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TITLE

AN ENQUIRY INTO THE RELATIONSHIP BETWEEN THE
AUTHORITY OF THE STATE AND THE FREEDOM OF THE
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AN ENQUIRY INTO THE RELATIONSHIP BETWEEN
THE AUTHORITY OF THE STATE AND THE FREEDOM
OF THE INDIVIDUAL

BY

W.E. WYLLIE

Submitted 1983 for the degree of
Doctor of Philosophy
in the Department of Philosophy,
School of Humanities and Social Sciences,
in the University of Surrey.
This enquiry into the relationship between the authority of the state and the freedom of the individual is conducted through the medium of a philosophical model of society initially conceived of as a political community with the individual in the role of citizen. The model is developed by introducing the notion of the state as subsuming the political community, and positing the individual first in terms of personhood derived from his parent state, and then in terms of autonomy. The logical relationship between the state as a complex of rule-governed situations and the freedom-seeking individual is examined. Within this context, the Hegelian notion of Sittlichkeit is introduced and developed as a concept indicative of the individual's obligation to his native state. Moreover, the challenge which Kantian-inspired autonomy may be held to pose to the state's authority is explored and found to be misconceived. The basis of the state's authority is then examined through an enquiry into the legitimation of law. The implications of Rousseau's notion of the general will are analysed and found to be consistent with Kant's universal principle of right as offering a criterion by which to evaluate the justice of law. By situating the principle within the social context of the state the principle can be given a content, a content which it is the purpose of the political community to determine. Finally, the presuppositions on which the model is based are shown to be generally consistent with aspects of Popperian epistemology.
Acknowledgements

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Introduction

1. This work is concerned with a series of problems which are connected with freedom and authority; the problems centering on the nature of authority, its justification, the grounds on which it may be challenged, and the relationship of the individual to the authority structure of the state. As this enquiry is ultimately directed towards an investigation of freedom and authority in the political sphere and as the enquiry is philosophically inspired, its purpose must be the production of philosophical theory in this area. But at once a methodological problem arises. What is the nature and function of philosophical theory here? If it can be reduced to political science, then the claim which has been made from time to time that political philosophy is dead would be substantiated. But if it is maintained that political philosophy does retain both its autonomy and validity as an intellectual discipline, what is its nature and methodology? It is this problem or group of problems which demand prior attention.

2. The classical approach to the problem of theorising about the nature of the political relationship has been to attempt to establish a set of axioms usually taking the form of basic, pre-eminent and assumed to be self-evident characteristics of human nature. With such characteristics established as the theoretical foundations, it then becomes possible to develop a model within which is offered a formulation of the minimum conditions which will allow individuals to pursue their substantive wants without jeopardising the political or civil relationship which is the necessary condition of a civil society.
So it is that for Hobbes, man's selfish and aggressive nature requires that conditions of restraint be accepted if there is to be the possibility of a stable society; for Locke, man's basic propensities towards the accumulation of goods and property require the sacrifice of a degree of personal autonomy in that for society to exist there must be some arbiter, viz., the ruler, to resolve conflicts as and when they arise; central to Rousseau's conception of a person is the right to be free, but such freedom can only be guaranteed within society if the individual surrenders his personal autonomy in favour of subservience to the 'general will' which, in an apparent paradox, assures his freedom. Each of these philosophers postulates the conditions which would exist if there were no recognisable society in any form, that is, man living in a 'state of nature'; such states of affairs taking on the character accorded to them by man's basic nature - for Hobbes one of savagery, for Locke one of acquisitiveness tainted with incipient conflict, for Rousseau one of idyllic virtue. Each postulates in differing terms the notion of a 'contract' into which the individual enters with the state whereby restrictions are accepted by the individual in return for one or another set of advantages obtainable only within a stable and secure society.

The implication is that the political philosopher is mainly concerned with the construction of models of society and that it is through such models that the solution is offered to the major methodological problem inherent in political philosophy. This is the problem of establishing
the function of theory in this area. But what do such models purport to offer?

It is clear that models can be used for different purposes and, as such, are amenable to categorisation in relatively unambiguous terms. First of all, a model can offer a generalised description of society or aspects of society which throw into relief certain features which are held to be significant. Weber's analysis of authority into three ideal types is of this kind. Such a model establishes, or seeks to establish, current de facto patterns of conduct against which gross deviations may be thrown into relief and, possibly, corrected. Secondly, there is what can be termed a technological function. Typically, in such a model certain features of reality are posited as basic assumptions and on these a model of society is erected which, it is held, will work. The Hobbesian model which begins with assumptions concerning the nature of man has this technological character, attended, perhaps, by the suggestion that this is the best that man can hope to achieve. Next, there is the normative function. Here it can be held that it is the object of political theorising to present us with a blueprint for some kind of ideal state of affairs - a desired end to be worked towards rather than a descriptive analysis. Finally, there is that function which is concerned with promoting an understanding of politics and society rather than simply offering a description or even an ideal. All models, including the Hobbesian, are open to interpretation in these terms to some extent. It will be the implications of this category, in particular, which will be examined in the following pages.
Although the categorisation of the various discernible functions of models within political philosophy is a useful starting point, such categories do not in themselves explain the nature of such models nor, more importantly, their status in terms of which the validity of any given model is to be judged; and it is here that the central methodological problem of political philosophy is located. Contemporary philosophers tend to have a short way with this problem. Robert Nozick asserts:

'A theory of a state of nature that begins with fundamental general descriptions of morally permissible and impermissible actions, and of deeply based reasons why some persons in any society would violate these moral constraints, and goes on to describe how a state would arise from that state of nature will serve our explanatory purposes, even if no actual state ever arose that way.' (1)

This forthright assertion of the explanatory power of theory is unaccompanied by an explanation either of its nature or its source. Michael Oakeshott offers an abstractionist starting point for his theorising when he states:

'This ideal character (of the theory) is among the instruments which may be used in seeking to understand complex, ambiguous, historic human associations .... here I am not concerned to use but to understand it in terms of its postulates. And, of course, it is ideal not in the sense of being a wished-for perfect condition of things but in being abstracted from the contingencies and ambiguities of the actual goings-on in the world.' (2)
Both approaches to the problem are interesting in that they both bear comparison with, and may be consciously based in, different aspects of scientific theorising. Oakeshott adopts an idealist approach in that, in the above passage, he suggests that his theory, the delineation of the 'civil condition', is ideal in character but is derived from being 'abstracted from the contingencies and ambiguities of the actual goings-on in the world'. It is, in other words, an attempt to understand the political mode of association in terms of actual underlying principles. How the range of phenomena is to be delimited in advance of the process of abstracting is not made clear, although it is likely that any political philosophy must begin by differentiating that which is political from that which is not (a process culminating in a delimiting decision which will almost certainly contain an arbitrary element). None-the-less, the process of noticing a pattern of happenings in some set of phenomena and then accounting for the patterning in terms of a theoretical construction is a familiar process in scientific explanations.

Nozick, on the other hand, is more formal in that he adopts a method which would have been familiar to the classical contract theorists; indeed, his theory germinates in a consideration of Lockean political philosophy. The formal character of Nozick's approach is apparent in his insistence that the theory is philosophically valid in that it enlarges understanding even though the processes described could have, but need not have, a counterpart in reality. The theorising here is not focussed on an examination of the given, but is rather a closely argued theorem based on a
number of axioms themselves grounded in assumptions involving human psychology and rights. The philosophic validity derives from the extent to which it generates understanding within the rules or tradition which delimits that which will count as philosophical reasoning within the field of politics.

The point of contact between Nozick's philosophy and scientific theorising may be found by comparing his method with that of, say, Einstein's deductive approach. But although both offer blueprints which may be held to have explanatory power, the scientific theory carries with it the additional requirement that it be testable against experience and that it has predictive power. A closer comparison would be with Freudian theory which has an undoubted capacity to generate explanatory power even though it is not expressed in a form which allows it to be subject to the Popperian criterion of falsifiability - a characteristic which opens it to the charge that it is metaphysical speculation rather than scientific theory.

A greater difficulty occurs with Nozick's theory when we consider its relationship with actual social conduct. The difficulty is not, as with Freud's theory of the subconscious, that nothing is excluded where human behaviour is concerned and is, hence, unfalsifiable, but that it is not clear to what extent the theory necessarily has to touch upon any aspect of the reality in question, that is, the social and political milieu. The minimal state as characterised by Nozick clearly need have no counterpart in reality as he challengingly admits. It would appear that the only point at which his formal construction needs to be accepted as
embodying empirical assumptions is in his set of axioms. But it is by no means obvious that even if these axioms are shown to be of doubtful validity in empirical terms that the theory would be in any way weakened.

Plato's 'The Republic' offers useful illustrations of the various kinds of ambiguity to which theorising in the social sphere is subject. In 'The Republic' the myth of the men of gold, silver and iron is a myth in the sense that it is a consciously devised fabrication intended to achieve a social end; namely, the willing popular acceptance of a particular social order. It should be noted that for those who believe it, the myth will have the features of an acceptable theory to the extent that it has both explanatory power and a clear relationship to the actual state of society (assuming the existence of Plato's Republic). Compare the myth with Plato's developed blueprint for the ideal society as delineated in 'The Republic'. As an example of philosophical theory it remains potent in that it is still regarded as a fruitful source of insights and recommendations which have contemporary relevance. Yet it embodies many of the features of a myth: the theory has no obvious actual counterpart - there is no ideal Platonic state; the major presuppositions are unacceptable in scientific terms either because an underlying epistemology has to be accepted which lacks scientific credibility or assumptions within the theory have been made which would now be regarded as either mistaken or simplistic in scientific terms (where the inheritance and nature of intelligence are concerned).
In what sense, therefore, can Plato's 'The Republic' be said to represent a political theory while the myth of the men of gold does not? Part of the answer lies in the truth condition. As has been noted, the myth, although meant to be believed, is proposed for instrumental purposes, not because it is held to embody truth. It is a fiction.

'The Republic', on the other hand, is intended to demonstrate some kind of truth - although 'truth' here stands in need of qualification. Intentions, however, cannot enter into the conditions which may be held to guarantee the truth of a theoretical structure: what is held to be a fiction may be true just as that which is construed in good faith may, in fact, be false.

What, then, ensures the continued status of 'The Republic' as political theory and not myth? As a theorem it does maintain an internal coherence; that is, given the particular presuppositions involved, there is nothing in Plato's theorising which is obviously contradictory or irrelevant. As such, it may be said to embody truth if that truth is understood in terms of its interior structure, i.e., in terms of accepting as given the postulates and accepting the logical validity of the ensuing theoretical reasoning and resulting structure. Stated in these terms, the status of the theory may be likened to a mathematical theory which is logically valid in terms of its axioms and deductions even though it will not bear the weight of any attempt to seek confirmation of its conclusions in the physical world.
Two observations are prompted by a comparison of this kind. First of all, it is not immediately obvious why essentially a priori reasoning of this kind should give rise to conclusions or theories which have any illuminative validity or use in such an eminently practical area of life as politics. Why, to return to Nozick, will the resulting theory 'serve our explanatory purposes, even if no actual state ever arose in this way'?

Secondly, if the initial postulates are unacceptable in terms of their truth, whatever is built upon them will have no more validity than a well-constructed fairy tale. In such a case it could be argued that the central thesis of Plato's 'The Republic' would be indistinguishable from the myth of the men of gold in terms of its pretensions to theoretical status. It would appear that internal coherence is insufficient to rescue a supposed political theory from being otiose. However, these two conditions, viz., the truth of the axioms and the supposed necessity for some kind of correspondence between theory and practical affairs have hitherto been presented in limited and, possibly, simplistic terms.

The comparison of political theory with mathematical system-building usefully allows the above objections to be thrown into relief, but there are elements in philosophical theory which are not analogous to a mathematical model, or, for that matter, to a scientific model without seriously misrepresenting the nature of political philosophy. A political theory could be a scientific theory about the nature of politics, it is even conceivable that it could be political
processes understood in terms of mathematical theorising, but the present concern is with philosophical theory related to politics and this must be located within the rule-governed framework which enables philosophy to be recognised as a distinctive activity.

Understood in these terms, the mooted objections can be resolved or answered. In the first place, the relationship between a philosophical model and reality is posited in terms of understanding: specifically, philosophical understanding. Thus a model within a political theory need not offer a description of an existing or past state of affairs. What is important is that it explores and elicits the implications of its epistemology; while these remain fruitful and interesting it is not even necessary to espouse the underlying epistemology - Plato's 'Republic' is just such a case. So it is that if the model continues to offer philosophic illumination of the world of politics, its status, qua philosophic model, is secure; if it is either logically or imaginatively stretched to the point where it ceases to fulfil this function, this will be the point at which it may be considered to be a fairy-tale or fiction. In other words, Nozick's assertion, though ambiguously expressed, is open to interpretation in these terms and so may be endorsed.

Secondly, the application of philosophic understanding to the examination of political activity implies that the resulting arguments, models or principles will be developed within parameters established by philosophical concepts and their contents on the one hand (such as the particular ontology and epistemology adopted by the theorist), and empirical evidence and assumptions on the other. What is more, insofar
as the presuppositions in which the theory is grounded are metaphysical in character, the theory will remain secure against changes in empirical evidence. Plato's 'Republic' is not invalidated as the means by which social and political questions are illuminated by objections to assumptions of an empirical nature, assumptions which are now held to be untenable. At most, the theory stands in need of amendment or the model in need of adaptation. The metaphysic would appear, in fact, to contribute largely to the status of the theory both as a philosophical theory and to its depth and profundity as a theory within political philosophy.

That said, the role of empirical considerations is not negligible. Although, in these terms, a philosophical theory and any model which is integral to it is, strictly, logically independent of a correspondence with empirical situations or considerations, nonetheless it would be strange if a philosophically successful theory were divorced from a recognisable political reality in any way. The recognition of the truth or partial truth of empirical assumptions will help to anchor the theory in a context which is recognisably political within the bounds of human experience. For example, it has already been noted that in classical political philosophy assumptions tend to be made concerning what are assumed to be self-evident human characteristics. But it may legitimately be objected that the basic conditions of personhood are more complex and elusive than those picked out as being the distinctive characteristics, and, by implication, the sufficient conditions of what it is to be a person. In other words, it is argued that although the classical
philosophers were unjustified in making such universalistic assumptions about man's nature, these assumptions will be true descriptions of the nature of some men or they may pick out characteristics which are part of the nature of most men. Insofar as they are correct to this extent, the theory will remain grounded in a recognisable human context. What is more, if a model is developed which uses such characteristics as axioms, as happens in Thomas Hobbes' philosophy for example, then it will be the case that the subsequent theorem will embody a corresponding degree of agreement with reality. To put the matter in slightly different terms, the theorem's identity as a possible and recognisable reality will be guaranteed to some extent by the extent to which the original presuppositions themselves reflect reality.*

The other observation which it is appropriate to make just now is that in political philosophy theorising is not entirely a deductive process. Political philosophers develop their theories by importing concepts, assumptions and information as required by the theory. It is not an exercise in pure logic, rather one of judgment. That being the case, the nature of the empirical evidence available to the philosopher may well be crucial in influencing the actual

* To say this much is not to deny that it is also possible (as may be held to be the case with Plato's political philosophy) that insights, which can be held to be empirical in nature, help to strengthen confidence in the underlying epistemology or metaphysic.
direction in which the theory develops. The underlying metaphysic may well limit the approach but it will not determine it; that will be a matter for the judgment of the philosopher, and in forming such a judgment empirical considerations may well be decisive.

3. At one level it is perfectly clear what counts as political theory and what its function is. The analysis of political concepts has been, since Plato, an important and continuing preoccupation of political philosophy although it is a preoccupation which has grown more intense this century with the development of a specific school of philosophical thought devoted to the practice of analysis as an end in itself and, latterly, much influenced by the later writings of Wittgenstein. But while the analysis and clarification of concepts is important and must be a concomitant element in any philosophy, it is necessarily insufficient as a description of the whole function of political philosophy because linguistic analysis as a methodology cannot address itself to important philosophical questions except to demonstrate ambiguities in the questions themselves. For example, where authority is concerned, using the techniques of analysis together with the essentially positivistic categorisations resulting from sociological interest in authority, it is possible to establish, relatively clearly, the area of meaning occupied by the concept. The point at which this means of enquiry needs to be supplemented is when questions are posed such as 'What are the limits of authority?' or 'Under what conditions can authority be legitimately challenged?' Answers to such questions will involve reference
to values and normative standards embodied in the social and political framework within which authority is located. In other words, the explanation of authority must take place within some wider theoretical context.

It now remains to outline the characteristics of such theorising. Certain features have already been established. To briefly enumerate them, they are:

(1) that the paradigm for a model of political philosophy cannot be that which is appropriate to the purely deductive processes of mathematics and formal logic (this is not to deny, of course, the necessity to adhere to the canons of valid reasoning in all forms of political theorising);

(2) that philosophical theorising will be founded in a metaphysic which will determine its ontology and epistemology in general terms;

(3) that such theorising will also incorporate empirical considerations which will establish the identity of the theory or of any integral model as a recognisably political state of affairs;

(4) and, that the correspondence of the model with reality is further guaranteed by the extent to which axioms are grounded in truths about the human condition with the likelihood that they will be generalisations concerning human nature.

To further elaborate and develop the characteristics of a philosophical political theory consider the process of theorising. In science the major purpose of a theory is to explain phenomena of one kind or another with the additional attribute of furnishing grounds on which predictions can be
made concerning the phenomena in question. To this end, the typical process is one of developing hypotheses which, if confirmed by experiment and experience, achieve the status of laws and so become incorporated into the wider paradigm which is accepted as embodying acceptable assumptions on which to base further experimentation and research.

It is, however, immediately obvious that if the formation of laws or law-like generalisations linked to testability and predictive power are the hallmarks of scientific theory and if these features generate, pari passu, explanatory power, then political theory is not of the same order. It cannot be claimed that either classical or modern theorists offer explanations of this order in their various theories or models; in fact, theories which did aspire to such characteristics would more properly be found within the province of political science.

One way of establishing the qualitative difference between scientific and philosophic theorising is to suggest that 'explanatory power' is a misleading phrase; rather, it is the case that the function of philosophy in this area is to provide understanding. While the two terms 'explanation' and 'understanding' are often used synonymously in ordinary usage, a plausible and (in this context) useful distinction can be made. First of all, where an explanation is given it does not necessarily follow that understanding has taken place, although where understanding is achieved, explanation may be involved. The point is that 'understanding' has a psychological connotation which is absent in 'explanation'. 'Explanation' implies the existence of objective, publicly available data
which in science typically takes the form of a theory, while 'understanding' is what might be called the subjective attitude of mind towards data like 'explanations', an attitude which is intimately connected with the enlargement of meaning within a pre-existing framework of reference. So that to 'understand' in scientific terms is to be able to accommodate theory to conceptual structures, assumptions and theories already subjectively held.

Given that political philosophic theory is not of the same order as scientific theory in that self-evidently it does not seek to offer explanations which are causal in nature and, as such, are capable of being framed in terms of testable laws with accompanying predictive power, it would appear that one function of political theory in philosophy is to bring about a greater understanding of politics, not to offer an explanation of politics in the severe scientific sense. It follows that if the furtherance of understanding is one of the important functions of political philosophy then political theorising as practised by the philosopher does not purport to offer explanations, at least not in the scientific sense outlined above where the two terms 'theory' and 'explanation' become virtually synonymous.

The importance of these distinctions is not that they are merely conceptual clarifications, but that they open the way to a clear appreciation of the differentiation which must be made when we consider the nature and function of philosophical theory as opposed to scientific theory or even theorising in the social sciences.
Features in political philosophy such as the partial validity of those generalisations which form the basic assumptions and the significance of concepts, information and ideas from the world of practical politics has already been the subject of comment. It remains to delineate the remaining characteristics of philosophical theorising. To this end, the notion of theory understood as a metaphor is productive. In his essay 'Does Political Theory Still Exist' Isiah Berlin points out that:

'The notion that a simile or model, drawn from one sphere, is necessarily misleading when applied to another, and that it is possible to think without such analogies in some direct fashion - 'face-to-face' with facts - will not bear criticism. To think is to generalise, to generalise is to compare. To think of one phenomenon or cluster of phenomena is to think in terms of its resemblances and differences with others. This is by now a hoary platitude. It follows that without parallels and analogies between one sphere and another of thought and action, whether conscious or not, the unity of our experience - our experience itself - would not be possible. All language and thought is, in this sense, necessarily 'metaphorical'.

Berlin's use of the term 'metaphor' is significant although it needs to be treated with some caution. The objection is that 'metaphor' is too ambiguous a concept to indicate the peculiar character of those elaborate comparisons which appear in theories within political philosophy (this ambiguity is implicitly conceded by the use of the inverted commas in Berlin's essay).
Towards developing this line of thought, it should be borne in mind that politics, however defined, as a practical activity has no necessary need of theory as a prerequisite for the continuing practice of the activity. Gilbert Ryle has pointed out that men reasoned intelligently long before there was a theory of logic just as men fished efficiently before Walton's theoretical prescriptions were developed. (6) The conclusion is that 'efficient practice precedes the theory of it'. (7) This is true of politics, and even where theory can be shown to have affected practice, this will be the outcome of peculiar contingent conditions, not of logical necessity.

But if the resulting theories do not have explanatory power in the scientific sense, that is they do not involve the formulation of laws which are logically linked with the phenomena which they explain, (8) what is their nature? The principal function, it has been argued, is to promote understanding of the political process; but understanding itself is a reflexive process requiring an interpretive framework on the part of the individual concerned which is brought to bear on the theory and which, if fruitful, enlarges the individual's subjective framework in the form of increased understanding. It is this element which has been emphasised in the insistence that a philosophical theory derives its validity from the philosophic mode of thought in which it claims to be incorporated. But this still leaves the objective nature of the theory ambiguous. What kind of 'explanation' offered by the theory is the subsequent understanding grounded in?
So far, it would appear that political theory within philosophy emerges as something like a shadow of scientific theory, viz., theory stripped of its strict connection with truth, falsifiability and logical connection, and so is left open to being characterised as 'metaphor', to use Berlin's term. But, as has been objected, 'metaphor' is too ambiguous in that it does not indicate the particular characteristics that the comparison has to have in order to qualify as belonging to the class of 'political theory'. Some further delineation is still required.

In 'Aspects of Scientific Explanation' (9), Carl Hempel makes an interesting distinction between a true explanation and a potential explanation in which the difference lies in the possibility of the potential explanation being false. This possibility is not open to a political theory because its philosophical validity is not to be judged in terms of its truth, where truth itself implies some kind of correspondence with, or confirmation by an objective reality. There is no comparable case in political philosophy to the kind found in science in which, for example, a theory such as the phlogiston theory has been falsified and has simply been discarded.

But the notion of a 'conditional explanation' is useful in this context if Hempel's notion of 'potentiality' is interpreted in the following terms: by a conditional explanation is understood any generalisations, principles or models formulated into a coherent theory which represent a possible picture of reality in political terms. To say
this much is to imply more than merely that the theory would be true if the practice corresponded to it (which would be an empty truism); rather it is to draw attention to the nature of politics in which practice is the result of decision-making. To that extent, philosophical theory in politics maps-out possible states of affairs. It is through a consideration of the comparison between the present reality of politics and what may be termed the potential or conditional realities represented by philosophical theory that understanding of the nature of politics is engendered. Berlin's argument concerning the necessity for there to be the opportunity for analogies to be made before productive thought is possible is substantially illustrated by the practice of political philosophy.

It follows that although there is no strict logical necessity involved in the relationship between a philosophical theory and the actuality of politics in the world, insofar as the political dimension of human affairs is recognisable as a form of life because it is rule-governed in the sense that it is expressed in a distinctive language, that it is concerned with problems and forms of social organisation and institutions which are distinctive, then it will be the case that these features will be reflected in the theory to some extent at least for the theory to be recognised as a philosophical theory about politics, per se. If political theory here presents a picture, then it is a picture of possibilities rather than actuality, but the possibilities themselves must be capable of being recognised as political by the same features which allow recognition of and engagement in the political way of life in the first place.
4. There is one feature which is held to be present in scientific theory which is a logical condition and which may also be held to have validity where the conditional theorising of politics is concerned. This is the requirement that for a theory to have the greatest explanatory power it should ideally, exclude any element of that which requires explanation. N.R. Hanson in 'Patterns of Discovery' states:

'One might object: the dynamical behaviour of a billiard ball can be explained by the similar behaviour of another ball which has just struck it. One could explain why a cloud moves by referring to the motions of its constituent molecules (whose group motion is the cloud's motion). It also explains the redness of the blood to say that blood is made up of red particles. True. But one cannot explain why any given thing is red by saying that all red things contain red particles; nor could one explain why anything moves by noting that any moving thing contains moving particles. In general, though each member of a class of events may be explained by other members, the totality of the class cannot be explained by any member of the class.' (11)

It follows that a theory of the greatest generality will have the greatest explanatory power providing it is not a mere generalisation about particulars. Therefore, universality should be built into the theories of political philosophy either implicitly in terms of the universal application of the theory which is presented, or explicitly, probably in the form of principles generated by the theory. In other words, the aim of the political philosopher should be to produce universalistic nomic structures, viz., theory of the
widest generality which does not require as an integral feature reference to the particular social or political conditions pertaining to any given society which either exists or has existed.

The point can be underlined by returning to Isiah Berlin's notion of political theory as 'metaphor' in which the notion of comparison is central. In such a case, the sharper the distinction, the more effective will be the metaphor. It would appear that the autonomy of philosophic theory and accompanying models in terms of the lack of a necessary relationship with actuality, imparts to the theory, in principle, greater explanatory power. Possibly the most striking example outside science of that which requires explanation not figuring in the explanation or theory is to be found in the moral philosophy of Kant where the principles embodied in the various formulations of the categorical imperative do not themselves prescribe moral action in any particular instance, rather it is the case that criteria are offered which may be applied to moral judgment-making, and the theory itself provides the means of greater understanding of moral thought and conduct. Robert Nozick puts the matter succinctly by insisting that the most desirable and complete understanding of the political realm is 'to fully explain it in terms of the non-political'.

5. There is, of course, one other important function of political theory. This is the extent to which theory imparts not only understanding of the political process but sets what may be called a normative standard. In other words, in so far as a theory can be likened to a blueprint it embodies
an ideal situation and embedded in this idealisation is the implication that the theory represents a state of affairs which not only can be brought about but which ought to be brought about.

But we have to exercise caution here. The primary concerns of political philosophy are not and cannot be equated with those of practical politics. Political philosophy, as has been argued, is mainly concerned with investigating the framework within which categories of substantive decisions are reached within society. Both the framework and the decisions we recognise as being part and parcel of that mode of life we call 'political'. That the term 'political' is ambiguous and is, in turn, in need of analysis need not concern us here, it is enough to admit that there is an admittedly ambiguous form of life called 'politics' and that as members of a political society we are acquainted to a greater or lesser extent with its forms, language, conventions and procedures. The philosophic concern starts with this subjective awareness of the activity in question and moves from this to a critical interest in questions which can be posed concerning the general framework within which political problems are solved, questions which cannot be answered in empirical or scientific terms.

The nature of such questions and the characteristics of the kinds of answers we are looking for have been the subject of the preceding sections. The questions and the answers are peculiarly philosophical but the purpose of the enquiry is to generate greater understanding and, where it can be maintained, truth. In the process of this enquiry
models are likely to be erected or principles enunciated which have the proper philosophical function of enabling a more incisive and critical understanding of actual social and political states of affairs. This is the proper normative function of political theory, but the more the discourse moves away from understanding towards making of prescriptions for change, the greater will be the tendency to move from philosophical to overt political discourse. At its most extreme can be traced the adoption of a philosophical model as a blueprint for an ideal state which is not just a theoretical construct but a possible and desirable state of affairs worthy of being brought about by political action. This is the point at which philosophy becomes ideology. One writer has characterised 'ideology' as a 'fighting creed' (13). Where the attitude towards a philosophical model moves from one of objective and critical scrutiny towards belief in it both in terms of its truth and value then it has become a 'fighting creed' and has ceased to be philosophical. The most obvious example which, on the face of it at least, appears to meet this case is that of Marxism which can be either the object of philosophical scrutiny or held in terms of a commitment which is ideological. At this point the philosophical has been subsumed by the actively political.

The other danger to which political theory may be subject is that it will be interpreted as providing a paradigm for an end-state in which either problems can be resolved without conflict or, more radically, in which political problems, as such, simply cease to exist. Philosophically
such an interpretation is unacceptable because it would involve a contradiction in the view which is appropriate to philosophical enquiry in this area.

To expose this requires the beginnings, at least, of an analysis of what is meant by 'politics'. 'Politics', as has already been argued, is an area of social life which is recognisable on the basis of inter-subjective participation in a way of life - a distinctive way of life in which 'politics' and matters 'political' gain their intelligibility. In order to show why a particular interpretation of political theory is mistaken we must be clear in what respects this departs from the philosophically appropriate stance.

By 'politics' is meant that context of our social life in which decisions are made, problems solved, and policies generated which regulate society and form society's response to the contingently changing conditions within which the society in question exists. This context is recognised by such features as its distinctive mode of relationships manifested in its distinctive vernacular language, procedures, institutions and rules. It is also distinguished in both practical and philosophical terms by the extent to which it generates questions to do with freedom, authority, equality, justice and legitimacy to name some of the more obvious areas of questioning and conflict. Further, it is difficult to see how a society which did not contain these features could be described as being in anything but a debased sense 'political'. In fact, understood in these terms, the distinctions involved begin to substantiate the claim that politics has to being an autonomous area of activity.
It would also appear that, given these features, the political context is one which directly or indirectly will affect the whole of society, and is a context which is recognisable and intelligible in terms of its processes and only its processes. To ascribe to it end-states which are once-and-for-all in character is to view the political mode or way of life as being similar to that which Michael Oakeshott has called 'enterprise association' (14). The nature of this relationship or web of relationships is founded on the recognition that there is some predetermined end or outcome to be achieved such as is the case in businesses, bureaucracies and services of one kind or another. In such a context the basic questions which will arise will be managerial in that they will be to do with the efficiency or efficacy of suggested means to achieving the end(s) - questions concerning the ends themselves, or problems to do with freedom, liberty, rights, authority etc. will not of necessity arise. It follows that there would be a contradiction involved in viewing political theory as supplying the goal of political endeavour if a necessary presupposition in the identification and intelligibility of political life is that it is an area which has to be understood in terms of its processes not of end-states, as to attempt to construe it as end-directed is implicitly to deny politics the very characteristics which give it its distinctive dimension in human life.
References


(3) The use of the word 'formal' to describe Nozick’s philosophy is based on Isiah Berlin’s definition of the term and its correspondence with Nozick’s method:

'The second type of question to which we can hope to obtain clear answers is formal. Given certain propositions called axioms, together with rules for deducing other propositions from them, I can proceed by mere calculation. The answers to my questions will be valid or invalid according to whether the rules that I accept without question as part of a given discipline, have been correctly used.'  Berlin, I.  'Does Political Theory Still Exist?' in *Philosophy, Politics and Society*, 2nd Series, Laslett, P. and Runciman, W.G. (eds.), Blackwell: Oxford, 1972, p. 2.

