

FINDING THE MIDDLE WAY: THE FORMATION OF DEMOCRACY AND THE
CONFLICT OF AUTHORITY AND AUTONOMY

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ABSTRACT

FINDING THE MIDDLE WAY: FORMATION OF DEMOCRACY BETWEEN THE CONFLICT OF AUTHORITY AND AUTONOMY

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This thesis aims to find a place where in the conflict of autonomy and authority there is a place for a democratic state to exist. The possibility of a democratic state that could have legitimate authority over its subjects is through consent of the subjects. I claim that individuals in a given neutral state in which there is no sign of a political body that has legitimate authority, will form a body that carries properties of a democratic state. I argue that if there is a possibility for the subjects to refrain from democratic participation, democratic participation can be considered as a way of expressing consent that would enable the state hold legitimate power and impose institutional obligations to its subjects.

Keywords: Authority, Autonomy, Consent, Legitimacy

ÖZET

ORTA YOLU BULMAK: OTORİTE VE OTONOMİ ÇATIŞMASINDA DEMOKRASİ OLUŞUMU

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Bu tez otonomi ve otorite çatışması arasında meşru otoriteye sahip demokratik bir devlete yer bulmaya çalışmaktadır. Bir devletin vatandaşları üzerinde meşru otoriteye sahip olmasının yolu vatandaşların rızasından geçmektedir. Bu tezde bireyler nötr bir halde birlikte var oldukları ve meşru otorite taşıyan bir yapı olmadığı durumda kendi rızaları ile demokratik özellikler taşıyan bir devlet kuracaklarını tartışıyorum. Bu rızanın gösterilme yolunda bireylerin eğer işbirliği yapmama ihtimalleri varken demokratik katılım yapıyor olmalarının rıza göstermek için yeterli olduğunu savunuyorum.

Anahtar Kelimeler: Meşruiyet, Otorite, Otonomi, Rıza

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TABLE OF CONTENTS

ABSTRACT.....	iii
ÖZET.....	iv
ACKNOWLEDGEMENTS.....	v
TABLE OF CONTENTS.....	vi
LIST OF TABLES.....	vii
CHAPTER I: INTRODUCTION.....	1
CHAPTER II: THE CONFLICT OF AUTHORITY AND AUTONOMY.....	3
2.1 State and Authority.....	3
2.2 Autonomy.....	5
2.3 The Conflict Between Autonomy and Authority.....	7
2.4 Limits of Authority.....	10
2.5 Legitimacy.....	12
CHAPTER III: CHOOSING DEMOCRACY.....	16
3.1 Scotts and Ernests.....	16
3.2 Dominant Strategy Equilibrium and Nash Equilibrium.....	19
3.3 The Game and Democracy.....	20
CHAPTER IV: CONSENT AND OBLIGATIONS.....	25
4.1 Obligations.....	25
4.2 Consent.....	27
4.3 The Relevance of the Game.....	28

4.4 Democratic Participation as a Way of Expressing Consent.....	30
CONCLUSION.....	34
REFERENCES.....	36

LIST OF TABLES

1. The Game of Scotts and Ernests.....	24
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CHAPTER I: INTRODUCTION

Political philosophy since ancient times has manifested itself as a means to understand the link that ties the subject to the ruler, how the ruler should rule and why the subjects should obey the rule. The existence of the efforts of understanding these issues says something, there seems to be an incompatibility at best, with the rulers, their rules and the subjects. Men, due to their nature as beings that have the ability to choose how and on what grounds they would act have a duty to be autonomous and the state's claim to authority to be able to function and even exist as a ruling mechanism gives birth to this incompatibility. Whether the matter of discussion is a rule of unanimous direct democracy or an absolute monarchy the conflict between autonomy and authority remains. This problem is not as ordinary as it seems to be. It has many layers starting from explaining the concept of the state and many conceptions of it. And continuing with many layers such as why should people choose between one conception of the state over another and when or if they choose how that particular state could legitimately have power over them. In this thesis I hope to give an answer to how a state that claims to have legitimate authority can exist in the conflict of autonomy and authority and if it can how this particular state could be formulated.

This thesis is structured as follows, In the second chapter of the thesis I explain what I mean by authority and autonomy and the conflict that arises from those two concepts which manifests itself as the primary problem that I try to tackle. The third chapter is on my claim that individuals in a state of nature, if they act rationally, will choose to form a political body that resembles a democratic state, I formulate this claim by a thought experiment, a game that is played by two distinct groups of people. And in the fourth chapter I will explain how this game relates to the world that we live in, how political obligations are created in an environment of that sort and how democratic participation can be considered as a way of expressing consent that would make a democratic state legitimate.

CHAPTER II: THE CONFLICT OF AUTHORITY AND AUTONOMY

2.1 State and Authority

A state is a political body that has been acknowledged by the subjects over whom the rule is exercised on as having supreme authority within a territory over a certain population. (Wolff, 1970, p.3) The particularities of a given state may vary from conception to conception, an ancient Greek city state that is ruled by direct democracy is as much as a state as absolute monarchy, such as Louis XVI's France when he said "l'etat c'est moi". But the concept of the state stays the same, as long as that given state fulfils the requirements of having acknowledged supreme authority and uses that authority in taking actions. The requirement of using authority in my opinion is under discussed at best. A body may have acknowledged supreme authority in a given territory and over a certain population but may decide to not act upon it. In that case that body can not be considered a state. Being a state requires that the body should act according to the aims of the state whatever that set of aims should be.

