

Introduction

Surviving

MERE LIFE AND MORE LIFE

Everyone should philosophize at some time in his life, and look around from his own vantage point. But such a survey is not an end in itself. The book is no goal, even a provisional one. Rather than sustaining itself, or being sustained by others of its kind, it must itself be “verified.” This verification takes place in the course of everyday life.

—*Franz Rosenzweig*

IN RESPONSE TO emergency, some political and legal theorists have focused on moral-political questions of justification: What may we do in response to emergency? The question, now again a mainstay of democratic and legal theorizing, seems to point toward justification: What justifies the suspension of civil liberties? Under what conditions can sovereign power declare emergency, legally suspend law, or, less radically, implement and normalize extraordinary measures to protect or defend democracy from destruction by its enemies? When is it permissible to torture, detain without habeas corpus rights, deport, use rendition, or invade another country? Such questions are not unimportant, not at all, but in addition to proposing answers to them, we do well to wonder what we are doing, as democratic theorists, when we focus on them. One worry is that we contribute to the very account of sovereignty we mean to oppose: If we ask what rules, procedures, norms, or considerations ought to guide or constrain the decision to invoke emergency, we may think we constrain or limit sovereignty—and we may indeed do so, when our arguments find favor with judges or administrators—but we also adopt a certain kind of sovereign perspective and enter into the decision. When we treat sovereignty as if it is top down and yet governable by norms we affirm, we help marginalize rather than empower important alternatives, such as forms of popular sovereignty in which action in concert rather than institutional governance is the mark of democratic power and legitimacy. The focus on institutional governance as the central question of democratic theory is not only a product of the centrality of emergency—there are other reasons for it as well—but the experience of emergency has enhanced that focus and it is a problem.

The considerations we generate at the level of ideal theory when we imagine ticking time bombs and ask what may legitimately be done when we are faced with them, those considerations of right and wrong with their appeals to universalizability or consequentialism and other standards or principles, are not likely to inform the deliberations of actually existing executive branch members of the government who make these decisions. We might say that such work generates norms and considerations that may filter in to the consciousnesses of those in power or into the courts that may pass judgment on them, and this is not untrue. Or we may argue that we arm the public and its media with the arguments and perspectives they need to engage in the most powerful sort of critiques while doing the naming and shaming that the international human rights community calls for. These are among the contributions democratic theorizing focused on legitimation and normative considerations might make to emergency politics.

But we must at the same time call attention to how these very engagements—the work of democratic theory in generating norms and the exercise of justifying or criticizing emergency measures—do not just enact public accountability. When democratic theorists imagine the considerations that may legitimate such measures, they also possibly inadvertently contribute to (even while trying to undercut) the emergency-think that legitimates the sovereign decisionism that for Schmitt was per se extramoral and extraprocedural. By asking “when may we invoke emergency and suspend the normal order of law?” we concede there may be times when this may be done and that sovereign power may legitimately do this. We may add to the calculation considerations of right that Schmitt saw as extraneous to the sovereign decision, and this is no small improvement over his account. But we also move the terrain for debate away from the critical questions of how emergency (re)produces sovereignty (a question as old as Hobbes’s state of nature) and how democratic actors can respond otherwise. We move to focus instead on questions of when do the facts justify the (newly constrained or proceduralized) decision and what sort of decisions are justifiable at all: Was there an immediate threat? Were there no other alternatives available? Did they get a warrant for the torture? And so on.

Facts do not offer a safe harbor. Hannah Arendt hoped facts could offer a kind of extrapolitical security to political life, but she knew that facts are as subject to political manipulation as anything else. Michel Foucault also alerted us to the problem when he called attention to the constructed nature of crises. For both, the fate of facts depends on other things. A certain kind of sovereignty, for example—unitary and decisive, committed to its own invulnerability—is most vulnerable to experiencing the political, with its contingencies and uncertainties, as a crisis. That sort

of sovereignty is most likely to perceive crisis where there may be only conflict and to respond to perceived crisis with antipolitical measures of emergency rather than with more pliant, engaged measures appropriate to the needs and uncertainties of democratic politics and conflict.