(4) I am indebted to Michael Oakeshott for the phraseology here which is taken from his essay 'On the Civil Condition', op cit.


(7) ibid. p. 31.

(8) In the terminology of C.G. Hempel:

'The explanandum must be a logical consequence of the explanans: in other words, the explanandum must be logically deducible from the information contained in the explanans: for otherwise, the explanans would not constitute adequate grounds for the explanandum.'  Hempel, C.G. *Aspects of Scientific Explanation*, The Free Press, New York, 1965, p. 247.
(9) ibid. p. 338.
(11) Hanson, N.R. *Patterns of Discovery*, Cambridge University Press, 1958, p. 120.
(12) op. cit. p. 6.
Chapter One

Authority and Rules

1. This work is concerned with a series of problems which are connected with the freedom of the individual in the face of the state's claim to authority. Such problems centre on the nature of authority, its justification, the grounds on which it may be limited or challenged, and the relationship of the individual to the state's authority. The questioning and delineation of freedom and authority within the state have occupied political philosophers from Plato onwards, and within the model developed in this work the theories of three classical philosophers - Kant, Hegel and Rousseau - will be fundamental. However, the starting point will be based in the contemporary analysis of authority.

Representative of the approach and conclusions of modern philosophers is the work of S.I. Benn and R.S. Peters(1) in which the exploration is primarily an analysis of meaning. It is argued in 'Social Principles and the Democratic State' that the concept of 'authority' has its roots in the notion of the 'auctor', that is, 'originators or umpires in the realm of rules'(2). Authority is held to reside in the decisions, pronouncements and rulings made by the 'auctors'. The next step is to enquire into the legitimising agency whereby the 'auctors' are given the right to make decisions. Max Weber's well-known categories (3) of the various sources of legitimation are introduced as offering an adequate description. The distinction is made between de jure authority as implying a set of procedural rules which determine who shall be invested with the right to authority, and de facto
authority involving reference to the person who is successful in actually obtaining obedience. Finally, it is argued that power and authority can be conceptually differentiated. Elsewhere (4), Professor Peters argues more fully the distinction to be made between being 'in authority' and being 'an authority', the former indicating authority derived from some set of normative rules, the latter indicating authority which is derived from proven competence in some area of knowledge. Henceforth, the concern will be with being 'in authority'.

Analysis conducted in these terms suggests that authority is to be understood in its exercise, that in order to understand the concept all that is necessary is to have a positivistic regard to the conditions within which order-giving, decision-making and pronouncing take place and that this will constitute a valid philosophical explanation. However, such an approach is limited. For example, it does not explain why authority may be thought to be necessary in the first place; nor is the relationship of authority to its legitimating rules critically examined; also, the character and scope of the legitimating rules are left obscure. These are examples of questions which are left unanswered but which will be the subject of the present enquiry.

2. First of all, it is important to establish the nature of the peculiar quality of authority which makes it worthy of philosophical enquiry, viz., the implications which arise from authority's logical connection with the notion of legitimacy. In elucidating this relationship, the analysis of one writer, D.V.B. Bell (5), provides an initially useful
Bell attempts to analyse the nature of authority through an examination of the propositional form which seems to characterise authority utterances. He draws attention to the categorical mode which is typical of authority, *Do X*, and which may be contrasted with sentence forms indicating power, *If you (do not) do X, I will (not) do Y*, and influence sentence forms, *If you (do not) do X, you will (not) do (feel, experience, attain, etc.) Y*. The categorical mode of the authority sentence form is striking and significant when compared with the hypothetical mode which characterises the other sentence forms. Implicit in both the influence and power propositional forms is a reference, albeit conditional, to some causal consequence(s), and it is this condition which informs the imperative element in each proposition. However, the authority mode *Do X* is devoid of this kind of contingency, yet it would be clearly incorrect to say that authoritative commands are power statements stripped of their contingent element, rather like empty threats. Rather, what is tacit within authority's categorical mode is the claim that the command has a right to be obeyed. To re-formulate the mode, it is *Do X because this command (order, pronouncement, decision, etc.) is rightfully given.*

An approach of this kind to the nature of authority invites a comparison with Kant's distinction between the categorical imperative and the hypothetical imperative. Kant's categorical imperative is unconditional in that it says simply *Do this* - not to achieve some further end or purpose but for its own sake. It is directly comparable to the authority mode. His hypothetical imperatives are, on
the other hand, prudential; they enjoin a means to an end, they are conditional. "Work hard if you want to succeed. "Be honest if you want to be respected" are, strictly, modes appropriate to advice, not authority.

Put in these terms, authority can be conceptually differentiated from power, a distinction which can be illustrated in practical terms (6). Although authority is not to be confused with power, nonetheless there is often a close relationship, even interdependence, between the two. In practical terms, authority often has coercive power available to it, and, as will be shown shortly, it is even possible for power to generate authority. In political terms, one of the main problems centres on the extent to which, if at all, the state is justified in exercising coercive power.

To return to authority in general, it is the derivation of the notion of 'right' or 'legitimate' implicit in the form 'Do X' which must be examined. What is implied by the notion of 'rightness' which is relevant to the understanding of authority? The significant feature is the implicit acknowledgement of a rule-governed situation. What is more, this is the case whether authority is located in the area of morality, public conduct or knowledge and skill. The significant implication of 'rightness' is that it cannot be an arbitrary matter regardless of the particular area in which authority is claimed.
Moreover, not only is the essential presupposition which is expressed by the notion of 'rightfulness', or, in the political sphere, 'legitimacy', to be understood in terms of a rule-governed situation, it is a rule-governed situation of an implicitly public nature, not merely rule-governed in the sense in which any human activity can be held to derive its intelligibility from being rule-governed (7). Authority has to find expression in public terms. It is indicative of a relationship or mode of association which demands not just its embodiment in some person, institution, corpus of law or fundamental text, but its recognition by others. It is necessarily a public matter.

Such an analysis has a bearing on the terms in which de jure and de facto authority are to be understood. For example, Benn and Peters attempt to differentiate them sharply by defining the rule-governed aspect of authority in terms of de jure authority ('de jure .... implies a set of procedural principles which determine who shall be the 'auctor' and about what' (8) ) while couching the definition of de facto authority in terms of successful practice ('it involves reference to a man whose word in fact goes in some sphere' (9) ). It would appear that de facto authority is analogous to Weber's charismatic authority in which there is no necessary reference to rules of some kind (10).
But this sharp differentiation cannot be maintained. Consider the case of a country whose legitimate government has been ousted by a coup and has been replaced by, say, a military dictatorship*. In terms of the above definition, the government in exile will be held to be the de jure authority while the ruling junta will be the de facto authority. But it is mistaken to imply that in such a situation the authority of the ruling party must be arbitrary by virtue of its de facto status. If even the most tyrannical ruler is exercising authority and not just power he will be ruling within the context of a rule-governed situation which is both understood and accepted to some extent by the subject population. The distinction between de jure and de facto authority is, therefore, not to be understood in terms of a distinction between theory and practice, between authority understood in terms of principles or legitimation or rightfulness and authority understood in terms of successful demonstration only. Rather, the two notions represent

* The situation also illustrates the subtle relationships which can exist between authority and power. Here it could be argued that authority germinates in power, first of all in simple prudential terms ('Obey, because I have the power'), developing into an acceptance of authority because it is held the person with the power should be obeyed, and ending with the habitual acceptance of the authority of those who have the power. In all this an emerging rule-governed situation can be discerned tending to legitimate the government.
different faces of the same entity, but one stresses the rule-governed aspect while the other stresses the successful practice, but neither precludes the other and both must be present where authority is held to exist.

3. It is now possible to begin to delimit the general notion of a 'rule-governed situation' with the end in view of discerning the particular characteristics of those rules which largely determine the nature of authority and the degree of freedom which may pertain within the state. For the moment it is enough to consider the nature of rules and rule-governed situations as disclosed in the context of regulating conduct generally. It has already been noted that where a claim to authority is made, more is demanded in terms of recognition than the mere ability to formulate a rationale; there has to be public agreement that the governing rule-governed situation is appropriate and acceptable. For example, it is possible that a tribal society could have its social life regulated by a system of rules which is simply traditional and for which no other rationale is offered other than to appeal to custom. It may even be the case that a rule or rules have emerged from a formalising of habitual behaviour. It is also possible that such a system of order could be challenged either from within or without as being unsatisfactory and that rules be introduced which are capable of being justified in more sophisticated rational terms. Nonetheless such a challenge may fail to replace the traditional authority even though the existing authority's justification is extremely limited. In other words, public agreement matters more in determining
a society’s rules than the rationality of the rules themselves. To that extent, an analysis, such as Karl Friedrich’s, which concludes that authority is ultimately based on the ‘potentiality of reasoned elaboration’ (11) underestimates the extent to which the rules which regulate conduct within a society and the accompanying form which authority takes may depend for their acceptance on factors over and above those of rationality itself. The precise nature of the most important subjective elements which engender acceptance of the state’s authority will be examined in later chapters.

The other important characteristic of a rule-governed situation which is instrumental in regulating human conduct is its essentially normative nature. Social behaviour may, on occasion, simply be habitual, instinctive, or even genetically determined, but any explanation of any society or social grouping is likely to concentrate on the extent to which it is to be understood in terms of its relationship to social norms, rules, customs, traditions—all of which are forms of rule-governed situations. To posit human behaviour in these terms is not to suggest that social rules are capable of being reduced to scientific rules in which the activity may be held to be an instance of the appropriate law. It is, rather, the case that such rules will prescribe standards of conduct, will define what is allowed or disallowed, what is legal or illegal, what is correct or incorrect. Take the prescriptions which inform such rule-governed activities as religious observance, the
playing of games, heraldry, etiquette, legal practice, democratic procedures: there is considerable variety in the examples which can be cited but it is clear that in each case the activity in question becomes fully intelligible only if it is understood that there are appropriate prescriptions which may be either implicit or explicit. In such cases, the rules do not determine behaviour but conduct is informed by the rules either in terms of compliance or non-compliance. Of even greater significance is the fact that prescriptive or normative rules are themselves the product of social life in that their inception arises from the decisions of men in whatever contingent social situations they find themselves and the continued acknowledgement of social rules is similarly a matter of decision. There is no necessity which determines the specific content of any rule, there is only the necessity that there be a rule-governed situation of some kind. This does not mean to say that the formation of the rules which regulate society, sanction authority and determine the extent of individual freedom is ultimately an arbitrary matter; on the contrary, it is the purpose of philosophic enquiry to demonstrate the essentially principled nature of this particular human activity*.

* It is the case that the most effective rules will be those which arise from a practice, which is the argument deployed by Professor Oakeshott. This does not imply complete acceptance of the view that rules cannot be 'transplanted' from one social context to another.
4. First of all, consider the elements which may be held to be present in rule-formation. This aspect is present in John Rawls' paper, 'Two Concepts of Rules' (12). Rawls' primary concern is to establish two distinct categories into which rules fall: the practice and the summary conceptions. In the practice conception the function of the rule is to define a practice. In such a conception, rules are seen as being logically prior to instances of the practice in that it is the existence of the rules which defines a particular act as falling within a particular category of practice. It is this conception of rules which corresponds to the paradigm cases of law which determine the legality of conduct. The summary conception, on the other hand, is understood in terms of rules which guide practice. Rawls argues within a utilitarian framework in that when faced with a problem, the individual has to decide what to do. This decision is made in the light of some general principle, in this case the principle of utility. The decision is then generalised to cover all similar situations; in effect, a rule is formulated. The rule so formulated is seen as a rule of thumb, a device which obviates the need for a fresh consideration of the consequences of a particular act every time a similar situation arises. However, it is recognised that the way is still open for a departure from this rule if the individual wishes to re-evaluate the consequences of this action.
The significant feature of this analysis for this work is Rawls' assumption that some kind of rule-governed situation is antecedent to the whole process of rule-making in that, in the summary conception, the original decision which forms the basis for the subsequent rule is itself made in the light of a 'principle'. It is not proposed to take issue with Rawls' adoption of utilitarianism as the guiding principle, as one of the principal aims of this work is to establish, independently, the nature of the principles which can be held to govern rule-making in a political society. The present importance of Rawls' paper is that he draws attention to the nature of the situation where rules are concerned, that if it is conceived of as a rational activity, it cannot take place in an existential vacuum. This will be particularly true of rules which are held to be necessary for the regulation of conduct, where ethical, political and even epistemological considerations are likely to form the principled framework within which practical decisions are made. It is also worth noting that although Rawls appears to place his summary conception within such a framework, there is no reason to exclude the practice conception from this, at least where the rules concerned are those which affect the authority of the state and the freedom of the individual.

The examination of the relationship between rules and governing principles within the important social and political area of jurisprudence is continued by H.L.A. Hart in 'The Concept of Law' (13) in which he attempts to establish the legitimating source of the legal framework
in society. The rules of jurisprudence which make acts of killing, stealing, deception, etc. illegal are referred to as 'primary rules'. Hart then suggests that these derive their validity from a system of rules, which he calls 'secondary rules', which govern the formation, recognition and modification of the primary rules. It is noticeable that Hart's argument that the primary rules need to be derived from, and justified by, reference to some higher order system of rules or principles mirrors the implication already present in Rawls' practice conception in that specific rules are not formulated in a ruleless void and that, indeed, specific rules are not self-justifying - reference to some 'higher' set of rules is implied. The distinction which is aimed at is of fundamental importance to an understanding of a socially rule-governed situation. The implication is that where there is a set of explicit rules such as those identified in terms of Hart's primary rules, such rules are to be understood as being binding where their appropriateness is recognised and, what is more, the application of such rules is held to be relatively explicit and unambiguous once such appropriate contexts have been recognised; principles, on the other hand, although they share the characteristic of needing to be invoked in appropriate situations, are not explicit insofar as they are constantly in need of interpretation. There is also the significant implication that, where law is concerned, such interpretations are embodied in the form of primary rules.
5. At this point it is revealing to examine how
the introduction of authority cuts across this relatively
straightforward model of law as rules which are governed
by principles. The matter may be approached by examining
Hart's description of a 'pre-legal' society (14). An
example of such a society would be a primitive tribal
organisation which has a system of customary rules or
taboo comparable to primary rules but lacking the
interpretive framework supplied by secondary rules. Hart
suggests that a system of primary rules of this kind would
be subject to the defects of being uncertain, static and
inefficient. In order to rectify such a state of affairs,
and to transform the society from its pre-legal to a fully
legal state, he recommends the introduction of an appropriate
set of secondary rules. Thus, where uncertainty is
engendered by a dispute as to the scope or even existence
of a specific primary rule, a secondary rule governing these
contingencies is advocated; where the primary rules are
held to be static or unalterable even in the light of
changing circumstances, a secondary rule which enables
change to take place is recommended, and, where the rules
are held to be inefficient in that there is no possibility
of adjudication where there are disputes as to the application
of a specific rule, once more an appropriate secondary rule
is recommended.

The characterisation of a pre-legal society is
convincing with respect to his suggestion that such a society
could not last for long even if its genesis could be
envisaged. In other words, there is the implication that
all rules are potentially ambiguous and none more so than social rules in which the conditions in which they may be applied will change as society changes. Even the most apparently clear statement of a rule requires an element of perspicuity essential for its successful interpretation, successful, that is, in furthering the activities of which it is a part of a way of life. The point is this: given that ambiguity in the wording of a rule is possible; given that even where the formal statement of a rule is clear, the understanding of the rule may still be hampered due to difficulties in understanding the context within which the rule has applicability; given that even where all is understood, there is still the possibility of a lack of perspicuous agreement on either its interpretation or practice by someone within society - given all these, the final response must be to an appeal to authority to decide matters. In other words, it is argued that in all rule-governed situations of a normative kind, authority is a matter of practical necessity if the notions of correctness or incorrectness, rightness or wrongness, legality or illegality are to be maintained with any degree of intelligibility and coherence.

With respect to Hart's pre-legal society, it is significant that although it requires a system of secondary rules to transform it into a legal society, it needs merely a primary rule, which commands acceptance, investing one person, say an hereditary chief, with the right to resolve all disputes and ambiguities which arise and the stability of the society would be maintained. Of even greater
significance, of course, is the fact that although the introduction of secondary rules transforms the nature of the rule-governed situation which regulates the society, it does nothing to diminish the need for authority. If anything, the need for authority as the means by which ambiguities or disputes concerning the rules are resolved is increased if the functioning of society, which the rules are meant to serve, is to be maintained. The fact that there will be, so to speak, an extra tier of rules requiring interpretation in their own right merely underlines the need for authoritative decisions. Moreover, ambiguities or disputes concerning the primary rules will have to be resolved taking the nature of the secondary rules into account. This is a problem which, in a complex society, is likely to be exacerbated by the tension which will develop between the interpretation of rules by individuals seeing them, and using them, in the light of their own particular circumstances and needs and the interpretation of primary rules in accordance with general principles embodied in the system of secondary rules. There is even the possibility, demonstrated by R.M. Dworkin (15), of the need to decide between secondary rules as to which to apply, in certain circumstances, to the primary rules. This situation takes place within the context of a discussion concerning the nature and need for judicial discretion, itself an illuminating example of authority in practice. Finally, the more complex the society and the more sophisticated the structure of primary and secondary rules, the greater will be the tendency for rules, both primary and secondary,
to become more 'open-textured' (16). Hart makes use of the concept of 'open-textured' in his discussion of legal formalism where he attacks the view that it is possible to 'freeze the meaning of a rule so that its general terms must have the same meaning in every case where its application is in question' (17). The condition which introduces ambiguity into the process of rule-recognition is the same condition which introduces open-texture into concepts, namely, the infinite variety of forms which an instance can take. Rules have to be applied to an unknown number of unforeseen situations; in such a case, the recognition of given instances as falling within the definitional parameters is a matter which will require investigation and decision, and, once more, the need for authority is underlined.

Summary

The chapter begins by focusing on the notion of authority in society and by acknowledging the useful clarifications which result from contemporary philosophic interest in the concept. But such analysis does not allow the examination of more fundamental questions to do with the justification of authority and its relationship to the rules which may be held to regulate society. It is argued that the implication of 'rightfulness' or 'legitimacy' which is present in authority is derived from rules which have acceptance within society; in other words, the acceptance of authority implies public recognition, either implicit or explicit, or a legitimating rule-governed situation. It is shown that in social terms, such rule
systems are of an essentially normative character, which, if they are derived from rational considerations, are likely to be formulated in the light of principles. It will be the elucidation of these principles in philosophic terms which will be one of the main concerns of this work.

It has also been demonstrated that not only is authority derived from rules in terms of its legitimation, but it is born of a practical necessity created by the rule-governed situation in the first place. It is the fact that rules can never be completely perspicuous, that there will be ambiguities, disputes and changing circumstances which require that there be an agency responsible for the resolution of these matters. It has been shown that the more sophisticated the rule-system in terms of its need for governing principles, the greater will be the need for authority to adjudicate on the problems created by this greater complexity. Rules create the need for authority and rules legitimate the same authority.
References


(3) ibid. pp. 19-20.


(6) The example used by Benn and Peters in Social Principles and the Democratic State is reasonably clear-cut in that there is no suggestion of coercive power: '...we might say that a man exercised authority over others if, during a crisis like a fire in a cinema, he rose to his feet and told everyone to file out quietly, and everybody in fact obeyed him, even though he was not the cinema manager or a fireman and was a complete stranger to all present'. op. cit., p. 20.


(8) op. cit. p. 19.

(9) op. cit. p. 19.
(10) For a discussion of charismatic authority see
Weber, M., 'The Types of Authority and Imperative
Co-ordination' in Concepts in Social and Political
Philosophy, (ed. Flathman, R.E.), Macmillan

(11) Friedrich, C.J. 'Authority, Reason and Discretion'
in Authority (Nomos 1), (ed. Friedrich, C.J.),

(12) Rawls, J. 'Two Concepts of Rules' in The Philosophical

(13) Hart, H.L.A. The Concept of Law, Clarendon, Oxford,
1972, ch. 5.

(14) ibid. pp. 89-91.

(15) Dworkin, R.M. 'Is Law a System of Rules?' in
The Philosophy of Law, (ed. Dworkin, R.M.),

(16) The phrase 'open-textured concepts' appears to have
been introduced by F. Waismann in his paper
'Verifiability', reprinted in Logic and Language,
The notion is further developed in The Open-Texture of

(17) op.cit. p. 126.
Chapter 2

On Politics as a Rule-Governed Situation

1. It is now appropriate to move from a consideration of the general nature of rule-governed situations and their implications in terms of authority to enquire into the particular nature of that rule-governed situation which is the province of politics. This is the essential prerequisite to confronting the central problems of political authority, viz., its nature, justification and limitation(s).

The activity of politics, identified by its determinate language, procedures and institutions, takes place within a particular context of human relationships. To postulate human relationships is to postulate at least a necessary condition of a rule-governed situation, namely intelligibility. It is the interaction of intelligent human beings we are concerned with and this together with the fact that the activity, i.e., politics, is identifiable in a variety of ways gives warranty that the relationships involved will be productive of analysis in terms of meaning.

The immediate problem, however, is not one of recognition but of delineation. Just as any competent language-user may be hard put to it to describe the nature of his language, so in a relatively open society a citizen may be effective and articulate without necessarily being able to characterise the political context, per se. Indeed, unless the citizen also happened to be interested in political science or philosophy there is no reason why he should be capable of this (1). The enquiry in hand is peculiarly philosophical in that what is offered is a
critical commentary on aspects of an activity, not an engagement in that activity.

What, then, is the nature of that rule-governed situation which is recognised as politics? The answer to this question will consist in offering a series of characteristics, conditions and qualifications which together comprise the criteria by which the political may be known. In other words, a recognitional framework is offered which is more than a mere description of a given state of affairs, but is rather a means of discrimination for determining the political from the non-political in any given state of affairs. To that extent it will be ideal, but an idealisation derived as an abstraction from what is known historically or is known as a continuing dynamic activity, and is capable, reflexively, of application to what is known in both of the modes mentioned.

2. The fact is significant that political history and associated histories of political ideas tend to begin with a consideration of the particular developments and ideas concerning government which took place in the Greek city states of the sixth and fifth centuries B.C. Not only is the etymology of the concept 'politics' rooted in the Greek 'polites' (a citizen) but it is only when something like the state of affairs pertaining to the city states of the period was realised that the concept begins to take on explanatory power. It is clear that whatever else politics is about it is centrally concerned with government, but not just government in the narrow sense
of 'rule' but government which has become the subject of conscious speculation, and government which has become, either by necessity or conscious adaptation, complex in form mirroring an increasingly complex and sophisticated society. Thus the notion of 'politics' does not sit easily within descriptions of social organisations such as tribes, or kingdoms where the royal will is absolute, or theocracies, or indeed any kind of totalitarian form of government or social organisation. In other words, a political society is organically complex in that it is comprised of groups with various sectional interests, ideas and aims; and, more importantly, that this state of affairs has come to be recognised and represented within the procedures of government by some process of historical evolution or conscious and deliberate action. Characterised in this way, a political society or community is an ideal society capable of direct Aristotelian-like comparison with other possible forms of social organisation such as tyranny, oligarchy, and the more modern manifestations of dictatorship and totalitarianism. In practice, of course, even the most dictatorial form of government will be subject to the pressures of other powerful sectional interests and to that extent there will be an interplay of interests which will be recognisable as political activity. The result is that, understood in terms of a comparison between practical states of affairs rather than ideal models, a political society may be said to express the political to the greatest degree. In 'In Defence of Politics', Bernard Crick characterises politics in these
terms:

'Politics arises from accepting the fact of the simultaneous existence of different groups, hence different interests and different traditions, within a territorial unit of common rule .... But the establishing of political order is not just any order at all; it marks the birth, or the recognition of freedom. For politics represents at least some tolerance of differing truths, some recognition that government is possible, indeed best conducted, amid the open canvassing of rival interests.' (2)

Crick introduces the notion of 'freedom' with some emphasis, but, as always, it needs careful qualification (3). It will be the case that if in the government of any society account is to be taken of a variety of interest-groups in the decision-making process, then such groups must have the opportunity to express their respective points of view: freedom of speech is required. But government implies more than this. Government is the process by which thought is translated into decision, and decision into action. A government whose function has degenerated into that of being only a debating chamber has ceased to be a government in any de facto sense, or, to put it another way, a debating society is not a political community although the skills of debate may be useful in the functioning of a political community. The point is that where freedom of speech may be held to be an absolute freedom in a political community, the fact that decisions have to be made within some finite time-scale, that actions have to be taken with greater or
lesser urgency means that there will of necessity be procedural constraints to enable the practical business of government to continue. There will come a point at which the concept of 'freedom' loses its force as an appropriate concept by which to judge the adequacy of particular political processes. It must not be forgotten that an important feature of a political society is that it is directed towards the taking of decisions and action, and this is a feature which it shares with other forms of government. Freedom is located in the political processes which precede decisions and action; the implementation of decisions may, in certain circumstances, justify the use of force and in such a justification an appeal to 'freedom' is likely, at best, to be indirect. The brute fact that rules and constraints will be necessary was recognised by Mill when he stated:

'All that makes existence valuable to anyone, depends on the enforcement of restraints upon the actions of other people. Some rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law.' (4)

While a consideration of 'freedom' in principled or ideal terms will be appropriate in political discourse culminating in the justification of specific laws, once such laws are put into effect it is the actual consequences in the form of the constraints affecting people's lives which takes priority over generalized theorising.
The notion of 'freedom' has, however, another defining application within politics. If a political community requires recognition of the interplay and means of conciliation of differing interests within society, then the community which allows, in principle, the expression of all interests will be the political community par excellence. To this end, the ideal political community will be that society which embodies the notion of citizenship, that is, the particular concept of an individual who is the recipient of a determinate set of rights and duties in relation to the community of which he is a member. Most individuals who are members of any state, including a political society, governed in any conceivable way, will inevitably be subjects within their society in that they will be subject to a requirement to obey the specific laws or commands issuing from the government. The only exceptions will be those privileged members within some systems of government whose status or power will remove them from this subjection, usually the rulers themselves.

Citizenship is more than mere obedience, however; it requires the capacity to understand and accept the responsibilities of government. In his discussion of citizenship, Aristotle states the point in emphatic terms:

'Ruling and obeying are two different things, but the good citizen ought to be capable of both; civic virtue consists in knowing how to govern like a freeman and how to obey like a freeman.' (5)
At the very least, Aristotle's assertion implies an obligation on the individual to participate in the procedures of government and to be informed on the principal issues involved in proposed legislation. While the status of citizenship confers on the individual the right to have his interests taken into account, and this brings with it the right to freedom of speech, it also implies that the good citizen is capable of making adequate judgments as to where the interests of the society as a whole lie. Furthermore, insofar as Aristotle recognises notions such as 'ideal citizens' and 'ideal constitutions' the implication is present that citizenship carries with it not only the duty to maintain an existing political society, but that there is also a duty to improve or even bring into being that state of affairs within which citizenship becomes possible. The case supporting the conception of the political community as being a morally desirable society will be examined later in this study.

Aristotle's dictum also underlines the extent to which citizenship embodies functions which require skill - a 'knowing-how' to achieve political results. It is in these terms that citizenship of the highest order will be expressed in a knowledge of how to persuade men, how to manipulate the machinery of government, and how to order the affairs of the state provided that these qualities are allied to political wisdom. It is in this
sense that civic virtue, when it appears, is capable of conceptually uniting the hitherto separate notions of the ruler and the ruled.*

These are the characteristics which should imbue those of a political community, and that political community which most approaches this ideal will be that whose members are citizens who clearly and demonstrably understand their role (6). Given citizen-status so-defined it is not overly persuasive to ascribe to those who are active members of a political society the status of free man — free in the sense that although they are subjects, they are not only subjects, but have some control over and responsibility for the very laws by which they live. Professor Crick expresses the point with aphoristic neatness:

'Politics are the public actions of free men. Freedom is the privacy of men from public action.' (7)

* Although Aristotle argues that all offices of the state should be open to those who display the qualities of a 'good citizen', in fact he envisages the rulers being drawn from a relatively small section of the citizenry: 'Men of good birth are more truly citizens than the low-born; and good birth is always esteemed in one's own country. Besides, men of good ancestry are likely to be better in themselves, for good birth implies goodness of one's whole stock.' (9)
3. The concept of a political community requires delimitation in respect of its position vis-à-vis other societies which may have similar characteristics to those already discussed but which require exclusion on other grounds. Michael Oakeshott's notion of 'enterprise associations' is pertinent in this respect (8). Briefly, he argues that individuals associated in respect of their pursuit of some satisfaction, whether it be real, wished for, or imaginary, may be held to form a community of interest which is teleological in character. Such aim-directedness characterises associations such as tennis clubs, religious sects, businesses and bureaucracies. Members are bound in a relationship which is founded on either an explicit or an implicit recognition of some common purpose(s).

Oakeshott further distinguishes such relationships by reference to the character of the decision-making process. An enterprise association exists to fulfil some purpose; decision-making within such associations will be governed by the extent to which possible courses of action may be held to further the aim(s) of the association. Oakeshott puts it as follows:

'An enterprise is a 'policy', and enterprise association is a 'managerial' engagement; it is agents related to one another in the substantive activity of choosing performances contingently connected with a common purpose or interest, or in their acknowledgement of such choices and performances as their own.' (10)
Because decisions are necessarily related to the aim or purpose of the association such decisions have the character of being 'managerial', the criteria for their success or failure, correctness or otherwise, efficiency or lack of it being determined by the contingent success or otherwise in furthering the association's aims.

Oakeshott makes the further observation which is particularly significant to this enquiry that authority within enterprise associations is largely a voluntary matter in that the individual usually joins such an association because its aims are of some interest and importance to him and he sees the association as a useful means of furthering that interest. The implication is that as membership of the association is voluntary the individual knowingly understands and accepts the rules or constitution which underpins the authority structure within the association. In other words, individuals can join or resign from enterprise associations and, if needs be, the claims of authority on the actions of the individual can be rejected by the simple expedient of leaving the organisation.