Having acknowledged supreme authority by its subjects is a defining characteristic of a state and when we are dealing with the term authority we have to be very precise in order not to scatter the argument all around the place. Authority may simply be

defined by the right to issue commands and have the correlative right to be obeyed. (Wolff, 1970, p.4) There are some discussion that this way of defining authority is inaccurate, since authority entails things other than just commanding such as the right to legislate, to grant permissions and so on (Raz, 1979, p.11) But I do not see why we can not see those powers as commands. Since for example a legislation can be considered as a de facto command on all subjects if exemptions are not specified. So there is no pervasive reason to not to use Wolff definition of authority.

It is important to note that having authority should not be confused with having power. Having authority is different from having power in a way that power is more closely related to the ability to use coercion and compel compliance. To clarify this point with an example, when an armed group of robbers decide to rob a bank and coerce the clerk to fill the bags with money at gunpoint it is not the case that the robbers have the “right” to demand money from the clerk but surely they have power over the clerk due to the potential threat that they pose. The imperative tone of the robbers and a person that has authority, say a drill sergeant, seems to be similar but the weight that the words that were uttered carry are drastically different. The leader of the robbers may command another robber to hold his gun to a specific person or go and keep the car running but this is not the same with the “order” that he gives to the clerk. (Hart, 1961, p.19)

To make the point clearer, when a police officer utters “Stop!” it is not the same with a robber uttering “Stop!”. This difference arises from authority not residing in commands, or orders but the persons and institutions. The imperative utterances of the

word “Stop!” have difference not because of context or the intent of the person that utters the word. The difference is that a police officer has authority whereas the robber does not. As Wolff stated in “In Defense of Anarchism” “Thus authority resides in persons; they possess it - if indeed do at all - by virtue of who they are and not by the virtue of what they command.” (Wolff, 1970 p.6) Meaning that I have a duty to obey the command from a person of authority because that person has authority to give commands not because of the moral weight of that particular command. If the direction would come from a person that holds no authority over me I may take it as a suggestion and decide according to the reasons that I am aware.

2.2 Autonomy

On the other side of the argument lies autonomy. It goes without saying that all men are responsible for their actions. That is because men are capable of choosing how they will act. Being able to choose entails that men are responsible for their actions, but taking responsibility for their actions is another thing. (Wolff, 1970, 12) Taking responsibility for one’s actions involves deliberation on how one should act. That lays more burden on men, the burden of reflection, setting principles and such. Since men have the capability of reasoning on their actions, they are under constant obligation of being responsible for them. Of course the people with mental impairment and children are exception to this case. Their lack of ability to reason about their actions and their consequences relieves them of their obligation. Still an argument can be made that children have some kind of ability to choose even before they reach the age of discretion and they might have some sort of responsibility for their actions.

Having an obligation to take responsibility does not necessarily mean that every man always deliberates on his actions, one might act wrongly but still be able to take responsibility for one's wrongdoing. As Wolff suggests, "When we describe someone as a responsible individual, we do not imply that he always does what is right, but only that he does not neglect the duty of attempting to ascertain what is right." (Wolff, 1970, p.13)

So the responsible man is bound by the moral constraints of his own making. Of course he can take advice from others but this is merely an advice, an advice of the form that when receive I ask someone how to properly season a steak. But I am alone the cook of that steak. He is not bound by other people's constraints, he arrives at his moral constraints by the reasons of which he is aware in the form of imperatives. He is self-legislating. Meaning that he is autonomous. While claiming that the responsible man is autonomous I also claim that being autonomous effectively requires the responsible men to make deliberations beyond his socialisation. Meaning that the all things considered judgements have to be made from a position that would go beyond the considerations of sex, race, economic status, a position the would resemble Rawls' original position. (Rawls 1971, p.118)

Kant (Kant, 1997, p.43) argues that moral autonomy is a submission that a man makes to himself if he is capable of choosing. He is not bound by the wills of another but of himself. Of course this does not mean that men can not forfeit a part of their autonomy or whole of it. Men can put themselves in a condition of obedience without any reflection and deliberation of what his actions would entail, go under some-

one else's will and act solely on an other's imperatives. But it is clear that it does not relieve them from having an obligation to be responsible for their actions.

There can be many ways of forfeiting one's autonomy. One may give up one's autonomy without any condition and duration, go under a position of mindless slavery with one's own choice or give up one's autonomy for a single purpose for a limited duration. It is important to note that the only way that the responsible man could forfeit his autonomy is by his own choice, whether he would want to serve under a master or whether he wants to take up a job. He and only he can give some one the right to give commands over himself. Even in the case of a plane crash. He may do as the pilot or cabin attendant willed not in virtue of the fact that he is the pilot but because he decided to go under the pilot's or cabin attendant's command considering the reasons of which he is aware such as not to create chaos and so on.

