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Introduction

THE IDEA of a privatized state sounds like a contradiction. Yet it is the state of contradiction in which we currently live. Without exaggeration, one may say that if the twentieth century was the age of the bureaucratization of the modern state, with its expanded class of ministers, public officials, and civil servants, the twenty-first century has been the age of its privatization. Since the 1980s, rulers around the world have promised smaller governments. President Bill Clinton of the United States, in the 1996 State of the Union address, twice proclaimed that "the era of big government is over." But Clinton was wrong. What the new era has delivered is not smaller governments, but rather bigger, yet privatized, ones.

Ask yourself: who pays for your children's public education? Who adjudicates whether your employer owes you a remedy for an injury you suffered at work? Who fights wars on your behalf? Who has the power to keep you in prison if you commit a felony? Who determines the health-care treatments for which you can claim public reimbursement? Who, when you need them, provides you with welfare services? Who decides whether you can sell or buy that product, drink that water, or eat that food?

As a citizen of one of the many professedly liberal and democratic states in the world today, you would likely answer that it is "the government" of your country that does all these things. Your answer would not be wrong, per se, but it would be an incomplete answer, one that conceals an important ambiguity. What is "the government" nowadays after all?

In some states, although government treasuries pay the majority of funds for education, a significant part is paid by private philanthropic sources that the government itself incentivizes through tax breaks. For example, the Bill and Melinda Gates Foundation—a private corporation—donated about

$2 billion between 2000 and 2008 to open or improve 2,602 schools across the United States.[1]

With regards to employment disputes, very often a private entity, not a state court, determines, through a process of private arbitration rather than public adjudication, what is owed to whom. Although the private arbitrator acts under government authorization, he or she is not an appointed public official. The arbitrator is handpicked by private parties on the basis of a contractual arrangement between them. While a judge answers only to the law, a private arbitrator answers first and foremost to the parties' needs and intentions.

Governments increasingly outsource the fighting of wars to private military corporations—today's version of the age-old mercenary. These corporations act under government authorization, through contract, but they are not part of the national army. During recent US military operations in Iraq and Afghanistan private contractors accounted for, on average, 50 percent of the total Department of Defense presence.[2] As for the UK, in 2006 there were twenty thousand private contractors in Iraq—three times as many as regular British soldiers.

Although states generally retain the final authority to determine who goes to prison, the power of imprisonment is increasingly exercised by for-profit corporations, rather than by public officers. Private prison officers judge when prisoners commit an infraction and when to impose punishment, and they provide advice to parole boards. Australia has the highest proportion of prisoners held in private prisons—about 18 percent of the total inmate population. Several countries across all continents are also engaged in prison privatization.[3] The number of US federal and state inmates held in private prisons increased from zero to almost 150,000 people between 1987 and 2001, and by another 56 percent from 2000 to 2013.[4]

What about access to health care and welfare? Although governments may fund most of these services, they also contract out to private corporations an increasingly large part of their provision, and with it the de facto authority to decide who should be eligible for these services. Some thirty-three thousand private US organizations are under a total of some two hundred thousand government contracts for social services delivery, including education, health care, child care, and unemployment benefits.[5] In some US states, nonprofit organizations control up to 90 percent of overall social service delivery.[6] Whereas until recently private actors had provided only particular services, today government outsources to such private actors the responsibility of running entire welfare offices.[7] Similarly, since the 1990s, in Britain, so-called

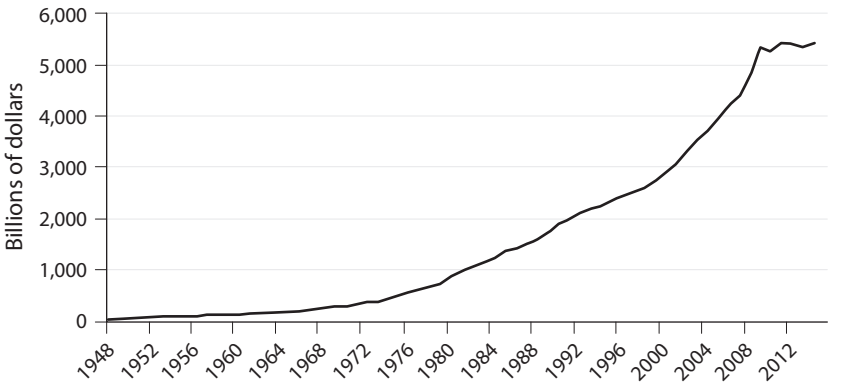

FIGURE I.1. Graph depicting total government expenditures between 1948 and 2014. *Source*: Office of Management and Budget—Fiscal Year 2016 (as published in John J. Dilulio, "10 Questions and Answers about America's 'Big Government,'" February 13, 2017), https://www.brookings.edu/blog/fixgov/2017/02/13/ten-questions-and-answers-about-americas-big-government.

quasi markets, characterized by public funding and private delivery, have become very popular in the provision of both health care and education.