The delimitation of a political community, on the other hand, is subject to a different set of criteria. Even though there are many contingencies which could bring about or have brought about the institution of political communities of one kind or another, it is still possible to offer a model with characteristics sharp enough to distinguish it from association by enterprise.
First of all, in so far as politics is necessarily concerned with government it will embrace all who are subject to the government in any given case, whatever form the government takes (it may be, for example, a democracy). In the contemporary world of nation states this will usually also involve a territorial demarcation but this is not a necessary condition as it is possible to envisage situations in which jurisdiction over the actions of an individual is not necessarily accompanied by territorial claims. (11)

In these conditions it is clear that membership cannot be characterised as voluntary as was the case with enterprise associations. The most usual mode of belonging to a political community will be by virtue of being born into it. This suggests that the political nature of a given society will be intimately embedded in those characteristics which give the society and its culture an identifiable form. This aspect will be explored later, for the moment it is enough to argue that membership is not based on a voluntary act of association based, in turn, on an agreed or supposed identity of interest or aim. Rather, the individual finds himself a member of a political community or not depending on the accident of birth. Also, while it is true that individuals may leave such a society and obtain membership of another (usually by becoming a subject of another state), the existence and continuity of a political society does not depend on this sum of voluntary acts of agreement. Again, a political community, as with a society subject to any other form of government, will contain members whose
continued association is not nullified by their disagreement with either the form of government which pertains or its actions. Indeed, in a political community discontent with the current state of that society will tend to fuel the dynamism for even greater participation in the political community with a view to engendering change. Discontent or disagreement and the dynamism it promotes are necessarily dependent on those involved perceiving themselves as being agents for change within the framework offered by the political community and committed by virtue of their status as citizens to the idea of the community itself.

Of even greater significance is the open-ended nature of the political community when its supposed teleological status is considered. Enterprise associations have discernible ends in view, but a political community has no end beyond being a condition which is considered of value as an end in itself. Attempts to ascribe to political society an aim-directed function are weak in that such suggested ends are of an extremely general nature; examples are the preservation of society or the good of society or the promotion of stability and order. But not only are such ascribed aims weak, they are not convincing. It may not be likely, but given the appropriate circumstances it would be neither absurd nor self-contradictory for a political community to decide to dissolve itself in favour of some other form of government, or to terminate itself by capitulation to some more powerful force, or for order and stability to take second place to the pursuit and demonstration of political interests. In each case it is the activity of
politics which is the direct precursor to the states of affairs which are each inimical to the examples of possible aims.

The distinction may be pressed even further. Whereas enterprise association is defined in terms of its aim(s), the aim at any given moment of a political society will either be contingent on circumstances or may be subject to definition by the political society itself. Not only the possible means of dealing with problems but how the problems are seen or even what counts as a problem will be subject to the values, interests, ideologies and historical perspective of the constituents of the political community itself. For example, changes in the procedures of political communities may be proposed and held to be of over-riding importance even though there is no compelling state of affairs which demands that the procedures be reformed. There is no discernible goal for a political community beyond the value which society places on politics and which gives a political community its raison d'etre.

4. The foregoing distinctions carry sufficient force not only to allow the notion of a political community to be distinguished from that of an enterprise association, but also allow the notion of a political community to be demarcated from other forms of government which are inimical to politics defined in terms of citizenship, open dialectic and agreed procedures for the resolution of conflicts. Dictatorships and other forms of totalitarian rule will, of course, share many of the features of a political community as outlined above. The necessary
attribute of government remains as does the general conditions of membership. However, such forms of political organisation share features more readily associated with enterprise associations in that the response to problems will not be subject to any kind of public scrutiny or accountability, and as a result will resemble the essentially managerial forms of decision-making typical of enterprise associations. There is the constant danger that even a political community will degenerate into a managerial society if the community itself is not vigilant in protecting its rights and responsibilities and if the government fails to perceive its political function and conceives of itself as fulfilling a managerial role. In extreme forms of totalitarianism, rulers may even ascribe to the state a pre-eminent purpose — probably, in one form or another, the notion of having a pre-ordained mission to rule or convert has been most common historically. Even in less aggressive governments the establishment of social priorities, the identification of problems, and the procedures of rule will be subject to the perceptions and ambitions of, at best, a relatively small number of individuals. The smaller the group concerned with the decision-making process the more vestigial will be the claim it has to being considered as a political community. In fact, while such forms of government cannot be identified in their entirety with enterprise association, they can with more accuracy be described as managerial forms of government.
5. Having delimited the political community with respect to other groupings within society, it is now possible to examine in more detail the character of the rules which distinguish politics as being a peculiar mode of human association and discourse. If it is accepted that the political community is rule-governed then the relationship between such a community's discourse and one rule-governed situation in particular is obvious. Political community is intimately and necessarily concerned with the production of rules, rules which relate one way or another with the business of government. From this perspective the political community is the source of rules. It is possible to categorise such rules although any categorisation will be provisional in that it is based on an abstraction from current and past practice and is contingent on practical developments.

The first category of rules and, possibly, the most easily recognised in terms of every-day acquaintance, is what is known as 'law'. By law is indicated those rules which govern conduct in a society by defining what counts as legal or illegal actions, what counts as lawful or unlawful; in contradistinction, law is not that corpus of rules which specify the rightness or wrongness of conduct in a moral sense, neither does it specify what is proper or improper conduct in terms of manners or etiquette. Law is concerned with the regulation of conduct in what can be broadly termed the public interest. For example, the criminal law may be styled as a category of law.
concerned with the negative public interest in that it is primarily proscriptive in its function.* Such a characterisation is sufficient for the present purpose and although other features of law will be the subject of comment it is not necessary to enter into the disputes concerning the nature of law.

One feature of law which is relevant to this enquiry is its general nature. Unlike a specific command which is addressed to a particular person and is exhausted by the act of compliance, law is not addressed (12) to any one in particular, rather it defines categories of action which apply to anyone whose conduct falls within the relevant category. Neither is law exhausted by the fulfilment of any legal processes resulting from any particular action taken under a particular law; the law itself continues to stand even though its interpretation may be modified in the course of judgment being given in a particular case. Because law is general in these senses, political discourse concerned with the formation or alteration of law will be characterised by the same sense of generality.

* Notwithstanding the ambiguities which surround the notion of the 'public interest', insofar as it is the function of the law to further the public interest, the extent to which it fulfils this function will be a criterion of the law's worth.
It is also worth noticing at this stage that it is the law which, positivistically, defines the extent of the state in that the state is that territory which is subject to the jurisdiction of the law, and the stage is that population which is subject to its jurisdiction. Therefore the generality which is a defining characteristic of law is limited in its jurisdiction only the extent of the particular territory and population to which it applies. To put it another way, the state is a de facto association of men, a necessary condition of which is a recognition of a common obligation to a corpus of law.

The second category of rules is closely related to that of law; however, its function within the state is of a sufficiently distinctive nature to support a claim for it to be considered as a separate category. The area indicated is that of the constitution and associated rules, conventions and practices which regulate and define the government of a state. Sovereign independent countries usually embody their constitutions in a single, written, codified document, or a collection of related documents, which, in turn, are intimately enmeshed with the law of the country concerned. In Britain the situation is that there are statutes and declarations which regulate the system of government, such as Magna Carta or the Bill of Rights, but these and other sources of authority on constitutional practice are distinguished by the fact that they are not codified, per se. The distinction which exists between the law and the constitution is further emphasised by the fact that in Britain the constitution is
manifested through a number of conventions, i.e., rules and practices which do not have the force of law but which enable the system of government to work effectively. Examples here would be the doctrine of Cabinet responsibility or acceptance that the Prime Minister should sit in the Commons, not the Lords. In practice, it can be seen that although a constitution may be considered to be part and parcel of the body of law of a particular country, there is no necessity for this to be so.

What is beyond doubt are the far-reaching consequences for everyone who is subject to a government when changes or amendments to the constitution are made. Unlike law which generates rules of one kind or another with which the individual may or may not find himself directly concerned, the constitution of a country affects, to some extent, everyone who is subject to the jurisdiction of that state. In other words, constitutional change carries with it implications, in terms of application and effects, which for any individual is not merely the possibility of involvement, but the certainty of involvement. To that extent the discourse which characterises the political community will reflect this intensified generality when constitutional matters are the subject of such discussion (13).

The next category of rules is that area of governmental concern which may be characterised as 'policy'. Here, the concern is with executive action on matters such as the economy, defence, social services, education and so on. The formulation of law is not a necessary
feature in these matters although new legislation may occasionally be required. There is a sense in which decision-making of this kind may approximate to the managerial mode discussed in connection with enterprise association (14). What will characterise political discourse concerned with non-legislative areas of legislative action will be a concern, often implicit, with that which is held to be in the public interest. In spite of the fact that political discourse to do with policy is likely to be a mixture of contingent facts, future expectations, values and ideology, the element which is purely political is the insistent need for justification that the recommended course of action is beneficial to society generally, that it is in the public interest. It will be an indication of the maturity of a political community by the extent to which it can independently judge where the public interest actually lies as opposed to merely accepting the invocation of the notion of the 'public interest' as a means to gain support for a particular course of action. Nonetheless, it is the implied generality of the admittedly obscure notion of the public interest which imbues and characterises both the discourse and the resulting policies in this category of political rule-making.

Finally, and briefly, there is that category of political rule-making which is, in Western democracies at any rate, least tangible and identifiable in positivistic terms: that is political concern with the propagation of values and ideology. The rule-governed situation is that
of social norms, and politics is the means by which the proponents of a given point of view seek to obtain some general acceptance within society at large. The importance of gaining an ascendency in this area where public opinion is concerned will obviously affect the extent to which changes in the law, the constitution or general policy gain a measure of public approval and, hence, effectiveness. Again, the characteristic which discourse of this kind will exhibit will be that of extreme generality of a persuasive quality derived from the heavily value-laden nature of the competing points of view. The rightness, say, of individualistic or collectivist ideologies as the governing rationales for changes in the law or innovations in policy will be recommended within political discourse as meriting adoption as fundamental and universal value positions.

This sketch of the categories of rule-governed situation which it is the province of the political community to produce is offered both to emphasise the fact that the mode of political association is what Michael Oakeshott described as essentially 'rule-articulated association' (15), and to insist that the nature of the rules produced will clearly affect the nature of the discourse which produces them. In particular, the character of generality which is present in each of the categories will, of necessity, characterise the language of political discourse from which the rules originate. But more is implied, particularly if the attributes of a political community discussed earlier are introduced as affecting and adding to the presence of 'generality'.
6. It has been argued that for a community to warrant the epithet 'political' it must be a community of citizens with all that this means in terms of freedom and participation. So far, the notion of citizenship has only been lightly sketched; now more attention must be paid to it. If citizenship is to be differentiated from the state of being a subject on the grounds that a citizen is the recipient of rights and the inheritor of duties, then it is clear that citizenship is grounded in a legal state of affairs. Subjects within a state may be held to possess natural or human rights, moral or even customary rights; in none of these cases will the claim to rights be sufficient to establish a claim to citizenship. The citizen's rights are enshrined in law which gives them the character of being substantive rights, not merely, as may be argued where other kinds of rights are involved, putative rights. To this extent, citizenship can be held to be a legal term capable of definition in terms of those rights and even those duties which are legally binding on the individual with that status. To posit citizenship in these terms is not to weaken the claim which any individual has to natural or moral rights; indeed, it is conceivable that an appeal to such rights may be made to widen the existing rights of citizenship. But to say this much is merely to emphasise the importance for citizenship to be based in substantive rights.
But citizenship is more than a legal status; it has a moral and, of course, a political dimension. The value placed on citizenship derives from the status it gives to an individual as a member of the political community, that is, the opportunity to participate in the decision-making processes of government either directly through participation in the procedures and machinery of government by being, for example, an elector or a politician, or indirectly, by simply taking advantage of the right to freedom of speech in a community which, ideally, is wedded to the principle that all interests should be taken into account before decisions are reached. In other words, citizenship is the embodiment of the value placed on the individual as a participant in society, on the respect afforded to him as a legitimate source of interests within society, and the recipient in real terms, that is legal terms, of these attributes of status within society. In short, citizenship is a badge of respect, it proclaims the individual as being a member of a political community and worthy of respect as such.

7. But the implications of citizenship go further. To be a citizen, to be a member of a political community is to be placed in a particular mode of social relationship to other members of that community. It is this mode which Oakeshott has explored in 'On the Civil Condition'. He makes the point that civil association is not, as with enterprise association, engaged in for the procuring of either substantive satisfactions or purposes, but that it is a continuing relationship defined in terms of its
practice and identified by its language:

As a practice, the civil condition is an enactment of human beings; a continuous, not a once-and-for-all enactment. And what is enacted and continuously re-enacted is a vernacular language of civil understanding and intercourse; that is some historic version of what I have called the language of civility.' (16)

Because it is a continuous mode of relationship which individuals enter into as it respects what might be called the political personhood of the individual, it is a mode which will inevitably have a moral dimension. To begin with, it is a mode of relationship which is permeated with moral considerations in which both freedom and equality figure (17). Freedom emerges in that each individual is held to be worthy of respect as a rational being with interests, points of view and values all worthy of being taken into account and hence being a free agent capable of reaching decisions rationally and entering into the political process responsibly. It is the freedom, to use an expression with Kantian overtones, to be a member of a kingdom of ends, to be a co-determinant of the general rules, policies and values of the community of which the citizen is a member.

Implicit in this relationship is the assumption of equality in terms of both status and consideration. A community of citizens is of necessity a community of equals if the interests of all are to be taken into account with anything like equity. To recognise that within a given community there are various interests which, if possible,
have to be reconciled within the decision-making process. It is to recognise that there must be some principle of equity which has to be introduced if the status of the citizen as a person worthy of respect for his political views is not to be undermined. Aristotle recommends those constitutions which rest 'on a basis of equality and likeness as between citizens' (18) and argues, uncompromisingly:

'Those forms of government which have regard to the common good are right constitutions, judged by the norm of absolute justice. But those which take account only of the rulers' interest are all perversions, all deviation forms; they are despotic, whereas the state is a society of freemen.' (19)

In other words, in the ideal political community matters should be decided by reference to the weight of good reasons which underpin the various interests to be accommodated and not by reference to such arbitrary considerations as power, wealth, charisma or status.

Equality results not only from the conditions of citizenship but from the nature of political discourse. Attention has already been paid to the role of the political community as a source of rules which fall into various categories, and emphasis has been placed on the varying degrees of generality which attach to rules. It follows that a necessary characteristic of political discourse will be the extent to which it is continuously reflecting an awareness of this generality. The citizen is a rule-maker in a kingdom of ends and the language of politics will be imbued with an implicit universality which embraces
the whole, at least, of the political community in the scope of its arguments and conclusions. Further, to conceive of rules which are to apply not only to oneself but to all members of a community is necessarily to accept a real commitment to equality of status. To accept that all men are equal under the law is necessarily to imply that there must be equality of consideration in the framing of the rules. Whatever may be the private wealth or power or status of the individual, his status qua citizen is one of equality inter homines and political discourse will reflect this equality with respect to its rule-producing function.

8. Finally, political discourse will be characterised by a regard for justice or fairness. Once more this stems from its generative function as a source of rules. Without embarking on a lengthy examination of the nature of justice, it is sufficient for this enquiry to assert as self-evident that judgments concerning justice are the outcome of rule-governed situations of one kind or another whether it is the intuitive judgment of a child who complains of a lack of fairness in his treatment to the sophisticated structure of argument which culminates in the formulation of principles held to govern justice such as John Rawls has offered. Certainly the concept of legal justice pre-supposes a codified body of law which is operative within a society. It is also commonplace to note that judgments concerning justice are not only appropriate in terms of the operation or application of rules within society, but that the rules or laws are
themselves open to judgment in these terms based on an appeal to a further set of principles or rules. In other words, the simple point which is being made is that when a community is concerned with the framing of laws, principles, values and policies, that community is intimately and necessarily concerned with the justice of these rules, laws etc.

This connection between justice and rule-governed situations of one kind or another within a political community is not only a logical and conceptual matter, but will also arise from the contingencies of life as a matter of practical necessity. Even if we admit the hypothesis of an ideal community, there is no need to carry the idealisation any further. Politics, whatever form it takes, will exist within the general forms of life of a society, and rules, laws and policies will have to be applied to people who vary morally, intellectually and physically and who vary in their economic and social circumstances. Given the infinite variety of individual circumstances it will be inevitable that the application of any given rule to a given situation is likely to meet with a challenge based on the perceived justice of its application to that situation. Given both the practical and logical inter-relationship between rule-governed behaviour and justice, it follows that, as before, this implication will find expression within and will tend to characterise the discourse of the rule-making, i.e. the political community.
However, given the ambiguities and contingencies which will cloud actual situations, whether political or not, the clear delineation of the logical and conceptual inter-relationships between the ideal model of a political community and the imperatives of justice and equality establishes a standpoint from which other actual communities may be subjected to critical scrutiny. It is even conceivable that the ideal model, insofar as it may be held to embody values and principles which permeate the life of the state, could be used as a vehicle to criticise the practices of non-political communities within the state.

Summary

The political community is characterised by its composition in that it is a community of citizens, free in terms of recognition of their individual worth as political agents, equal in status, qua citizens. Both the freedom and the equality are given additional weight by the status of citizenship being subject to definition in legal terms, that is, being the subject of specific rights and duties. Secondly, political community is association for no other purpose than that of governance to be understood particularly as the source of rules: the rule of law, constitution, policy and social norms. Thirdly, political community is characterised in terms of political discourse. In particular, the specific character of its discourse is a concern with rule-governed behaviour of the greatest generality possible within the state. The formation of rules with this degree of generality implies also equality
of consideration for all and a concern with justice. These are the features which, it is maintained, differentiate political community from other possible modes of human association such as enterprise or moral association. It is within this context that authority has its place. It is also timely to restate the point that in political philosophy it does not matter that there has never been a society which has worked purely in this way, it is through an understanding of the validity of an ideal model that understanding and criticism of the ambiguous goings-on of actual political societies is increased.
References

(1) See the Introduction for an extended discussion on the role of theory in political philosophy.


(3) In fact, in a later and more categoric definition of 'politics', Crick does not mention freedom at all: 'Politics, then, can simply be defined as the activity by which differing interests within a given unit of rule are conciliated by giving them a share in power in proportion to their importance to the welfare and survival of the whole community.' ibid., p. 21.


(7) op. cit. p. 18.


(9) op. cit. note 1. p. 88.

(10) op. cit. p. 115.

(11) An individual will be subject to the laws of his country while he is travelling in unclaimed territory, for example.

(13) Recent examples of the general concern exhibited when constitutional issues are at stake can be seen in the public discussion surrounding British entry to the E.E.C. and the subsequent possibility of withdrawal from it.

(14) The remark attributed to the President of General Motors that 'What's good for G.M. is good for the U.S.A.' illustrates the error in identifying politics with business.

(15) op. cit. p. 124.

(16) op. cit. p. 122

(17) In attributing moral considerations I am assuming a basically Kantian or principled model of morality, although the facets which I draw upon do not conflict with the assumptions of Utilitarianism.

(18) op. cit. p. 77.

(19) op. cit. p. 77.
Chapter 3

Authority and the State

1. The notion of a 'political community' in the sense elaborated on in the previous chapter is a community of rule-makers bound together in a reflexive mode of association by conditions which are dictated by the language and logic of rule-making. Also, it has already been argued that authority emanates from rules insofar as authority means the right to command and any such right is located within some rule or system of rules. Rule-making can therefore be seen as authority-producing and authority-legitimating insofar as the enforcement, arbitration and interpretation of rules has to be embodied in someone. It would also appear, although this will be challenged in due course, that the rules which are the outcome of the political process will have a special claim on the allegiance of the political community; the political community is alone responsible for the rules, it is a free association of men bound together by a common realisation that their individual freedom is founded on the self-determined nature of the rules by which they live, and there is the further implication that where rules are found to be attended by unforeseen difficulties it is within the political community's powers to change such rules.

Such an ideal model, as has been noted, is illustrative of the conditions which rule-making places upon men whose conception of and desire for freedom and justice is dependent on the establishing of a rule-ordered
society. However, such a model is incomplete in that it relies on an essentially legalistically defined concept of a person as a citizen, and it misses completely another source of authority where rules are concerned, namely, society as a whole. Perhaps the case which most clearly exemplifies the area to be considered is that of Socrates and his attitude towards the state under whose laws he met his death. We are not concerned at this stage with Socrates' actions which led to his trial and their implications concerning the grounds on which the individual may or may not dissent from and attempt to undermine the law, rather the relevant aspect is to do with the reasons why Socrates went to his death willingly acknowledging his allegiance to those very laws with which he appeared to be at odds. To put the matter in slightly different terms, the death of Socrates illustrates that it is possible to acknowledge the legitimacy of the authority of the law even though it is possible to dissent from the content of the law.

Now the model, as it has been presented so far, cannot accommodate the case of Socrates. In presenting a member of a political community as a contributor to a kingdom of ends there is the implication that the individual is autonomous in that he is the author or originator of interests, opinions and judgments which his privileged position as a citizen gives him right to express. Secondly, there is the implication that the political community is to be regarded as no more than the sum of such individuals, and, hence, the only rules which have a call
upon their allegiance are those in which they have had some hand in making. The model appears to be essentially individualistic and atomistic in its assumptions. These attributes are characteristic of the underlying presuppositions of much English political philosophy from Thomas Hobbes onward, but the models which result tend to be deficient in that they do not sufficiently account for the phenomenon of authority as it emerges from that network of social relationships which goes beyond the purely political in the terms used so far. Such models may, in this context, be held to mark important stages in the development of a more deeply-based understanding of political authority.

That Socrates' sense of allegiance to the state transcends the objective and definable obligations and duties of citizenship as described so far will be demonstrated. The problem is as follows: why should the individual who is at odds with the laws of his society, and who knows that his actions will sooner or later bring him into conflict with the established authority, acknowledge that the claims of that society to try, judge and punish him are greater than the need to preserve his own life by whatever means are available (in Socrates' case, legally by the possibility of accepting banishment or illegally by escape to another city)? In the model of a political community presented so far, an obligation of this kind is not required. The rational course for the individual who finds his society both uncongenial and dangerous would be to leave it; the obligation to obey the law exists while he chooses to remain
a member of the political community, but escape or exile
remain possibilities which, though inconvenient, are
ethically and politically without taint. In other words,
the claims of law on the members of a political community
appear to have force only while the individual chooses to
remain within the community. The propriety of any decision
to stay or leave is essentially an area within which
individual freedom of choice may be exercised; it is an
area of decision-making which is delimited by the model
as being of individual, not civil, concern, but when it
comes to the propriety of decisions such as that of
Socrates, the model is silent.

2. Before proceeding to enquire into this area there
is one other feature of the model of a political community
which needs to be clarified. So far, apart from noticing
that the jurisdiction of the law is a defining characteristic
of the state, nothing has been said about the relationship
between the political community and any other, possibly
wider, grouping or society of which the political community
is either an aspect or a part. A difficulty arises in
selecting the term to characterise this wider society as
there are a number of possibilities which are not quite
synonymous with each other. A.P. d'Entreves indicates
the nature of the problem:

'I have been deliberately ambiguous in using
a modern word, 'State', to describe a
condition of affairs which, to be precise,
Plato, Aristotle, Cicero, and St. Augustine....
have quite different names: polis, res publica,
civitas, regnum.' (1)
There are also other possibilities such as 'commonwealth', 'nation', 'country' or 'people'. All these terms either have or have had differing connotations either in that they signify differing social and governmental arrangements or in terms of the evaluative connotations with which they are used (2). To short-circuit the possibility of being involved in a lengthy analysis of all the neologisms indicated, it is proposed to take a short way with the problem and to follow d'Entreves by accepting that the term 'state' is to be adopted as the appropriate concept to be used in indicating the social context within which a political community may be embedded. By 'state' is meant that population and territory which is finite in that it is subject to a system of law and to the will and authority of government. The state is also finite to the extent to which it is possible to discern a measure of social cohesion engendered by shared institutions, a willingness to defend itself, and a common, if tacit, commitment to maintaining the way of life which supports the wider cultural life of the people even where that cultural life is pluralistic. Features such as a common language, a common ethnic background or a common religion would be likely to strengthen the cohesion of the state but they cannot be necessary conditions of statehood. The construction of an ideal model is dependent on conceptual and logical coherence but such coherence is bought too dearly if its characteristics cease to bear any resemblance to the world of politics on which it is a commentary. In a world in which a plurality of language,
backgrounds and religions is the rule rather than the exception in statehood, such features must be contingent matters only.

The state is, therefore, the vehicle, so to speak, which carries the political community. In a perfect model, the state and the political community would be one and the same in the sense that the populations indicated by each term would be identical. In practice, all states which may be considered to have a political community contain classes or groups which are not members of the community: in classical Athens the political community was limited to the freemen - foreigners, slaves, women and children being excluded; and all modern states contain groups which are ineligible for the full status of citizenship such as children, convicted criminals and the insane.

3. It is significant that when Socrates decides not to try and escape from the death sentence hanging over him that the focus of his allegiance is to the state and not just the political community, per se. He personifies the laws and constitution of Athens as his imaginary interlocutor and judge and is himself apostrophized in the following terms:

"Are you so wise as to have forgotten that compared with your mother and father and all the rest of your ancestors your country is something far more precious, more venerable, more precious, more sacred, and held in greater honour both among gods and among all reasonable men? Do you not realise that you are even more bound to respect and placate the anger of your country than your father's anger? That if you cannot persuade your country you must do whatever it
orders, and patiently submit to any punishment that it imposes, whether it be flogging or imprisonment? And if it leads you out to war, to be wounded or killed, you must comply, and it is right that you should do so. You must not give way or retreat or abandon your position. Both in war and in the law courts and everywhere else you must do what your city and your country command or else persuade them in accordance with universal justice ....." (3)

This passage from the Crito is remarkable for the categoric mood in which Socrates states his position. It would appear that Socrates is enunciating a principle something like 'My country, right or wrong' which if accepted without qualification would underpin the authority of the state in absolute terms. However, before examining the status of any possible governing principle which the passage contains it is first necessary to enquire into the source of Socrates' allegiance.

Although it is the laws which are personified above, as the argument develops it is clear that the object of Socrates' obligation is wider than just the laws and constitution. The appeal which is made, is made to 'your (Socrates') city' and, more often, to 'your country'. The implication is that Socrates is expressing his obligation not just to the laws of his city but to the society as a whole within which the laws are embedded. This society we will call the state.

There is the further suggestion that the relationship between the individual and the state is to be likened to that between a child and his parents. The
parallel is present throughout the speech. The implication is that the obligation is born out of a condition of dependence based on the need for love, care and education as well as an acknowledgement of the superior wisdom and experience of the parent. It is a state of tutelage. But useful though such an analogy is in highlighting the nature of the emotional ties which may bind the individual to the state, they do not supply a principled or rational framework within which to account for the individual’s obligation. The relationship between parent and child is, essentially, not one of reciprocation in the sense that it is not a bargain. It is the responsibility of the parent to bring the child to adulthood, a pattern to be repeated in due course; but although there may well be a strong reciprocation of emotions during the period of childhood, there are no reciprocal duties which the child has accepted in return for the discharging of parental responsibilities.

In fact, Socrates attempts to extend the grounds on which obligation is based by introducing additional arguments:

‘If you leave the city, Socrates, you shall return wrong for wrong and evil for evil, breaking your agreements and covenants with us, and injuring those whom you least ought to injure — yourself, your friends, your country, and us (the laws) .......' (4)

Although there is a strong moral tenor to Socrates’ language here, the passage contains a mixture of moral and legal arguments. However, they are all obscure. In legal terms, the nature of the ‘agreements and covenants’
to which Socrates is supposed to be party is not made clear, neither, in moral terms, is the nature of the wrongs, evils or injuries which Socrates' exile would incur. Yet although the arguments will not stand the test of detailed analysis, they are not to be dismissed as mere rhetoric. Undoubtedly, the strong sense of attachment to his native state is a sentiment which is readily recognisable in actuality. It is, for example, intimately related to the more easily identifiable notion of patriotism. If this much is allowed, then at least there would appear to be prima facie grounds for supposing that the relationship between the individual and the state has a moral, though subjective, character which contains within it a possible aspect of the state's authority and the individual's sense of obligation, and, as such, is worthy of examination.

4. The significant feature of man's relationship to a wider society such as the state, which both Aristotle and Plato understood very well, is the extent to which personhood is an achievement within the context of an existing society. How societies first came into being is not a question that is of importance here; what can be argued with conviction is that in the absence of society the individual will achieve the attributes of personhood only in a physical sense - morally, emotionally, and intellectually he will remain undeveloped. In practical terms there are the documented examples of feral children which indicate how limited the development of personhood can be when children survive in such strange circumstances. Also, the implications of Wittgenstein's demonstration(5)
of language as a public activity underpins the need for the child to be born into a language community for it to learn how to speak and hence develop towards being a person in any meaningful sense. A congenital Robinson Crusoe would be little more than an animal in his actions.

It is also pertinent to point out that however those philosophers who postulated a state of nature are to be understood, it is self-contradictory to suggest that men who are and always have been divorced from any society can be good or evil, altruistic or acquisitive, hostile or benevolent as these are concepts whose function as judgments on aspects of human behaviour require a social context for any kind of meaning to be possible. The 'state of nature' functions as a potent metaphor whose meaning has to be elucidated or interpreted, it is not a description of an actual state of affairs because men, as the term is ordinarily understood, would not be men in such conditions.*

5. The idea that the relationship between the individual and the state is comparable, in some figurative sense, to that between child and parent, and that, moreover, it is a relationship to be understood in terms of moral considerations is strengthened both by the device of personification in the Crito and also in The Republic by the frequent comparisons made between the individual and

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* It is of interest that Hobbes implicitly recognises this in 'Leviathan', but by attributing to man the ability to learn to reason is then able to develop a theory of natural rights from such foundations.
the state which carry the implication that the state, for Plato, is the individual writ large (6). The Republic contains, perhaps, the best known ideal model, but because it is grounded in unacceptable assumptions which are made concerning the nature and inheritance of human characteristics, and because the ultimately mystical nature of Platonic idealism presents too many difficulties, Plato's ideal society is an inappropriate model within which to find elucidation of the source of social obligation of the kind expressed in the Crito.