2.3 The Conflict Between Autonomy and Authority

The conflict shows itself here, in on the hand there is the notion that it is the defining characteristic of the state is to have the acknowledged supreme authority in a given territory and to have the will to rule (since if that particular political body is not claiming any authority it is not really a state in the sense we understand it). And on the other hand men having a natural duty to autonomy and thus the solid argument that they will refuse to acknowledge a will that would be over theirs, someone that will have the last say on their actions. One of the expressions of this conflict comes from Joseph Raz in his book "The Authority of Law", "To be subjected to authority,

it is argued is incompatible with reason, for reason requires that one should always act on the balance of reasons of which one is aware” (Raz, 1979. p.3) Meaning that men will not accept that they have a duty to obey any laws just because they are laws. They will make their own all things considered judgements since they have a duty to be autonomous and be the author of their own decisions. Thus prima facie a state’s authority over an individual seems impossible by itself. So the dilemma is formulated as follows, as Wolff presents it, there can be no de jure legitimate state that would have authority over all of its subjects and the subjects would have an obligation to obey the commands of the state at all times thus philosophical anarchism would present itself as the only way out of this dilemma.

It seems that this conflict between autonomy and authority leaves only one way for a state to exercise legitimate authority. This way is by choice, the choice that men would consent to submit themselves to the authority of a state and forfeit a part of their autonomy. This means that every single individual that is dwelling in the territory that a state claims to be the supreme authority in need to have consented to that state’s claim to authority.

I believe that an individual’s consent to going under a state’s authority can be thought of as a similar process as an individual taking up a duty to do something for another individual, a promise. The mechanics of this process of claim and duty creation was pointed out by H.L.A Hart in his article “Are There Any Natural Rights” (Hart, 1955) and with a little bit of tweaking we may be able to apply this process to the state’s and subjects case. The main assumption of autonomy is formu-

lated as, people having the right to be free due to their ability to choose. This freedom manifests itself in two ways, the freedom to act as they will and being free from the use of coercion and force. This right to freedom does not come from being part of any given community or having any ability other than being able to choose, apart from other moral rights this right does not come from any action, it just is. This means that other rights and correlatively duties come from voluntary acts of people.

This way of formulating the natural right to be free seems to entail this as well, people due to their ability to choose do have the freedom to choose as well. Meaning that they have the freedom to confer rights and take on duties by voluntary acts or should be able to be relieved from their duties if they willed. This implies that in order for A to be able to rightfully claim something from B, B must have conferred that right to A via a voluntary action, a promise, a contract and so on.

An initial relationship with the state should come to be in a way that would suit this sort of paradigm. For me to have any sort of duty towards a state, a duty to obey and so on, I must first confer the right to rule me to the state by my voluntary actions. Meaning that I must forfeit a part of my authority to the state. The nature of those actions will be discussed later. But there should be a difference between the choice I make that ties me to a particular state and a choice I make that ties me to a particular person. When I decide to be part of a state it is not a moral call due to my duty to autonomy. It is not a moral call since I do not have a moral duty to become a part of a given state. I make an institutional call to become a part of a state, in a way I gain a new status as a subject due to my newly found tie to an institution. The duties that

stem from me acknowledging a particular body as the supreme authority are not the same duties as are created by say, a promise to another person. Being a part of a state and acknowledging a state as a holder of supreme authority I give the state the moral power to impose institutional duties and I expect to enjoy correlative institutional rights. Such as the right to vote or the right to have property in the territory that the state claims to have supreme authority in.

2.4 Limits of Authority

What happens after an individual has consented to take up obligations by being a subject of the state is not clear. It is not clear in the sense that it is doubtful what this authority entails. Meaning that whether a state has authority to order anything at any time and any context that it likes to from its subject or whether the state's authority has a limit is open to discussion. The states that claim to have authority on their subjects also claim to have the right to decide where the limits of their own authority start and where they end.

There have been some arguments that suggest that the state has the ultimate authority on all of the issues that happen under its particular domain. Jean-Jacques Rousseau argued that having a social contract “gives to the body politic absolute command over the members of which it is formed; and it is this power, when directed by the general will, that bears, as I have said, the name of Sovereignty” (Rousseau, 1988), or more recently the United Nations charter implies that sort of ultimate authority to

a state within its domain. The article 2 paragraph 7 reads as “Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.” (United Nations Article 2 Paragraph 7) What this passage suggests is that a state that is a member of the United Nations can not be intervened by other member states on any grounds which fall “essentially within its domestic jurisdiction” giving a state, in the international arena, ultimate authority in its domain. An opposition to this comes from John Locke, stating that the supreme authority of the state is not absolute. It only covers the issues that is related to the “proper” rule of the state and it is ultimately tied to the consent of the subjects. (Locke, 2003, p.118)