Finally, the food we eat, the water we drink, the products we buy and sell in the market, and the environment in which we live are often not directly regulated by governments. Rather, governments have delegated extensive regulatory authority to international private-sector organizations, and governments are often compelled to adopt the rules these organizations establish.[8]

A privatized government, note, is not the same as a smaller government. Even in the United States, the breeding ground of neoliberal "small government" advocates, government spending has substantially increased in the last decades (see figure I.1), and the overall workforce employed by the federal government has also gone up. However, its composition and modes of operation have changed (see figure I.2). While the number of civil servants has remained more or less unchanged, the number of private contractors has grown significantly. Private contractors in the United States amount to about 12.7 million employees, a number far greater than the sum of the federal civilian workforce, US postal workers, and uniformed military personnel (4.25 million).[9] In the meantime, contractual exchange has become the main instrument of governing, to the extent that the administrative state has been redefined as "the contracting state."[10] In sum, while government is morphing into a nexus of contracts with private actors, private actors are, in turn, morphing into government.

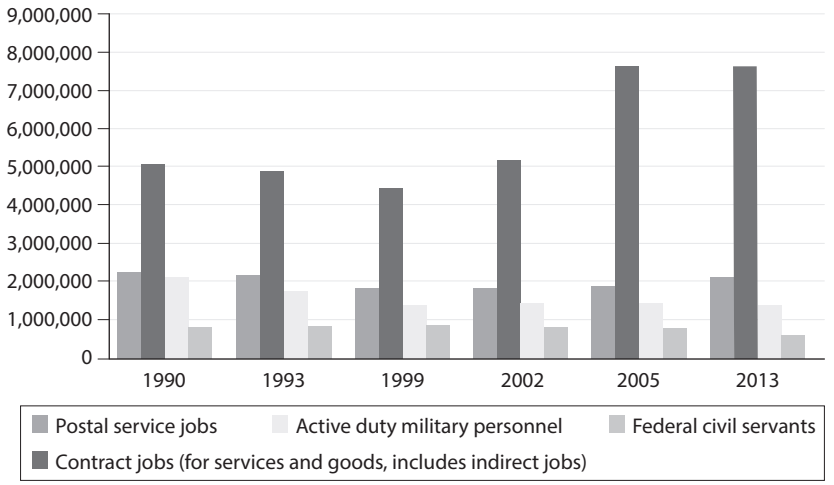

FIGURE 1.2. Chart depicting the growth and decline of civil servant and contract workers, respectively, between 1990 and 2013. *Source*: Bureau of Labor Statistics, Defense Manpower Data Center. Published in Paul C. Light, *The True Size of Government*, Washington, DC: Brookings Institution Press, 1999.

In 2002 and 2005, Light estimated that roughly 60 and 70 percent, respectively, of the contractor workforce provided services—the category most of interest. The 2013 contractor estimate is the same as 2005. The value of contracts awarded in 2013 is slightly higher than the same value in 2005 (after adjusting for inflation). However, numerous factors make this number higher or lower.

Light also includes employment created by grant spending in his analysis. The Center for Effective Government excluded this category because of the different nature of the relationship between grant recipients and those working on a contract. That said, there is a reasonable debate about what truly makes up the federal and public workforce.

When it gets down to it, then, government today is not what many intuitively think it is. And, certainly, it is very far from the picture we get of it from most books of political theory, or the history of political thought. Although elected lawmakers, appointed judges, and executive agencies are still an important component of many contemporary democratic governments, a large part of the practice of governing is outsourced to private institutions, whether these be for-profit or nonprofit organizations.

While historians still debate how and why this dramatic, if quiet, transformation of the mode of governing has occurred, there are urgent ethical and philosophical questions that must be addressed.[11] Can justice ever obtain, and can democratic legitimacy ever be secured, in a privatized state? What ethical considerations should guide debates about the expanding privatization of government? When is the use of private means for public ends morally objectionable,

and why? Are there public functions that should never be delegated to private actors, even if by outsourcing them a government could achieve better results?

Although few would doubt the importance of these questions, political philosophers have paid relatively little attention to them. While increasing economic inequalities have led to a renewed concern with the distribution of private control over the means of wealth accumulation in the economy, not much has been said about the distribution of private control over what may be called "the means of governing."[12] Similarly, while much ink has been spilled in debating the implications for both justice and democracy of the growing concentration of political power at the global level, as manifested in the consolidation of new international institutions, little attention has been paid to the potential implications of the reverse phenomenon: the increasing dispersion of political power at the domestic level, through systematic processes of privatization and outsourcing.[13]

Recently, however, there has been a growing, yet confined, discussion on whether and when it is permissible for a government to delegate certain responsibilities to private actors. According to some, the answer ultimately boils down to a question of outcomes, while others contend that, even if privatization could facilitate the achievement of socially desirable goals, there are functions that we have strong reasons not to privatize, irrespective of outcomes.[14] While appreciating this important discussion, I should explain why an alternative approach is necessary.