What Socrates does express in the Crito in terms of a profound and categoric sense of moral obligation to the state is a spirit which finds its counterpart in the Hegelian notion of 'Sittlichkeit'. This is a notoriously difficult term to translate, but for the purposes of this study it is proposed to adopt that sense used by Charles Taylor in his sympathetic commentary on Hegelian philosophy 'Hegel'. His extended interpretation is as follows:

'Sittlichkeit' refers to the moral obligations I have to an ongoing community of which I am a part. These obligations are based on established norms and uses and this is why the etymological root in 'Sitten' is important for Hegel's use. The crucial characteristic of Sittlichkeit is that it enjoins us to bring about what already is. This is a paradoxical way of putting it, but in fact the common life which is the basis of my sittlich obligation is already there in existence. It is in virtue of it being an ongoing affair that I have these obligations; and my fulfilment of these obligations is what sustains it and keeps it in being.
The presuppositions which give Sittlichkeit its substance are of the following order: first, the relationship between man and society is entirely reflexive. The state does not exist for the individual nor the individual for the state, each is a necessary precondition of the other. As has been argued, man only achieves personhood, individuality, through his participation in a society. To that extent we may endorse Marx's dictum that 'It is not men's consciousness which determines their existence, but on the contrary their social existence which determines their consciousness' (8). On the other hand, society is composed of individuals, but not individuals who have come together expressly for the purpose of creating a society — there is no overt 'contract'. Even those occasions in history on which constitutions have been adopted, such as the American Declaration of Independence, tend to mark what is merely a significant stage in a process of dynamic change. It is a formalisation of an already existing state of affairs, even though the formalising act itself may further that state of affairs. In other words, societies or states do not come into existence like committees by virtue of an agreement between individuals, but rather as part and parcel of a process of historical evolution — they are the development of states of affairs inherited from previous societies. The complete mode of association between man and society is reflexive, it is a state of symbiosis in which each enriches the other.

Secondly, if it is accepted that the state is the most complete unit which comprises a self-sufficient reality within which the individual develops, it follows that the
values, beliefs, assumptions, patterns of behaviour, response to ideal types, even standards of emotional response which find expression in the larger society will, in turn, be reflected in aspects of what can be called the personhood of the individual, that is, in his intellectual, emotional and even physical characteristics, in the values, beliefs and modes of conduct he adopts. To posit this much is not to suggest that personhood is to be explained entirely in terms of social determinism; rather the weaker claim is made that human consciousness and behaviour will necessarily be influenced by the society within which the individual develops. Personhood is at least partly a matter of social conditioning.

It also follows that the more homogeneous a society is in its social norms, beliefs, etc., the greater will be the likelihood that the individual will conform in both thought and action to the mores of the host society in a direct and observable manner. What is more, this propensity to comply with the existing social mores, what Bertrand de Jouvenal calls 'otherdom', will usually be considered to be a social virtue in that the individual who complies will not be seen as a threat. Such a general judgment on individual conduct will inevitably strengthen the de facto exercise of authority. This is more likely to be the case in, say, a remote and primitive tribal society than in a more pluralistic modern industrial state in which it may be more difficult to trace the particular influences which help to shape the consciousness and behaviour of a given individual. To say this
much is not to diminish the effect of social conditioning on the individual, it merely makes it more difficult to observe and analyse. de Jouvenal makes the point in these terms:

'Each man's character is very much his own; it is not given once for all but grows up as the fruit of his confrontation with Otherdom and consultation with himself. But we do reasonably expect a man of a given society, of a given standing or occupying a given office, to display the character pertaining to this society, standing or office.' (9)

One qualification which should be mentioned at this stage is that the society or state within which there is a plurality of languages, beliefs and customs does have implications for the development of autonomy in the individual which will be explored when the claims of the autonomous person with respect to authority are considered. The present concern is with the nature of the relationship of the individual to the state. 6.

So far, the description offered has been couched in quasi-psychological and sociological terms. In order to extend the explanatory power of the philosophical model into this area it is desirable to transpose those features of the relationship into a more acceptable philosophical language. This can be achieved by positing the relationship in terms of rule-governed situations. In so far as human behaviour is intelligible it may be held to be rule-governed in the weak sense argued by Professor Winch in his essay 'The Idea of a Social Science'.
in which he suggests that where explanations of conduct are available, no matter how weak they be in terms of the 'reasons' offered, the conduct in question can be characterised as being intelligible and on the basis of this judgment of intelligibility, 'rule-governed'. Winch concludes 'I have claimed that the analysis of all behaviour which is meaningful (therefore all specifically human behaviour) is ipso facto rule-governed.'

(10) It follows that the greater the extent to which conduct is influenced by the existence of a specific rule, law or custom, the stronger will be the sense in which the nature of the rule-governed situation may be understood.

If personhood is to be, partly at least, understood as an achievement engendered by interaction with a society or state, it follows that the individual may be understood to that extent as an extension of the complex of rule-governed situations present within the state. For example, in that the language spoken by the individual is that which he learns by being reared in the state, it can be held that insofar as language-use is an aspect of personhood it is attributable to a definable rule-governed situation to be identified and located within a finite population. The same can be held for the more obviously normative facets of an individual's beliefs and behaviour. It is likely that the range and content of the individual's moral perceptions, for example, will be heavily influenced by those pertaining to his own society, and, again, this
relevant aspect of personhood is at least partly to be understood in terms of his participation in a pre-existing rule-governed situation.

7. The existence of a moral perspective and content within the state and, hence, within the individual is particularly significant in understanding the individual's Sittlichkeit. In the first place the quasi-legal notion of being obligated which results from an acceptance of contract theory on the grounds that its explanatory power is vitiated by the inherent implausibility of that account. If that approach is discounted, it becomes possible to postulate that without a moral dimension the relationship between individual and state would be one of either self-interest or fear. The only bond would be that of maintaining that the association is preferable to the consequences of dissolving or challenging the association. Also, it is the case that the notion of 'being obligated' itself has a moral component built into it unless this is cancelled by some specific qualification.* 'Obligation', which throughout this work is used in the sense of 'being obligated' not

* In 'The Merchant of Venice', Antonio is legally obligated to submit to Shylock's knife. There can be no moral obligation to lend oneself to a morally monstrous act. In such a case the obligation requires the limiting epithet 'legal' to nullify the moral component. The nature of Antonio's obligation to the laws of Venice is another matter - the matter which is one of the prime concerns of this work.
the more ambiguous 'being obliged', implies 'legitimacy' or 'rightfulness'; it is not only 'that which is owed' but 'that which is rightfully or legitimately owed'.

However, the argument developed in the previous section that the moral development of the individual is likely to be largely dependent on the extent to which the state itself is expressive of a moral language and perspective does not, in itself, explain why the individual should possess a sense of obligation to the state or accept that the state has any kind of moral authority in its claim to his obedience. The difficulty is embedded in the nature of morality itself which is centrally concerned with problems of conduct between individuals; morality is characteristically personal and inter-personal. Where the association is between the individual and an organisation of one kind or another, problems of a specifically moral nature are unlikely to arise unless the individual or the organisation has entered into some specific contractual obligation which by its very nature contains a moral element. In other words, where the individual is in association with largely impersonal groupings within society there is a loosening of the requirement to construe the relationship in actual or potential moral terms. If this is the case with organisations within society, then the lack of a moral dimension is likely to be even greater where the association with the state is concerned, particularly if the possibility of a 'contract' between individual and state is discounted.
The problem needs to be stated clearly. Moral obligation is transactional in character; that is, it is indicative of a relationship, most usually between two individuals, when one party to the transaction is held to owe something or some service to the other party not in terms of a legal commitment but in terms of the transaction falling under some relevant moral rule or principle. Moral obligations may be held to obtain, albeit more problematically, between individuals and organisations, between organisations and individuals, and between organisations. It can be seen that moral obligation entails that there be a recipient or object of the obligation. Between individuals it is the moral status of the object as being worthy of respect which contributes to the moral character of the obligation, e.g., a promise, say, to meet someone at an agreed time and place derives its specifically moral character partly from the recognition that the promise is worthy of consideration as a matter of moral principle, and that to break the promise is to demonstrate an instrumental attitude to others.

The difficulty is that the state, as with any other largely impersonal organisation, is not recognisable as an entity worthy of such respect. Respect for persons is born of a recognition that to claim rights for one is to acknowledge the validity of a claim to similar rights for all. But the state is not another individual in spite of the popular personification of it as the 'motherland' or the 'fatherland'; it is not even the sum of all its constituent individuals; it is a social unity with all
that is implied in terms of government, institutions, procedures, laws, customs and traditions. The state is a polymorphous concept.

Finally the problem is compounded by the fact that the nature of the obligation involved is not of a kind which can be discharged in any one particular act; the obligation is to accept the authority of the state as a continuing claim on the actions of the individual even to the extent of acknowledging the state's authority in matters of life and death.

8. The first stage in the resolution of this problem is to return to the notion of Sittlichkeit, the moral obligation which the individual has towards the state. In his interpretation of the concept, Professor Taylor also notes the adjunct to this which is that the obligation is to "an ongoing community of which I am a part"; that is, the moral obligation is not to bring about a state of affairs which is demanded by the imperative element in the use of the concept 'ought' characteristic of Kantian personal morality, rather the obligation in Sittlichkeit is towards the maintenance of an existing state of affairs, viz., the larger community life of the state. Hegel, in fact, distinguishes the two kinds of morality by making use of two separate terms: Sittlichkeit, the meaning of which has been discussed, and Moralität which is to be identified with personal ethics. The confusion which in English is unavoidable because the epithet 'moral' is used in both senses is, to a certain extent, avoided in German usage. In "Hegel's Theory of
the Modern State’, Shlomo Avineri suggests that in one of his early unpublished works Hegel defines Sittlichkeit as ‘the identification of the individual with the totality of his social life’ (11). The use of ‘identification’ neatly sidesteps the difficulty caused by the introduction of ‘moral’ but it is doubtful if it solves the problem entirely as obligation is still implied with all its moral overtones, and in ‘The Philosophy of Right’ Hegel equates Sittlichkeit with ‘ethical life’ (12) which underlines the moral dimension.

To compare explicitly the two categories of meaning, it can be held that where Moralitäts is concerned it is the atomistic individual which is emphasised concerned to bring about that which ought to be in terms of his moral perspective; Sittlichkeit recognises the social nature of man by positing the nature of his obligation to the ongoing society to which he owes his personhood. Hegel implies a further distinction between the vacuous formalism of Kantian morality and the real content of Sittlichkeit as it is to be identified in the life of the state. Such a distinction is too extreme in that it can be held that Kantian ethics are to be understood as more than merely producing formal principles, and, particularly in modern societies, that which constitutes the life of the state may be difficult to identify without encountering contradictions and ambiguities. Nonetheless the distinction which resolves itself into a duty to bring about that—which—ought—to-be as opposed to a duty to that—which—is is valid and significant.
Where Moralitaat and Sittlichkeit converge is in the subjective element within the individual which informs the rational perspective of his situation and requires fulfilment of the moral obligation of each. This requirement is discarded or negated only at the cost of personhood or humanity; extreme cases would be the psychopathic state of the man without a sense of Moralitaat, and the desolate alienation of the man devoid of Sittlichkeit.

Before attempting to characterise what might appear to be the more subjective element in the individual's obligation to the state, it is necessary to examine the difficulty created by the conceptual entailment that just as authority must have a subject so obligation must have an object. So far, the object of obligation or, in this respect, the embodiment of authority, has simply been characterised as the state both as a formal definition in terms of laws, constitution and governance, and in terms of it as a way of life. If the state, like Athens, were small, homogeneous and clearly defined, the object of Sittlichkeit becomes intelligible as an identifiable entity. A modern state will rarely meet these conditions and a plurality of beliefs, customs, languages and ethnic backgrounds is likely to be the rule. In such an amorphous and possibly contradictory set of conditions and states of affairs the objectification of authority or obligation is too diffuse to be intelligible in positivistic terms. Of course, the option open to Hobbes' sovereign, who is the fountain-head of all authority, to personify the state in terms of himself as enunciated by Louis XIV, 'L'état, c'est moi', is not available to the model presented here.
In strict Hegelian terms, the difficulty could be resolved, at least partly, by interpreting him as allowing to the state what might be called personified status in that he attributes to the state Spirit or Geist. With the introduction of Geist a considerable difficulty arises as Hegel's arguments which intend to show the ontological necessity of Cosmic Spirit both as positing the universe and being embodied in the state are of a complexity which defies any brief rehearsal. Moreover, although the metaphysic of Geist with its theological background is necessary for the symmetry and cohesion of Hegel's model of the state, by its very nature it is the most contestable part of his political philosophy; also, as this study is not predicated on purely Hegelian presuppositions, it is neither necessary to endorse nor to accommodate the metaphysic.

Of greater significance to this work is another Hegelian notion, that of Volksgeist or national mind, interpreted by Charles Taylor as 'the spirit of a people, whose ideas are expressed in their common institutions, by which they define their identity.' (13) Volksgeist is intelligible in that what is indicated is what is often called the national character of a country expressed through its culture and institutions. Just as it is intelligible enough to differentiate the national character of militaristic Sparta from the democratic and intellectual spirit of Athens, so the Volksgeist of the United States of America as expressed through notions like 'the American way of life' can be differentiated from that of the U.S.S.R. or France or Iraq or Mexico.
The nature of the constituent elements in the Volksgeist of a particular state are objective in that they are to be identified in terms of the prevailing features, institutions and ideals by reference to which individuals define their sense of identification with the state. That such features are singled out in the consciousness of individuals as being significant in this respect does not detract from their objectivity although it may make for difficulty in establishing them with precision. What will characterise these objects of consciousness will be their generality, i.e., they will be held to be pervasive in that they will not just be the opinion of any given individual, but will be, so to speak, common property in that there will be a measure of general recognition. An awareness close to pride in the special nature of the countryside, attitudes to food and wine, the republican tradition, and the superiority of its intellectual life may be aspects of the French Volksgeist even though there may be individuals or even groups to whom any or all of these mean nothing.

The idea of patriotism, for example, is an expression of the individual's sense of Volksgeist, an acknowledgement of the bond between individual and state in which the state is conceived of, not in terms of any one feature such as government or even constitution, but in terms of a sense of identity. Hegel conceives of patriotism as follows:
The sentiment is, in general, trust (which may pass over into a greater or lesser degree of educated insight), or the consciousness that my interest, both subjective and particular, is contained and preserved in another's (i.e. in the state's) interest and end, i.e., in the other's relation to me as an individual. (14)

The introduction of the notion of 'trust' into the analysis is significant. It has already been argued (in section 5) that there will be a propensity on the part of the individual to comply with the social mores of his native society. This propensity will be reinforced by the extent to which such compliance is perceived as a virtue, it is also a propensity which will act in favour of the state's authority - that is, so long as the trust is retained.

The trust of a populace can significantly strengthen a government's claim to legitimacy; by the same token, a loss or withdrawal of trust can undermine that same legitimacy.

The factors which influence individual conduct in these terms derive from the inter-relationship between the personhood of the individual and his native society. It is upon this foundation that the notions of Sittlichkeit and Volksgeist are built. Volksgeist represents the terms in which the individual recognises this relationship between himself, as a person with a specific identity, and the state, the source of that identity, in part at least. It is this sharing of identity which informs the individual's Sittlichkeit, the subjective sense of obligation that the individual has to his native society - a sense of obligation which is strengthened, where it
exists, by the extent to which it subsumes an element of trust founded, in turn, in a community of identity and interest. What is more, it is in these terms that Socrates' sense of moral obligation to the laws and constitution of Athens becomes intelligible and is only partially expressed through the metaphor of family relationships, because it is more than this. The obligation arises, most fundamentally, from the extent to which the individual, either tacitly or consciously, recognises a subjective obligation on his part to contribute to and support that state of affairs, viz., the state, which is, in part, the source of his own identity. It is the implicit sense of 'rightness' in this sentiment which imparts to it its moral complexion, although, as Hegel rightly distinguishes, it is a moral sense peculiarly conceived of in terms of maintaining that which is, rather than bringing about that which ought to be. Although this by no means exhausts the investigation of the relationship between state and individual, it is in the terms outlined above that the notion of Sittlichkeit finds expression.

Summary
In this chapter the concern has been to extend the model of the individual and his relationship with the political community into the character of his relationship with the wider society of which the political community may be only a part. In other words, it is the nature of
the individual's obligation to and implicit acceptance of the authority of the state as a whole which is examined. To this end, the rationale underlying Socrates' acceptance of the death penalty has been analysed as focusing attention on the individual's relationship with the state. In the course of this analysis, the Hegelian notions of Sittlichkeit and Volksgeist have been introduced as concepts which have explanatory power both with regard to the nature of the individual's obligation and the object of his obligation in social terms. Of particular importance to this work, the argument has been endorsed that individuality or personhood is to be understood, partly at least, in terms of being a social achievement where the individual is seen as an element in a reflexive rule-governed situation which embraces both him and the state. It is argued that the sentiment of Sittlichkeit arises from this relationship insofar as it is an acknowledgement by the individual of his debt to and trust in the society which shares its identity with him.
References


(2) ibid. pp. 33/4 d'Entreves comments on the reluctance in Britain and America to use the word 'state', a reluctance which is absent on the continent.


(4) ibid. p. 39.


(6) See, for example, 'The Republic', p. 637 in the above edition of The Collected Dialogues of Plato.


(13) op. cit. p. 387.

(14) op. cit. p. 164.
Chapter 4

Obligation, Freedom and the Self

1. Of all the concepts central to the study of political philosophy none is more treacherous than 'freedom', carrying with it, as it does, an emotive loading, an inherent ambiguity, and a propensity to persuasive definition. But it is the only concept which at all adequately catches the vital feature which lies at the heart of the individual's subjective sense of obligation to accept the authority of the state. The only corrective available is to make explicit at every stage the particular sense of 'freedom' which is being used.

It is helpful to open with some straightforward analytical comments on the meaning of 'freedom' as the concept is used in the context of political philosophy. First of all, freedom is usually claimed in relation to the existence or absence of constraints. The constraints from which freedom is won or sought will be of a character amenable to human action; it is intelligible to talk of 'freedom from want' or 'freedom from oppressive laws'; it is nonsensical to complain of the lack of a freedom to fly because humans do not have wings or because gravity obliges one to be earth-bound. Implicit in the linking of freedom with constraints are two notions: (a) the freedom from constraints of one kind or another, what is termed the negative concept of freedom, and (b) the freedom to act in the way one chooses, the positive
concept of freedom. The negative concept draws attention to the nature of the constraints which are complained of, that is, their justification is called into question; the positive concept emphasises the status of the individual not only as an adequate judge of which actions are in his own best interests but, ultimately, as the only one who has the right to make such choices (1).

The Janus-faced relationship between freedom and constraint leads to the so-called paradox of freedom which may be stated in the following way: as men are less than perfect, a state of affairs which, left unregulated, would result in the domination of the weaker and more trusting by the stronger and more unscrupulous. In other words, what may be a state of freedom for some would be likely to be one of servitude for the many. It follows that in order to guarantee to all protection from the arbitrary interference of others, and so to guarantee to all a measure of freedom within which to pursue their own interests, a system of laws or rules is necessary. So it is that the conditions in which freedom to act become possible are bought at the price of accepting constraints of one kind or another - the apparent antithesis of that which is sought.

One of the assumptions on which this work is based is that the moral qualities of men are as various as their physical and intellectual qualities. It follows that while the uniformly bleak Hobbesian psychology is rejected, the brute facts of life in terms of this moral
diversity lead inescapably towards acceptance of the
paradox as enshrining a principle expressing the conditions
for individual freedom in society. This principle is that
human freedom is the outcome of a rule-governed situation.
It is the implications of this principle in its various
social contexts to which we now turn.

2. The immediate context is that of the individual's
obligation to accept the authority of the state, a
description of which was offered in the previous chapter.
The problem now is to account for the subjective will to
accept the state's authority as exemplified by Socrates'
quietistic acceptance of the death sentence. To put the
matter in different terms, the matter to be explored is
the ontological basis of Sittlichkeit, and to offer a
philosophical, not psychological, explanation.

To this end a more developed concept of person-
hood than that so far offered is required. The starting
point is the assumption that the individual is to be
understood in terms of his personhood being partly
attributable to the society in which he is a member.
The concept of personhood adopted here is one which
departs from the traditional reductionist model in which
it becomes isolated as a single attribute such as
'rationality' or 'reason' which, it is argued, distinguishes
man from the animal world. Such 'testimonial-notions'(2)
are inadequate in that, among a number of possible
criticisms, they do not do justice to the real complexity
of human personhood or to the variety of content within
which rationality itself is evidenced. Instead, we may
view personhood in terms of individuality as a 'notion (which) is much more than that of an assertive point of view; of judgments, appraisals, intentions and decisions that shape events.' (3) The content of such judgments, appraisals, etc. being informed by the mores of the society or state within which the individual lives.

The concession which may be granted to a reductionist viewpoint is to characterise the individual in terms of 'subjective will'. Even this concept is indicative of complexity rather than simplicity. In the first place, it implies rational self-awareness; but rational self-awareness is a concept akin to the Kantian 'rational will' in which the ego is positioned as being aware of itself only in the purely formal terms appropriate to the criteria of logical consistency and universality. In other words, it is a notion not only of mind disembodied, but it is a concept of mind devoid of content other than formal criteria and aware of itself only in these terms.

But subjective will is to be taken as a concept indicative of real people, actual or prospective citizens, the populations of states. To be conceived of in these terms the subjective will must be determinate, that is, it must have embodiment both in terms of the particularity of personhood and of rational content. By particularity is meant that self awareness which is based in personhood realised in terms of historical moments: that whatever judgments, appraisals, intentions and decisions are made are themselves the outcome of previous states of affairs.
in which the continuity is expressed by the formation of dispositions, traits, habits and assumptions. Further, the assumption of subjective particularity is necessitated by the awareness of that which is objective, i.e., that which is not-ego and which will include the perception of other subjective wills as particularities. So it can be argued that the finite subjective will is itself the product of its position vis-a-vis other finite particularities. By rational will is meant that the purely formal notion of Kantian rational will is fleshed-out in terms of the specific judgments within which the logical and universal find expression. Those judgments characteristic of rational will would be the implicitly universalistic moral judgments and the explicitly universalistic, at least relative to the state, political judgments.

Personhood conceived of as subjective will is therefore analysed into qualities of mind yielding two categories of experience: that which is assertive and is centred on, and is an outcome of self-consciousness; and that which is other-directed in that it is rationality focused on what may be called objective ends. These categories are not mutually exclusive but are, rather, categories indicative of stresses of interest - the former mainly concerned with the satisfaction of self, the latter more concerned with making judgments in which ego-consciousness is necessarily a subordinate matter. In each category the element of self is present, in each category rational capacities will be brought to bear, but the distinction indicated remains.
Such a description, as it stands, is compatible with Kantian rational autonomy where the individual's position as originator and judge of right actions is informed by formal, rational criteria. Where the description departs from the Kantian conception of autonomy is in the insistence that the individual is at least partly to be understood in terms of social determinism to the extent that the categories are not purely formal in character. The conception of the particularity of self-hood, and the rational appraisal of otherhood involving universality, are themselves the products of mind which is informed by the mores of society and, as such, may be said to have its origin in society or state. The terms in which the ego is the object of self-awareness and the nature of the relationship between self and otherness, as well as the terms in which that which is other or objective is understood will all be products of the social dimension within which the self has existence. Put in these terms, the formal Kantian rational criteria are transposed into abstractions from what is known or understood in experience rather than being a priori categories applicable to understanding and experience.

An example of the way in which a difference in social mores can affect the individual's apperception and social pereception is provided by Hegel in one of his early works in which he suggests that:
'As free men the Greeks and Romans obeyed laws laid down by themselves, obeyed men whom they had themselves appointed to office, waged wars on which they themselves had decided, gave their property, exhausted their passions, and sacrificed their lives by thousands for an end which was their own. They neither learned nor taught (a moral system) but evinced by their own actions the moral maxims which they could call their very own. In public as well as in private and domestic life, every individual was a free man, one who lived by his own laws. The idea of his country or his state was the invisible and higher reality for which he strove, which impelled him to effort .... Only in moments of inactivity or lethargy could he feel the growing strength of a purely self-regarding wish.' (4)

This passage is particularly interesting because it is open to two interpretations. In the Hegelian view, life in the ancient world was characterised by the extent to which 'the body politic lived in every individual's consciousness and in the collective imagination' (5). In such a milieu, Kantian autonomy has no place and must wait its turn on the advent of social developments in which a more developed and radical sense of individuality has its place. Hegel held that the historical ascendancy of Christianity provided the decisive element within which such a change in self-consciousness could take place. Hegel's example is pertinent in that it illustrates the nature of possible paradigmatic revolutions in the nature of consciousness and self-consciousness which are required to achieve the incorporation of radical autonomy into the world.
On the other hand, there is a sense in which the model presented by Hegel could be held to represent a society in which the Kantian ideal is already realised. The Kantian notion of the categorical imperative proposes that man can achieve freedom by forsaking prejudice and appetite to realise his duty in the light of pure reason. The implication is that the categorical imperative is required as a criterion of right judgments and right action because men are not purely rational beings - they are ignorant, or unenlightened, or the slaves of passion and desire. The assumption is that men do not know that which is right; hence the need for a criterion. But in the ancient world described by Hegel, the Greeks and the Romans were free men in these terms. They were the originators of their own laws, the laws were the embodiment of universality, and the authority of the laws was unquestioned.

What is missing from this second interpretation as far as both Kantian and Hegelian philosophies are concerned is a recognition of a conscious awareness of individuality which has to come to terms with a striving for the universal in both political and moral life. What is missing from the first interpretation is a recognition that, as a matter of fact just such an awareness of individuality could exist at that time. The example is, of course, that of Socrates. Even though Socrates eventually acknowledges his Sittlichkeit to Athens and through this his recognition of obligation to the universal, i.e., the laws, nonetheless he considers
a variety of individualistic arguments which, if accepted, would have saved his life. Perhaps, in this Hegelian sense, Socrates has a claim to being the first Christian.

The likelihood is that Hegel overstates the case. In terms of the categories of personhood adopted, although the emphasis in the ancient world may have been on the individual's other-directed responsibilities towards his civic life, it is difficult to see how such other-directedness could exist in the absence of, at least, a vestigial self-awareness or ego-consciousness. History may demonstrate the progressive development of this aspect of personhood but its genesis is likely to be found in pre-history not in Christianity.

3. The next important characteristic of the subjective will to be considered is that of freedom. There are, in fact, two concepts of freedom to be isolated in this context; these are the freedom of the will and the freedom of action. The former is centred on the subjective will of the individual, the latter on the individual seen as a social and political agent. Once more, categories of experience are offered in which the distinctions will blur as the interdependence emerges.

First of all, consider the freedom of the will qua will. Hegel puts it in these terms:

'The will contains the element of pure indeterminacy or that pure reflection of the ego into itself which involves the dissipation of every restriction and every content immediately presented by nature, by
needs, desires, and impulses, or given and determined by any means whatever. This is the unrestricted infinity of absolute abstraction or universality, the pure thought of oneself. (6)

For Hegel, such a freedom is the 'freedom of the void' (7), negative freedom, freedom unconstrained and hence absolute in that its source is the ego, its direction ego-determined and subject to no restraint beyond the thinking which informs the will. It is such a concept of freedom which, if translated into action, can only be destructive and which, for Hegel, found expression in the revolutionary Terror of 1783/4. The reason is that it is entirely abstract, incapable of realising anything which would bring with it the requirement that a consideration of men and organisations be taken into account — it would then be forced into objectivity.

However, this account of the nature of the free will masks an ambiguity. This concerns the terms in which the act of willing is to be understood. Hegel appears to envisage the will as a priori in the sense that it is subject to no restriction founded in experience; it is the self conceived of in terms of pure rationality, something like a rational id in its destructive potentiality. The difficulty is that such a conception appears to be unintelligible. It is one thing to posit, as Kant does, the notion of pure reason as a priori categories, such as universality, which can be applied as criteria to the contents of consciousness. It is quite another, as Hegel
appears to suggest, that the contents of consciousness can consist of 'the pure thought of oneself'. The level of abstraction required for the state of 'that pure reflection of the ego into itself' itself leads to the charge of vacuity.

On the other hand, it can be maintained that the necessary conditions for the freedom of the will are that the will is a thinking will and that the ends in view are informed by rationality and not merely by appetite. In other words, there is no freedom of the will where that which is willed is dictated by bodily or psychic contingency. The madman's thoughts may range far and wide but he has no freedom of will in any sense, and neither does the starving man whose thoughts are conditioned by his need. The will is free in the sense that that which is willed is not restricted by contingent features which effectively determine the content of the will. This much is consistent with the Hegelian view.

However, the view of the nature of personhood adopted in this work has stressed the extent to which personhood and its concomitant expression of rationality finds embodiment and intelligibility in social terms. The self has to be understood not as an abstracted pure ego, but as the ego of a determinate individual with all which that implies; rationality and the will must have ends in view, that which is willed, and such an awareness of ends will be limited to some extent by the experiences of the individual and the cultural milieu in which he has been socialised. In other words, the notion of the will
which is adopted here is that of the embodied will; it is will based in one person's judgment vis a vis another's.

However, the state of negative freedom does have significance in that it conceptualises intelligibly the notion of the will as being inherently freedom-seeking. Pure thought will be limited only by the extent to which thinking itself is either developed or rudimentary; this, in turn, being limited by factors such as intelligence, experience, and the extent to which the contents of consciousness are limited by the paradigms present in society at any given time. But the freedom so gained may be termed a false freedom, because its destructive conclusion can only result in the elimination of everything which imparts to the self both the necessary conditions for its being and its continuing raison d'etre, that is, the continuation of society. To put it another way, it is a self-negating freedom because it results in the self denying its own nature. The freedom of man in a world reduced to anarchy as a result of such a will would be little more than the freedom of the individual in a Hobbesian state of nature. The concept of absolute freedom of will resolves into a complete absence of liberty*.

*A comparison with Hobbes is illuminating. In Hobbes' state of nature, insecurity or anarchy is created by the free expression of the individual's instinct for self-preservation. The insecurity of this state is resolved by the development of prudence which, in turn, develops into reason and, ultimately, the creation of rules. In Kantian terms, the whole process is short-circuited in that the will is a rational will to begin with, and, as such, it limits and tries to control the irrational world rather than growing out of it in Hobbesian terms.
To talk of the self denying its own nature is significant in that what is meant is that in terms of personhood the notion of the indeterminate will is only one aspect of the developed notion of the self. Personhood itself is only intelligible if the subjective will is manifested in action, but once action is admitted then the individual is committed to having to take account of the context within which the action is capable of fulfilment. The negative freedom of the will to destroy is self-negating because, as it is incapable of willing constructively, no the very exercise of the freedom to destroy is the negation of the conditions within which even a negative freedom is possible. The negation of society is the negation of those rule-governed situations which contribute to the formation of personhood. To that extent, the subjective will conceived of in terms of negative freedom and finding fulfilment in action is self-contradictory and, ultimately, irrational.

