostly confined to political emergencies. The theory developed combines materials from Hobbes and Raz to indicate the possibility of a democratic politics that is (thinly) liberal but that takes more seriously than other liberalisms threats from disorder or crime or terrorism to life and limb. The theory is Hobbesian, but with many departures from the unreconstructed Hobbes. Being liberal, the account invites objections from theorists who think that questions about emergency response are nothing less than the undoing of liberalism. It invites objections in particular from critics of liberalism who have themselves appropriated Hobbes for the articulation and defence of an *illiberal* politics (see Chapter 4).

The responsibility for preventing public emergencies, or containing them when they cannot be prevented, has traditionally fallen on nation-states and their specialized protective institutions, including police forces, armies, rescue and health services, and agencies for such things as food hygiene and building standards. Governments have an obligation not only to respond to threats facing citizens but to minimize the need for private rescue and for individuals to play God. In this way emergency politics – the theory of the obligations of legitimate public institutions – takes up the slack left by emergency ethics. Not only politics at the level of individual nations is implicated. Supranational institutions are also increasingly assigned a role in emergency response.

Political theory and law usually take war, internal or external, to be the prototype of the public emergency, and this will be the type of emergency that gets most attention in this book. According to some theorists, internal war is to be prevented by rigorous legal controls on aggression, and war in the international arena is to be prevented by strategic alliances, shows for the benefit of non-allies of a willingness and ability to repel invasion, and, in recent times, by the development and enforcement of international law.

What happens when preventive measures fail and war is about to break out or has already started? In that case, political theory and law alike have traditionally placed the power to mobilize force in a head of state or a committee with dictatorial powers, these powers to be retained not only to meet an existing emergency but according to some theorists, for as long as there is a threat of one. Theorists divide over whether a significant threat of war is permanent or temporary. The view that the threat of war and the corresponding need for dictatorship are at most temporary is close to common sense, and eventually I will

endorse it. But the opposing view is the more interesting of the two philosophically, and there is a considerable amount to be learned from seeing what is wrong with it.

Thomas Hobbes is the main early modern source of the view that human beings are by nature warlike, and that highly centralized, unlimited power is needed all the time to keep these warlike tendencies in check (Chapter 2). A more recent variation on this position is due to Carl Schmitt.¹ Up to a point influenced by Hobbes, Schmitt's view (Chapter 4) also reflects aspects of the constitutional crises of the Weimar period in Germany. Hobbes and Schmitt agree on more than the point that a public emergency needs a strong response from a government with unified decision making. They also agree that the purpose and correct form of a state in *normal* times is to be drawn from the requirements for a state response to emergency.

There is something of value in this point of agreement between Hobbes and Schmitt. Emergency makes vivid the worth of a unitary, central authority that can quickly translate decision into action. But emergency can also put in an unflattering light the divided and protracted decision making of peacetime. Divided decision making is incipient war, according to Hobbes, and the purpose of the state is to avoid war. Again according to Hobbes, behaving as a citizen is best seen as an exercise in self-preservation, so that there is something irrational about disturbing the peace or unsettling a government that is good at maintaining order. Someone who accepts the responsibilities of government is supposed to decide in a more impartial way than citizens what their protection requires, and citizenship requires deference to that co-ordinating and dispassionate directing intelligence. The design of the state is to be dictated by the overriding goal of public safety, a goal that everyone would agree to adopt if they were clear-headed about the consequences of not doing so.