Consider, as one example, the case of private prisons. The dominant view among economists, and also shared by some philosophers, is that whether prisons ought to be privatized exclusively depends on instrumental considerations. As some scholars put it, "the most controversial and interesting issues raised by private prisons concern the quality of service."[15] On the opposite end of the spectrum, there are philosophers who argue that the privatization of prisons is inherently problematic and should be avoided, even if it could facilitate the achievement of better outcomes. For some, the reason is that punishment inflicted by private hands is not punishment. It is violence.[16] Insofar as managing prisons entails the imposition of sanctions on inmates, such functions cannot be delegated to private actors without compromising punishment's own condition of possibility. For others, instead, the problem is that it is always wrong to exercise coercive power merely for private gains. Since private actors are more likely than public actors to be motivated by such gains,

and since prison guards exercise coercion over inmates, the privatization of prisons is inherently suspect. Other arguments against privatization build on considerations that are familiar from the literature on the moral limits of markets.[17] Privatization, in this view, is a corrupting force.

Without denying the importance of such views and leaving aside for now the relative merits of the above approaches, I find the framing of this debate to be reductive, if not misleading. This is not only because the debate seems to rest, somewhat simplistically, on an all-or-nothing approach to the relevance (or lack thereof) of outcomes in the assessment of privatization decisions.[18] Nor is it simply because many of the considerations that are relevant to determine the moral limits of markets cannot extend to privatization, since the latter need not involve the direct buying or selling of goods, and since privatization has often been conducted through nonprofit organizations, putatively outside the market. Rather, and more fundamentally, by presenting the problem simply as a question about the desirability or permissibility of transferring discrete functions to private actors, even the strongest critics of privatization, somewhat paradoxically, reinforce its very logic, which assumes that government is ultimately reducible to a provider of particular goods and services, on par with a business or charity, and thus ought to be evaluated as such by its citizens, customers, or beneficiaries.[19]

This approach not only risks presenting privatization as a merely technocratic problem, rather than as a genuinely moral and political one. It not only fails to understand privatization for what it is: a broader transformation of the mode of governing and of the identity of government, rather than a particular policy. It also, and most importantly, leaves unanswered two fundamental questions: If private actors are morphing into government, can they act with the legitimacy that government claims? And can a government morphed into a network of private actors still govern those subject to its rules legitimately? These are the questions at the core of this book.

Asking whether a governing agent is legitimate, I take it, is to ask whether that agent has the right to make and impose certain decisions on others, and whether the agent has the standing to make those decisions in a way that results in changing the normative situation (the rights and duties) of those subject to them. In this respect, legitimacy is relevantly different from other values, including justice and efficiency, which either concern the substantive content of certain norms, for example, whether they are fair, or concern their expected benefits and costs.[20]

This book treats privatization, understood as a transformation of the practice of governing, mostly consisting in the systematic delegation of public functions to private actors, as an object of philosophical investigation. My aim is both to provide an original, diagnostic account of the wrong of privatization—a wrong that is partly independent from whatever good or bad outcomes privatization may also produce—and point to a path forward.

This book also aims to make theoretical contributions to a set of questions that are of fundamental importance in political philosophy and democratic theory. It develops an account of the foundations and limits of democratic authority that gives centrality to a commitment to rational independence (chapter 2); it defends a novel, philosophical account of the conditions of representative agency—what it takes for an agent to genuinely act in the name of another (chapter 5); and it develops an account of legitimate, ordinary lawmaking grounded on a theory of jointly intentional action (chapter 6). Although these contributions are developed through a critical discussion of privatization, their validity and significance are meant to stand independently of it. Therefore even those who are not particularly interested in contemporary transformations of governance will hopefully find other sources of interest in the philosophical arguments.

Privatization as Regression to the State of Nature

Why start with a focus on legitimacy, rather than directly focusing on the overall consequences of privatization for, say, distributive justice or equality? To see why, consider the following scenario. Imagine that a random person in the street, call him Stuart, walks toward you and claims the right to determine what you owe as a remedy to a third party you allegedly injured, or the right to determine whether you are entitled to be publicly reimbursed for a surgery, or the right to force you to enter and remain in a closed space against your will. You would presumably think, and reasonably so, that Stuart is out of his mind. Even if Stuart was acting with good intentions and was substantively right in his determinations, and even if his determinations would likely generate desirable outcomes, including a more equal distribution of resources, Stuart would have, I take it, no right to do what he claims to have the right to do. After all, who is Stuart to determine what you owe and what you are owed? Who is he to coercively restrict your freedom? If Stuart were to act on his claims, his actions either would be impermissible or would, in any case, lack the moral

power to change your normative situation—to impose new obligations on you or to determine what you are entitled to as a matter of justice. If backed by actual force, or by a credible threat of force, the imposition of such obligations would constitute a wrongful infringement on your freedom. Note that Stuart's willingness to be accountable to you for his actions would not improve the situation substantially. Stuart could be disposed to provide reasons and compelling justifications for what he has done or would like to do, but he would still lack the appropriate standing to act in that way.