Having ultimate authority seems to entail that a state claims to be the final decision maker regarding its subjects actions. This is clearly problematic. The problem is that there has to be something differentiating the group of armed robbers and the state. In the consequentialist sense a state can be at the same position with the robbers, if I do not obey the will of the state I might get coercively punished and if I obey I compromise from my autonomy. But the consequences rarely are a matter of fruitful discussion. The difference of the state with a group of armed bandits should not lie in the potential use of coercion, a threat of harm. A state that claims to have legitimate authority has to exist between the conflict of authority and autonomy. The other ways of conceptualising the state go either to anarchy and to the dissolution of the particular state or to the rule of bandits, a Mad Max sort of environment since the

ones that manage to get their hands on the bigger sticks that would deter others from trying to claim power will have the right to rule. This area of conflict between autonomy and authority gives way to two concepts. One from the state's side and one from the subjects' side that are closely intertwined. The concept that comes from the state's side is legitimacy and the concept that comes from the subjects side is consent. Legitimacy is the decisive factor that grants the state authority amongst its subjects. Legitimacy binds the subjects of the state to obey the orders that the state issues. But legitimacy, legitimate authority is not an adjective that a state has just in virtue of being a state. Legitimacy has to be earned.

2.5 Legitimacy

The discussion about legitimacy on how can a state justify the use of its authority on its subjects is at best murky. Here we must distinguish the concept from the various conceptions to avoid the confusion. The concept of legitimacy vaguely is about the right to rule, use authority. Various conceptions of legitimacy follow the concept on how and on which grounds someone or some political body would have the right to rule, and are followed by the discussion on what this legitimacy entails. Applbaum in his article "Legitimacy without the duty to obey summarises this discussion as;

Some might hold that a state, in its virtue of legitimacy, has standing as a party to international treaties, an entitlement to be recognised by other states, the right to control territory and forcefully defend its borders, immunity from outside interference, and the normative power to impose moral obligations on its residents. But others hold that a legitimate state simply is one that is justified in exercising coercion. For some a legitimate ruler simply is a lawful ruler. For others, a legitimate ruler must be a just ruler. (Applbaum, 2010, 217)

With the fair assumptions that I have on people seeking autonomy thus refraining from going under a rule whenever possible, I claim that a state that claims to have legitimate authority upon its subjects has to exist between the conflict of autonomy and authority. Since that is the case we have to consider legitimacy as a facilitator for the use of authority. It creates the conditions for a state, or someone who holds authority to be able to enforce nonmoral prescriptions. Without legitimacy commands of a given political body would have no authority. The commands then become utterances that are based on threat like in the robbers case. So a state without legitimate authority can make commands but I would have no institutional duty to obey those commands.

I believe it is safe to say that in our various conceptions of various terms, legitimacy being tied to consent seems to fit the best to our case. since we claimed that individuals may forfeit a part of their autonomy to a political body or a specific person only by their voluntary actions, by their consent. Consent being tied to legitimacy gives us one great advantage amongst many others. This advantage is that through withdrawal of consent the legitimacy status may be changed. I will explain the details of this mechanism in detail in the following chapters.

I believe that using the Hohfeldian scheme as Appelbaum did in *Legitimacy Without the Duty to Obey* (2010, pp 220-222) is useful in understanding legitimacy. Hohfeld claimed that one might have four legal advantages over another.

1-If X has a claim right over Y, then Y has a duty or an obligation against X

2-If X has a privilege over Y, then Y has no right against X

3- If X has a power over Y, then Y has a liability to X

4- If X has an immunity from Y, then Y has a disability to X

And each legal advantage has an opposite, claim right - no right, privilege - duty, power - disability , immunity - liability. For Applebaum this scheme can be transposed to accommodate moral concepts as well. For example if X has a moral privilege over Y then Y correlatively has no moral right against X.

This leads up to Appelbaum accounting for legitimacy as a moral power that enables the holder to enforce nonmoral prescriptions. So the moral power that a legitimate authority holds is to “author legal, institutional, or conventional rights and duties, powers and liabilities and create social facts and mechanisms of coordination that change the legal, institutional and conventional situation or status of subjects.” (Appelbaum, 2010) It seems to be clear that what legitimacy entails is having the moral power to impose changes on the nonmoral status of the subjects. But in which way a legitimate authority could be able to change the moral status of its subjects via the use of this very moral power? Appelbaum suggests that when someone has a moral power over me, he can change my institutional status, such as relieving me from an institutional right or imposing an institutional duty on me. Someone having moral power over me clearly means that I have a moral liability towards that someone. So when a I have a moral liability to someone, by that someones decree my nonmoral claims might be changed.

It is important to note here that a moral liability is not a moral duty. My moral liability allows the state (assuming that the state has legitimate authority) to make changes

in my institutional status. The state can impose some institutional duties and obligations on me but these are not moral duties. These duties stems from me being a subject of that state, being part of the institution. not me being a rational human being that is morally bound by myself.

CHAPTER III: CHOOSING DEMOCRACY

We have discussed earlier that many ways to formulate a state can be conceived that would hold legitimate authority, but among the grand scheme of things now we have to explain how and why people should choose one among the others. Freedom to choose one among many can now be considered as a part of the basic freedom of men can be included to act as they willed and be free from coercion. I believe that a simplistic thought experiment that involves two distinct groups in an island could represent the dynamics of state creation and involvement in state affairs in real life.