For Schmitt, on the other hand, government is not for public safety. It is for energizing a popular will and, for example, enabling it to realize in history a certain sort of mythic self-image in the face of enemies. The

¹ Schmitt's views have been rediscovered and widely discussed since 9/11. He is only one of a range of European thinkers in the 1920s and 1930s who brought Hobbes's ideas to bear on the political instability of the period. See L. Foisneau, J.-C. Merle and Tom Sorell, eds. *Leviathan Between the Wars: Hobbes's Impact on Early Twentieth Century Political Philosophy* (Frankfurt: Peter Lang, 2005). Schmitt was a consistent admirer of Hobbes, although a critical one.

vehicle for energizing a people is a personal will in tune with a people's will, the sort of personal will given authority when dictatorial powers are conferred on a political leader in an emergency. If Schmitt is right, emergency makes vivid the superiority of decision to debate even in a non-emergency situation. Even in normal times, according to him, decision concentrated in a dictator is a better channel for a people's will (and so for democracy) than the rational debates of a parliament: for one thing, these debates force matters that people would or ought to be willing to die for into the distorting mould of values that can be balanced against one another and decided between coolly after rational debate.

There is an important difference between these two appreciations of dictatorship, and one that seems to me to show that, of the two, the unreconstructed Hobbesian one is much to be preferred. I have in mind Hobbes's implied critique of a kind of fundamentalism that Schmitt positively requires in a dictator. Hobbes nowhere claims that the commonwealth should be dedicated to values that define its citizens as a people in history. On the contrary, he denies that citizens ought to be willing to fight to the death for such values. Both personal and group fundamentalism are things that the commonwealth is bound to discourage, precisely because they lead to violent conflict (Chapter 2). The purpose of the commonwealth is nothing other than the preservation of life and productive activity, and fights to the death in any cause other than collective self-defence or survival are outlawed. Authorized dictatorship is the medium by which the goal of the security of each can be pursued without being sidetracked by disagreement. When each citizen agrees to be guided in their public behaviour² by the laws of the sovereign, according to Hobbes, each agrees not to let practical decisions be biased by the self, the present and the pleasurable. Dictatorship is supposed to embody public and impersonal judgement, and is supposed to be a means of reducing a plurality of conflicting security plans to a single co-ordinated plan. Not only does this plan rise above the selves of each of the many and the demands of the present time:

² In his *The Leviathan in the State Theory of Thomas Hobbes* (1938) Schmitt criticizes Hobbes for undermining his own lessons about the extent and absoluteness of state power by limiting its scope with a distinction between interior acts of will and belief and outward behaviour. Schmitt and Hobbes are on the same side, however, in preferring decision to debate and unity to plurality in the body politic.

it rises above various illusions about destiny that come from shared myths and religions.

Hobbes's position, in fact, tells against three kinds of fundamentalism: the fundamentalism of an individual who would rather fight to the death than sacrifice his personal values, goals or self-image; the fundamentalism of a leader dedicated to realizing a possibly myth-based will of the people, as in Schmitt; and the milder fundamentalism of people and governments who would rather fight to the death than give up the continuity of a network of shared practices that defines them as a community when that community is threatened militarily. This milder fundamentalism (Chapter 5) does not necessarily have associations with mythic destinies, but it does accord great importance to a sort of continuity which confers unity and identity on a people that the state represents. According to this milder fundamentalism, defended in our own day by Michael Walzer, a supreme emergency is constituted not only by a large-scale threat to life but also by this combined with a threat to a long-established collective *way* of life. It does not take a dictator to safeguard such a way of life. A democratic government could do it. But, according to Walzer, such a government has to be prepared to go to great lengths in the defence of the continuity of practices that binds them together historically. 'Going to great lengths' means not only fighting to the death, but if necessary fighting ruthlessly – in defiance of the scruples felt by the government in normal times. According to Walzer, ruthless self-defence is legitimately open even to undemocratic governments defending communities that are strongly hierarchical and unequalitarian.