If a privatized system of government turns out to be akin to a system where private actors, precisely like Stuart, lack the legitimacy to do what a government should do, we would have strong reasons to at minimum significantly limit privatization, even in the presence of some improvements in terms of efficiency, distributive justice, or equality, and regardless of other corrupting cultural tendencies privatization may or may not have. For keeping things as they are, in such conditions, would not be much different from keeping a benevolent colonial order in power just because it is benevolent. Benefiting others is an insufficient ground for the right to rule over them.[21]

However, privatization may seem to generate no problem of legitimacy. After all, unlike Stuart, within a privatized government, private actors are often authorized by a democratic government, generally through contract, to act on its behalf, and they can be subject to more or less strict forms of legal regulation and control by the principal. They thus seem to inherit, by transfer, whatever legitimacy government has.

But this conclusion is premature. As we shall see, political legitimacy does not simply require that those who credibly claim permission to define the content of our rights or duties, or to restrict our freedom through presumptively binding rules, be de facto publicly authorized to do so. They must also be validly authorized, an invalid authorization being no authorization at all. I will refer to this as "the authorization condition" on the legitimate exercise of political power. Further, in a democracy, the power to make decisions that change the normative situation of citizens, especially if discretional in nature, ought to be not simply authorized by the people but also exercised "in their name" and in a way that carries out their shared will.[22] We may call this "the representation condition." Finally, those who are authorized to make certain decisions, or to perform certain functions, on behalf of a democratic government must have the capacity, both moral and factual, to do whatever it is that they are authorized to do. Otherwise, their actions, even if well intentioned, would end up falling outside of the proper

domain of public authorization, with the result that they would amount to nothing more than merely unilateral determinations. We may call this third condition "the domain condition."

In light of these considerations, whether a privatized government can be a legitimate government ultimately depends on (1) whether privatization systematically transfers to private actors the power and de facto authority to make decisions or issue rules that change the normative situation of citizens in a relevant sense, thus triggering concerns of legitimacy, and (2) whether private actors have the standing and the capacity to meet the above conditions on the legitimate exercise of political power. By providing a positive answer to the first question and a negative answer to the second, this book delivers a distinctive critical diagnosis of the fundamental problem with privatization.

What is ultimately wrong with privatization, I argue, is not, or not primarily, that it commodifies, thereby corrupting, the meaning or nature of some particular goods or purposes, nor that it makes the provision of certain intrinsically public goods impossible. Nor is it only the fact that privatization may embody an objectionable form of neoliberal rationality, or that private actors tend to be motivated by inherently objectionable, profit-making considerations, or are unaccountable in the sense of lacking transparency or being unresponsive to the political community.[23]

The ultimate wrong of privatization rather consists in the creation of an institutional arrangement—the privatized state—that denies, to those subject to it, equal freedom, understood not as mere noninterference but rather as a relationship of reciprocal independence.[24] It does so by making the definition and enforcement of individuals' rights and duties, as well as the determination of their respective spheres of freedom, systematically dependent on the merely unilateral will of private actors, whose standing turns out to be not much different from the one of Stuart.

By further developing the recent revival of Kantian political philosophy, I argue, in part 1, that the very rationale that justifies and compels the existence of political institutions, including a democratic system of government and an administrative apparatus, consists in overcoming a precivil state of merely provisional justice. This state occurs because, in the absence of a political authority, the determination and enforcement of rights cannot but consist in the wrongful subjection of some to the merely unilateral and legislative wills of others.[25] This is true even if everyone is, by assumption, determined to act on objectively valid principles.

On the basis of this account, I then turn to show, in part 2, how, through the progressive privatization of its own functions, a democratic government reproduces, within the state itself, the very same problem that characterizes the precivil condition as a condition of merely provisional justice. This is because private actors' exercises of political power, owing to certain features that, normatively speaking, distinguish these actors from genuinely public agents, fail to qualify as exercises of an omnilateral, public power and instead remain merely unilateral decisions of particular men and women. Under a privatized system of governance, then, citizens' power of choice—their ability to form and pursue ends—becomes systematically and, to a large extent, unavoidably, subject to the legislative and merely unilateral will of others. In this way, privatization undoes the very rationale that justifies and compels the existence of political and democratic institutions in the first place.