Arendt and Foucault, along with Wittgenstein, Rosenzweig, Connolly, and others prepare the way for thinking of democratic sovereignty as plural and contingent, a constellation, as Connolly puts it, of contending forces. Such an “accidental sovereignty” stands in contrast with the deliberate democracy at the center of much of today’s political theory. By contrast with deliberative democratic theorists’ emphasis on justification, I attend to the remainders of political or legal settlement: Where they seek consensus (overlapping or better), I seek out agonistic contention as a generative resource for politics; where they focus on a series of paradoxes (democratic legitimation, constitutional democracy, bounded community, and so on, all of which I discuss in the chapters that follow), I focus on the paradox of politics as the key, central one.

The insoluble paradox of politics, which thematizes the concern that good citizens presuppose good law (to shape them) but good law presupposes good citizens (to make good law), teaches an important truth of democratic theory and practice: The people, the so-called center of democratic theory and practice, are always inhabited by the multitude, their unruly ungovernable double. And the law, to which liberal and democratic theorists look as a resource in their efforts to privilege the people over the multitude, is itself undecidable as well, just like Rousseau’s own lawgiver, who Rousseau acknowledges may be a charlatan. In the end, it is not the lawgiver but the people/multitude’s decision to accept him that is decisive for their political future. I present the argument for this view in detail in chapter 1 by way of a reading of Rousseau and conclude from it that the task of reinterpellating people into the demands of democratic practice is never over or complete. The paradox of politics is not a paradox of founding, a problem only at a regime’s beginning, but rather a problem of everyday political practice in which citizens and subjects try to distinguish general will from will of all without knowing for sure whether they have got it right (or whether it has got them right).

Unlike the paradoxes to which Habermas and his followers are drawn, the paradox of politics does not elicit from us justification or confront us with the need for legitimation. The paradox of politics is not soluble by law or legal institutions, nor can it be tamed by universal or cosmopolitan norms. The paradox of politics highlights the chicken and egg circle in which we are law’s authors and law’s subjects, always both creatures and authors of law. Thus, the paradox teaches us the limits of law and calls us to responsibility for it. And it teaches that the stories of politics have no ending, they are never-ending.

They have no unitary beginning either. While deliberative democrats too seek out the promise of open-ended political practice, they anchor that practice in a unitary beginning that promises to deliver on the promise of legitimation. As we shall see in chapter 1, when Habermas himself refers to democracy's eventful beginnings, he uses the synecdoches of "Paris" and "Philadelphia," thereby marginalizing the aconstitutional politics that goes by other names—instanced by various political actors and thinkers from the antifederalists to John Brown and James Baldwin—and on which democracy also depends. When Habermas immediately shifts from those idealized city names to refer rather to their "rational trace," he marginalizes in turn those elements of Parisian and Philadelphian political practice that may violate the ideal norms of discourse ethics, notwithstanding the fact that these unruly practices may not only trouble current democratic activism but also inspire them. Habermas's rational trace sifts through the historical record for elements that can anchor a democratic tradition whose original, plural radicalisms committed it to the rejection of such anchors. Retelling democratic history in terms of its rational trace rather than its many contingencies evinces the faith in progress that guides deliberative democratic theory and rules out the plural timelines by which agonistic democratic theory and practice are otherwise riven, engaged, and animated.

In the essays that follow, I explore an alternative to deliberate democracy. From an agonistic perspective, I thematize the promise and limits of accidental sovereignty, forms of action in concert that postulate and produce new public goods, rights and popular orientations upon which diverse democratic forms of life are deeply dependent.

First, though, I want to stay for a bit with the normative question as posed in order in a different way to generate an alternative critical orientation to it. When might it be permissible or even necessary to torture, detain, or otherwise violate the rule of law's most expansive expectations? Here I turn to Bernard Williams's moral theory on behalf of a politics of emergency. I do so mindful of my own past criticisms of the colonization of political theory by moral philosophy. I turn to Williams's theory for inspiration and seek to translate it into more political terms, not to adopt it as such. And I find in Williams's moral theory a welcome departure from the more systematic and justificatory kinds of moral philosophy whose example has, in my view, influenced political theory in less than salutary ways.