3.1 Scotts and Ernests

Say the society is formed of two distinct types of people, Scotts and Ernests. Scotts are people who do not want to take part in governing but if they must they can rise up to the occasion and take up the role of ruling. Ernests are eager to govern and rule. Let's assume that Scotts and Ernests were living in isolated areas in an island and a landslide on the island connects these people so they are now exposed to each other. Ernests were living in a state of nature, that resembles the situation of every man for himself, a state of conflict. Scotts were living in partial isolation to each other only interacting when they want to. Due to all the conflict Ernests had in their iso-

lation, they are low in number but Scotts and their resources are abundant. It is the case that Ernests can not overpower the Scotts due to the numbers disadvantage but since they are aggressive they are capable of harming Scotts so the threat of force is still present. And Scotts are risk averse and conflict avoiding so they seek out a way to adjust the situation such that it would resemble their pre-landslide way of life.

Scotts want nothing to do with policing, ruling and so on, they just want their autonomy, meaning that they want to preserve the way of life that they had before Ernests came or a way of life close to that. Ernests being aware of the situation try to make the best of the situation and try to form a way of governing that they would have a say in. Now the Ernests face two choices, the choices are to rule and not to rule and Scotts face the choice that to be involved in a way that they will choose which Ernest or group of Ernests will rule them or they will not be part of any process. Let us have a table that shows the game:

Table 1. The Game of Scotts and Ernests

	Rule	Not Rule
Choose	-2, 5	-3,-4
Not choose	-5,10	-7,-7

The vertical choices depict the action possibilities of Scotts and the horizontal ones depict the Ernests'. First case is that of Scotts choosing that they will be involved in the process of choosing the set of rules that Ernests will propose and Ernests deciding to rule Scotts and other Ernests. It is important to note that the set of rules that

are put here will be applied to other Ernests as well the ruling Ernests. When both parties agree to cooperate, one by choosing one by ruling we have a democratic process in our hands, but the sort of democracy that democratic process entails seems to be ambiguous for now.

The second case is the case when Scotts decide to choose, choose meaning here get organised to find a way to live amongst each other and Ernests choosing not to rule. Now if Ernests decide not to cooperate the explanation for it would be that they would not desire to be chosen by the Scotts. That would mean that Scotts will have to rise up to the occasion to rule in another instance but the very instance this will result in a environment of non-cooperation and ghettoisation. No one will gain anything from it. The third case is when Scotts decide not to choose which of the Ernests and how they should rule them. That would definitely result in a way of absolute monarchy or oligarchy, there might be a case that Ernests would disagree on whom should rule amongst them but that is not important for the time being. And the fourth case is the case of complete chaos, it actually means that they do not want to live together and result in conflict.

The numbers given to the cases are representative numbers that do not represent an amount. They are just ordinal and there to show what the cooperative status of the cases to each other. Simple game theory shows that both players have a dominant strategy given these circumstances. Scotts will always act on choosing since when they decide to not to choose both outcomes will end up in them loosing part of their autonomy, first in the way of rule that they may not want to end up with and the sec-

ond is the situation of conflict. The Ernests will decide on ruling since again other outcomes will not yield as much. The dominant strategy equilibrium and Nash Equilibrium here is the case one, the case of a democratic process.

3.2 Dominant Strategy Equilibrium and Nash Equilibrium

I see that there is a need to explain what dominant strategy equilibrium and Nash equilibrium are. The game that we have here is a non-cooperative game, meaning that neither group given makes choices by cooperating. They might end in a result that would mean that they would cooperate but that is irrelevant. Dominant strategy equilibrium is an equilibrium in game theory that in a game the players would have a single option among all other options that would yield the best results for the players no matter what the other player chooses. (Mas Colell, 1995, pp.236) In the game that we have Scotts have a dominant strategy of choosing and Ernests have a dominant strategy of ruling. The point that they clash is the dominant strategy equilibrium.

Every dominant strategy equilibrium is also a Nash equilibrium, but not every Nash equilibrium is a dominant strategy equilibrium. In order for a game to be able to have a Nash equilibrium the players need to have a point in a game that no matter how they decide to play it if they are rational agents they would end up in that point, the Nash equilibrium. Meaning that equilibrium needs to be self enforcing.

... Another argument for Nash equilibrium comes from imagining that the players can engage in nonbinding communication prior to playing the game. If players agree to an outcome to be played, this naturally becomes the obvious candidate for play. However, because players cannot bind themselves

to their agreed-upon strategies, any agreement that the players reach must be self-enforcing if it is to be meaningful. (Mas Colell, 1995, pp 249)

In our game the first case is both a dominant strategy equilibrium and a Nash equilibrium. I believe that making the differentiation between these two terms is important due to some objections that are regarding the given ordinal numbers in the game and some payoffs. Even if we may not have a dominant strategy equilibrium we still have a Nash equilibrium.

3.3 The Game and Democracy

A prima facie problem with this sort democratic process is that it does not seem to be a real democracy, it seems like rather a plebiscite than a complete democracy since there is one instance of choosing of how they will be governed and by whom. But it is better to see this game as a dynamic one rather than a single instance. What I mean by dynamic is as follows, every individual at any given time makes a choice according to the table. The good thing about the Nash equilibrium, as I mentioned before, is that if a change occurs in a period that makes the society end up in a different position, the best responses will be to adapt to that change and Scotts and Ernests will again end up in the Nash equilibrium since the equilibrium is self enforcing. So we can safely say that if a change occurs, then there will be another democratic process that will change the Ernests that are currently ruling. This way the first case resembles a democracy even more.