So understood, privatization, while being an institutional transformation, is also, and more fundamentally, a normative one. It represents nothing short of a progressive regression to the state of nature, understood not in the Hobbesian sense of a state of ever-potential conflict, but rather in the Kantian sense of a normative condition of merely provisional justice, objectionable dependence, and unfreedom. Of course, in many democracies, unlike in the Kantian state of nature, the law still imposes limits on how private actors can exercise their discretionary powers, and the state, through its judicial system, retains a final say over private actors' decisions. However, as we shall see, the internal logic of privatization seriously undermines both the constraining power of public rules and the ability of states to exercise their adjudicatory authority through courts.

As I will show, one important way in which privatization reproduces the problem of the state of nature within the state itself is by undermining the separation between public offices and private roles—a separation on which the modern, bureaucratic state was founded so as to obliterate the patronage dependencies that were legacies of the feudal state.[26] In so doing, privatization turns the wheel back to a renewed kind of patrimonialism. In this respect, the critical thrust of the book can also be read as a continuation and, at the same time, an inversion of the story that Jürgen Habermas so eloquently told in his seminal book *The Structural Transformation of the Public Sphere*. Habermas argued that the entanglement of public and private, state and society, in the nineteenth century led to a refeudalization of society, culminating in the destruction of the bourgeois public sphere—a space of critical and open exchange.[27] I argue that the ever-greater entanglement between public and

private, brought about by processes of privatization since the late twentieth century, leads to a refeudalization of the state itself, a collapse between public offices and private loyalties, status and contract, that undermines the very rationale that justifies the existence of the modern state and the exercise of political power by its government.

If we assume that the progressive privatization of governments is a signature feature of what is often referred to as the contemporary "neoliberal order," the above fact also illuminates a contradiction that is arguably internal to neoliberalism itself.[28] As an ideology, neoliberalism advocates a restoration of liberalism, understood as an era of limited government that putatively ruled before the era of the welfare state and social democracy. However, as a practice of governance, if my analysis is correct, neoliberalism delivers the opposite: a renewed feudal order within which political power is increasingly exercised on the basis of privately negotiated obligations, nonpublic purposes, and, ultimately, unilateral determinations. Neoliberalism is thus inherently illiberal, insofar as it contradicts a view that is central to any possible liberalism: the idea that political power ought to be exercised in a public capacity and for public purposes alone.[29]

The title of this book can then be read in two ways. On the one hand, "the privatized state" is a descriptive characterization of a system of government in which the distinction between public offices and private contracts fades, and where the administration of the public is widely outsourced to private actors. On the other hand, it refers to a normative condition—a state—of objectionable dependence, where the determination and enforcement of people's entitlements, and of the restrictions under which they can be free to act, is made systematically dependent on private and merely unilateral exercises of power, rather than on an "omnilateral," that is, genuinely public and representative, will.

If to provide a philosophical diagnosis of the ill of privatization is one ambition of this book, a further, more prescriptive, ambition is to point a way forward. The solution to the normative problem that privatization generates—a problem of legitimacy—should be found, I argue in part 3, neither simply in increasing the regulation of private actors nor in accepting the rigidity and inflexibility of an aging command-and-control public bureaucracy. The solution should rather emerge both from (1) a normative account of the constitutional limits that must, *ex ante*, constrain the process of outsourcing and from (2) a democratic theory of public administration.

With regards to the first solution, I will not argue that all individual instances of outsourcing are equally problematic and should be constitutionally

limited. Although the book of course cannot address each and every instance of privatization, it does propose a new normative framework for thinking about such instances. What makes the relevant difference, I will suggest, is primarily the kind of discretionary power that private actors come to exercise within a privatized system of governance, and not all instances of outsourcing transfer the same kind of discretionary powers. Only forms of privatization that transfer "quasi-legislative" discretionary powers to private actors—the power to establish or regulate both the conditions of, and the restrictions on, individuals' freedom and their capacity to pursue ends—trigger, in my account, concerns of legitimacy. I will argue that privatization, as an overall transformation of the system of governance, does consist in the systematic transfer of quasi-legislative forms of power to private actors.

Further, I will not defend the implausible view that legitimacy is the only value that matters. In cases in which privatizing certain responsibilities would lead to massive gains in terms of, say, distributive justice that could not be achieved otherwise, these gains may well override considerations of legitimacy and thus also the case for constitutional limits. However, I do believe that, as the example of Stuart shows, legitimacy should enjoy a certain priority. Therefore, in many cases, we may have sufficient reasons to limit outsourcing even in the presence of some other gains.