What interests me in Williams's work is his treatment of tragic situations, situations in which, as he puts it, there is no right thing to do but something must be done. Here, even inaction is action. For Williams, the question posed to the moral agent by the tragic situation is not simply what should we do in a tragic situation but what does the tragic situation

do to us and how can we best survive it with our moral integrity intact? That is, the goal of moral theory in response to tragic situations is not to guide choice but to enable the moral actor to survive the situation, to do the right enough thing or the thing that is right enough for him or her, and then to survive the action's potentially crippling effects on his or her moral agency in the future. The goal is to salvage from the wreckage of the situation enough narrative unity for the self to go on.

Williams thinks of that narrative unity as "integrity." Integrity on Williams's account is both the product and condition of moral action. Most of the time, our actions are moral when they are consonant with the goals and values that define us and mark our character. In tragic situations, however, that consonance is sacrificed. We already know, by the nature of the choice we confront, that we will have to sacrifice something fundamental to our sense of integrity, and we want to come through that choice in a way that does not totally destroy us. While I have elsewhere criticized Williams's overly unitary view of moral agency, in particular the seemingly essentialist idea of a core self that he calls integrity, here I find that assumption of unitariness useful. For here we are looking into the conditions of a democracy's survival; we are, in short, committed not to national unity but to the preservation of a regime's identity as democratic—its democratic integrity.

The entirely problematic premise of the emergency measures question is that we have no choice. The bomb is ticking and we can either risk destruction or torture someone to find out its location and defuse it. Both options are unacceptable and yet we must act. In practice, democratic citizens do well to contest such claims. Governments often claim to have no choice when the facts do not support the claim or when the sense of choicelessness seems to be a product of a lack of imagination rather than a lack in the situation. Indeed, as others have pointed out, such situations, by way of which arguments are made to justify warrants for torture, are unreal. Real life never provides such stark and incontestable alternatives. But moral philosophy does. What might it teach us?

When Bernard Williams thinks about tragic situations, he does not have the state of exception in mind. But his thought may usefully inform ours insofar as he is imagining a kind of moral emergency, a situation in which something must be done and the only options available seem unacceptable. Are they equally unacceptable and how should we assess our options?

In *Utilitarianism: For and Against* Williams provides two examples by way of which to think through the problem.¹ His examples are that of George, an unemployed pacifist chemist who is offered a much-needed job but in a laboratory that does chemical weapons research, and Jim, a hapless botanist who stumbles on a horrific scene of mass violence in an unnamed South American country and is offered by the state militia the

opportunity to save nineteen of twenty native people randomly rounded up to punish a village, which is charged with harboring guerillas. If Jim shoots one Indian, the commander says, he will let the rest of those rounded up go free.

Both situations pose a problem for the agent's integrity. But the challenges in question are importantly different: Were George to accept the job, it might wear away at him, compromising in small almost unseen ways his fundamental moral commitment to pacifism and, more important, his sense of self. Through the daily grind of work in this laboratory he will be implicated in violence. George will never actually see a weapon or fire one at any victims but he will be implicated in something he rejects, nonetheless. On the other hand, he may use his position for good and seek to alter the organization's aims from the inside. That is why he has a dilemma. He may decide that it is not only morally permissible but perhaps even incumbent upon him as a pacifist to take on this work and try to redirect, hinder, or even sabotage the organization. Williams does not think so, however. For Williams, this tragic situation has a right answer. George should not take the job. Contra utilitarianism, George is under no obligation to insert himself into the political situation even if he thinks he might thereby do some good. The damage to George's integrity that would be the likely result of such an insertion is for Williams the overriding consideration here.