It also follows that negative freedom is incapable of being realised in action as the whole concept dissolves into unintelligibility. Action itself is only intelligible within a rule-governed context. If, as has been argued, the realisation of negative freedom involves the destruction of the social context, its culmination lies in incoherence as action in the resulting void will have no significance. Action has no meaning in a rule-less vacuum.
What does emerge is the logical connection between the freedom of the will and freedom of action, both components of personhood. Freedom of the will without any resulting action, pure contemplative freedom, has its place within human life but in itself it scarcely touches the problem of the nature of individuality, particularly as it relates to the individual in a social context. It is the subjective will as evidenced in action which is central to the understanding of personhood in social terms; in fact, it is not overstating the case to suggest that personhood is completed through action. The point is that freedom in a social context, i.e. liberty, is the logical extension of freedom of the will, but the freedom of the will exercised towards the fulfilment of ends which at the very least do not decrease the possibilities within which freedom of action is possible. It is in this sense that Isaiah Berlin’s notion of ‘positive freedom’ is deeply rooted in the concept of the self.

There is one consideration which needs to be made explicit in this enquiry into the nature of the subjective will, and that is the extent to which choice is a necessary condition for the exercise of freedom. A will which is constrained to the extent that only one line of thought is possible, in which there is no room for any consideration of other possibilities, loses its claim to freedom and becomes, instead, a determined will. Such a will would merely be the outcome of whatever
constraints prevent the consideration of other possibilities, whether these constraints be extrinsic to the mind, such as hunger or physical illness, or intrinsic, such as insanity or extreme poverty of thought engendered by, say, deprivation.

Similarly, where action is concerned, constraints which effectively limit the possibility of action to the extent that no choice is possible remove the possibility of the subjective will fulfilling itself, and in these conditions personhood itself is diminished. The prisoner may retain his value as a person worthy of respect in moral terms but he is diminished in terms of actual personhood insofar as his opportunities for demonstrating and developing individuality are diminished. The conditions of imprisonment may impose on the individual the necessity to maintain rather than develop personhood which in itself may require the development of appropriate aspects of character. This, however, does not affect the central point which is that it is the liberty of the individual which is at stake here, and liberty involves not only the attainment of desired ends but the expression of self in the subjective willing of these ends and this cannot be in circumstances where the ends are effectively dictated by others.

Finally, as far as choice is concerned, it is possible to go beyond the contention that choice is a necessary condition of freedom and to maintain that human freedom is engendered by choice. In the individual's moral life, a particular course of action may have become
habitual until it is challenged by a different moral viewpoint; in social terms, a pluralistic society requires a reconsideration of current values and beliefs where differences occur. Plurality or choice engenders autonomy even though the conflicts involved may seem threatening to the extent that many people find them difficult to tolerate and seek psychological refuge in, say, a kind of conformity (7). The corollary of this is that the greater the degree of choice which is open to the individual in terms of his understanding and capacity to conceive ends, together with greater opportunities for fulfilling ends in actuality, the greater will be the degree of freedom of thought and social liberty which can be claimed.

5. One feature of the relationship between individual and state which has been insisted upon has been its reflexive nature. It is now appropriate to examine this in more detail with particular reference to the concept of personhood. If the will is grounded in thought, then even the pure thought of the negatively free will must have a content. The contents of consciousness are not the creation of consciousness itself: language is necessary, presuppositions are required which form the paradigmatic framework which supports understanding, values and morality require a social initiation before the individual is able to
acquire autonomy in these areas. In short, independent thought is the outcome of, not the originator of social experience.*

Further, for the subjective will to reach fulfilment in the striving for or achievement of ends, the relationship with social experience becomes stronger. Another way of putting this is to say that the more the subjective will requires the use of rational capacities for objective ends, the greater will be its dependence on an understanding of the social milieu for its success. Nowhere will this be greater than in the spheres of morality and politics where there is the implication of universality in the reasoning of the former and the possible actuality of universality in the rule-making of the latter.

So it can be posited that the self, understood in terms of its conception of its own individuality and expressed in terms of its determinate aims, wishes, wants, desires and needs, has its powers of conceptualising, its rationality informed, by the nature of the social milieu within which it itself is a contributory member. Similarly, to adopt the second part of the Hegelian

* Such a view implicitly supports distrust of attempts to impose foreign or 'rational' constitutions on a people in the name of liberty. Freedom stands in need of interpretation, and how it is interpreted will depend on the traditions, values and beliefs of the people concerned. This is a point of view to which both Burke and Oakeshott subscribe.
The most obvious example is that of language acquisition. The individual who is born and develops within a particular language community learns and masters the language relatively effortlessly as part of his participation in a form of life. Transactions within that community will be underpinned in terms of their efficiency and effectiveness by a secure, subtle and probably tacit understanding of the community's language. Compare this with the problems faced by a stranger unfamiliar with the language trying to conduct his transactions, or with the degree of effort needed by a foreigner to acquire even a rudimentary understanding of the language. The point is that to posit the notion of the state is to posit a complex of rule-governed situations of enormous intricacy, a form of life in fact. The individual who is native to a society absorbs an understanding of this complexity, but such an understanding, which may be either explicit or tacit, is not to be itself understood entirely in terms of a relationship between an agent and an object; rather, it is the
case that the understanding of the agent, the individual, is derived from the extent to which this complexity is assimilated into the subjective will of the individual, that is his mind. In other words, that complex of rule-governed situations which is expressed in the way of life of a society becomes to a certain extent part and parcel of the personhood of those who are born and develop within the society in question. To posit this much is not to suggest that the whole of personhood is to be explained in these terms, but to suggest that this is a necessary and important element within the concept of a person. Once more the state of affairs is most easily exemplified by citing the case of the stranger in a society, the emigre, the ex-patriate, and to note the difficulties which usually attend such exiles who may never be able to identify with the host society because the process of attunement to a society's mores is extremely difficult unless the person is young enough to absorb the complexities as part of the general process of maturation.

6. It is now possible to incorporate as assumptions the arguments which have been offered in terms of freedom, choice, personhood and the nature of the subjective will, and to reach conclusions with regard to the nature of the subjective impulse which lies at the root of Sittlichkeit. It has been argued that the mind is inherently freedom-seeking in the sense that thought is only limited by the framework which is available to it in terms of the conceptual sophistication of the language and the nature
of the explanatory paradigm which is culturally derived. Further, the more pluralistic the composition of society, the more there is a diversity of viewpoints, the more extensive the opportunities for the satisfaction of possible goals, then the greater will be the confidence with which the subjective will can be characterised as free as a matter of logical necessity. This applies to the freedom of the will conceived of as purely negative freedom and also, more significantly, in terms of the positive freedom of the will which finds expression in fulfilment through action.

Given, also, that human freedom typically requires a social context within which to find expression, it follows that the expression of such freedom becomes dependent on the existence of a rule-governed situation. The fulfilment of the subjective will implies acceptance of the paradox of freedom as a necessary condition for both its expression and for the intelligibility of the notion of liberty. This remains true even when the end in view is to change the nature of the order or the rules.

However, the rules with which society is imbued are highly complex. Even the system of law which pertains is unlikely to be capable of being understood as a formal set of rules because the constant need for interpretation and arbitration will ensure a degree of fluidity. The customary and traditional rules which inform the mores of society are even more difficult to apprehend by anyone who is not native to the society in question and has not been initiated in childhood to the complexities of the
way of life. This being so, it follows that if the fulfillment of the subjective will in its impulse towards freedom of expression requires that there be an appropriate social context for this to be possible, then that society whose complete and complex rule-governed situation is best understood will be the context which is most conducive to the expression of freedom. The society most likely to offer the facility of being fully understood will inevitably be the society into which the individual is born and in which he develops. Given that for present purposes it is the state which is the social unit appropriate to this enquiry, the conclusion is that in terms of the individual's need for an understood social context for the expression of his subjective will, the individual's parent state will most completely offer such a context, not only because it is understood both consciously and tacitly, but because the mores of the state will be reflected in the personhood of the individual. Another way of making the point which is consistent with the analysis of the subjective will is to suggest that it is within the rule-governed situation which is that of the parent society that the particularity of personhood expressive of personal wants, desires, hopes and ends will find satisfaction; also the rationality of personhood expressed in terms of consistency and universality in law or rule-making will be imbued with a content and basis for further judgment-making and an
arena within which such judgment-making may find adequate expression. In these terms the subjective impulse which informs the obligation within the individual's Sittlichkeit is analysed in terms of the subjective will's freedom-seeking propensity.

Summary

The initial concern in this chapter has been to develop the concept of personhood in order to make explicit the nature of the reflexive relationship between man and society. It has been argued that the content of thought, of rationality, is derived from the cultural environment, and that this content reflects back into society in terms of either the satisfaction of particular wants, needs or desires, or in the expression of the individual's rational capacity for forming universal judgments particularly in the areas of morals and politics. It is in these terms that the notion of the subjective will has been analysed.

Human personhood posited in these terms has then been shown to be essentially freedom-seeking, an enterprise which both logically and contingently is only intelligible within a rule-governed situation. That being so, it is argued that there will be a strong propensity for man as a social being to find the liberty he needs within that rule-governed environment which he best understands, viz., his native state or society.
Finally it has been suggested that the inherent impulse of the subjective will to freedom which finds fulfilment within the state is the subjective basis for the sense of Sittlichkeit delineated in the previous chapter.
References

(1) For an elaboration of the notions of 'positive' and 'negative freedom' see 'Two Concepts of Liberty' in Four Essays on Liberty by Isaiah Berlin, O.U.P., London 1969.


(5) ibid. p. 20.


Chapter 5

Authority and Stability

1. The model of the state has now been extended from a conception of it as that self-conscious, legally-defined and sophisticated population which comprises the political community to include that dimension of the state which may or may not be conterminous with the political community, viz., that population the totality of which forms the society which is the complete embodiment of the state. At the same time, the concept of personhood has been extended from the essentially legally-defined concept of a citizen to include that aspect of personhood which may be characterised as being socially-derived, and which also may or may not be conterminous with citizenship. Although care has been taken to avoid suggesting that the individual is to be understood as being totally a product of his social environment, it should be remembered that the individual considered as being autonomous or self-directed has yet to be explored. It follows that although the model presented so far is capable of offering insights into a range of social and political phenomena, there will be matters which will, of necessity, have to wait upon a further elaboration of the model before comment and explanation become profitable. In general, the kind of conduct which is open to explanation so far will be that typified by compliance with authority; conduct typified by non-conformity and the justification of such conduct
will be considered later.

It has also been argued that the mores of the state, understood as a complex of rule-governed situations, are reflected in the consciousness of the individual contributing to the content of his hopes, desires, needs, wants, judgments and values. The further contention is that as the state is, partly at least, the source of the contents of the individual's consciousness, it will be within the rule-governed complexities of the reality of the state that the individual will be most likely to find that milieu which, both tacitly and consciously, is most fully understood and within which he can most rewardingly pursue his objective goals. In other words, it is within the state that the sense of freedom can be realised.

To posit the connection between individual and state as being one grounded in understanding or meaning is to posit the connection as being logical or conceptual in character. For example, among the Pueblo Indians of New Mexico, one, the Zuñi, has no concept of 'sin' (1). This means that not only are attitudes to sex free from the element of moral censure familiar to the Puritan mind, not only are guilt complexes unknown, but the metaphysical basis of the concept 'sin', in terms of belief in a struggle between good and evil, is absent in Zuñi culture. It follows that in order to understand Zuñi attitudes to sex it is necessary for a Western anthropologist to disburden himself of a conceptual perspective which he would normally have
taken for granted in his own culture. Conversely, for a member of the Zuñi to appreciate Western attitudes he would have to learn not only the term 'sin' but also the assumptions and implications which attach as a matter of logical necessity to the concept. In each case the visitor to the foreign environment has to learn an appropriate language, that is, not just a different grammar and vocabulary but a different set of beliefs, assumptions and priorities. To suggest this much is not to insist, as with the more extreme relativists in this field, that the different way of life must be adopted for it to be understood, but simply to argue that the act of understanding the unfamiliar society will require a shift of perspective to the extent that the assumptions which form the basis for any understanding have to be entertained. To put the matter in terms familiar to this enquiry, a different rule-governed situation has to be understood and this is primarily a logical matter in the sense that a new way of conceptualising the situation is required.

It is peculiarly important to establish the exact sense in which there can be said to be a logical connection between the individual and the state or society of which he is a member because this is only one aspect of the relationship, a relationship which, in full, is characterised by a variety of contingent features. The logical aspect is significant as it is this aspect which can be pursued with confidence in a
philosophical enquiry, whereas other aspects, such as the temperament with which an individual is born or the peculiar complexities of any given society, are matters to be explained in psychological, sociological or historical terms.

2. That a logical relationship of this kind can be held to be the case is essential to the philosophical analysis of Sittlichkeit as it is expressive of the subjective tie which demands of the individual his adherence to the state as the most-favoured milieu within which the freedom-seeking subjective will can find expression. One implication of this analysis is that there will be in any society a strong predisposition to maintain the status quo and resist change which is imposed and is not a reflection of changes already inherent within society. Another symptom of the Sittlichkeit bond between individual and society is the fact that it will normally require some pressing reasons to induce a person to leave his native land and adapt to life in a foreign country.

It is the function and a strength of a political community that proposed changes are discussed in terms of their desirability and future practical implications; in other words, the procedures of a political community will, ideally, prepare the ground so that change is not only willed but understood. But the fact that it is necessary to legitimise and institutionalise the procedures whereby change takes place in no way detracts from the contention that the rules which order society
are inherently resistant to change. It is also the case that those rules for which the political community is primarily responsible, both for formulation and amendment, are the rules of law and government, areas which are explicitly recorded within statutes and are, as such, the object of conscious appraisal. But within the state such explicit and codified rules form only part of the total complex of rules which permeate society; there are many other rules of a customary or traditional kind which serve to guide conduct. Such rules may be learnt consciously or they may be part and parcel of the socialisation process. However they are learnt, rules of this character will not be susceptible to change by the conventional processes of the political community except to the extent to which the introduction of a law can help to create a climate of opinion favourable to more deep-seated changes in public behaviour; it is more likely that change, when it does occur, will be attendant on social or economic developments which carry with them their own imperatives. An example of this kind is to be found in that area of normative standards which give expression to those attitudes governing the role of women in society. It is arguable, at least, that whatever changes have been achieved in recent years in this matter have been mainly brought about as a result of social and economic influences together with direct social action associated with the rise of feminism rather than as a result of attempts to legislate for greater equality.
One qualification is required to the general argument that effective change emanates from within society and that is in the case in which the division between ruled and rulers is so great that there is little or no interaction between the two. In such a case, change is likely to be brought about with revolutionary force with all the unpredictability which is involved. Both the Russian and French revolutions are examples of the extent to which change from within may, under these conditions, disrupt if not destroy the social structure.

It is a merit of a political community that, by its very nature, such a situation should not arise if participation is wholehearted and the procedures have general acceptance.

It is the case that as a necessary condition for its being, the notion of 'society' implies stability. While the contingencies of life will probably ensure that no society will remain completely static in respect of the rules which inform it, none the less change which becomes too rapid, and especially change which succeeds change to the extent that periods of stability become infrequent, will be likely to threaten the existence of the society concerned. Rules which are quickly succeeded by new rules and in which the process is repeated will begin to lose any practical force which a rule must have as a guide to action. If rules cease to fulfil their purpose, the notion of society as indicative of a rule-governed state of affairs dissolves. What is more, as the notion of the state is understood to be
that of a society delimited by law and rule, then the
notion of the state is even more dependent both practically
and conceptually on the maintenance of stability and
continuity as a necessary state of affairs for the
existence of a rule-governed situation.

If, as has been argued, there are good reasons
for suggesting that a society or state will be inherently
resistant to change in its rule-governed practices, and
that the very notion of the state implies that stability
and continuity will be the rule rather than the exception,
then with these features built into the model of the state
the phenomenon of violent change apparently co-existing
with stability becomes explicable. The phenomenon
centres on the situation which arises from time to time
in which a legitimate government is overthrown by a
coup d'etat or revolution and is replaced by a governing
body with no claim to legitimacy other than the possession
of coercive power and the control of the machinery of
government. If legitimacy or right is built into the
concept of authority, there would be no reason why the
population of the country should obey the dictates of
the new regime unless the people are coerced into
obedience. Yet it is not uncommon in states which are
plagued by such abrupt changes in government for life
to continue in a relatively normal way: the government
functions, the laws are obeyed. To suggest that what
before was enacted willingly in deference to the
legitimacy of the ruling body is now changed to
unwilling coercion does not appear an altogether
satisfactory explanation. The instruments of coercion cannot be available everywhere and on all possible occasions when the law could be broken or defied, and anyway the apparently normal nature of day-to-day life would seem to belie this possibility. The problem is to account for the effectiveness of authority when it would appear that the right to exercise it no longer exists.

A number of hypotheses present themselves as responses to a situation of this kind. In the first place, changes in government, whether brought about legitimately or otherwise, may make little difference to the life of the population at large. States in which the political community is vestigial are likely to be composed of populations which regard the organs of government as remote and, possibly, incomprehensible. In such situations it is possible that the rules which most immediately govern the nature of the social order and within which people arrange their lives are customary or traditional, or that the local authorities responsible for the administration of law and the decrees of government are perceived in this way. This is likely to be the case where the society is predominantly tribal or peasant in character and where the central government is sufficiently acute to engage the services of individuals holding locally accepted positions of authority to
administer the law. In such situations the authority of the local headman or elder will invest the laws with the required legitimacy; the government, unless it intrudes, may not be considered.*

Secondly, there is the argument, already considered, that within the state there will be an inherent tendency towards stability as the freedom-seeking subjective will requires, as a matter of practical necessity, a rule-governed state of affairs within which to realise its objectives. Put more simply, people tend to be apprehensive of upsetting the social order, preferring that which is known to the possibility of anarchy. This attitude can be posited of a sophisticated political community as well as of the politically immature societies of the kinds already mentioned. In such a state of affairs, what may be termed the constitutional legality of the new government may be of less actual importance than the legitimacy which the government is accorded simply by the degree of public acceptance it enjoys. This particular situation illustrates the importance for authority of its actual effectiveness because it is usually the case that where a regime comes

* The example of India presents itself as a case which fits many of the conditions outlined above, particularly in respect of the extent to which the government has apparently been successfully integrated with a varied and largely peasant population.
to power by illegal means and manages to retain authority
in these terms, it will ultimately create its own
legality, possibly by enacting a new constitution.
In other words, in political affairs de jure authority
alone may well be insubstantial having to wait upon de
facto authority to bring it into being.

Such a state of affairs serves not only to
emphasise the distinction between state or society and
government, but to underline the importance of traditional
or known rules and patterns of behaviour which may inhere
within society but which may not be sufficiently
recognised by government. Not only may an otherwise
illegitimate regime benefit from the desire for security
which is grounded in an acceptance of customary or
traditional rule-governed patterns existing within society,
but the actions of a legitimate but radical government
may be open to the charge that they are a departure from
accepted tradition. It is possible for an astute
politician, in other words, to undermine the legitimacy
of government by arguing that it is departing from the
traditions which legitimised it in the first place.

The contention that de facto authority is a
matter of acceptance or obedience for reasons of security
rather than a matter of coercion or power has inescapable
Hobbesian connotations. But for Hobbes, acceptance of
the sovereign's authority is attendant upon a transfer
of rights in that the individual, in concert with the
others who form the society, authorise the sovereign to
take what actions are required to procure the benefit of peace (2). It is within this canalising of the exercise of free will from the individual to the sovereign in terms of a transfer of rights that the 'contract' exists. However, in this study the situation under examination does not represent a transfer of rights, per se, because at no stage has it been argued that personhood is to be construed in these terms. Rather, the emphasis so far has been on the extent to which the person is a product of his society and that in these terms the freedom which the individual seeks has a specific construction or content which will be imparted to it by the nature of the society in which he lives, and that society, as being the most completely understood society, will present itself to the individual as the most-favoured milieu within which such freedom can be realised.

In other words, the present analysis rests on a basis of a concept of personhood already integrated into a society and dependent on it, to some extent, for its continuing status. Understood in these terms, authority is granted even to an illegitimate government by virtue of the necessity for the subjective will not only of a milieu within which it can aspire to freedom but within which its identity will remain secure - and both of these are threatened by change. There is no contract, only the logical and practical imperatives issuing from the nature of man as a social being.
Finally, the condition in which a society accepts the authority of even an illegitimate government is indicative of one factor which helps to promote the stability of any society, viz., a tendency for the acceptance of authority to become habitual. This is not surprising. It has already been argued (3) that in any situation concerned with the application or acceptance of rules, authority is required as a matter of practical necessity in order to resolve disputes, offer definitive interpretations, and decide between apparently conflicting rules. The practical necessity involved derives from the need for there to be some curtailment of discussion so that there can be a time limit on the resolution of disputes and the affairs of men can continue. It follows that if authority is inevitable in the conduct of social and political affairs, it may well be the case that, as a contingent fact, men will prefer to accept the authority of an illegitimate government simply because the need for authority in day-to-day social life remains whatever the political upheavals, and in such day-to-day life it is the attainment of immediate ends which is uppermost in men's minds rather than questions to do with legitimacy.*

* Both the need for authority and the existing habitual acceptance of authority help to account for the necessity of social life to return to normality as soon as possible in the wake of a revolutionary convulsion. Also, these factors together with the importance of tradition within a society suggest why even a revolution inspired by a foreign ideology quickly adapts to take account of national or traditional characteristics in its actual operation.
Where authority is perceived in such purely instrumental terms there is unlikely to be concern for its genesis with the result that its acceptance may become habitual. Although such habitual acceptance of authority is a contingent attitude, the full analysis of which would require a sociological/psychological dimension, the fact is that everyone does, habitually, accept the authority of others in everyday concerns, be it catching a train, being directed in traffic, or passing through customs after a visit abroad. But such an attitude of habitual acceptance becomes politically significant when it underpins the authority of a regime after, say, a coup d'etat, as acceptance itself not only demonstrates the existence of de facto authority but it also contributes evidence to the claim of the authority in question to legitimacy — that acceptance implies tacit approval.

4. The distinction which is revealed by this situation is that the legitimacy of government and the rightfulness which is implied by authority are not necessarily one and the same, even though it may be in the interests of a new regime to blur the distinction. But it is by no means easy to make the distinction clear. The reason for the difficulty is twofold: in the first place, both concepts, authority and legitimacy, share the central notion of 'rightfulness', and, secondly, the notion of 'legitimacy' as applied to government is an inherently ambiguous concept.
One writer suggests that the most fundamental distinction between the two is '... to see authority as an alternative to coercion whereas legitimacy is a justification for the use of coercion and therefore a concept rightly applied to governments.' (4) To try to locate the distinction in the use of force does not offer a convincing criterion as authority may have recourse to coercive force without endangering its status as authority. It may well be the function of authority to authorise the use of force in certain situations in which case there is little to choose between the legitimacy of a government's use of force and authority of a government to use force. Authority is to do with the right to command or order; there is no necessary qualification excluding force from that which may be ordered. It is also the case that legitimacy itself has no necessary connection with the use of force even though it may provide an explanation of why force is accepted if it is attached, so to speak, to certain arms of government.

In his discussion of legitimacy, d'Entreves (5) reviews the arguments which have attempted to locate legitimacy in legality, but here the arguments founder on one or other of the twin rocks of positivist or normative legal theory. A positivistic view of law can locate the legitimacy of a government in a law or legally valid constitution but has no means of analysing the legitimacy of the law or constitution other than by emphasising its existence; it has already been noticed
how a revolutionary government may transmute its status to that of Rechstaat, government under law, simply by creating self-validating law. Normative legal theory, however, brings with it the unresolved problems of elucidating those principles which will inform law with legitimacy by giving it an ethical basis. Here, even if such principles could be discerned the problem would not be solved because although ethical principles might provide the touchstone for pronouncing on the nature of a just law, they will not necessarily touch the practical problems of legitimacy in the world of politics. There are at least prima facie grounds for supposing that the legitimacy of a government is not, at root, an ethical matter. The legitimacy of governments may go unquestioned even though they may be condemned as corrupt, oppressive or evil.

The distinction between 'authority' and 'legitimacy' can be clarified to some extent if attention is paid not to legitimacy, per se, but to the notion of 'legitimation'. It is possible to refer intelligibly either to the legitimation of government or to the legitimation of authority. In each case, that on which attention is focussed is the nature of the rule(s) or rule-governed situation(s) which inform government or authority with rightfulness. There is no implication that the same rule(s) or rule-governed situation(s) must be the same for each. In the example which has been at the centre of this discussion it has been argued that as far as authority is concerned, the
legitimation of the government's authority may well be completely unconnected with any prior recognition of the legitimation of government, and may be more to do with a desire for stability or just a matter of sheer habit. Indeed, it is likely to be the case that it is the acceptance of authority which forms one of the states of affairs which contributes towards the legitimation of a government. Other contributory situations would be the enactment of a constitution, the possibility of holding elections, or the recognition afforded by foreign governments.

The distinction can be further strengthened by extending the situation in which there has been a coup d'etat by envisaging that the ousted and presumably legitimate government has sought refuge in a neighbouring country. If this government in exile is still accorded international recognition, if it attracts adherents, if it retains the sympathy of the population of the state it claims to govern, then, even though the authority of the new regime may be unquestioned in de facto terms, its legitimacy may still be suspect. The essence of the distinction between the legitimacy of government and the authority of government resides in the contention that the source of the inherent 'rightness' in each case is unlikely to be one and the same rule-governed situation or set of rules. This distinction is strengthened when it is remembered that not only can a government have legitimacy and authority, but also legitimacy without authority and authority without legitimacy.
In practical terms, the distinction is strengthened by the extent to which the notion of legitimacy lays stress on a de jure condition, viz., the right of the government to govern and legislate, while authority is expressive of a de facto condition, viz., the effectiveness with which the government functions in these terms. This polarisation is a matter of stress only, because once the element of 'right' implicit within the concept of authority is admitted, then, once more, enquiry must lead to an examination of the particular rule-governed situations which impart to the respective concepts the element of 'rightfulness'.

Summary

It has been argued that the connection between the individual and society, an aspect of Sittlichkeit, is based in meaning or understanding. The individual understands his own society because he is both an extension of it and an integral element within it. The implication is that there will be resistance to change within the rule-governed complexity which comprises society; particularly affected will be those rules, which are not subject to conscious appraisal, and that where change in customary practices or rules does occur it will probably be attendant on social or economic changes rather than being a consequence of legal innovation.
Insofar as the state is a rule-governed situation, stability is implied. Rules which change too rapidly lose their force as guides to conduct or action, and, as such, lose their effectiveness, qua rules. The stability which results is evidenced in those states which have been subject to frequent changes of government by revolution or coup d'etat, but in which the normal life of society has continued in spite of governmental upheavals. Such states of affairs emphasise the extent to which stability is assured by traditional practices and rules which, in turn, affect the population directly, particularly if the population is peasant or tribal in character. Also contributing towards the general requirement for stability is the condition in which authority is accepted as a matter of habit, a condition engendered by the practical need for authority in day-to-day life. This phenomenon suggests that the legitimacy of government and the notion of authority are not necessarily one and the same. It is argued that although both concepts imply 'rightfulness', the rule-governed situation(s) which impart rightfulness in each case are not necessarily one and the same. Also, the notion of 'legitimacy' stresses the de jure aspect of government, whereas authority is primarily a concept indicative of a de facto relationship.
References


(2) "A commonwealth is said to be instituted, when a multitude of men do agree, and covenant, every one, with every one, that to whatsoever man, or assembly of men, shall be given by the major part, the right to present the person of them all, (that is to say, to be their Representative;) every one, as well as he that voted for it, as he that voted against it, shall authorise all the actions and judgments, of that man, or assembly of men, in the same manner, as if they were his own, to the end, to live peaceably amongst themselves, and be protected against other men." Hobbes, T., *Leviathan*, Penguin Books, Harmondsworth: England, 1968, ch. 18, pp. 228 - 9.

(3) See chapter 1, Authority and Rules.


Chapter 6

Tradition

1. Any consideration of those factors which might be held to contribute to the stability of the state and which also may have a claim to be possible sources of authority must include some reflection on the role of tradition, the influence of which it has already been impossible to ignore. The first difficulty with tradition is that both as a concept descriptive of a state of affairs within society and as a concept, in the form of 'Traditionalism', indicative of a political ideology, it has a number of variants within each category. These variants will be the subject of critical commentary in conjunction with a consideration of the more specific problems associated with tradition and authority in society.

In the most general terms, tradition is to do with the broad notion that past practice in one form or another is the source from which principles or precedents can be derived which can be applied to and which can guide present and future practice. Such a formulation is intentionally general and, as a result, is ambiguous because the more refined and unequivocal the attempt to define it, the more it will tend to bifurcate into one of two theoretical viewpoints, the first of which may be called 'historical traditionalism' and the second 'presumptive traditionalism'.
Historical traditionalism is already implicit in the model of the state so far delineated and may be stated in the following terms. The model of the state and of the individual as a constituent member have been conceived of as abstractions which are necessarily arbitrary in some respects. To summarise the position, the state has been defined as a finite grouping of people coupled with a finite expanse of territory delimited in terms of rule and law. Moreover, the people whose totality is the embodiment of the state have not been presented, so far, as discrete individuals, but as an entity generative of that volksgeist which is itself another defining characteristic of the state. Moreover, it has been argued that the individuality, the personhood, of the state's population is itself necessarily a partial reflection, at least, of the mores of the parent state. Finally, the state is conceived of as a society likely to be composed of a number of smaller groupings which interact, interlock, overlap or are conterminous with each other depending on the defining characteristics of each subsidiary society. In this respect, and of prime importance in this work, the state on which attention is focussed is that which contains as an integral feature of a political community. For the purposes of the model, the ideal state will be that in which the state as a whole and the political community are one and the same.
It can be seen that the individual, the state and the political community understood in these terms are an abstraction not to be confused with the actuality of any given state or even any existing form of government or social organisation. But as an abstraction it is clearly related to and draws its characteristics from existing states; and, further, its function, qua model, is to facilitate understanding of political authority and freedom when and where they exist. In other words, the model is understood as being capable of application to actual situations. It is at this interface, so to speak, between the model and its application to, or derivation from, an actual society that the notion of historical traditionalism is a crucial concept.

The fact is that the social complex which comprises an actual state is not born in any single moment; rather, states as they exist are the result of the social usages, modes, practices and institutions which have gone before. The state as it exists at any given moment is the result of a process of evolution, although evolution here carries with it no implication, as with Hegel, of a moral progression. Even where states have undergone revolutionary change, as with either the French or Russian revolutions, such change cannot be complete in the sense that an entirely new way of life has been brought into being. Change may be engendered in specific institutions, laws, political organisations,
ownership of land or means of production, but such change cannot amount to a transformation of the state in all respects. Even revolutionary change has its social and historical antecedents.