Finally, my normative defense of constitutional limits does not imply that, starting tomorrow, any government around the world should implement it, regardless of circumstances. Clearly, if a government is deeply corrupted or largely dysfunctional, and if privatization is, empirically speaking, the only way of getting things done, then there can be an all-things-considered justification for some instances of privatization. However, as I will also argue, it is doubtful whether this is the kind of situation many contemporary democracies face. Indeed, the opposite would seem to be true: privatization contributes to, rather than reduces, several aspects of institutional corruption, and its promised gains in terms of justice and efficiency are highly debatable. In any case, a justification for privatization as an escape from corrupted and dysfunctional governments would be, at most, a temporary and second-best solution.

A more ideal, but still feasible, solution is, I will suggest, to reform the system of public administration in a way that would also strengthen civic trust in government. In this respect, the second prescription proposed in this book consists in a more democratic theory of public administration. While this theory should include a sharp, normative distinction between office and contract—a distinction that, in practice, privatization so insidiously undoes—it should

also demand a tighter integration between the democratic and the bureaucratic, by including participatory elements in the daily administration of public affairs. In systems that are widely privatized, however, and where a democratized system of administration is out of reach, at least in the short or medium term, the problem of privatization can be addressed only by directly, albeit provisionally, extending some of the requirements of political morality to the internal organizations of private actors. These requirements include demands for democratization, that are generally thought to apply to political institutions alone.

Broader Contributions to Political Philosophy

Beyond its diagnostic and prescriptive goals, this book also aims to make a number of broader contributions to political theory and political philosophy. Much contemporary political philosophy focuses either on questions of democratic authorization and democratic citizenship, or on the content of principles of justice, while largely ignoring the inner workings of government and of the modern administrative state. Against this trend, my book brings to the forefront a still-neglected area of investigation: the practice of public administration. In this respect, it joins in the recent efforts of a few scholars, including Bernardo Zacka and Henry Richardson, who have already done much to establish public administration as a new object of inquiry for the discipline.[30] However, unlike Zacka's excellent study, which focuses on the moral agency of street-level bureaucrats, the present book focuses on questions of legitimacy, including what counts as a legitimate exercise of administrative power and whether quasi-legislative power can be validly delegated to unelected public officials, and further, to private actors. Unlike Richardson's pioneering work on bureaucratic domination, it treats privatization as a distinctive threat to administrative legitimacy and draws important normative distinctions between public and private administrative agents. Importantly, the book shows that the legitimacy of a system of government and, in part, also the justice of a society do not depend simply on government respecting certain formal constraints, satisfying certain substantive principles, or achieving certain outcomes, but also on questions of agency: by whom relevant principles are implemented, what public officials are committed to, what ethos they have, what intentional relationships they share among themselves and with citizens, and whether or not they are embedded in an integrated procedural structure.

This book also hopes to contribute to the recent neorepublican literature in at least two important respects. While neorepublicans are directly concerned, as I am, with the problem of domination, they tend to focus on the excessive centralization or concentration of political power in the hands of a few as the main causes of political domination. This neglects the dangers of domination that arise from the excessive dispersion or diffusion of political power outside the formal branches of government, through processes such as outsourcing.[31] For republicans, then, the principal institutional solution to political domination naturally involves the separation of powers across different branches of government. Yet further separating powers may not be a viable solution within contemporary administrative states where functions of implementation and policy making cannot be fully separated and cannot provide a solution in those cases where the systematic delegation of political power to private actors is the problem. This leaves us with a dilemma that remains largely unaddressed by normative political theorists: either we limit outsourcing, thereby accepting the rigidity and inflexibility of an aging command-and-control public bureaucracy, which in and of itself can be regarded as a form of domination, or we embrace outsourcing but then face the risk of privatized domination, which leads us back to that very problem of subjection to the merely unilateral will of others that the modern bureaucracy, with its neat distinction between office and contract, was supposed to overcome.

In response to this problem, the book builds on a normative critique of privatization as a diagnostic tool with which to discover what general features a nondominating system of public administration should exhibit. While retaining the impersonal character of officeholding as a crucial feature of any such system, I reinterpret the requirement of impersonality as entailing, in terms of its practical achievement, not a rigid, Weberian system of command and control, or blind obedience to rules, but rather, and on more Hegelian lines, an appropriately institutionalized ethos of public service. I further argue that, while the system of public administration should become more "representative," democratic forces should be more directly involved in the process of administration. Rather than a sharper separation of powers, I thus propose, in this context, a partial integration of powers, as a way of combating new forms of privatized domination.

The second contribution to neorepublicanism, and more generally to democratic theory, consists in a novel, philosophical account of representation, as developed in chapter 5. Traditional understandings of what it means to act "in the name" of another tend to emphasize either certain qualities of

the representative's external conduct, for example, the representative's acting within the boundaries of a given mandate, or the audience's uptake of the representative's act. By contrast, I argue that while compliance with mandates is not sufficient for representation, the audience's uptake is not necessary. I develop an "internalist account of representative agency" that puts emphasis on the representative's intentions and reasons for action. In order to truly act as a representative, an agent must behaviorally act not only within the boundaries of his or her mandate, however vague these may be, but also on the basis of reasons that are not positively excluded (although they may not be positively included either) by his or her authorized mandate. This account has, in turn, important implications for how we should understand the duties of officeholding and lawmaking.