As I have argued elsewhere, when Williams locates this example in England, he telegraphs its manageability but does not analyze the conditions of that manageability.² Staying home—literally and metaphorically—is an option for George in England in a way that it simply is not for Jim in South America. On the other hand, it is surely precisely because our home institutions distance us from the violence in which they and we are implicated that George's dilemma is difficult: It lacks clarity. The violence in which he may be implicated is real but it is distant and alien. For Jim, by contrast, the scene of his dilemma is distant and alien (South America) but the violence in which he is about to be implicated is undeniably real and clear.³ This may suggest implicitly that we, as moral agents, have some responsibility to do what we can to avoid encountering tragic dilemmas, to stay home rather than risk home leaving. If so, Williams ought to have done more to analyze the not unproblematic forms of institutional and political work that render home a safe moral space. He ought also to have thought not just about moral but political integrity. We do not need to be Sartrean existentialists to see that political integrity may, more than moral integrity, demand of us that we put ourselves at risk, rather than insulate ourselves from it.

Jim is less lucky than George.⁴ For Jim, there is no way out. He stumbles on his tragic situation when he is abroad, away from home and its

guarantees, insulations, or attenuations. He finds himself in a situation in which he will, no matter what he does, be directly implicated in a violence that is undeniable. He will witness the shooting of twenty Indians who are begging him to intervene in order to save nineteen or he will intervene and shoot one. Either way, he will suffer; so will they. Thus Jim's situation points to a different consideration than George's. George can decide to stay out of trouble (even if he will regret not doing the good he might have done). But Jim does not have that option. Thus, for Jim the question shifts. It is not just "what is the right thing to do?" but also "how will I survive this situation?" For Williams, since the moral integrity of the agent is what is at stake here, the two questions meld in Jim's case: What Jim should do is whatever course of action he, being who he is, is more likely to be able to survive. Thus, Williams says, Jim should "probably" shoot one Indian, but not definitely so.⁵

With this second example Williams moves us away from one subject-centering question: What should I do? and toward another: How can I survive what I did? Survival points us beyond moral choice to its aftermath. Survival more than choice has intersubjective implications: How can I express remorse for what I did or did not do? How can I exhibit fidelity to those I may have wronged even though I did what I thought was best? Decision isolates. But acting can force us into connection with others. On Williams's account, acting for the best in a tragic situation includes remaining around for the cleanup. Where other moral theories give guidance ad hoc, they are nowhere to be found post hoc. Take the question of torture. Kantians will say it is never permissible. Utilitarianism will tell us to do the felicific calculus. As long as we act in ways called for by these moral theories, both will treat any post hoc regret on the agent's part as irrational or irrelevant to the moral situation. Williams, however, argues that regret is a *moral* emotion and that it is an appropriate response to a tragic situation.⁶ Because of his focus on the agent's integrity, he has a broader understanding of the moral situation—it lasts longer—and he includes in it a concern for the self's future moral agency. His focus on the integrity of the core self may, as I have argued elsewhere, diminish the pull of politics in ways that undermine democratic energies that require plurality, shifting coalitions, and a willingness to put oneself at risk.⁷ But if we think here of the integrity of democracy rather than the self, the effect may be different. By broadening what counts as part of the moral situation and focusing on surviving it rather than on doing the right thing, per se, Williams may provide a useful template for democratic theorists confronting the problem of democratic survival of the state of emergency.

Most of us in daily life do what Williams counsels George not to do. In little ways everyday we put or find ourselves in situations that compromise

our principles and put pressure on our commitments. This daily and all too familiar compromise is opposed by Williams in no uncertain terms insofar as it threatens an erosion of self. Here we can say no—I cannot do this and still remain who I am or become who I want to be. And so it may be that we should say no to the opportunity to do good by changing corrupt institutions from the inside. But what about Jim’s situation? With that second example, Williams moves us from our little seemingly costless yeses onto a different register of moral challenge. Shoot one person to save nineteen or stand by while twenty are shot and do nothing to save them? Now schooled by Williams’s example of George, we may be inclined to say no—sorry, can’t help you. I cannot get my hands dirty like that. But Williams says no, it is not that easy. Jim’s case is importantly different from George’s. In the end, in a case like Jim’s, only you can decide what you can live with. Whatever you do, you will have cause for remorse. And the act of doing it will put into question your integrity as a moral agent. Thus, what course of action you choose should express what best will secure your continuation as a moral agent in the aftermath of tragic moral choice. Not only that, your actions after the fact should also express a commitment to your survival as a moral agent. In other words, whatever you do, you ought to feel remorse and you ought to find ways to express it in action afterward. Here remorse is a mark of moral character not a symptom of irrationality. And integrity is both the condition and the product of moral action in extended time.