It seems to be clear that Ernests or groups of Ernests need to compete for the rule over Scotts and other Ernests. So it will be the case that the Ernests that want to be in

a position of having legitimate authority over the others need to be desirable by Scotts and other Ernests. There is two sides to being desirable. The first side comes from Scotts. Scotts, I believe it is safe to say, resemble responsible men. So they recognise that they have a duty to autonomy and they will become a citizen of that state by a all things considered voluntary action. Scotts want to be ruled by the Ernest or the group of Ernests which will implement the least duties on them. This is not a quantitative statement as it seems to be. Since it is possible that an oppressive dictatorship with minimal duties will be formed. The claim I made is purely a qualitative one, by saying least duties I mean that Scotts will choose the Ernest who will give more room to Scotts' autonomy, will provide a way of living that resembles the pre-landslide times. The Ernests will also make a choice if they would consent to the rule of other Ernests since consent of the whole individuals in this society is needed for the ruling party to have legitimate authority. The choice of giving consent for Ernests will depend on the possibility of them gaining that position of ruling. What that means is simple, they will not consent to an Ernest that will hog the position in the future periods. They want to ensure that this mechanism of choosing will happen again and they could have a possibility of winning. Meaning that the Ernest that wants to rule has to have a date of termination for his rule.

So there needs to be an intra-Ernest competition for the consent of the governed. And the way this competition would work is quite straightforward, they need to make the rules that they would implement or the duties that they will impose on the society be known by the very society that they will rule. In a word they have to make campaigns. Of course this does not mean that it is absolutely necessary for Ernests to

make campaigns but the Ernest that makes his intent and position known (providing that it would be desirable by Scotts) will be in an advantageous position in the competition. What this provides is making the system self regulatory. It puts the most accountable Ernest in an advantage since when he makes his agenda known, the Scotts and the Ernests consent to him ruling with that particular agenda. If the Ernest with the agenda that is known by the society earns the right to rule and he decides to deviate from the agenda, the legitimacy of the rule is in danger. For a new set of rules that is to be implemented the Ernest in charge has to make sure he has the consent of the governed. If not than there can not be any moral liability and thus no institutional duties to obey the commands of the ruling Ernests.

If that is the case, the position in the game changes. If another Ernest come up with a better agenda the Scotts are free to gather around that particular Ernest since they no longer have a duty to the Ernest that has deviated from his initial agenda. Of course the Ernest that did not specify any sort of agenda in the first place might be immune from such a thing, but the nature of Scotts and Ernests provide that if there is even one Ernest that makes his agenda known amongst all of the Ernests with unknown agendas he will be chosen. The reason is simple Scotts are risk averse and by knowing the agenda of an Ernest provides them two things. First they will know which duties they will take on and thus adjust their future expectations accordingly. Second having a agenda creates an accountability mechanism for Ernests. Ernests will know that if they deviate from the agenda that they made known, their legitimacy as a ruler might shatter and since Ernests desire to keep the power at their hands there is an incentive to stick to their agenda.

In the traditional contract theories such as Locke's (Locke, 1988, p. 32-40) there is a two step process in formation of a state. The first step is that individuals decide if they would be better off if they formed a body that they would be subjected to and it would have a some degree of authority on them or they would be better off in the state of nature. The second step is to decide how that body would be governed to the best interests of the subjects or to facilitate the order, differing from theory to theory. What this experiment does is that it enables Scotts and Ernests to choose if they want to form a body and decide on the way that it would be governed in a single step. Any choice except Scotts not deciding to choose and Ernests not deciding to rule ends up in formation of a body.

I believe this sort of one step process should work better than the ones that involve two steps since Ernests and Scotts will make their choices regarding the way that they will be governed. By this mechanic I believe that the choice element is better facilitated. The two step process always carries the risk of one committing to the formation of a state in the first step but ending up in a state that he would not have chosen to form if he would have known how it will be governed. For example a Scott could end up in a monarchic state in the second step. As we have discussed before men sacrifice a part of their autonomy by submitting to the authority of a state. So in the two step processes if a Scott makes the choice to be a part of formation of a state, he forgoes part of his autonomy and undertakes an obligation to comply with the state that will be formed or the general will and it is ambiguous what that would result in. The two step process enables for a Scott to make a better choice by making

him choose the way he would be governed at the same time, making him somewhat resistant to end up in a position he did not desire.

CHAPTER IV: CONSENT AND OBLIGATIONS

4.1 Obligations

Now the democracy in this thought experiment being fairly simplistic seems to carry the perk of having legitimate authority due to the virtue that all of the subjects and the rulers consent to the way of ruling. From this example we can say that consent seems to be a factor that is essential for legitimacy of that particular democracy.