Even those aspects of the life of the state which have been the specific targets of revolutionary change bear evidence of a continuity which predates the revolutionary period. It is commonly remarked that the interests and conduct of Russian foreign policy are still dictated by the factors which were present in czarist Russia; similarly such features of Russian life as the functioning of bureaucracy and the use of secret police have a continuity which stretches back beyond the events of 1917. Newly introduced secular ceremonies such as marriage and funerals contain elements which have their roots in traditional practices. It is even arguable that the success which an ideology such as Communism has in establishing itself in a state will be dependent on the extent to which existing, traditional beliefs and practices embody or imply broadly collectivist principles. It is also significant in this respect that in the French revolution comparatively rootless innovations such as the attempt to establish a Jacobin religion complete with Festivals of the Supreme Being or the renaming of the months of the year did not survive, although each in turn has now the status of an historical precedent if not a tradition.
Such examples are introduced merely to support and demonstrate the meaning of historical traditionalism, not to introduce a developed theory of history. Clearly, any adequate account of change, particularly revolutionary change, must include elements which cannot be termed traditional without rendering the notion of tradition so elastic as to be useless. The emergence of ideas, the impact of individual self-consciousness and autonomous action all suggest modes of social behaviour and influence in which the element of tradition may be minimal. However, even with this qualification, it is worth noting that if change involves, to some extent, the working out of dynamic social forces which have, in turn, their own social precedents, then Hegel's attack on the French revolution as being the outcome of an attempt to alter society by means of the imposition of a priori, socially rootless ideas (Hegelian negative freedom in action) can be criticised as being an overstatement of the case.

It is now possible to relate historical traditionalism to the model of the state and the individual. Although the model has been presented as an abstraction, it is an abstraction capable of application to the reality of politics and the state. Furthermore, it has already been made clear that such elements as the contents of individual consciousness, the content of volksgeist, the concerns which find expression in political discourse are not to be established a priori but must be established by examining actual states at moments in their history. But if the states of affairs which exist at any such
moments in the history of a state are largely the outcome of antecedent moments, then historical traditionalism is a necessary component of the model. Immediately the model ceases to be an abstraction and is given any kind of content then such a content must necessarily include a historical dimension if it is to be understood.

The difficulty which emerges from this conclusion is mainly terminological. If 'tradition' is to be understood so broadly as to include all the significant antecedent events which have led to whatever aspect of the present state of affairs is now under examination then it ceases to differentiate those practices or beliefs which in ordinary usage are picked out as 'traditional' from any other event, practice, belief etc., which has antecedent events. There would be little that could not be claimed as being traditional.

2. It is now appropriate to consider a more restricted definition of tradition and its implications in terms of the model. First of all, tradition may be understood in terms of repetition and continuity; that is, in so far as people have a conscious awareness that present practices, institutions and modes of behaviour are repetitions of that which has gone before, then there is the essential characteristic of tradition. But it is worthwhile noting the presumptive nature of this consciousness. The important factor is the belief that a practice, institution or mode of conduct is authorised by repetition over a period of time, not that it must necessarily be the case that the rationale in
which the tradition is based in true or even that the tradition is understood in terms of its original rationale. The celebration of Guy Fawkes day has now little or nothing to do with the events in which the practice is founded. It may well, as a matter of fact, be impossible to check the reliability of the evidence which supports a given belief which supports a tradition. What is more, even when it is established that a belief which supports a tradition is false, this in itself is no guarantee that the practice which the belief supported will be undermined or that its status as being traditional will be affected. The veracity of the presumption is not the nub of the matter; it is, rather, a matter of self-perception. As was argued earlier, the way of life of a state cannot be re-born, re-structured, revolutionised in its entirety at any given moment; the character of the state, including its institutions, will in large measure be inherited from the past. Not only this, but the perception that the population of a state has both in terms of each individual's self-consciousness and in terms of general beliefs, values and attitudes will, again, in large measure be determined by the historical legacy of the particular state. It follows that where self-perception is the matter at issue, it is the image of self, whether it be individual or collective, which will have the dominant force as this is lived and acted on in daily life, not the veracity of beliefs about long past events. For example, the knowledge of the fact that many of the practices which are built into the so-called
traditions which govern the celebration of Christmas may be of recent origin or may never have existed in any customary form will do little to alter either the perception of Christmas in traditional terms or the practices involved in the celebration.

3. To state this much leads directly to the second major characteristic of presumptive tradition which is its prescriptive force. Commentators tend to accept as self-evident that tradition has prescriptive force and that this imparts to tradition the quality of authority. J.G.A. Pocock’s analysis makes this assumption and introduces the idea that, ideally, it is the immemorial repetition of an action which underpins the tradition’s authority:

'A tradition, in its simplest form, may be thought of as an indefinite series of repetitions of an action, which on each occasion is performed on the assumption that it has been performed before; its performance is authorised — though the nature of the authorisation may vary widely — by the knowledge, or the assumption of previous performance. In the pure state, as it were, such a tradition is without conceivable beginning; each performance presupposes a previous performance, in infinite regress.' (1)

While the assumption of immemorial repetition may be entailed by the need for the internal consistency of an ideal model of the nature of tradition, tradition as it is manifested in reality does not need to be immemorial for its status as tradition to be maintained. In the
United States, for example, traditions which attach to
the office of the presidency can scarcely be held to
extend beyond the late eighteenth century. More pointedly,
however, the mere inclusion of repetition does nothing
to explain why repetition should be accorded prescriptive
force in the eyes of men.

Traditionalist writers have attempted to offer
rationalities which purport to explain the phenomenon.
Burke, for example, suggests that:

'...we are generally men of untaught feelings;
that is instead of casting away all our old
prejudices, we cherish them to a very
considerable degree, and, to take more shame
to ourselves, we cherish them because they
are prejudices; and the longer they have
lasted, and the more generally they have
prevailed, the more we cherish them. We are
afraid to put men to live and trade each upon
his own private stock of reason; because we
suspect that this stock in each man is small,
and that individuals would do better to avail
themselves of the general bank and capital of
nations, and of ages.' (2)

Elsewhere he succinctly makes the same point:

'The individual is foolish; the multitude,
for the moment is foolish, when they act
without deliberation; but the species is
wise.' (3)
Burke's justification of tradition is culturally pragmatic* - we should revere that which has been bequeathed us from the past because it works, it has stood the test of time. But whether or not it is the case that what is traditional must be considered superior to that which is innovative or even revolutionary is open to dispute. In fact, as will be shown, even Burke does not endorse an unquestioning acceptance of tradition.

Indeed, when it happens that a traditional practice is held up to scrutiny in terms of its utility as compared with, say, some proposed innovation, it begins to lose its prescriptive force qua tradition in that its continuance over a period may not be of significance within the present circumstances. A tradition only maintains its force as a tradition when it is accepted as such, and, seen in this light, Burke's argument is justificatory, possibly even polemical in its context, not explanatory in character. This point will surface again later.

* Burke's distrust of the judgment of individuals is echoed in Aristotle's implied criticism of Plato's rule of the wise:

'E... sovereignty should lie with the people at large rather than with a few persons of very high quality,... The many, when taken individually may be quite ordinary fellows; but when they meet together they may well be found collectively better than the few. A feast to which many have contributed is better than one provided from a single purse.' (4)

Although not an explicit endorsement of tradition, Aristotle is suggesting a mode of government in which tradition can make its influence felt.
Burke approaches the heart of the matter when he introduces the notion of 'prejudice':

'Prejudice is of ready application in the emergency; it previously engages the mind in a steady course of wisdom and virtue, and does not leave the man hesitating in the moment of decision, sceptical, puzzled, and unresolved. Prejudice renders a man's virtue his habit; and not a series of unconnected acts. Through just prejudice, his duty becomes part of his nature ...' (5)

'Prejudices' to Burke were the 'untaught feelings' which men hold in favour of the institutions under which they have lived for many years and are to be contrasted with the dictates of individual reason divorced from practical experience of the institutions or procedures under consideration (6). For Burke, the proper use of reason in political philosophy was to enlist it as supportive of prejudice - hence the justificatory nature of his arguments. But by introducing the qualifying epithet 'just' into his defence of prejudice, Burke effectively undermines the prescriptive force of tradition or prejudice insofar as the notion of 'just' implies the appropriateness of independence of mind and the availability of criteria or principles which may or may not be traditional in judging prejudice.

That said, the notion of 'prejudice' is significant. To interpret it into a modern idiom, it appears legitimate to suggest that what Burke means is comparable to the notion of a tacit acceptance or predisposition to favour a tradition which is not grounded
in a conscious conceptualisation of whatever is the object of the sentiment. To tacitly understand or accept or favour in the political sphere is to have internalised, as a result of socialisation, certain procedures, values, and understanding of the functioning of institutions. But such a tacit acceptance of those social usages which have passed from generation to generation cannot be said to be traditional in quite the same way as presumptive traditionalism. The individual or the society which values, say, a particular traditional procedure in presumptive terms will be conscious of being the inheritors of a procedure presumed to have been continuously repeated in the past. This awareness cannot be available to those who tacitly accept a given procedure as we are here dealing with 'untaught feelings' not states of conceptual awareness and understanding. It requires a shift in viewpoint to see the object of the tacit acceptance, viz., the tradition, in traditional terms. The anthropologist who studies the behaviour of a tribe may well describe them as being traditional in their conduct and attitudes; if attitudes and conduct are tacitly held there is no reason why, even if the tribe possesses the concept of 'tradition', members of the tribe should perceive their society as being traditional in character. The appellation 'traditional' is only open to third person accounts where traditions are tacitly adhered-to.
4. At this point it is appropriate to comment on Max Weber's model of authority, particularly as it has been influential within modern analyses of authority. Traditional authority forms one of the ideal types in his model of authority's legitimation:

'A system of imperative co-ordination will be called 'traditional' if legitimacy is claimed for it and believed in on the basis of the sanctity of the order and the attendant powers of control as they have been handed down from the past, 'have always existed'. The person or persons exercising authority are designated according to traditionally transmitted rules. The object of obedience is the personal authority of the individual which he enjoys by virtue of his traditional status. The organized group exercising authority is, in the simplest case, primarily based on relations of personal loyalty, cultivated through a common process of education. The person exercising authority is not a 'superior', but a personal 'chief'. (7)

Weber's classification contains a number of significant features in terms of this study. First of all his use of the term 'tradition' is ambiguous as between the categories of tradition so far noted, i.e., presumptive traditionalism and tacit traditionalism, although the implications of his analysis lean towards the latter. The notion of 'tradition' which is employed is restricted to a belief in the sanctity of that which is perceived to have been handed down from the past. Such an acceptance of customary practice is not derived from a considered view of the worth of the practice involved, but is
essentially irrational in the unquestioning acceptance demanded of its adherents - a form of tacit acceptance. Furthermore, given the need for such acceptance, the authority which emanates from it will be dependent on the existence of a society in which the central tradition takes a specific form, namely, that important decision-making is the prerogative of its chief(s). Presumably, such a society, in order to maintain itself in terms of these traditions, is and has been continuously stable in the sense that it has not been subject to ideological, social or economic upheavals which have seriously challenged the basis on which authority is founded.

The Weberian notion of tradition would appear to take the form of a settled attitude towards an existing state of affairs where authority is concerned, and, as an attitude of mind, it is fostered and maintained by a predominantly unquestioning society, that is a non-political or pre-political society of, say, a tribal or feudal kind. Moreover, in so far as it derives from an established and stable society it cannot be held to be an independent factor imparting stability to the society in which it is found; although Weber uses the term 'education' it is, rather, the outcome of a socialising process which is, in turn, dependent on the particular kind of society indicated above. As an attitude engendered by socialising influences it will be deeply embedded in the personhood of the individuals who comprise the society, and, as such, will further contribute to the
general stability, even to the extent of offering to some degree effective resistance to ideological or other challenges which may arise. But such an attitude will be contingent on specific social circumstances and is to be viewed as evidence of the success a society may have in achieving a particular kind of stability rather than as a factor which is logically related to the maintenance of rule-governed situations in any society.

The point may be reinforced by considering the distinction between tradition and habit. In his paper 'Is There Reason in Tradition?', Samuel Coleman contrasts the social aspect of the former with the personal nature of the latter:

'*habit, (which) is personal and singular, whereas tradition is social and cultural. Even if a tradition regulates the behaviour of only a single person, e.g., the President of the United States, the tradition is socially known. The President's conduct has been handed down to him; it is regular and predictable conduct within defining circumstances. Traditions attach to roles, rather than to individuals apart from their roles. Habits belong to the individual apart from his role.' (8)*

Weber's classification of traditional authority is intended as a description, albeit ideal, of a major means by which authority is legitimated. In fact, due to its inherent irrationality and its dependence on a particular social context, tradition understood in these terms has virtually no place in a model of society which contains a political community responsible for its
own decision-making. This remains true even though in actual societies such attitudes may be found in relatively isolated pockets. Because the Weberian notion of tradition is indicative of an attitude, its meaning is properly anchored in an exploration of the particular mores of particular kinds of society. It may form part of a sociological description, but such a concept of tradition cannot be used to either explain or justify authority, obligation or order in society as an integral characteristic of a philosophical model. Habit, on the other hand, has its place as part of an explanatory scheme because even though, as Coleman points out, it is personal rather than cultural, none the less it is argued that habit will be a factor in the maintenance of order and the acceptance of authority in any society, even a political society, because it is born of practical necessity - the need for individuals to assume order and authority as they go about their everyday business.

5. There is one other aspect of tradition which requires comment, if only because it tends to be accepted as self-evident and, consequently, is not submitted to examination; that is the authority of tradition - its prescriptive force. First of all, it is the case that traditions are normative in character, that is they not only prescribe modes of conduct or practices but, either implicitly or explicitly, they imply standards to be achieved if the conduct or practice is adhered-to. Insofar as the traditional mode implies the correct mode
so there will be the further implication that any deviation will be incorrect. What is more, the standards implied by the tradition will be internal to the tradition itself in the sense that the validity of the tradition in question must be accepted on its own terms if its prescriptive force qua tradition is to be maintained. If a tradition is compared with other possible modes of conduct or procedure, that is, if there is a predisposition to be open-minded as to the supposed merits or demerits of all possible modes, then the tradition begins to lose its prescriptive force. As it begins to shed or weaken an important characteristic of its status in social usage, so its meaning suffers a diminution to that of a practice which has a presumed continuity in time but has now no particular sanctity for that reason.

The point has surfaced as something of a by-product in the philosophic discussion concerning the extent to which tradition is compatible with reason or rationality. In one such discussion, Karl Popper suggests that it is possible to accept a tradition critically, but he distorts the case by claiming that all that is lost by such a critical acceptance are 'taboos':

'But we can free ourselves from the taboos of a tradition; and we can do that not only by rejecting it, but also by critically accepting it. We free ourselves from the taboo if we think about it, and if we ask ourselves whether we should accept or reject it.' (9)
Traditions are maintained by states of belief in which taboos may or may not be present; what is essential is that the assumptions which support and validate the tradition are subscribed-to either consciously or tacitly. In 'Personal Knowledge', Michael Polanyi quotes the example of the capacity of the Zande tribe in Africa to justify their traditional practices, which are grounded in a belief in witchcraft, in their ability to produce arguments which are proof against the scientific and logical objections of Western observers (10). What is at stake is not a matter of taboos, but the acceptance of a system of belief, and, in particular, the acceptance of those basic assumptions which by their very nature are likely to remain resistant to criticism or disproof (11).

However, it is not the supposed rationality or lack of it or even the character of any rationalisation which may be produced to justify a tradition which is of importance here; what is important is the nature of the tradition's prescriptive force and this has been shown to reside in a rule-governed situation, viz., the beliefs, either tacitly or consciously held, which impart to the traditional practice its prescriptive quality. Once scepticism is induced, it is the tradition's prescriptive force which is diminished.

This analysis allows some further illumination of what is usually referred to as the authority of tradition. Where traditions are dynamic realities in a society or state, that is where the tradition is maintained with its prescriptive force intact, the
suggestion is that authority resides in the tradition. This is inconsistent with the conclusions reached, so far, in this study. The analysis of authority has revealed the social nature of the concept's meaning as being indicative of a relationship between two or more people, one standing in the relationship of being the rightful or legitimate giver of commands, orders, pronouncements or rules to the other(s). Because the function of authority within a society is born of the practical necessity for there to be those who are entrusted with the right to enforce rules and laws, to interpret rules and laws, and to arbitrate between conflicting rules and laws, it is clear that authority must be embodied in some person or group of persons whose role contains all or some of these functions. There is no suggestion that authority itself can reside in any given rule-governed situation somehow characterised as being conceptually or practically distinct from such specific embodiments. Authority is the product of a rule-governed situation not its nexus.

Understood in these terms, the phrase 'the authority of tradition' is misleading in its implication that a tradition itself is the locus of authority; rather, it is the case that tradition understood as a rule-governed situation is a possible source for the legitimization of authority. In other words, it is possible to distinguish between the prescriptive force which a tradition may have which derives from its basis as a rule-governed situation and the authority which devolves on
those persons whose role is bound up with the continuance of the tradition. The craftsman who instructs his apprentice in his craft is an authority on the craft as far as the apprentice is concerned, and if he is a traditional craftsman that authority will be exercised in the light of his traditional convictions and training. The confusion which is engendered by the occlusion of the tradition with its embodiment in authority figures is also likely to be reinforced by the fact that many traditional authoritative figures are also authorities in other respects. The judge who upholds traditional practices in a court of law is helped in his transmission of tradition because the authority invested in him as a judge transcends the merely traditional elements in his role, but by so doing reinforces them in the eyes of those subject to his authority.

The presumptive nature of tradition itself provides a further argument that authority cannot be located in the tradition itself but must find expression in what are accepted as the authoritative pronouncements of some person or group. Due to its inherently presumptive character, tradition will be in continual need of interpretation and, as has been argued, this is exactly a function of authority. Also, as Professor Pocock has shown (12) there is a division in traditionalist thought between those who, like Burke, see tradition as a mode of behaviour or practice which is sanctioned by the past but which may and should be altered in the light of present exigencies, and those who value tradition in
terms of the possibility it offers in providing an unchanging standard against which present practice should be judged and guided - a school of thought which tends to revere the words of 'founding fathers' or the status of sacred texts. In practical circumstances of conflict the resolution of which view should prevail will again be a likely function of authority - tradition itself cannot take into itself this function.

6. Finally there is the question of the place that outright Traditionalism has in any analysis of authority and the state. By Traditionalism is meant the interpretation of an analysis and justification of tradition as being generative of a theory which, it is recommended, should govern the conduct of the state. In other words, we are concerned with the transformation of analysis into ideology.

While the content of a given ideology can be a legitimate focus of philosophical interest and while ideology certainly informs the language of political discourse, the place of any particular ideology in the history of the state will be a matter of historical contingency and not a characteristic of either the state or the political community which is dictated by logical or practical necessity. So it is that although Traditionalism has been and remains an important strand of thought in the practical politics of this country, it can have no place within an objective analysis of politics which aims to remain neutral with respect to ideological persuasion.
One philosophical difficulty with Traditionalist theory, as with other ideologies, lies in the extent to which such theories appear to be offering descriptive analyses productive of theoretical insights, but which at some stage undergo a sea-change into prescriptive theories. This is true of both Oakeshott (13) and Burke, although with Burke there would appear to be ambiguity as to the nature of those principles or assumptions which lie at the root of his preference for the traditions he espouses. Various writers have seen either or both a moral and a religious basis for his Traditionalism while recently it has been argued that Burke's Traditionalism is an apologia for the then developing capitalist economic order (14). It is certainly likely to be the case that any Traditionalist ideology will not be content to accept all possible traditions in society as of equal worth and will be likely to offer a rationale which will be the basis of special pleading with regard to those traditions which are preferred.

Summary

Tradition has been examined and analysed into the various categories of historical, presumptive and tacit notions of tradition. It is the concept of presumptive tradition with its implications of continuity and repetition which is central to tradition as it is understood in this study. Arising from this enquiry,
Weber's model of the ideal types of authority legitimation is criticized for its ambiguity and lack of explanatory power in philosophical terms. Finally, it is argued that the prescriptive force which tradition has, derives from the extent to which there is an acceptance of the assumptions and beliefs in which the tradition is grounded, but that it is through the embodiment of tradition in someone, an authority, that it lives and through which it is continually re-interpreted.
References


(5) op. cit. p. 84.


(11) In the essay referred to above, Popper goes on to suggest that in such a situation we are merely in the position of having to choose between different traditions. This seems to stretch the notion of 'tradition' too thinly; perhaps a term such as 'paradigm' would be more accurate in the circumstances.

(12) op. cit. p. 217.

(13) For a demonstration of Professor Oakeshott's move from descriptive to prescriptive theory see Coleman, S. 'Is There Reason in Tradition?' in Politics and Experience p. 249.

Chapter 7

Individualism

I. The model of the state and the individual elaborated so far is one which presents no inherent tension between the individual and the authority of the state. Both state and individual are conceived of in predominantly Hegelian terms in which the content of the individual's consciousness is derived primarily from the mores of the state of which he is a constituent member; and the character of the state is, in turn, a dynamic reflection of its citizens' values, beliefs, concerns and institutions - a character which finds unique expression in the volksgeist of its population. The reflexive nature of this association between individual and state means that in terms of identification and self-consciousness the individual is necessarily a fully integrated social being. In such a conception, life apart from the state would be almost unthinkable as is illustrated by Socrates' contemplation of the miseries of exile in the Crito; also the pursuit of individual concerns would offer no grounds for opposing the authority of the state or the calls which the state might make upon the individual. The prime examples of societies enjoying this mode of complete identification was, for Hegel, to be found in ancient Greece and Rome, particularly the former. An eloquent expression of this mode of association is to be found in Pericles' funeral oration where it imbues the speech and is made explicit when he exclaims:
'It lies with all to superintend home life and state affairs alike, while despite our varied concerns we keep an adequate acquaintance with politics. We alone regard the man who takes no part in it, not as unobtrusive, but as useless, and we all give much thought to an action, if we do not rightly originate it, supposing not that it is debate which is the undoing of action, but rather the absence of debate to warn us before it.' (1)

Hegel describes this conception of the state and individual at one with each other in classical times in the following terms:

'As free men the Greeks and Romans obeyed laws laid down by themselves, obeyed men whom they had themselves appointed to office, waged wars on which they had themselves decided, gave their property, exhausted their passions, and sacrificed their lives by thousands for an end which was their own. They neither taught (a moral system) but evinced by their actions the moral maxims which they could call their own. In public as well as in private and domestic life, every individual was a free man, one who lived by his own laws. The idea of his country or his state was the invisible and higher reality for which he strove, which impelled him to effort ... Only in moments of inactivity or lethargy could he feel the growing strength of a purely self-regarding wish.' (2)

In general, such descriptions of, or examples drawn from particular historical circumstances should not be understood as an attempt to assimilate into philosophical theory a contingent condition. The historical examples are used to illustrate states of affairs which allow
insights into those necessary conditions embodied in a mode of association in the reality of its historical setting.

That said, there is one aspect of the historical examples which calls for comment, and that is the apparent conflict occasioned by the introduction of the individual, conceived of in individualist terms, i.e., the individual aware of his own individuality, his own uniqueness. In the examples, chosen, both Pericles and Hegel acknowledge the possibility of the individual following his own interests which may be inimical to those of the state: Pericles calls such a man 'useless', Hegel mentions the 'self-regarding wish' arising in 'moments of inactivity or lethargy'. The difficulty which this gives rise to is the extent to which the concept of the self-regarding individual can be integrated into the model without disturbing the assumptions on which the model has, so far, been based. Obviously, much will depend on the terms in which individuality is to be understood and this is an aspect of the model which will be developed in this and in the succeeding chapter. For the moment, it is enough to admit that the free society as envisaged within the model is fragile in that it demands of the individual a willingness to accept the responsibilities of citizenship with the possibility that these will take priority over the demands of personal inclination. To that extent, the model may be conceived of as an attempt to erect within society the mechanisms which can control movement away from the civic and political areas of life.
in the direction of purely individual goals and effort. Such a view, however, misses the extent to which the existence of the free society is in the interests of the self-regarding individual and, as such, it is in the interests of such an individual to bring it about. In other words, there is no contradiction in these terms between the self-regarding individual and a society dedicated to the realisation of freedom, and there is no contradiction involved in the self-regarding individual taking upon himself the role of political man to bring about or maintain the kind of society in which his individuality may be most fully expressed.

2. It is now appropriate to consider the terms in which individuality is to be understood. On examination, concepts such as 'individual', 'person', 'personhood' and 'self' all carry implications of an atomistic view of humanity insofar as they are all concepts which allow a variety of distinctions to be made which point in that direction. To take 'self' as an example, the notion of 'self', eo ipso, implies the possibility of distinguishing between 'self' and 'not-self'. Furthermore, the notion of 'not-self' can, in turn, be organised into categories which are significant in social terms (3). There is, to begin with, the self as opposed to that which is nature. Nature here embraces all that is not conscious in the world, that is, all that is not capable of reflecting on the world or its own existence. Consciousness, as R.M. Unger puts it, is a 'sign of the self's distance from the world' (4), and
such a distancing is a prime characteristic of differentiation. Secondly, 'self' allows of the distinction between 'self' and 'others'; the notion of a personal, atomistic differentiation from the rest of society would break down and become redundant if, for example, humanity belonged to a species characterised by some kind of group mind. To insist that personhood is to be understood at least partly in terms of it as being consciousness with its content determined by society is not to imply that the consciousness of any particular consciousness is to be equated with what is anyway the highly questionable notion of the 'state of consciousness of society' at any given moment. Neither does it imply that the contents of consciousness are in any sense uniform among members of society. On the contrary, the notion of 'self' in a social context carries with it the implication of a uniqueness of personhood understood in terms of the contents of consciousness on the part of any member of society, and, what is more, an awareness of that uniqueness vis a vis the other constituent members of that society.

Finally, in so far as consciousness itself is indicative of the capacity to reflect on its own existence, so 'selfhood' is defined by its own necessary characteristic. This is not so much a circularity of argument, rather a case of a concept containing within itself elements of meaning which, once understood, are revealed as defining characteristics. So that to suggest that 'selfhood' is defined by its own necessary
characteristic is to do no more than to analyse, in terms of meaning, the concept 'self' into 'consciousness' and 'self-awareness'.

What it is to be self-conscious may be described using the terminology of the objective and subjective in relation to the self. Following Hegel (5), the subjective self may be characterised as determinate in that it includes personal caprices, desires, impulses, wants, as well as the contents of consciousness derived from the social context - in short, every element in a person's physical, emotional and intellectual composition which differentiates the individual as unique. Self-consciousness is the extent to which the subjective self, so understood, is objectified and capable of being appraised within the consciousness of the self-same individual. Such a capacity presupposes a vantage point, so to speak, from which the appraisal may be taken, and the only possible position which cannot be subsumed into the subjective self is that of the universality of reason. It is the knowledge of logical possibilities, categories, ideals, potentialities and indeterminances which stretch beyond the particular elements which are embodied in any one self which enable comparison, and hence, appraisal to be made. Awareness of the particularity of self is made possible by the universality of reason. The point may be illustrated in terms of moral self-consciousness. In so far as a self-regarding judgment such as an appraisal of oneself in terms of self-respect includes such elements as the requirement to be dealt with fairly and
justly, so a conception of the universal categories of justice and fairness will be entailed.*

It can be seen that although this sketch of the nature of self-consciousness is carried out in terms of subjectivity and objectivity, it could be completed in terms such as particularity and universality, concrete and abstract, finite and infinite. The implications of the resolution of this duality will be examined later, for the moment it is enough to establish that self-consciousness itself is one of the major categories of experience by which the human being individuates himself.

The immediate conclusion is that in the construction of the philosophical model of the individual and the state, in so far as central concepts such as 'individual', 'person' and 'self' have been used more or less synonymously, they have been employed with full recognition of their implications for individuality itself even though, to this point, it has been one particular aspect of personhood (its relationship to society) which has been stressed. To that extent, there is no contradiction between the stress on what may be called the inter-subjectivity of man and state and the implicit potentiality for individual self-consciousness.

* What is more, a rational awareness of what it is to be fair and just carries with it the implication that as universal categories they are worthy of universal application. In so far as they are acted on, the resulting concern for other people could be held to be the universal aspect of individualism.
3. Having demonstrated the individualist assumptions built into the model in terms of the logical implications of the concepts employed, the way is now open to complete the description of the individual conceived of in individualistic terms and by so-doing complete the main elements in the model as a whole. Allowing that the concept of a person understood in individualistic terms is built into the terms 'individual', 'person', 'self' etc., there are two further sets of considerations which strengthen the individualist case: although they are not means discrete categories, one is predominantly philosophical in origin, the other historical.

To deal with the philosophical element first, individualism, in which the element stressed is the responsibility which the individual has for his own actions with particular reference to moral conduct, is underpinned by the formidable foundations of Kantian philosophy. Kant's exploration of the nature of moral reasoning reaches its culmination in an acceptance of the notion of autonomy as expressive of the state in which it is the individual, and the individual alone, who is responsible for his own moral judgments, judgments based on a process of reasoning which divulges which practical maxims are in accordance with the moral law. If it is accepted that man's moral capacity is most fully expressed when he takes upon himself to be his own rule-maker in moral matters as opposed to being the mere recipient of rules in a heteronomous acceptance of authority in these matters, then man's moral autonomy - a logically
necessary attribute in so far as it is derived from the nature of reason itself – becomes a powerful factor in support of an individualistic view of man's nature.