Williams’s two examples share a concern for the moral agent as a continuing entity in time, a commitment to his or her ability to continue acting as an agent of moral integrity in the future. In both examples, and this is what makes them consistent with each other, the aim is survival. Here is the key point of contact for democratic theorists dealing with the problem of emergency. Rather than focus on what is allowable or defensible on behalf of integrity, Williams invites us to switch the question’s emphasis, away from surviving *emergency* and toward *surviving* emergency. What do we need to do to ensure our continuity as selves and/or our survival as a democracy with integrity? Our survival depends very much on how we handle ourselves in the aftermath of a wrong. We will not recover from some kinds of tragic conflict. But when faced with such situations, we must act and we must inhabit the aftermath of the situation in ways that promote our survival as a democracy.

So to return to the question of torture: Kantians will rule it out and utilitarians will calculate its costs and benefits. But Williams seems to refuse to say decisively what to do in any particular situation, and counsels that we think about it in the context of considering the problem of how we will live with what we did, *how* we will live with what we did, so that we can survive what we did or didn’t do. He calls attention to the postu-

lates of moral agency—in particular, integrity. He chides Kantianism for its refusal to let us consider dirtying our hands in such a situation and he chides utilitarianism for treating our hesitations to do so as mere self-indulgence rather than granting that such hesitations may themselves be expressions of a sort of moral care for the self.

Politically, surviving the emergency situation with integrity as a democracy might mean engaging in a kind of political care for the self. It may mean refusing to legitimate the use of violence that your democracy does engage in.⁸ An example of this might be Justice Robert Jackson's dissent in *Korematsu*, which focused on the dangers of a Court-approved internment that to Jackson were distinct and importantly different from internment without Court approval.⁹ Political care for the self may mean being clear that there is no justification, no proceduralization, no clever legal argument that can cleanse or insulate the regime that tortures from implication in a wrong. It may mean, as I think it does, simply refusing to engage in torture. For those democracies that do torture, their survival as a democracy (not intact, but survival nonetheless) would require they hold themselves responsible and answerable to those they harm. This may mean offering restitution for harms done, empowering those harmed to make claims against them (as we provide public defenders for those accused of criminal wrongdoing), recognizing their claims on behalf of the democracy's own survival as a democracy, supporting the international criminal court that may bring charges against one's own citizens. It may mean offering safe harbor to those facing torture elsewhere. And, in a different vein, it might also mean being responsive to the fact that, as Clinton Rossiter claims, expansions of executive branch and administrative powers will not simply or automatically recede after emergency's end.¹⁰ Surviving as a democracy therefore commits us to revisiting regularly such expansions from the perspective of democracy's needs rather than those of emergency.

In sum, the current focus on the question of what we are legitimately allowed to do in response to emergency, while important, tends to privilege the moment of decision and obscure its also important aftermath. It tends to focus attention on the moment of emergency and not on the afterlife of survival. It tends to make us feel like everything is justifiable and there can be no cause for regret when our survival is at stake. But a democracy's survival requires quite the opposite attitude. Regret is a morally and politically productive emotion and survival requires it. Thus, if there is a moral theory by way of which democratic theory and practice might be well instructed, that moral theory is Bernard Williams's.