This is not a book about Hobbes and Schmitt, or a book about Hobbes, Schmitt and Walzer. It is a book about right or permissible responses to private emergency and to an important subclass of public emergencies, a book that is informed by Hobbes, Schmitt and Walzer but which strikes out in a direction none of them takes. Public emergency is harder than private emergency to respond to, and, in the form of large scale violent conflict both within a jurisdiction and internationally, it gets most of the attention in the book. A modified Hobbesian approach to public emergency is developed and applied. It is a liberalized but very thinly liberalized Hobbesian position. This position stands up to criticisms of liberal emergency response made by Schmitt and is much more faithful to the unreconstructed Hobbes than Schmitt's own views, influenced though they are by Hobbes. The thinly

liberalized Hobbesian position is also superior to other positions, such as Walzer's, that justify strong emergency response by reference to the value of community, as opposed to the values of survival and the avoidance of serious harm. What is more, it can be applied to problems of emergency response facing individual jurisdictions (Chapter 6) as well as the international order (Chapter 7).

I agree with Hobbes that the state has to be divorced from fundamentalisms, even of the mild kind, and that the value of security defines some of the interests that the state must protect before others. However, Hobbes was wrong to think that government should be a permanent, authorized dictatorship for collective self-preservation. *Permanent* dictatorship is not a necessary form of government, because contrary to Hobbes, government is not a response to an emergency permanently in the offing when human beings live together. Hobbes makes too many forms of disagreement count as latent war, and he exaggerates the degree to which the sources of the disagreement are written into human nature. According to Hobbes, individuals are not cut out by nature for rising above the passionate pursuit of short-term gratification in the present, and the only way to avoid the conflict that results is for them to agree, out of fear, to be governed by a unified source of decision separate from themselves.

Detachment from passions is accomplished by the delegation of decision making. Delegation to whom? Hobbes's answer is, 'A person or assembly willing to rule in the interest of the safety of the many'. According to Hobbes, the sovereign can be a human individual with passions, but if he is to do his job he has to detach himself from these passions in order to identify with the vital interests of his subjects. Hobbes does not think this is *beyond* a would-be head of state. So, even according to Hobbes, human detachment from the passions is sometimes possible. This is the key to a more sober Hobbesianism than is to be found in Hobbes. The concession that detached practical reasoning is sometimes possible for individuals, taken together with the implausibility of saying that all disagreement among subjects is incipient war, opens the way to a form of government that can be democratic to the extent that each citizen can detach himself from the practical biases that Hobbes identifies. So *dictatorship* falls out as unnecessary as a condition of a state that is organized around the value of security. Security can instead attract democratic deference.

A neo-Hobbesian position is possible, then, that escapes some of the implausibility of the Hobbesian original. But it, too, turns out to be unacceptable (Chapter 3). According to the neo-Hobbesian position, security is the organizing goal of a state contracted for by individuals whose citizenly decisions proceed from suitable detachment. Again, liberties are what law silently permits when law is tailored to what security requires. The problem is that security is not a credible *organizing* value of life in the state, and liberty is improperly conceived as what is permitted by law geared to security. Security is more of a *constraint* on an organizing value, namely that of leading one's life autonomously, and liberty facilitates autonomy. Another way of putting the point is by saying that a liberalism with some concessions to Hobbes is better than neo-Hobbesianism.

A version of liberalism that can make these concessions and that incorporates the right general understanding of practical reason is Raz's (Chapter 3). What I call liberalism with Hobbesian sobriety is Raz's liberalism, with some of its security provisions emphasized, and with some of its communitarian elements and some of its outlying claims about personal well-being subtracted. The essence of liberalism with Hobbesian sobriety (I sometimes use the phrase 'Hobbesian sobriety' for short) is that, while other things than security of life and limb can and do matter enormously to people, including – to take Raz's examples – marriage, parenting, the practice of many occupations and professions and some of the things that are prized by fundamentalists of different kinds, security of life is a condition of many or most. Security thus makes sense as *a* fundamental – not necessarily *the* fundamental – value for a state in which an indefinite range of other things – organized by the value of leading one's life autonomously – also matter. By the same token, things that are inconsistent with security are *prima facie* ineligible as things a state can be dedicated to.