It is significant in this context that Hegel's attacks on Kant are directed at what Hegel considered to be the vacuous nature of Kant's criteria for moral judgments, criteria which, in Hegel's view, would allow the justification of any moral stance. This is a matter for continuing controversy, although it is reasonable to suggest that Hegel takes too severe a view and does not allow sufficient discriminatory force to all the formulations of the categorical imperative which Kant proposes. Of more importance here is the fact that although Hegel was critical of Kant's criteria of rationality, he accepts the notion of autonomy as a necessary stage in man's historical development. In the following passage Hegel's culminating phrase 'self-determining universality' is autonomy under another guise:

20. When reflection is brought to bear on impulses, they are imaged, estimated, compared with one another, with their means of satisfaction and their consequences, etc., and with a sum of satisfaction (i.e. with happiness). In this way reflection invests this material with abstract universality and in this external manner purifies it from its crudity and barbarity. This growth of the universality of thought is the absolute value in education. 21. The truth, however, of this abstract universality, which is indeterminate in itself and finds its determin-
In Hegel's terms, autonomy is a necessary condition for freedom, simpliciter, and so it is a broader concept than the more limited moral notion of Kant; also, Hegel's state of autonomy is not vacuous in that the 'abstract universality' of thought is imbued with a necessary content, the content of Geist as embodied in the state and in its institutions and, through this social context, into the consciousness of man. For Hegel, the Idea is human understanding imbued with the cosmic spirit (Geist) so that what is viewed in concrete terms is released from its inner contradictions and is revealed as truth. For example, the admired state of harmony in ancient Greece was subject to contradictions as it was dependent on the unreflective acceptance of the individual's prior duty towards the state, but when this was challenged by rational questioning on the part of the individual, as it was by Socrates, then the harmony faces disruption and eventual decay. The idea of Greek democracy becomes a phase in the progress of the cosmic spirit towards the embodiment of the Idea.
It can be seen that Hegel's conception of autonomy in terms of 'self-determining universality' becomes part and parcel of the general historical progression, and this leads naturally to what can be termed the practical imperative which individualism posits for the model. Without subscribing in any way to the Hegelian metaphysic of history understood in terms of the realisation of the Idea, it is the case that the growth of individualism since, say, classical times has been such that it is now part of modern consciousness. The previously discussed implications of the concepts associated with personhood bear witness to the extent to which such assumptions are embedded, through language, in consciousness. Evidence of the ready acceptance of individualistic assumptions is evinced by the philosophical tradition which can be traced at least from Hobbes to contemporary writers such as Robert Nozick whose works are all characterised by atomistic assumptions concerning human nature or human rights even though the conclusions or subsequent models of society differ markedly.

Furthermore, the fact of individualistic assumptions within the intellectual consciousness of the times is supported by political doctrines such as liberalism which places explicit value on the individual and his argued rights in opposition to the possible
demands of the state as initiated or expressed by
government*. The minimalist state philosophies of
John Locke and Robert Nozick as well as the political
philosophy of John Stuart Mill evidence the extent to
which the growth of individualistic political doctrine
has been partnered by individualistic political
philosophy. While it is neither necessary nor desirable
to subscribe to the overt value placed on the individual
in ideological terms, yet in practical terms the force of
individualism is such that any model of the state and
citizen would be unreal and incomplete without allowing
individualism its place, and acknowledging the problem
which is created within politics by the rational
questioning of the critical individual.

4. It is now appropriate to assemble in all its
essentials the model of the state and the individual, the
components of which have been constructed in this and in
the preceding chapters. The starting point is the
assumption that man is a social being in that it is
recognised at the outset that human personhood is an
achievement only possible within a social context (6).

* It is of interest that wherever individualism appears,
whether it be in philosophy or in social life generally,
there is a tendency for it to be accompanied by the
notion of the state as an entity to be opposed. Whether
it be the actual personification of the state ('Big
Brother') in the public mind, or Hobbes' constant stress
on the artificial nature of the state, the effect is to
set up an opposition or polarity between state, or more
properly government, and individual. It is a dichotomy
which the present study attempts to bridge in theoretical
terms.
It is an assumption diametrically opposite to 'state of nature' theorists who initially posit man in isolation from society.*

Out of the many possible categories of social milieu which it is possible to identify as being contexts significant in the development of personhood, the state has been chosen as the most appropriate. It not only tends to be all-embracing, covering such significant units as the family, the work environment, the religious community and most other social groupings, but also, as this work is primarily concerned with political authority and freedom, it is within the context of the state that problems to do with political authority find their most characteristic expression. It is also the case that the state embraces, and may be conterminus with, a political community which is itself a necessary pre-requisite for any discussion of political authority. Given the state as being the significant unit within which the individual's development is conceived, it is to be identified primarily in terms of territory and population subject to government and the rule of law. It is to these features, government and law, that politics is primarily addressed, and it is in relation to these features that political authority exists.

* This does not include Rousseau who readily acknowledged man as a social being. But, then, it is doubtful that Rousseau qualifies as a 'state of nature' theorist anyway.
Within that society which is the state is situated the individual. The concept of a person which is developed is predicated on the assumption that it is within consciousness and the contents of consciousness that the significant characteristics of individuality are located. Two main elements or defining characteristics are identified as being of particular relevance to the analysis of the central predicaments of man in society. The first is that element of personhood which is derived from and which, reflexively, contributes to the character of the state. Here it is argued that the contents of consciousness are partly at least derived from the mores of the state of which the individual is a constituent member, so that, to that extent, the individual is a determined and determinate reflection of the society in which he lives. This inter-relationship between individual and state has been analysed in terms of the Hegelian notions of Sittlichkeit and volksgeist.

The other element, delineated primarily in this chapter, is the state of autonomy which is engendered by rationality and self-awareness. Rational self-awareness carries with it the capacity for the individual to consider and value his own uniqueness, an independant valuation which is most forcefully expressed in the autonomous rule-making demanded in man's ethical life. Individualism in this sense implies that the individual cannot be subsumed in his totality within society either conceptually or practically and so any developed political philosophy must take this into account.
Although the concept of the individual has been presented as consisting of two relatively distinct categories, i.e., consciousness derived from society and rational autonomy, it is not the case that these are discrete categories in the total consciousness of the individual. In particular, as a result of socialisation and education the subjective contents of individual consciousness must necessarily be derived from some social context, even if that context is not wholly to be located within the parent state. Even the value which is placed upon autonomous judgment-making is derived from the social context as the previously explored contrast between the mores of the modern state and those of ancient Greece demonstrate. So the force which individualism may have in both philosophical and political rationales is in itself contingent on the mores of society at any given time. On the other hand, it could be plausibly argued that the development from latent to expressive individualism in political history has been one of the major forces for dynamic change within societies, change which is attributable to the capacity of the individual for independent judgment-making and action. One way of putting it would be to say that dynamic individualism is the return which the individual makes to the state for the gift of his own instinctive consciousness or personhood.

Of course, it is precisely at this point where the individual's obligations as a member of a society and his capacity and moral requirement for autonomous
judgment meet that the central problems of authority are located and it is this which must be considered next.

Summary

The principal concern in this chapter has been to introduce to the model the notion of the individual conceived of in individualistic terms. To this end, the self-regarding individual has been delineated in terms of self-consciousness - self-conscious in relation to three categories of experience: (a) the objects of the natural world, (b) an awareness of other self-conscious individuals, and (c) an awareness of self made possible by the possession of rationality. The analysis concludes by espousing the notion of autonomy as indicative of the relevant aspect of individuality to which the model must accommodate, as it is autonomy which encapsulates the idea of the individual as not only a self-regarding but self-determining entity whose freedom is to be realised within the political community in spite of the possible threat which critical autonomy poses. The chapter ends with a resume of the main features of the model as developed so far, including the notion of personhood developed in this chapter.
References


(3) I am indebted to Roberto Mangabeira Unger's Knowledge and Politics, The Free Press, New York, 1975, for the suggestion of these categories.

(4) ibid., p. 201.


(6) The recognition of this can be traced at least to Aristotle where in his 'Politics' he writes:

'...an individual, when isolated, is not self-sufficient and is thus the equivalent of a part in relation to the whole. A man who cannot live in society, or who has no need to do so because he is self-sufficient, is either a beast or a god; he is no part of a state.' Politics, Dent: London, Everyman's Library, 1959, p. 8.
Chapter 8

The Challenge of Anarchism

1. The Kantian aspect of individualism, which posits the individual as his own arbiter of rightness where moral conduct is concerned, would appear to pose an immediate challenge to the authority of the state or to any authority external to the individual which seeks to limit the individual's conduct in any way. It is a challenge which is primarily concerned with a denial that the legitimacy of the state's authority, howsoever that legitimacy is conceived, can over-ride the authority vested in the individual as a moral agent and, hence, the author of the rightness of his own conduct. The form in which this case has been most forcefully articulated is in R.P. Wolff's 'In Defense of Anarchism' where Wolff states the objection to accepting the state's authority in the following terms:

'The defining mark of the state is authority, the right to rule. The primary obligation of man is autonomy, the refusal to be ruled. It would seem, then, that there can be no resolution of the conflict between the autonomy of the individual and the putative authority of the state. Insofar as man fulfills his obligation to make himself the author of his decisions, he will resist the state's claim to have authority over him. That is to say, he will deny that he has a duty to obey the laws of the state simply because they are the laws. In that sense, it would seem that anarchism is the only political doctrine consistent with the virtue of autonomy.' (1)
Before examining the case in more detail, it is proposed to make one terminological concession. This concerns the use of the term 'anarchism'. In the history of European thought 'anarchism' is a generic title given to a variety of social philosophies which are united by a general hostility towards the authority of government. It is in terms of the positive prescriptions which are advocated that anarchism subdivides into a variety of contending ideologies, ideologies which range from the extreme individualism of not only the anti-state but anti-society anarchism of Max Stirner to anarcho-syndicalism which stresses a collectivist view in that it is argued that the control of industry and the subsequent dissolution of the state would be brought about through the power of trades unions.

It is clear that R.P. Wolff belongs within this tradition at the individualist end of the spectrum even though he seems to be advocating a measure of mutual co-operation. However, because his objections to the authority of the state are based on what he sees as the implications of Kantian moral philosophy, the substance of his argument is more accurately characterised in terms of the competing claims of autonomy and heteronomy. In other words, there is a prima facie philosophical point at issue which can only be obscured if it is understood in ideological terms. Furthermore, this work's primary concern is the examination of the relationship between authority, the state and the individual through
the medium of an emerging philosophical model, not to offer prescriptions for the supposed betterment of either the individual or society which is the main purport of anarchism or any other ideology.

These reservations notwithstanding, it is proposed to continue to employ the term ‘anarchism’ as descriptive of Wolff’s radical interpretation of Kantian philosophy as it will be argued that autonomy does not necessarily imply anarchist conclusions. ‘Anarchism’ will, therefore, be retained as a term which usefully differentiates between ‘autonomy’ understood in Kantian terms and Wolff’s extended notion of autonomy which encapsulates a particular view of the relationship between state and individual.

2. One way of construing Wolff’s objection to the authority of the state is to understand it in terms of conflicting rule-systems. On the one hand there are the morally binding maxims of the self-legislating individual, on the other the rules which are generated by the state and which carry with them the authority of the state. Wolff’s contention is that it is the first set of rules which must, in all circumstances, take priority, as not to allow this would be to undermine man’s moral autonomy.

Before proceeding, it should be noted that Wolff seems to be mainly concerned with law, although it is only one category of rules in the totality of that rule-governed situation which is the state. Other rules include those of custom, the society’s (not the individual’s)
moral code(s), and religiously inspired codes of conduct. However, for the purposes of this argument it is of no consequence that Wolff limits himself to seeing social rules as being law; any rules of whatever character which clash with the individual's exercise of autonomy will be subject to the same objection. All rules which are in some sense external to the individual constitute a possible condition of heteronomy and are, as such, a threat to autonomy.

At this point it is apposite to introduce a distinction which Kant makes in his discussion of the rule of law. This is that civil law is to be differentiated categorically from moral law. The former is a necessary condition for the existence and continuance of society, the latter is a necessary condition for the realisation of man's moral capacity. In each it is freedom which is posited as good in itself and is accepted as such. Thus, in ethical life, man becomes free when he is in possession of a good will, that is, when his moral principles, his maxims, are realised in accordance with the moral law. The accessibility of the moral law is mediated through the various formulations of the categorical imperative, that is, through purely formal, rationally derived, criteria. In Kantian terms, the state of freedom, the realisation of moral autonomy, is completed when the individual's actions are motivated by the dictates of pure rationality.
There is a parallel to be drawn between the conditions within which individual moral freedom is achieved and the conditions within which the individual may be conceived of as free politically. Kant does not explicitly argue the desirability of society, per se, as a necessary alternative to the state of nature, although it is true that he is open to interpretation in these terms (2). Rather, he accepts the social nature of man as given as is man's rationality, and it is only in a social, i.e., rule-governed, context that rationality and informed 'right' rules are possible. Another way of putting it is to suggest that as freedom is conceived within the framework of a rule-governed situation, then to the extent that society embodies that rule-governed situation it would be irrational to will its dissolution. If the necessity for society is given, then the role of the political philosopher is to establish those criteria by which the laws or rules governing society may be adjudged to be 'right' or 'just'.

The criterion of 'rightness' for the laws governing society will be the extent to which they are compatible with the freedom of the individual. Kant formulates this in the universal principle of right:

'Every action which by itself or by its maxim enable the freedom of each individual's will to co-exist with the freedom of everyone else in accordance with a universal law is right.' (3)
Kant is proposing that the rightfulness of a law (maxim) is to be judged by the criteria of rationality and freedom in that law is conceived of as the means by which substantive rights are created which guarantee to the individual those grounds on which unjustified interference with his freedom of action can be penalised.

To achieve this reconciliation between freedom and coercion Kant, as in his moral philosophy, introduces the major characteristic of rationality: universality. A law will be a just law if it is such that it would be a maxim that rational beings would adopt in a situation of mutual choice where individual interests were set aside. In terms of a comparison with his moral philosophy, there is an obvious similarity between the universal principle of right and the first formulation of the Categorical Imperative:

"Act only on that maxim whereby thou canst at the same time will that it should become a universal law." (4)

However, a more productive comparison is with that formulation of the Categorical Imperative which enjoins:

"...every rational being must so act as if he were by his maxims in every case a legislating member in the universal kingdom of ends. The formal principle of these maxims is: so act as if thy maxim were to serve likewise as the universal law (of all rational beings)." (5)

Although he does not use the phrase 'kingdom of ends' in the context of his political philosophy, there is an equivalence between the notion of a 'kingdom of ends' and the requirement for 'the freedom of each individual's
will to co-exist with the freedom of everyone else in the universal principle of right. Just as the 'kingdom of ends' requires equal consideration of each person as an end in himself, so the same requirement is implied if there is to be no infringement of the freedom of any individual will. It is therefore reasonable to use the notion of the 'kingdom of ends' in the context of Kant's political philosophy.

The vital difference between the rules generated by the Categorical Imperative and those governed by the principle of right is that the former are concerned with establishing a good will in the mind of the individual, whereas in the latter the individual is legislating as a member of a 'kingdom of ends' for substantive laws which will govern society and which may even justify the use of coercive force.

It can be seen that Kant's political theory is rich in that it aims to engender criteria by which the rightness or justice of law can be judged, and insofar as this can be achieved, effectively delimits the areas within which the individual may rightfully enjoy freedom of action as well as providing a source of rights whereby the individual may claim protection from or retribution for unjustified interference with his liberty. Furthermore, by directing the force of the criterion of right on the law and not on the individual motivation, Kant categorically differentiates the civil from the moral law. He is not guiding individual ratiocination for the satisfaction of a personal end;
he is offering criteria which purport to justify the constraints of law and this is a public not a private matter. Elsewhere Kant explicitly states:

'As hard as it may sound, the problem of setting up a state can be solved even by a nation of devils (so long as they possess understanding). It may be stated as follows: 'In order to organise a group of rational beings together who require universal laws for their survival, but of whom each separate individual is secretly inclined to exempt himself from them, the constitution must be so designed that, although the citizens are opposed to one another in their private attitudes, these opposing views may inhibit one another in such a way that the public conduct of the citizens will be the same as if they did not have these evil attitudes.' (6)

The Kantian state could be peopled by morally evil men, but providing they are rational they can devise just laws, and providing they abide by the law they remain good citizens.

If the moral and the civil spheres are categorically different rule-governed situations, then the grounds on which Wolff bases his case for anarchism in the name of autonomy is undercut. If there is no necessary connection between moral intent and civil probity, there would appear to be no necessity for any conflict. The question of the individual's morally autonomous assent to the law does not apply: law is the outcome of political not moral discourse. Even though both are rational in character, they are not
directed, as has been shown, to the same ends - one is personal and motivational, the other is public and substantive.

2. Furthermore, although a distinction can be drawn between the categories of rules which obtain in the moral and civil spheres, it is significant that no such distinction can be drawn between the respective 'kingdom of ends'. In his political philosophy, the principle of right makes an appeal to the main criterion of rationality, universal law. But the world view which is implied here is of a universal community of rational wills. But the formulation of law is embodied in society; it is related to society and, hence, to a finite community. In other words, substantive law is framed by men in whom rationality is embodied, that is, rationality will have a content in the shape of values, beliefs, assumptions and knowledge. What is more, the principle source of such contents of consciousness will be the society or state in question. So it will be that anywhere there are law-governed societies, just laws will accord with universal principles but this does not entail that all laws will be the same everywhere. The universal 'kingdom of ends' where the 'ends' are rational wills will, as a matter of practical necessity, stand in need of translation into a 'kingdom of ends' in which rationality is embodied in a specific society. The specific content of the laws which result will be determined by the character and needs of the specific society.
By the same token that rationality is embodied within a given content means that a principle which, it is proposed, can stand as the criterion of just law cannot be understood as an absolute standard standing outside the social context within which the law is being judged. Except that it includes reference to purely formal qualities such as the logical requirement of non-contradiction, the principle itself will stand in need of interpretation and this can only be achieved validly within the society in question. The effect is to make any suggested appeal from positive law to a governing criterion or principle complex and difficult. Nonetheless, insofar as principles, such as the universal principle of right, can be formulated which purport to offer standards of justice, existing and proposed law may be held to be subject to scrutiny on the basis of interpretations of the principle. Within the context of the model, the resolution of disagreements involved in the interpretation of such principles will be a central function of the political community and its procedures.

This relationship between universal principle and practical embodiment is paralleled in Kant's moral philosophy where the formal criteria expressed in the various formulations of the Categorical Imperative require interpretation in their embodiment as maxims which will govern or guide conduct. Once more, the translation needs to occur from the concept of man as a pure rational will to that of man as a social being, the contents of whose consciousness are socially derived.
Insofar as rationality needs embodiment in a content for its intelligibility, it follows that the individual in framing his maxims must conceive of the 'kingdom of ends' in terms of his own world-view, the character of which will be largely coloured by his own social origins. There is, for example, no inconsistency involved in the moral approval which may be given to polygamy in one society but to monogamy in another where the social mores are different. As with the formation of law, so with morality, the maxims which govern conduct must take into account the relevant characteristics of the particular milieu within which they are to operate. In terms of the practical formation of maxims, the 'kingdom of ends' within which the individual reasons will be his own society or state or some subgroup within it.

It would appear that no significant distinction can be drawn between the moral and political 'kingdom of ends' where each is conceived of in terms of universal communities of rational wills, or between the moral and political 'kingdom of ends' where each is conceived of as specific societies within which specific laws are formulated or specific maxims are established. If the moral and political 'kingdom of ends' are essentially the same, rationality as it is embodied in the contents of consciousness will also be the same. It follows that there can be no possibility of conflict between the injunctions of a just law and those of a moral maxim. To put it slightly differently, in legislating for the same 'kingdom of ends' in both morals and politics there
can be no contradiction if the terms in which what it is to be an 'end' are also the same, particularly what it is to be considered as an 'end' worthy of respect and with a claim to freedom. There can be no possibility of a just law which enjoins an immoral act, or a moral act which conflicts with a just law.

Those states of affairs in which there could be the possibility of a conflict between individual morality and the rule of law will only arise if either or both are defective, that is, if

(a) the law is unjust,

or (b) the individual's moral code is mistaken,

or (c) the law is unjust and the individual's moral code is mistaken.

Although each of these situations raises problems concerning the identification of unjust laws or mistaken moral reasoning as well as practical problems for the individual as a moral agent and the individual as a citizen, they are aberrations from an ideal model and they do not affect the anarchist objection to the authority of the state as being considered to be superior to the autonomous judgment of the individual. In fact, it is argued that if to be autonomous is to espouse a principled, predominantly Kantian view of the nature of moral reasoning and moral rules, then using arguments based in precisely the same assumptions concerning freedom and rationality the question of a challenge to the authority of the state is misplaced in that it should only arise in the contingently aberrant conditions in which either the laws of the state or the maxims of the individual are
rationally defective.

4. The foregoing objections to anarchism are founded in distinctions between rule systems and are, consequently, logical objections to what are seen as confusions of categories. To a certain extent, such objections may be held to be negative in that they do not further the explanation of the relationship of man to society and the place of authority in this relationship. Given the status which is accorded by anarchism to the individual vis à vis the state, it is appropriate to examine more closely the nature of the relationship, and, in particular, the state of autonomy as purporting to be descriptive of a possible state of personhood within society.

It is here that Wolff's conception of autonomy, though derived from Kantian philosophical roots, is too coarse-grained in its interpretation. For Kant, the autonomous agent is he who exercises his will in terms determined by rationality. That is, autonomy is the exercise of the rational will, qua will; not, it should be noted, by the person as being subject to desires, wants, needs, values and so on, in short, all the attributes of personhood. It is as a rational will that the autonomous agent is understood as generating purely formal law - a priori criteria which are derived from reason alone. It is because it is divorced from the contingent features of personhood, e.g., desires, needs, values and psychological characteristics, that such a will is free. In 'The Fundamental Principles of the
Metaphysic of Morals* Kant states:

'Now we cannot possibly conceive a reason consciously receiving a bias from any other quarter with respect to its judgments, for then the subject would ascribe the determination of its judgment not to its own reason, but to an impulse. It must regard itself as the author of its principles independent of foreign influences. Consequently, as practical reason or as the will of a rational being it must regard itself as free, that is to say, the will of such a being cannot be a will of its own except under the idea of freedom.' (7)

It is the freedom of the will which is at the root of autonomy; the freedom of the person is a further question. But Wolff does not differentiate between the two. He interprets autonomy in terms not of the will determining its principles 'independent of foreign influences', but as the person so doing:

'Since the responsible man arrives at moral decisions which he expresses to himself in the form of imperatives, we may say that he gives laws to himself, or is self-legislating. In short, he is autonomous. As Kant argued, moral autonomy is a combination of freedom and responsibility; it is a submission to laws which one has made for oneself. The autonomous man, insofar as he is autonomous, is not subject to the will of another. He may do what another tells him, not because he has been told to do it. He is therefore, in the political sense of the word, free. (Wolff's emphases) (8)
A number of points arise from this. It should be noted, in passing, the confusion of the political with the moral. To imply that the morally autonomous man is free 'in the political sense' is to make a categorical mistake in line with the lack of differentiation which has already been discussed. To be free politically is to be subject to laws which are just and legitimate, not to deny subjection to any law and the authority which must accompany it. As far as being morally autonomous or morally free is concerned, this is another matter independent of the laws of the state, be they good or bad. An individual can remain morally autonomous even in an unjust state. The eventuality of a law enjoining a morally unacceptable act will be discussed later; such contingent circumstances are not at issue here where it is the rejection of authority, in principle, which is at stake.

Of greater significance is the difficulty inherent in Kant's notion of autonomy, a difficulty which Wolff simply ignores. In the first place, the point has often been made that the freedom of the good will in Kantian philosophy is bought at the price of the moral life only being capable of full realisation if the rational will is in a state of struggle or tension with the desires. A good will is recognised by virtue of the imperative demands of reason and reason alone, not inclination.* One way of putting it is to say that the

* It is significant that Kant's argument has the effect of making inclination, and particularly a contrary inclination, a necessary condition for the recognition of the demands of the categorical imperative. If men were purely rational beings, it is arguable that the categorical imperative would be unnecessary.
a priori is at war with contingency. Of course, it is this very contrast which gives substance to the notion of freedom which Kant develops, but, given that man, being an earthbound creature and not a divine will, is necessarily subject to contingencies, it is a state of freedom which beckons more as an ideal rather than as a realisable state. This in itself is enough to induce a certain wariness when a notion of autonomy is floated which appears to suggest that simply because man is rational and may be held responsible for his decisions that this is sufficient grounds for accepting that autonomy is to be equated with authority in the political sphere. A state of being, viz., Kantian freedom, which appears to be an ideal to be aimed at is to be sharply differentiated from a state of being, viz., Wolffian autonomy, which is fully achieved simply by virtue of man being a rational creature.

But the difficulty goes further than this. There is a sense in which by positing the demands of reason as being in conflict with the contingencies of life, this in itself creates a false dichotomy. Even reason needs to be embodied: embodied in language, embodied in assumptions concerning personhood, and embodied in assumptions concerning society. This is evidenced in the extent to which commentators have noticed that those examples of moral reasoning in which Kant has chosen to illustrate his thesis contain underlying presuppositions. The example of the tests for honesty in one's dealings with others assume that
truth-telling in the circumstances suggested will be valued by society. The fact is that in both moral and political discourse, if anything is to be said which concerns the human condition, assumptions will have to be made, assumptions which are inherently contestable not having the logical status of self-evident axioms. Rationality itself in moral and political language is subject to the contingencies of social derivation present in the context in which it is expressed.

Such a conclusion forms the basis of an objection to anarchism insofar as the individual, in anarchist terms, is conceived of as primarily atomistic in relation to society at large. The individual is a self-legislator and society is no more than the sum of all these autonomous parts. The objection which the foregoing analysis throws into relief is that such a picture of man in society is fundamentally mistaken. If there is agreement among men as to the nature of rules in society, for the anarchist it can be no more than a provisional agreement wholly dependent on the constituent individuals remaining in the same state of mind. It is obviously an unstable state of affairs, but, more importantly, it subtracts from rules an essential element both in terms of what it means to have a rule and what, in a social context, it means to be rule-governed. This is that for a rule to be a rule it must be a source of authority which can be legitimately invoked in the face of individual objections. This does not mean that a rule cannot be successfully challenged; but it does mean that there is no, and can
be no prior assumption that individual judgment must in all circumstances take precedence, which is the essence of the anarchist view.

The contradiction in the anarchist case which emerges is that if anarchism is fundamentally hostile to rules other than those which are self-legislated, it must be incompatible with society as a condition or state of affairs necessarily embodying rule-governed situations of one kind or another, but particularly the rule of law. But personhood understood in terms of the contents of consciousness is in itself dependent on the social context. Should that context disintegrate, as it would given the anarchist rejection of authoritative rules, it is difficult to understand the force that a notion such as autonomy would have in such a consequential setting.

The point which Wolff ignores is that for the concept of autonomy to be intelligible as descriptive of a state of being, it necessarily pre-supposes a social context. This is at odds with what would appear to be the underlying model of anarchism which is a reversal of that usually developed in classical political philosophy: anarchism begins with society and regresses to a state of nature.*

* If, as it would appear, anarchism rejects the rule of law, per se, it seems to be committed to a continuous enactment and re-enactment of self-legislated rules on the part of each individual. This means that there has to be a continual appraisal of the rules to see if they are appropriate rather than a Sartrean-like rejection of rules. The autonomous individual is not authentic in existentialist terms.
The remaining objections to the anarchist case rest on an analytical critique of the concept of autonomy employed by Wolff. Autonomy, Wolff insists, is born of responsibility:

'The fundamental assumption of moral philosophy is that men are responsible for their actions. From this assumption it follows necessarily, as Kant pointed out, that men are metaphysically free, which is to say that in some sense they are capable of choosing how they shall act. Being able to choose how he acts makes a man responsible, but merely choosing is not in itself enough to constitute taking responsibility for one's actions. Taking responsibility involves attempting to determine what one ought to do, and that, as philosophers since Aristotle have recognised, lays upon one the additional burdens of gaining knowledge, reflecting on motives, predicting outcomes, criticizing principles, and so forth.

The obligation to take responsibility for one's actions does not derive from man's freedom of will alone, for more is required in taking responsibility than freedom of choice. Only because man has the capacity to reason about his choices can he be said to stand under a continuing obligation to take responsibility for them.' (9)

In the first place, Wolff shifts autonomy from being descriptive in character to being a normative concept. It is possible to maintain that the self-conscious rational element in man's make-up places him in a unique position in the universe in that he is in some sense freed from the strict determinism of causality.
which governs and underlies the explanation of all else in the world. In other words, to hold that man has freedom of will and is in that sense autonomous is a case which commands respect. But to move from this to the proposition that the individual is 'under a continuing obligation to take responsibility' for his choices, i.e., to exercise autonomy, is more suspect.

The immediate effect of establishing autonomy as a normative concept is to allow, implicitly, that where human conduct and states of mind are concerned it can, in principle, be either autonomous or non-autonomous. To have an obligation to do something is to admit that the obligation may be ignored. If two classes of conduct and states of mind are implied, it must be the individual who decides in favour of autonomy who is worthy of the anarchist's privileged status with respect to the authority of the state. Should the individual not admit or simply ignore the obligation to take responsibility for his own choices by not exercising his capacity to reason, then it is difficult to see how he qualifies as being autonomous.

The practical problem which results is one of identification. The autonomous man is to be recognised by virtue of the extent to which he is actively 'gaining knowledge, reflecting on motives, predicting outcomes, criticizing principles, and so forth'. But the questions which follow are how are such ratiocinations to be judged as having been satisfactorily completed and who is to make the judgment? For Kant, the only judge could
be the individual concerned, but such an individual is acting as a moral agent, simpliciter, that is, he is consciously seeking to act in accordance with the moral law for its own sake. In these terms, the individual is engaged in the task of testing his maxims against the rational dictates of the categorical imperative and rigorously excluding inclination in whatever form it may occur. Whatever the problems which may result from this view of man and his engagement in moral reasoning, it is based on an acceptance of man's capacity to structure experience in moral terms and the integrity of his desire to fulfill his moral nature in the state of freedom which possession of a good will entails. In such a case, it is the individual who is the guarantor of the purity of his motives simply because as a moral agent striving for that which has the highest moral worth, the individual and only the individual is in a position to make such judgments.

However, as has already been noted, Wolff makes no distinction between the rational will and that which may be considered to be contingent, viz., inclination. He simply accepts the person as a given entity in whom the capacity to reason is simply pre-eminent. Moreover, the point at issue is not the search for the grounds of right action, but the status of the individual's judgment vis à vis the authority of the state. In such a case, the problem disclosed is not the essentially private one of judging the moral worth of one's own actions, but is, rather, the public difficulty of deciding who has reached
the required state of intelligent reasoning to be considered worthy of autonomous status as against the state's authority. To allow the judgment to remain a private matter would be simply to admit as autonomous anyone who claimed his decision or judgment deserved greater respect than the laws of the state simply because he had thought about the matter at issue, or claimed to have done so. In other words, the claim to autonomy is open to anyone, no matter how base, self-deceptive or stupid the person may be. And yet such a conclusion seems inescapable given the notorious difficulty, if not downright impossibility, of establishing the true nature of an individual's motives independently of the individual in question.