There is a risk of analogizing emergency and the tragic situation, however. Williams's most tragic situation, that of Jim in South America, is one in which our hero stumbles haplessly into a conflict in which he is

unimplicated. That supposition provides Williams with analytic clarity but it also is a point of dis-analogy with emergency. Political emergencies rarely occur as a result of mere innocent wanderings. Instead, emergencies are usually the contingent crystallizations of prior events and relationships in which many are deeply implicated. This combination of responsibility and chance is missing in Williams's analytic examples but it is at the core of the ancient Greek tragedies in which the tragic heroes are not hapless; they are, in modern terms, both guilty and innocent of wrongdoing. Oedipus unknowingly killed his father and married his mother but he did so trying to escape his fate, about which he did know. Similarly, emergencies in the real world have a history, and one of the requirements of political integrity, as with personal integrity, is surely the need to own up to our implication in the histories by which we, at any particular moment, may feel unfairly assaulted.

Here it is useful to recall Jacques Derrida's explication of the French term for survival: *survivance* as *sur-vivance*—more life, surplus life.¹¹ In Classics, the term overliving applies to those who ought to have died but go on to more life.¹² Survivance, survival, here means something like that overliving: it is a dividend—that surprise extra, the gift that exceeds rightful expectations, the surplus that exceeds causality. Often survival's needs reduce us, they make us focus on specifics, immediacies, the needs of mere life. For that reason, Arendt saw the focus on survival as a problem for politics. For her, not need but rather overlife was the condition and goal of political life. But Derrida rejects the starkness of a choice between mere life and more life. He offers a concept of survival that signals in its doubleness both the needs of life and the call to overlife. As Derrida puts it, we have in *sur-vivance* both *plus de vie* and *plus que vie*: both more life and more than [mere] life.¹³ This "survival" seeks to orient us toward overlife, toward the gifts of life, to the extra, the dividend, the unearned, and toward that which cannot be earned. The question here then is what resources, concepts, and practices might promise survival as life and overlife, mere life and more life, to contemporary democracies?

One important project of democratic theory in response to emergency is to diagnose the sense of stuckness that emergency produces in its subjects and to identify remaining promising opportunities for democratizing and generating new sites of power even in emergency settings. This is the overlife of democracy and it points beyond current apocalyptic diagnoses of our situation. The goal of the linked essays in this volume is to mobilize democratic theory on behalf of the doubled meaning of survival as mere life *and* more life. The propulsive generative powers of political action often seem at odds with its obligatory focus on the needs of mere life. But if democratic politics is about risk and heroism, it is also just as surely about generating, fairly distributing, demanding, or taking the re-

sources of life—food, medicine, shelter, community, intimacy, and so on. The tensions of food politics are a matter of concern in chapters 2 and 4, where I look at battles over the infrastructure of consumption and its implications for human and animal life (chapter 2, in a discussion of the food politics group, Slow Food) and at the symbolic and material political implications of hunger (chapter 4, by way of a reading of an episode of food politics drawn from the Hebrew Bible's *Numbers*). These treatments of food and hunger highlight the ways in which radical founding and everyday maintenance, the people and the multitude, the lawgiver and the charlatan, mere life and more life are undecidably implicated in each other in ways we ignore at our peril.

Too many democratic theorists focus on either the heroic or the everyday, reinscribing rather than interrogating an opposition between the needs of mere life versus more life. But survival as mere and more life postulates both, acknowledging their agonistic tension and mutual indebtedness. The agonistic mutuality of mere and more life is discernible in all the chapters that follow. Sensitized to it, we start to see democracy's challenges in what Williams would call tragic perspective and we attend to the forces, temporalities, powers, agencies, and contingencies that thwart but also enliven human efforts to bring order, meaning, and justice to our universe. When Bernard Williams attends to the tragic situation, he generates insights regarding moral agency as such, highlighting the salience of regret as a moral emotion and the centrality of both choice and its aftermath to the moral situation. So too, I hope, democratic theory and practice are enhanced by a tragic perspective, one that alerts us to suffering, which is a way of saying we are alerted by it to our noncentrality in the universe. A sense of this noncentrality might induce in persons an attitude of defeatism. Kant issued a version of this criticism at Moses Mendelssohn, as we shall see in chapter 2. But a tragic perspective, no less than the ancient Greek tragedies themselves, can be seen rather to issue in a call to action, responsibility, and the creative communalities of festival and ritual—not an excuse to withdraw from them.