Finally, much of contemporary political philosophy, in particular liberal-egalitarian theories of justice, influenced by either John Rawls or Michael Walzer, still tends to conceptualize the social world as a cluster of discrete spheres—state, civil society, and markets—governed by different moral principles. This picture leaves almost no conceptual space to think about the complex relationships that in the real world take place between public and private institutions and organizations, of which the phenomenon of privatization and outsourcing in the administration of justice is perhaps one of the most important instantiations. By focusing on such transformations, a further contribution of the book is to create that conceptual space, while at the same time, however, also providing a renewed defense of a division of moral labor between political institutions and nonpolitical associations. On the one hand, the book argues that the division of moral labor that liberal-egalitarians envision among different social spheres and social actors is premised on a certain picture of the social world that began to vanish in the 1970s.[32] On the other hand, it reaffirms the need for a sharp institutional distinction between public and private, properly understood, arguing against an increasingly common view of political institutions and private forms of action as interchangeable means for the achievement of independently defined ends. What, of this distinction, must be preserved is an outcome, rather than a premise, of the book.

Methodologically, the book engages with different disciplines and different styles of argumentation. At times, especially in addressing foundational questions, I use the means of analytic philosophy, including conceptual analysis and logical argumentation. Other times, I closely engage with the social sciences, and I provide an interpretative analysis of real-world cases, so as to offer an empirically grounded account of how existing practices of governance

actually function. This approach, moving from the fairly abstract Kantian philosophy of right to the very concrete daily operation of nonprofit and for-profit companies, is not meant to be a form of methodological schizophrenia. Rather, it is meant, following Kant himself, as a reminder that we can move from the universal (the concept of right) to the particular only through a "principle of politics" that is "drawn from experiential cognition of human beings, that have in view only the mechanism for administering right and how this can be managed appropriately."[33] My hope is to show how, on the one hand, abstract philosophy is a necessary means to generate a normative framework that focuses our judgment on certain aspects rather than on others, when evaluating even the most mundane kinds of political practices. For example, our normative assessment of how to deliver welfare services to the needy may change substantively depending on our understanding of the philosophical foundations of the state and its political authority. On the other hand, the analysis of concrete, daily practices of governance may illuminate certain limits of a theoretical framework that we may not be able to see through philosophy alone. For example, a sociological analysis of how the exercise of discretion actually works within the administrative state, and of the limits of legal frameworks in constraining such discretion, may reveal some important holes, if not necessarily theoretical limits, within the republican theory of political legitimacy. How can citizens be free from the arbitrary imposition of the will of others, if the making and implementation of the law are unavoidably discretional?

Outline of the Argument and Book Roadmap

The book is divided into three parts. Part 1, "Privatization and the State," provides both the motivational and the philosophical background against which an account of the wrong of privatization is then developed. In chapter 1, after clarifying how to understand the concept of a public function, I critically assess existing answers to the question of when and why privatization is morally problematic. I then argue for a different diagnostic approach, which begins with the following fundamental question: what are political institutions for?

In chapter 2, I reject the widespread idea that political institutions and private modes of action are ultimately interchangeable means for the pursuit of the independently defined goal of justice. I defend the view that political institutions, including a democratic system of law, are constitutive of justice, rather than merely instrumental to it, for it is only through these institutions that claims of justice can be defined and enforced in a way that respects both

the fundamental status of persons as equal normative authorities and their independence, including their rational independence (independence in one's ability to respond to reasons and independence in acting being closely intertwined).

In chapter 3 I argue that if the rationale for a democratic state is to curb a form of subjection to the merely unilateral and legislative will of others, the just and effective administration of the modern state risks reproducing this problem within the state itself by demanding the delegation of a form of quasi-legislative discretion to administrators, whose judgment cannot be fully constrained or predetermined by higher, democratic rules. I call this the problem of bureaucratic unilateralism. I further show that in the privatized state this kind of discretion is unavoidably transferred to private actors. The problem of bureaucratic unilateralism, I then argue, can be solved, or at least mitigated, only by directly applying certain standards of legitimation directly to the exercise of quasi-legislative, administrative discretion. These standards require (1) that the delegation of relevant discretion be validly authorized by a democratic legislature, representative of an omnilateral will; this is what I refer to as *the authorization condition* on the legitimate exercise of administrative discretion; (2) a neat separation between contract and office, so as to support officeholders' commitment to implement the law in the name of all; this is demanded by *the representation condition*; and (3) an appropriate procedural integration between the bureaucratic and the democratic, so as to ensure that laws and policies carry out the omnilateral, shared will of the people throughout a unified process of administration, even when mandates are left vague and the constraining power of formal rules is limited, and to ensure that delegated agents end up doing what they are authorized to do, rather than something else, as required by *the domain condition* on legitimate exercise.