Having consented to the government the subjects undertake a set of obligations. Here we have to distinguish the political obligation from the moral claims, since moral claims seem to be more binding for the subject. In order to be able to say this we have to show that having obligation to do X does not necessarily say that having ought to do X. It is important for us to be able to say that political obligations can be overruled by the moral claims, especially when we consider people are autonomous and forfeit part of their autonomy by deciding to be a subject of a given state thus undertaking a set of political obligations. The importance for us being able to say that is to pave the way for the possibility of individuals resigning from their obligations on moral grounds. If that is not the case individuals would have a predicament to undertake whatever obligations that stem from being a subject of a given state.

I will utilise the distinction that was made by John Simmons between obligations and moral claims in his book “Moral Principles and Political Obligations”(Simmons 1979). Obligations are simply requirements. Being requirements, obligations do not depend on one’s preferences and desires, considering this it may seem that there is a connection between force and coercion with obligations. Simmons uses Lemmon’s “Moral Dilemmas” (Lemmon, 1962) such as, a doctor deciding between holding his promise of giving a talk at a meeting and helping an outbreak of an epidemic in the next town. It is clear that the doctor has an obligation to hold his end of the promise but what he ought to do is different. So what we end up with is a somewhat clarified distinction between obligations and moral claims. Having this in our hands “ought” statements become “all things considered” statements and having an obligation does not produce a conclusive reason for action.

Simmons states that he will use the duty and obligations with the same extensions thus when he utters obligations it will mean obligations and duties following Hart’s tradition and again using his formulation of obligations. But still there is a distinction that we will explain later, which is the distinction between moral duties and positional duties. With Hart’s formulation he claims that an obligation has four conditions. I will summarise them briefly here:

- 1- An obligation is a moral requirement that is generated by a voluntary act (e.g promise)
- 2- An obligation is owed by a specific person to a specific person or persons and they are dischargeable while moral duties are not.
- 3- For every obligation a relevant right is generated simultaneously.

4- It is the nature of the transaction or relationships into which the obligor and obligee enter not the nature of the required act which renders the act obligatory.

It is clear that the state that is formed has the moral power to impose some institutional obligations due to the fact that I consented to be subjected to the authority of the state by participating in its formation process. So the state here is legitimate to put me in a position of an obligee. But it is important to note that this I become an obligee because I choose to be. The state carries that moral power as long as I have the option to walk away from my obligations thus the state.

4.2 Consent

I can safely claim that the state that is formed in the example of Ernests and Scotts seems to carry the basic requirements to be a state that claims justified authority over its subjects. That is so since Scotts and Ernests effectively choose the way that they would be governed. The desires of the subjects and rulers are fulfilled in a simplistic game. The government has the consent of all of the subjects. But let's assume that some of the Scotts choose that they would be better off under a rule of different group of Ernests. Does that compromise the integrity of the legitimacy of the government?

My claim is that it does not as long as they stay in the Nash equilibrium of case one. That is the case of Ernests deciding to rule and Scotts deciding to choose. Even if some Scotts decide to choose differently this act of choosing constitutes as consent, a

promise to accept the results of the election (assuming that they hold an election only after they decide on the case one). Just by participating in the democratic process they legitimise that process. They grant that political body the moral power to the state to impose some institutional duties on them. Of course this is the case since there is a possibility to go back to the anarchy if they choose to do so.

Their action can be translated as “By participating in this election, I legitimise this process with my consent and I acknowledge the possible outcomes that could come out of this election.” Again I feel the need to mention that this democratic process can only occur when parties land on the Nash equilibrium of the game that is the democracy. The way of formulating consent that I hold that considers participation to the ruling process as implicit consent is as follows: No action that I do in a situation can be considered as my implicit consent to do that particular action unless it is possible for me to in that situation do something that could be considered as refusing to do that particular action.(Beran, 1987) Here I grant the difference between “I agree with the process” and “I agree to obey the process”.

4.3 The Relevance of The Game

The game, I believe, is not too far away from the reality. Meaning that, in real life there must be something behind the motivation for people in a given political body to act the way they act, whether they decide to be a part of a given society or decide to live as a hermit, or when they make the choice to vote in democratic elections or not to vote or even decide to engage in economic transactions. I think that I am not

too far off when I claim that we play a game that resembles the game of Scotts and Ernests play in every action we make that could be regarded as a form of participation to democratic processes. I play that hypothetical game at every moment, I weigh the benefits of me complying with the rule of the state at every given moment and when I decide to act upon it, I in a way tacitly give consent to the state that I dwell in.

On the surface there seem to be two different groups with different natures that correspond to different sorts of people, but that is not necessarily the case in the world I live in. From time to time due to my beliefs and desires towards that given state I might act like a Scott or an Ernest. I feel safe to claim that any state is formed of both Scotts and Ernests, any given individual may vary as being an Ernest or Scott at different times. I even need not exclude hermits since I can say that they are Scotts who are really committed to their autonomy. Their commitment to authority makes them deviate from the rational choice of democracy. But they are still Scotts. Or I could try to irrationally plot to overthrow the government and try to find some way to seize the power, I am still an Ernest but I do not act rationally.