More precisely, where security would seem to a detached liberal-democratic judgement to be undermined by a practice or an institution that matters to some people, then that is *prima facie* a good reason for suspending the practice or institution, sometimes by making it illegal. Though some of the things that conflict with security become visible only in emergencies, the fact that states should be designed so as to minimize these conflicts is relevant even in normal times. In this way emergency can be a guide to the design of the state outside periods of emergency. The normal institutional setup, including the scheme

of non-emergency law, has to discourage practices that contribute to collective insecurity of life and limb. These practices include familiar forms of criminality, but they also extend to fundamentalisms pursued by both individuals and governments.

The case for liberalism with Hobbesian sobriety having been made in Chapters 2 to 5, the theory is applied in the final two chapters to state responses to domestic emergency – primarily in the form of counter-terrorism and public order offences – (Chapter 6), and international humanitarian intervention and the over-consumption that partly causes climate change (Chapter 7).

Liberalism with Hobbesian sobriety takes over from Hobbes the idea that to be a good law, a law addressing a security threat has to be necessary: many illiberal prohibitions that have actually been introduced in the name of security – including several associated with the ‘War on Terror’ – may in fact be unnecessary or even self-defeating as security measures (Chapter 6). They may add nothing to already existing measures or create a backlash that itself increases insecurity. In recognizing this, liberalism with Hobbesian sobriety makes available a non-liberal basis for opposing security measures: namely the existence of a reason to think they would be ineffective or indirectly disabling of security. The democratic character of liberalism with Hobbesian sobriety, and its emphasis on detachment as a desideratum of good judgement, further constrain the introduction of the most illiberal security measures to meet emergency. Measures that seem inconsistent with the formal equality of citizens, measures that seem to be inconsistent in application with the equal status of citizens, are objectionable from the point of view of liberalism with Hobbesian sobriety, even though the value of equality before the law can be acknowledged by regimes that limit liberties.

The sober Hobbesian account supports dirty-handed government action in the face of emergency when the threat is big enough and imminent enough, but because it connects emergency with threats to life and limb, it does not support dirty-handed action in defence of ways of life simply. On the contrary, it affords resources for critical detachment from ways of life outside periods of emergency, especially where they are illiberal or at odds with personal security. Again, although liberalism with Hobbesian sobriety calls for detachment on the part of the many who are co-citizens and subject to a shared coercive legal order, it does not call for cosmopolitan detachment. The

security of co-citizens matters more to a liberal government than the security of other people, and, when the security of co-citizens conflicts with cosmopolitan aid or foreign humanitarian intervention, that is a reason for omitting that aid or that intervention. This means that liberalism with Hobbesian sobriety conflicts with the non-statist ‘human security’ approach that has become influential in some international institutions and among some academic writings on international relations. This conflict is not necessarily to the discredit of an approach influenced by Hobbes, since ‘human security’ seems to inflate or revise the concept of security in ways that are objectionable (Chapter 7). Sober Hobbesianism also applies informatively to two kinds of emergencies in international relations: militarized repression or expulsion of some of a foreign population by its government, and the evolving global climate change emergency (Chapter 7).

I started thinking about emergency in writing a previous book, *Moral Theory and Anomaly*.³ There I took up the question of whether moral theories and the conventional morality that they systematize are sometimes inapplicable. Emergencies fit in with that topic, because they can seem to be situations in which conventional morality lapses, and in which systematizations of conventional morality cease to be applicable in turn. The present book gives reasons for thinking that emergencies are entirely accessible to conventional morality and moral theory, while also admitting that they engage a section of conventional morality and moral theory whose applications are not every day. Emergency often involves threats to life and so engages with precepts about saving life and not taking life that do not have to be applied routinely in well-ordered, prosperous and peaceful places. But the fact that they do not have to be applied routinely does not mean that their overridingness cannot be recognized even in normal times. Emergencies do not typically create a moral black hole in which suddenly everything is permitted. Still less do emergencies operate in such a way that things done in them are neither right nor wrong. Instead, emergencies point to the priority of saving life and minimizing serious harm among the reasons for action on which morality concentrates.

³ (Oxford: Blackwell, 2000).

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