Part 2, "The Privatized State," turns to show how privatization, by virtue of its very logic and of certain features that constitutively differentiate private from public actors, undermines each one of the above conditions. In this way, it reproduces, within the state itself, the very same problem of subjection to the merely unilateral and legislative will of others that characterizes the pre-civil state as a state of merely provisional justice.

In chapter 4, I answer *the question of authorization*: are there limits to what a democratic government can validly (not simply permissibly) authorize private actors to do on its behalf? Although I reject an essentialist account of "inherently public functions"—functions that by their very nature can never be delegated—I argue that there should be *ex ante*, aggregative limits to what

private actors can be validly authorized to do and decide on behalf of a democratic government. More precisely, I defend the claim that privatization, beyond a certain threshold, ought to be regarded as an abdication of the collective right to democratic self-rule. Since, I argue, a democratic people lack the moral power to abdicate their own self-rule, a government lacks the moral power to validly engage in the systematic privatization of public functions. Therefore, in societies where privatization is already pervasive, further delegations ought to be regarded as lacking the authorizing normative power they purport to have. When private actors make decisions under invalid authorization, they do so in their own private capacity, namely unilaterally. Their resulting exercises of salient forms of discretion thus fail to meet the authorization condition on legitimate exercise.

In chapter 5, I answer *the question of representative agency*: do private actors have the standing or capacity to exercise certain forms of power, or make certain decisions, in our name? I first defend a novel account of the conditions that an agent must meet in order to act or speak in the name of another. I call this "the internalist account of representative agency." On the basis of this account, I then argue that, even when private actors act under valid democratic authorization, owing to certain constitutive features that differentiate them, qua private actors, from public ones, they systematically fail to act in our name. They thus fail to meet the demands of the representation condition on legitimate exercise.

In chapter 6, I turn to *the question of delegated activity*: do private actors have the standing to do what they are democratically authorized to do on behalf of government? I argue that, in some cases, the agency, public or private, through which a certain decision is made, or a function is performed, changes the very nature of the decision or function at stake. On this basis, I further show that private actors, even when they follow the terms of their government's authorization, may fail to do what they are authorized to do, thereby violating "the domain condition" on legitimate exercise. Insofar as their actions can be regarded as falling outside of the domain of public authorization, they remain not very different from the merely unilateral (because also unauthorized) actions of private individuals in the Kantian state of nature. Therefore, if a commitment to independence provides us with reasons, indeed a duty, to exit the state of nature, it also provides us with strong reasons, indeed a *pro tanto* duty, to exit the privatized state.

Part 3, "Beyond the Privatized State," both provides an account of the responsibilities of private actors within nonideal contexts of widespread privatization and proposes an exit strategy—a way out of the privatized state.

Chapter 7 focuses on one kind of private actor: the philanthropist. I argue that, in contemporary societies, the philanthropist's duty to give should be understood neither as an imperfect duty of beneficence nor as a conclusive duty of justice, but rather as a transitional and provisional duty of reparative justice. The duty is "transitional" because it should eventually be taken over by public institutions. It is "provisional," for in the absence of just institutions, its fulfilment is simultaneously demanded by, and incompatible with, individual independence. Finally, the duty is "reparative" because it is grounded on the wealthy's liability for wrongful harm to the poor.

Chapter 8 turns from independent private donors to contracted private providers. Within contexts of widespread privatization, I argue, we have strong reasons to extend to the internal conduct of many private organizations the same demands of political justice and democratic governance that many political philosophers, in particular liberal-egalitarians, would instead confine to political institutions alone. In particular, I defend a transitional duty of democratic justice for nonpolitical associations that pursue justice as government's proxies. However, I argue that, since the collapse of a division of moral labor between political institutions and nonpolitical associations comes at great costs for the latter's members' associative independence, we have strong reasons, grounded on associative independence, to limit privatization and reestablish a sharper division of both institutional and moral labor between the political and the associational.

Chapter 9 sketches a way out of the privatized state. It first defends certain constitutional limits on privatization. It then articulates, in broad terms, some policy proposals for rebuilding a more democratic and representative system of public administration. One such proposal concerns an educational program for the civil service. Although I believe that the education of the civil service should share many of the features of the civic education of citizens, I do defend some distinctive conditions that apply only to the former. The other proposal concerns the introduction, through arrangements like codetermination, of democratic practices within the administrative state itself. The purpose of these arrangements should be to strengthen the democratic legitimacy of the administrative state, and thus also citizens' trust in it, without compromising its independence from undue political pressures.

The epilogue provides a quick summary of the book's argument and draws three main theses from it.

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