There might be an objection that claiming the consent of Scotts solely depends on my claim on them being risk averse and people are not that risk averse. I would disagree to that claim. It is true that it is one of the reasons that Scotts make an all things considered claim to be a part of the state. But people are that risk averse. To be able to claim that I refer to the economics literature, particularly the problem of the equity premium puzzle. Mehra and Prescott in their article "Equity Premium: A

Puzzle” (Mehra and Prescott, 1985) claim that the average yields of stocks far exceeds the average yields of bonds. The expectations provide that the average yields for both stocks and bonds in the long term should be equal if the market is working properly. The reason for that situation is caused by stocks having much less demand due to their perceived risk by the population. Bonds being fixed income securities carry much lower risk than the stocks. So what makes this demand difference is that individuals are much more risk averse than anticipated. We can easily apply this to our case. What makes people risk averse in the equity premium puzzle is the fear of losing part of their income, In our case Scotts, if they end up in a situation of conflict even if they have the possibility to overpower Ernests and continue to live as they were in the initial situation, completely autonomous, they will not because of the possibility of being harmed in any way.

4.4 Democratic Participation as a Way of Expressing Consent

What this entails is this, my participation in the democratic process can be considered as my consent to the given state if and only if there is some possible way for me to refrain from doing so. Meaning that if I can not find a way to stay away from participating to democratic processes by any reason, me participating does not mean entail my consent, it becomes the case that I participate just because I have to.

In the simplistic case of Ernests and Scotts, groups come together to find a way to live together through a single decision process and that decision is the way of ex-

pressing consent for Scotts and Ernests. But it is clear that participating in an election is not the only way to participate in democratic processes in the world that we live in. The island of Ernests and Scotts is a vastly reduced case and it misses out many aspects of real participation. Any sort of action that involves the state (When I say state, I mean a democratic state) and its institutions must be deemed as democratic participation. Writing a petition, paying taxes, any sort of legal action and so on are actions that require dealing with a democratic state are considered as democratic participation. I will go further that any action that I may have to deal with the society can be considered as democratic participation when I live under a democratic state just because of when I participate in the society I become a part of the political sphere thus you participate in the state. Meaning that even when I buy an apple (with the very apparatus of currency that the state issues) I participate in that the particular state by monetary transactions.

What this means is as long as I keep your relationship with the state by the many ways that I have mentioned, I implicitly consent to the rule of the state. I by participating state that I willingly forfeit a part of my autonomy to take up on some institutional duties that stem from being a subject of the state. So every time I participate I make an action on the balance of reasons of which I am aware, I make an all things considered judgement to be a part of a state. I provide the state the legitimacy that it needs to be able to create obligations or duties. But again this is the case if and only if I have a opportunity to refrain from any action the would validate the state's legitimate use of its authority. So my condition of giving consent entails that the state must provide some means for dissent in order to be legitimate. Right to leave without

an opportunity to go anywhere does not particularly facilitate this means. A state must provide a safe haven for the dissenters in order for that particular state to have legitimate authority among the subjects that choose to remain bound to that authority. In which they will be able to live without forming any form of relationship with the state. An isolation of the Scotts. I believe that I am safe to say that would be an isolation of the Scotts due to the fact that Ernests would be the ones who rule the state in most of the cases and the Ernests that does not rule, they would want to be in the decision making process and would want to participate in democratic processes in some way.

Stating that any sort of action that involves the state can be considered as democratic participation I effectively claim that one can not at the same time be a part of the state by participating in society in any way and argue that the state does not have the claim for legitimate authority. Of course this is the case that the state would also provide what is necessary for me to not be able to participate. What this entails is quite simple, there will be no positional voting. Meaning that if I believe that I will be forced to obey no matter what I might as well unwillingly vote for the option which I might find less undesirable for me in order to influence the outcome. This is quite problematic because by doing so I give the rule which I do not essentially want necessary legitimacy to be able to affect my institutional status just because I believe that other choices are more undesirable for me. But positional voting ceases to be a problem given that a state provides the possibility to not to participate. If there is a possibility for me to not to participate then any form of participation would be con-

sidered as my consent and positional voting becomes a choice not made out of necessity but just a institutional call.

CONCLUSION

It is clear that if we consider people have a duty to be autonomous due to the nature of having rationality there appears a conflict between autonomy and authority. I have claimed that people can only become a part of the state by forfeiting some of their autonomy by their own voluntary actions, making a all things considered judgement as a “responsible man” would. I believe that the argument I made with Scotts and Ernests is an elegant and simple way to find a middle ground in this conflict due to the fact that individuals do choose to be a part of a political body when they have a possibility of not having to forfeit a part of their autonomy. This hypothetical political body in the initial period seems to carry legitimate authority on its subjects and the system is formed such that in an event that the legitimacy would suffer the agents return to the initial state.

But in the world that we live in a state to have legitimate authority on its subjects at any times seems quite demanding of it. The conception that we put out for a state that would possess legitimate authority has to be quite limited in its exercise of its legitimate authority. In the sense that it has to be very careful and considerate in imposing institutional duties among its subjects. The conception allows for disobedience on the moral grounds since moral duties stem from being able to reason on actions and having autonomy and the institutional duties can easily be overridden by

moral duties. Among the forms of democracy that we are acquainted with the state with legitimate authority has to be close to a direct democracy that allows for contained anarchy in a isolation of Scotts that decide not to give in to the authority of the state.

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