

transmit their power across wide social spaces at a high level of positive reproducibility. The primary norms of constitutional rule, in consequence, can be seen as adaptive dimensions of political power itself. These are institutions generated within power as power became progressively sensitive to highly differentiated societal environments, and as society as a whole, shaped by its functional extension and differentiation, created and encountered a need for more inclusive and autonomous capacities for using power. In a modern society, in short, political power is always likely to be applied through constitutional laws, through rights, and through reference to the inclusionary norm of popular/sovereign authority. Moreover, political power is always likely to be perceived as *legitimate* if applied in this form: constitutional laws, rights and selective popular inclusion create an internal apparatus within political power through which it can reproduce and transmit itself through society at a high level of internal consistency and with a minimum of unpredictable resistance. Societies that do not articulate power in this internal normative form are (over longer periods of time) unlikely to utilize power very effectively, and they are always susceptible to the threat that they might forfeit their inclusive political structure and erode their defining capacities for spatial and temporal extensibility, relatively rapid and reliable decision making and effective inclusion. To this extent, normative or analytical theory intuits a basic truth in its common claim that the legitimacy of political power depends on its exercise through constitutions and distinct legal rights. However, these primary objects of normative constitutional analysis (constitutions, rights and legitimacy) can only be adequately explained by sociological reconstruction.

The third conclusion of this book has a more formally normative quality. It is that in modern societies political power is always likely to assume certain basic normative legal features. Above all, if we assume that modern societies are usually determined by the fact that they require innumerable positive and replicable decisions (statutes) and they necessitate positive procedures for the positive, extensible political inclusion of very diverse actors and exchanges, it is probable that in these societies political power will assume and preserve an internal normative shape that is defined by constitutional laws, uniform subjective rights and some degree of popular/democratic inclusion. These principles or institutions might be seen as the *functional norms* that underpin modern power, and that permit societies recursively to apply and reproduce their power. To this limited degree, in fact, sociological analysis might allow itself to suggest that the norms of constitutional rule are probable preconditions

for the political (and perhaps more general) self-reproduction of modern societies, and it might even indicate, prescriptively, that such norms have a *desirable* status. Indeed, it is observable that societies able to multiply their reserves of power through a normative constitutional apparatus are also societies that, in extracting their power from highly singular processes of coercion, usually (albeit with exceptions) engender relatively high levels of political freedom for their members. Societies capable of generating power as a positive autonomous resource are normally societies in which extreme personal violation is rare (although not unknown): societies in which power is abstractly concentrated in states and in which power can be positively replicated through law without singular personal intervention in different settings tend to permit higher degrees of social liberty than societies in which the means of social coercion are endemically privatized and obdurately resistant to positive reproduction. Constitutions play a central role in this regard: in holding political power at a level of positive abstraction, they create conditions in which, over longer periods of time, power is likely to be applied in equal, internally reproducible, routinely inclusive and, therefore, personally indifferent manner. Across different historical periods, it can be observed that societies that struggle to abstract positive facilities to reproduce political power are defined both by weak constitutional structures and by high levels of personalistic violence and duress. To this degree, a sociological approach to constitutions might suggest that constitutions, although primarily acting, in functional manner, to maximize the reserves of usable power in society, have the benefit that, in multiplying power, they also (normally) produce and multiply social freedom. Indeed, this approach might suggest that societies producing high volumes of power tend to produce the highest degree of social liberty. The coincidence of constitutions and social liberty has often led normative theorists to think that constitutions and constitutional rights are created to secure human freedom, or that the extent to which they facilitate human liberty might even be a measure for the validity of constitutions and constitutional rights. Liberty, in fact, is only an incidental outcome of constitutional functions. Yet it surely authorizes normative endorsement of constitutional rule.

The yield of a sociology of constitutions is, therefore, threefold. First, it allows us functionally to explain the widespread reliance of modern societies on constitutional order. Second, it allows us to correct the foundational reductivism of more conventional lines of normative inquiry into constitutions and political legitimacy. Third, it allows us

to illuminate the probable normative structure of modern society, and even to indicate that deviation from certain constitutional norms might (for reasons that are not normative but sociological) be undesirable and might jeopardize the basic resources and structural form of society. On this last point, a sociology of constitutions permits us to bring towards conclusion the first objective of the sociological critique of the Enlightenment, and it enables us to offer a sociological (not deductive) model of political legitimacy. Specifically, it allows us to propose a generalized model of political legitimacy, which defines the legitimacy of the modern state as depending, first, on the exercise of power through uniform public laws; second, on the constitutional guarantee of equal subjective rights, usually differentiating clearly between public rights and private rights; and, third, on constitutional provisions for selective popular/sovereign inclusion. Above all, this sociological perspective suggests that societies diverging egregiously from the abstractive and selectively inclusionary functions of constitutional rule are often exposed to the danger that they erode their conserves of political power, they undermine their ability to utilize political power as an autonomous facility, and they relinquish their capacity for the reliable politicization of social exchanges. In this respect, a sociology of constitutions might even play an evidentially sustained role in debate about ideal or undesirable patterns of governance. Yet a sociology of constitutions has the distinction that in isolating a normative political model for society it is not afflicted by the deductive aporia afflicting rival lines of inquiry, and the grounds of the normative model that it proposes are constructed in pure sociological fashion: through internal analysis of the adaptive pressures underlying the political systems of modern societies.

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