In fact, the basis of the claim to autonomous status on Wolff's account reduces to something like a right - perhaps an 'honorary right' would be better - that is, a right which is justified simply on the grounds of the individual's assumed capacity and responsibility for rational decision-making, not that decisions made on rational grounds alone have, in fact, been made. Given that the exercise of such a right, if that is what it is, has built into it such destructive implications for society and, as has been argued, for individuality itself, it is by no means self-evident that the acknowledgment of such a right should be conceded.
It is the case that the difficulties involved in establishing the nature and existence of an autonomous act are compounded by Wolff's curious notion of what it is to 'take responsibility for one's actions'. In Wolff's terms, 'taking responsibility' is 'attempting to determine what one ought to do', i.e., by bringing rational capacities to bear upon the matter at issue. It should be noted that this is a process which can remain a private matter if the individual so wishes, a point which has been noticed already. But it is not clear why rationally weighing up or considering a course of action in these terms specifically involves the taking of responsibility. There is no reason to suppose that a man who is habitually thoughtful has taken more responsibility for his actions than another who happens to be more impulsive. One may be considered to be more responsible than another, but not because he has taken that responsibility.

The root of the difficulty lies in the fact that Wolff has chosen to imply that taking responsibility in this context is essentially a private matter, whereas for the notion to have a content which is clear and useful rather than vague and obfuscatory it must be indicative of a public action. It is perfectly intelligible for an individual to say that he takes responsibility for his actions (whether he thought about them beforehand or not) in that by so-doing he is admitting that his actions can be judged and that he can be blamed if they are found wanting. So understood, taking responsibility
is clearly implied by the exercise of autonomy, but such a meaning cannot be entertained by Wolff because as a public demonstration it implies the existence of standards by which actions may judged, standards independent of the individual concerned, and it implicitly acknowledges the right of others to judge and to blame. In other words, 'to take responsibility' in this public sense is an acknowledgement on the part of the individual that he is part of a wider social order which may make legitimate demands upon him, but this is contrary to the anarchist case.

6. A further implication which is involved with the conception of autonomy in normative terms is that it introduces a relative element. If it is the case that the individual may choose whether or not to be autonomous, then autonomy ceases to be a term which is descriptive of a permanent state of consciousness or state of being. It is misleading to think of autonomy as something like a title, such as sainthood, which once attached or accorded to an individual is thereafter indicative of a special status. Autonomy, on the contrary, is only evidenced when it is exercised, and whether to exercise it or not is a matter for decision. In other words, if what is meant by autonomy is making decisions for oneself rather than accepting the authority of others, then the individual may choose whether or not to exercise it often or occasionally, whether to exercise it on trivial or important matters. Furthermore, even the assumption that all men are rational beings masks real
differences in the actual capacity for rationality as between individuals. The result is that while it is reasonable to suggest that, in general terms, all men are, in principle, potentially autonomous, it still remains the case that it is a matter of degree; it is a judgment based primarily on the incidence and importance of the occasions on which the individual decides matters for himself, and this will vary according to inclination, personality and circumstances.

In fact, autonomy is more intelligibly, and, hence, more properly applied to those occasions on which the individual exercises his own judgment. That is, in the social sense of the term which Wolff adopts, it is the quality of specific judgments and actions which are autonomous or not, and it is only by way of such specific acts that the term finds any general application to an individual. If such is the case, then the argument that the individual has a right to autonomous status based on a duty to make autonomous judgments collapses as it has been argued that autonomy is vested in the quality of specific judgments and actions, not in general attributes of personhood. If there are rights to be claimed then they must be sought in justifications which are to be found in the qualities of autonomous actions, not in conditions which are necessary for the exercise of autonomy (such as rationality), or in general predispositions to exercise autonomy (the 'obligation' involved).
7. Finally, Wolff's contention that the individual has an obligation to exercise autonomous judgment independently of authority can be challenged. The following example in which Wolff attempts to show how autonomy can be reconciled with authority contains elements which make it particularly germane to the present issue:

'If I am on a sinking ship and the captain is giving orders for manning the lifeboats, and if everyone else is obeying the captain because he is the captain, I may decide that under the circumstances I had better do what he says, since the confusion caused by disobeying him would be generally harmful. But insofar as I make such a decision, I am not obeying his command; that is, I am not acknowledging him as having authority over me.' (10)

The interesting feature of this example is that it illuminates the circumstances in which the exercise of autonomy is inappropriate and the exercise of authority wholly justified — the contrary of Wolff's interpretation. In Wolffian terms there is an obligation on every individual as a rational being to be autonomous, that is an obligation which rests on every member of the crew. If, however, that obligation were realised, the result in this case would be likely to be disastrous as the action demanded by the emergency is unlikely to wait upon the results of individual decision-making by the crew. Instant obedience to the captain, because he is the captain and has authority vested in him, constitutes a good reason for putting aside the claims of autonomy, even supposing such claims were valid in
the first place. In fact, although Wolff insists that the individual has an obligation to think and act autonomously, there are occasions and situations on which it can be claimed that there is a duty to obey authority. The duty of the soldier to obey his superior officer or the duty of the crew to obey the captain is not subject to autonomous judgments and agreement with such orders as are given. (11)

The root of the difficulty lies in Wolff's misrepresentation of the Kantian concept of autonomy. The context within which Kant develops his notion of the autonomous will is that of moral choice. While it may well be that in moral terms the state of autonomy is expressive of man's developed moral capacity, it does not follow that all situations are specifically moral in character and that the assumption of autonomy is appropriate in all possible contexts. As mentioned above, the primary duty of the soldier is to obey; it will only be in exceptional circumstances that this primary duty may be over-ridden and action taken on the basis of personal decision-making. When this does happen, any justification will have to be based on contingencies or principles other than an appeal to the individual's supposed right or duty to autonomous conduct. In other words, the example aptly illustrates that there are rules concerned with social action which are not moral in character and which make no necessary claim on the individual qua moral agent.
The point is highly significant in terms of the implications it has for the individual's relationship with the authority of the state. Two conclusions follow which will be merely sketched in here. First, that the individual has no prior prima facie right or duty to the exercise and status of autonomy where the laws, rules or conventions which govern the civil life of the state are concerned. As has been demonstrated, the rules which order the state are to be differentiated categorically from those which may be held to govern moral conduct. If there are grounds for recognising the primacy of autonomous decision-making in a political context where the authority of the state may be challenged, then such grounds are other than an appeal to the duty of the individual as a free and rational agent to decide matters for himself. A moral rationale is in itself an insufficient justification for the assumption of autonomous status in a political context.

Secondly, in the case for upholding the individual, qua moral agent, reserving to himself the prior obligation to think and act autonomously in moral matters, it is necessary to demonstrate that the situation in which autonomous action is proposed is, in fact, a moral context. In other words, should the individual find himself morally at odds with the injunctions of a civil law or rule, it will be necessary to draw a distinction between the individual's response insofar as he acts as a moral agent and insofar as he responds as a member of the body politic.
Such conclusions are necessarily tentative, and these and other matters which arise from them will be considered more fully in the following chapter.

Summary

The primary concern of this chapter has been to enquire into the challenge which is posed to the authority of the state by anarchism. In particular, that form of anarchism which is represented by R.P. Wolff in his essay 'In Defense of Anarchism' has been selected as offering the strongest philosophical challenge in that it is purportedly based in Kantian moral philosophy. It has been argued that Wolff is fundamentally mistaken in his interpretation of Kant in terms of the political implications of his concept of autonomy in that he does not recognise Kant's differentiation between categories of rule-governed behaviour, viz., the moral and the political. Neither does he recognise the Kantian distinction between the autonomy of the rational will and its opposition to inclination and other contingencies. By ignoring these matters, Wolff distorts the Kantian concept of autonomy imbuing it with a content which is inimical to the existence of all authority.

Also, simply taking the Wolffian concept of autonomy as meaning 'assuming responsibility for one's own actions and decisions' it has been demonstrated that by endowing the concept with a normative function, autonomy ceases to be descriptive of a general state of being or consciousness in the individual, but is more
properly applied to specific occasions on which the individual may or may not decide matters for himself. As such, autonomy will become relative between individuals as it will be dependent on the incidence of its occurrence. Moreover, as autonomy resides in the occurrence and not in some general state of being, the justification for the assumption of autonomy's status vis-à-vis authority must be found in the circumstances in which it is exercised. Wolff also interprets the notion of 'taking responsibility' in terms of it indicating a private decision by the individual to bring rational capacities to bear on a problem rather than a public declaration of a readiness to incur blame. Wolff's definition has the effect of creating great difficulties in judging the extent to which any decision or action is, indeed, autonomous. Finally, drawing on the distinctions examined earlier between categories of rule-governed behaviour, it has been denied that in situations which are social but not necessarily moral in character there is any primary and permanent obligation to the assumption of autonomy.
References


(2) See, for example, J.G. Murphy's discussion of law and coercion in Kant: The Philosophy of Right (Macmillan, London, 1970) pp. 109-13. In connection with the coercive force of law, he states: 'Like Rousseau, Kant thinks that it is only in a context governed by social practice (particularly civil government with its Rule of Law) that this can make sense.' p. 110.


(5) ibid. p. 338.


(7) op. cit. p. 347.

(8) op. cit. p. 14.

(9) op. cit. p. 12.

(10) op. cit. pp. 15-16.

Chapter 9

Morality and the State

1. To conclude that the anarchist case fails to offer a substantiated case in favour of the claims of autonomy as against the claims of the state's authority does not carry with it the implication that there is no moral dimension to the relationship between state and individual. Even to argue that there is a categorical difference between moral rules and civil rules does not preclude the possibility that the relationship which is involved between state and individual as it relates to the observance of and attitudes towards such rules has elements within it which are of moral significance. It is this relationship which must now be further examined, particularly as the extent and nature of the individual's obligation to the state will have important implications for both the legitimation of the state's authority and the delimitation of that authority's jurisdiction.

One aspect of this relationship has already been the subject of enquiry - the Hegelian notion of Sittlichkeit has been examined and shown to be expressive of man's subjective sense of obligation to his parent state (see chapters 3 & 4). Such an obligation is grounded in the extent to which the contents of individual consciousness are determined by the society into which the individual is born and in which he develops; also, if the contents of consciousness are,
partly at least, determined by a specific social milieu, then it will be that society which is familiar and which is understood which, in turn, is likely to be the milieu within which the individual's will to freedom will be best able to find expression. In other words, Sittlichkeit expresses the notion of a subjective obligation to the state based on the extent to which personhood itself is derived from the state, and the extent to which the state offers the most-favoured, because best understood, milieu within which personhood may be most fully expressed.

Analysis of the relationship between state and individual in these terms is fundamentally deterministic in that it posits the contents of individual consciousness as being in some measure a reflection of the norms, ideas, knowledge, beliefs and values present in society at large. Such a model is most explicitly exemplified in the personhood and way of life to be found in those tribal societies which have managed to remain relatively uninfluenced by contact with Western civilisation. Morality in such a restricted model would necessarily be conventional and heteronomous (1) as the limitations of the model do not allow for the expression of self-conscious individualism and the concomitant value which is placed on autonomous judgment-making and the realisation of the individual as a self-legislator in moral matters. It is, of course, moral personhood understood in these individualistic terms which forms the basis of the anarchist view that there is a basic incompatibility
between the demands of external authority and those of
the autonomous agent.

So far, criticism of anarchist theory has
focussed on confusions or contradictions implicit within
the anarchist concept of 'autonomy'; but the concept of
'autonomy' is central to personhood as it is understood
in terms of the citizens of a modern state. Specifically,
it is indicative of that power of decision which, to use
Hegel's phrase (2), is ascribed 'to the subjectivity of
explicitly independent self-consciousness'. It is,
therefore, necessary to understand the nature of the
relationship of the individual as a self-conscious moral
agent to the state, particularly if the authority of the
state and the autonomy of the individual is not to be
left in the ultimately sterile state of conflict which
is the conclusion of anarchism.

2. It has been argued in previous chapters that
personhood is an achievement which is only to be attained
within a social context of one kind or another. Moral
autonomy, as an aspect of personhood, is only possible
if the individual has developed the capacity for moral
reasoning and making moral judgments. In other words,
the individual cannot be intelligibly conceived of in
atomistic terms, simpliciter; the achievement of
personhood requires a social context which is necessarily
a rule-governed complex of situations. However, this
dependence on a social context for the achievement of
personhood is not, and cannot be, the only link in the
relationship between individual and state. If it were,
the way would be open for a development of the anarchist argument which could, without inconsistency, claim that although society may be necessary for the development of individual personhood, that does not entail that value should be placed on society and that the autonomous individual should be free to reject society in whatever form it takes as being intrinsically inimical to the exercise of autonomous judgment.

But such an argument is flawed. It has been argued in the previous chapter that should the anarchist rejection of society be carried to its logical conclusion, the result would be the dissolution of society. If everyone accepted their responsibility to exercise autonomous judgment, agreement between men as to social conduct generally would be entirely subject to the chance agreement of the judgment of atomistic wills and reasoning. In such a situation, social rules, such as the rule of law, would be denuded of all force, qua rules, and a state of affairs comparable to the classical state of nature would pertain.

The question which arises is, given a completely anarchistic state of affairs, to what extent would moral judgment and moral conduct be possible? The question is particularly pertinent as moral autonomy and its exercise are those aspects of individuality which must be taken into account in any argument purporting to limit the authority of the state. In answering such a question, it is tempting to suggest that where the individual is already capable of making autonomous judgments, his moral
principles will ensure that he will continue to act with moral probity in whatever situation he finds himself, even one which is anarchic. However, such an argument ignores the extent to which the formulation, interpretation and application of moral principles depends on the context being understood within which they are situated. Karl Popper, in considering the role of tradition in society, envisages just such a state of affairs and explores its implications for rational conduct:

'...whenever we happen to be surrounded by either a natural environment or a social environment of which we know so little that we cannot predict what will happen, then we all become anxious and terrified. This is because if there is no possibility of our predicting what will happen in our environment - for example, how people will behave - then there is no possibility of reacting rationally. Whether the environment in question is a natural or a social one is more or less irrelevant.' (3)

Lacking all reverence for any rules, conventions or laws beyond those which are generated by the self, the anarchist state of nature would be, in principle, just such an environment as Popper describes - one in which human conduct would be completely unpredictable. A society is only maintained by a continuing acceptance by its members of the authority of those values, codes, conventions, traditions, rules and laws which impart to the society in question its own discernable identity. Such an acceptance may be either overt or tacit; it can be
critical or passive, there can be commitment to change or to the status quo: but whatever the attitude, the authority of the rules, laws, conventions etc. must be acknowledged to some degree for the cohesion of the society to remain intact. Should a society disintegrate and not be swiftly replaced by a new complex of governing rules then the state of affairs envisaged by Popper will come into being: a state of affairs which, lacking all predictability, will simply engender terror and anxiety — not, strictly a Hobbesian state of nature born of the imperfections inherent in man’s nature, but something like it in effect, born of the chaotic unpredictability of men’s actions.

3. The point can be illuminated (and itself illuminates) by considering one of the ambiguities in Kantian moral philosophy, a process which also discloses the extent to which Wolffian anarchism distorts or deviates from the concept of autonomy understood in Kantian terms. The ambiguity in question is based initially in Kant’s insistence on the purely rational or a priori nature of his moral philosophy:

Now it is only in pure philosophy that we can look for the moral law in its purity and genuineness (and, in a practical matter, this is of the utmost consequence): we must, therefore, begin with pure philosophy (metaphysic), and without it there cannot be any moral philosophy at all. That which mingle these pure principles with the empirical does not deserve the name of philosophy ......." (4)
The extent to which Kant ultimately manages to adhere to this self-imposed rigour in the formulation of the principles embodied in the various formulations of the categorical imperative is not at issue here. What is relevant is that the examples which Kant introduces to illustrate the practical application of his principles are not free of empirical data. When Kant demonstrates the inconsistencies involved in the willing and making of false promises, he necessarily presupposes social institutions and modes of life in which the activity of promise-making matters. Also, his discussion concerning the morality of suicide is only intelligible in the light of an acceptance of empirical data on the nature of the body and its mortality. J.G. Murphy suggests another problem which similarly requires data drawn from experience:

'...whether or not I act immorally in hoarding a certain commodity – candy or oxygen, say, – will depend in part on such empirical facts as its scarcity and the extent to which it is needed or desired by people.' (5)

Or again, all moral problems concerned with the ownership of property will necessarily presuppose social institutions and values which relate to ownership.

In the light of such examples it is reasonable to conclude that, without necessarily disputing the rational purity of Kant's formal principles, where practical moral reasoning is concerned which is aimed at determining the rightness of moral conduct in real situations, the situation in question will need to be
understood in terms of the likely attitudes, dispositions and behaviour of others concerned. In other words, in order to make moral judgments which are relevant to the moral dilemma, relevant facts have to be known and assumptions made of an empirical nature. Indeed, that a moral dilemma is recognised within a particular situation in itself presupposes a recognitional framework; without the shared assumptions, facts, norms values and codes which are implicit in a social context, the grounds on which it is even possible to bring moral judgments to bear begins to crumble. The anarchist world of atomistic beings subscribing only to their own individual judgments and principles is a world without predictability, which lacks the grounds on which assumptions concerning human conduct can be made, and which, consequently, offers no framework within which what it is to act morally or not can be judged.

Not only does practical moral judgment-making depend on a rule-governed social context for its intelligibility, but this condition, which is rendered ambiguous by the anarchist case, is implicitly recognised by Kant. While it is possible that purely rational wills may find themselves in agreement on moral matters by the application of a priori principles, what is more certain is that where the affairs of men are concerned (as opposed to purely rational wills) there is no such agreement. In fact, widely differing, if not contradictory, maxims may be justified by reference to the categorical imperatives. In other words, Kant's
philosophy implicitly allows for the diversity of rules which can exist and which can be contained within the framework offered by the rational principles. For Kant, society is implicitly given and, as has been argued, the social institutions and rules by which men live have to be taken into account in the interpretation of the categorical imperatives and the making of moral judgments. Wolff, on the other hand, appears to assume that social life will continue on the basis of a purely rational agreement (as with pure wills) as he refuses to acknowledge that the actual moral diversity which exists is founded in a given social diversity of governing rule-governed situations which have their own particular claims to authority.

The important and positive conclusion which emerges from this critique is that a social context is a necessary condition for the functioning of man's moral capacities. Not only is a state of nature antipathetic to the development of personhood but even if it were willed by the universal adoption and application of autonomy-founded anarchism, the resulting state of affairs would be inimical to the functioning of autonomy as expressive of the fulfilment of human moral capacities.

It follows from such a conclusion that if the practice of morality is dependent on the maintenance of a social order, then there must be an obligation on the part of the individual as a moral agent to maintain the conditions within which the practice of morality is possible. It would clearly be contradictory for the
individual in the name of radical moral autonomy to will the destruction of the very conditions within which the practice of morality becomes possible. Where the choice is between the maintenance of an existing rule-governed situation and the chaos of anarchism, the individual, qua moral agent, is bound by the logic of morality to choose in favour of the former.

The conclusion that morality is grounded in a rule-governed situation can be extended to include the activities of man as a rational agent. Insofar as the practice of morality is a rational activity, it follows that all rational activities, not just morality, require a rule-governed society for their expression. Just as moral practice requires a rule-governed context for its intelligibility so rational actions, by the same token, derive their intelligibility by virtue of their being understood within some rule-governed context. That being so, it follows that man, qua rational agent, must support a rule-governed society rather than the incoherent state of affairs implied by anarchism.

4. There is another aspect of the relationship between moral rules and social rules which anarchism ignores. This is the extent to which the capacity to make moral judgments contains within it the logical conditions which make the development of social rules possible. The point is that insofar as moral judgments embody moral rules then it is the case that rationality and, particularly, universality is implicit within such judgment-making. While judgments remain interior, so to
speak, or personal to the individual concerned, their status, qua moral judgments remains undisturbed and, as such, they are an expression of the morally autonomous standing of the individual. However, if, as Wolffian anarchism seems to envisage, two or more individuals, that is an embryonic society, mutually agree to adopt such rules, then a change takes place in the character of such rules and the relationship to them of the individuals concerned. They are no longer private rules which are subject only to the rational appraisals of the individual concerned; instead, the process of mutual agreement has the effect of explicitly externalising them, the result of which is to impart to the rules an authority over and above the judgments and appraisals of the individuals concerned. In particular, the implicitly universal character of moral judgments becomes explicitly universal when these rules publicly relate to and govern the conduct of a society. Moreover, not only does the universalisability of moral judgments strengthen and become explicit in the transformation into public rules, but the moral perspective which is founded in universalisability, that is a concern for moral rightness, is itself transformed in the externalising process into a public concern for right conduct, that is a concern for justice and fairness.

Such an analysis has important consequences. Not only does it demonstrate the extent to which anarchism refuses to face the logical development of its own arguments, but it offers an account of the genesis of
rules within society. If social rules can be held to be the expression of the externalisation of private moral judgments, then the legitimating procedures of the state may be held to be the means by which social rules are formalised. But because the moral foundations are recognised, the need for the law to be justified and ultimately legitimated in terms of 'right' is emphasised.*

At this point it is necessary to displace Kant in favour of Hegel as the central figure, as for Kant the only category of moral obligation which is acknowledged is that which is based in a good will, that is, the duty placed on the individual rational will to bring about that which accords with the Categorical Imperative. In other words, it is morality (morality) conceived of as a personal obligation to bring about a state of affairs not yet realised which is his central concern. But the obligation of the individual to the maintenance of social order is of a different category; it is to an existing state of affairs, it is a means to an end, viz., the maintenance of the conditions which are necessary for the conduct of moral reasoning and judgment-making, and that state of affairs need not necessarily be good in itself. What the foregoing analysis allows is the Hegelian notion of Sittlichkeit developed to include an

* Insofar as law can be held to contain a moral dimension as an inherent characteristic, the problem of accounting for the legitimacy of law other than in terms of self-legitimacy - a problem faced by legal positivists - is resolved. The problem disclosed is that of establishing the formally inherent properties or characteristics which a valid law should have.
obligation which is founded in the moral nature of man. It should be noted that this dimension of Sittlichkeit, unlike the subjective bond between individual and state delineated in chapters 3 and 4, is objective in that it is an obligation capable of unambiguous analysis and capable of being consciously known. The concept of Sittlichkeit, therefore, embodies the moral obligation which the individual has towards the state both in terms of his identification with that society which is in large measure responsible for the character of his personhood and within which, as a most-favoured milieu, personal freedom is most likely to be realised; and in terms of the individual’s recognition, either implicit or explicit, that the state is a necessary state of affairs for the realisation of a moral way of life; and that the state itself is a moral entity insofar as it is capable of embodying justice within its rules and laws. The individual is, as a result, obligated to the maintenance and betterment of the state, an obligation which is not inter-personal in Kantian terms, but which, none-the-less, derives logically from man’s status as a moral agent and which is, therefore, moral in character. It could be said that the sense of duty which is present in the individual’s moral dealings with others and the sense of duty which is present in the individual’s relationship with the state are both informed by the same capacity to structure the world in moral terms,
The foregoing analysis stands in need of qualification on at least two related issues. First of all, the argument that the individual has an obligation to maintain the state would appear to carry with it the implication that the obligation is to uphold the status quo. This does not follow. The argument has been couched, so far, in terms of clear-cut alternatives: the implications which the maintenance of society has for the individual as a moral agent as opposed to the implications which the dissolution of society would have for the individual as a moral agent. The conclusion that it is morally unwarrantable to will the dissolution of society does not entail that it is equally unwarrantable to will change, even radical change, in society. What has been posited so far are extremes - the state/society or not the state/society. Between these extremes lie the most complex problems of politics, viz., the extent to which the individual's general obligation to maintain the state requires obedience to specific laws or to specific forms of government, or, conversely, the extent to which the authority of the state is justified in exacting obedience from individuals and the limits, if any, of that which may be legitimately authorised in the name of the state.

Secondly, some comment is required on the contention (see p. 233) that the individual has a moral obligation to the maintenance of the state even though that state may not necessarily be good in itself. The analysis so far has been conducted in morally neutral
terms in that all that is required for the exercise by
the individual of personal morality (moralität) is a
socially rule-governed situation. Whether or not the
rules governing society are just or unjust, whether or
not the government of that society is legitimate or
illegitimate is irrelevant, in principle, to the
justification of the individual's moral obligation to
the maintenance of a situation within which the moral
life can be lived. The categorical difference between
the rules governing civil life and those governing
personal morality has already been demonstrated, a
differentiation which allows the Kantian conclusion that
the organisation of society requires only intelligence
and not moral worth on the part of its inhabitants
('As hard as it may sound, the problem of setting up a
state can be solved even by a nation of devils (so long
as they possess understanding)') (6). If this argument
holds, then it must follow that unless the laws of the
state interfere with the fulfilment of the demands of
personal morality, the character of the civil rules in
terms of their justice or lack of it is, strictly,
irrelevant. It is possible for a man to live a moral
life in an unjust state, albeit not so easily as one
ordered by just laws. The necessary condition for the
enactment of the moral life is an ordered social
context, not that specific qualities, such as justice,
should inhere within that order.
That said, the necessary qualification is that although any ordered state, however unjust, is morally preferable to a state of social chaos, this does not entail that the character of the state's laws are of no moral concern to the individual. The argument which has been developed and which interprets Sittlichkeit in terms of a specific moral dimension ensures that the character of a state's laws will be a matter of continuing moral concern to the citizen in that any appraisal of the laws will, necessarily, contain a moral element. To suggest this much is enough to establish the grounds on which the notion of 'right' or justice within the law can be based. An examination of the nature of 'right' and the implications arising from this for the freedom of the individual and the authority of the state will be examined later.

Summary

The principal concern in this chapter has been to demonstrate the moral necessity for the state as embodying the required rule-governed conditions within which the individual's moral life may be enacted and find fulfilment. Such an argument adds further strength to the grounds for upholding the individual's moral obligation (Sittlichkeit) to the maintenance of the state. That argument has been framed in terms of positing the implications for the moral life of the state's dissolution and has been morally neutral with
regard to the justice of the laws and rules which govern the state. However, in analysing the extent to which civil rules may be held to be an externalisation of moral rules, it has been argued that both universality and right derive from this specifically moral source and, as such, will have a particular claim on the moral concern and obligation of the citizen.
References

(1) To posit such a society as being moral cannot, of course, imply that all moral problems are resolved by the simple application of a customary rule or authoritarian judgment. Should such a society exist, its claim to being moral would be difficult to substantiate as it would appear that there would, in principle, be nothing which would present the individual with a choice and, hence, the need for any specifically moral consideration.

The kind of society embodied in the model as developed so far and illustrated by reference to tribal life is one in which custom or convention may be held to guide choice, even powerfully influence it, but in which the awareness of choice still survives. To allow this much is to allow the existence of individuality in undeveloped terms, not to suggest that a full-blooded individualism is evidenced. Also, to allow this much is to remain true to the nature of morality in which the problems which arise are too varied to be met adequately by the application of a set of rules.

Finally, the notion of tradition in moral matters being a matter of guidance rather than authoritative resolution is echoed in Oakeshott's view of the role of tradition in politics. See Oakeshott, M., 'Political Education' and 'Rational Conduct' in Rationalism in Politics, Methuen, London, 1962, esp. pp. 100, 128/9.


Chapter 10
Authority, the State and the General Will

1. The stage has now been reached where the central problem of political authority can now be examined. This is the problem of locating and delineating the legitimising source of the state's authority; more specifically, it is the legitimisation of law which is the area of enquiry as it is through law and the devolution of authority made necessary by the administration of law that the state's authority is most clearly apprehended. To this end, it will be helpful to rehearse those conclusions reached so far in this work which are directly relevant to this problem as such conclusions form a framework of assumptions within which the enquiry is contained.

First of all, it is intended to discuss authority within the context of the ideal model of a political society developed earlier in this work. It will be recalled that the purpose of developing such a model is, principally, to enable the enquiry to be conducted within a context which is relatively free of the highly ambiguous features which permeate real societies and actual political situations. The model, although an idealisation, is, nevertheless, an abstraction from that which is known in actuality, and, as an abstraction, may be held to retain those features which are fundamental to the political process. In other words, its ideal nature derives not from its status as a theorem developed from what may be
held to be self-evident assumptions, but from its status as a model representing the necessary conditions which are held to be present within the actuality of the political process.

It follows that if it is the case that where there are problems concerned with the legitimation and scope of authority in the ideal model, then not only will such problems be exposed with the greatest clarity as they will be unclouded by the presence of complicating contingencies, but both the form in which the problem is exposed and the conclusions to be drawn from any subsequent enquiry will bear the character of being the worst and best possible cases respectively. If the problems of authority and freedom which arise in actual, and hence less than ideal political societies are still present in an ideal model, such problems will be exposed as being fundamental to the political process, and in this sense may be held to be worst possible cases. Similarly, any adequate case purporting to resolve such problems will be the best possible in that if it is adequate to meeting the conditions present in the ideal model, it will be adequate to meeting those present in actuality as it will be dealing with, as stated, problems fundamental to the political process. For example, if there are principles which may be held to limit the exercise of authority in an ideal state, they should be adequate to their limiting function in a less than ideal state. To say this is not to imply that as the best possible case its application to political actuality
will be perspicuous; the contingencies present in reality will create a complexity of additional factors which may well obscure the fundamental character of the case derived from the ideal model. Nonetheless, it is the best possible case precisely because it is fundamental, and this quality will remain even though the contingencies present in actuality may hinder an appreciation of it in these terms.

Secondly, it has been argued that insofar as problems of political authority are social problems, it is necessary to delineate the necessary features present in society which are relevant to the presence and exercise of authority. In particular, the logical and practical necessity for society to be understood as a rule-governed or complex of rule-governed situations has been insisted upon and the early chapters of this enquiry demonstrated the consequent requirement for authority as a practical necessity born of the inherent ambiguities arising from the formulation and application of rules, per se. This is a case which has been reinforced by demonstrating that the anarchist attempt to conceive of society without authority, other than that of the autonomous individual, is ultimately incoherent as it is the rule-governed basis of society which anarchism undermines.

Next, in spite of an inherently unavoidable arbitrary element, the state has been chosen as the social unit in which it is appropriate to locate authority. The principal reason is that the state is that unit which
is open to definition in terms of the jurisdiction of law and is, therefore, a coherent and identifiable socially rule-governed entity. Also, it is within the state that contingent features such as the embodiment of tradition, territorial boundaries, and that peculiar sense of moral obligation referred to as Sittlichkeit are to be recognised.

Finally, given the paradox of freedom whereby individual freedom is an intelligible concept only within the context of a rule-governed situation, it has been argued that when men decide for themselves on the social rules by which they shall live, this is the condition within which individual freedom can be held to be realised in an intelligible form. In other words, men may be held to be free where the social rules which delimit individual freedom of action arise from deliberation among those subject to the rules. The activity of politics is the process of such deliberation, a process which results in the formulation and legitimation of rule(s).

The foregoing characteristics are integral features of the ideal model, although the last one which introduces individual freedom as an essential element invites immediate comparison with the rationale underlying Kant's universal principle of right. The recognition of this principle as a necessary element in the model will be developed during the discussion which follows.
To propose that a formal principle such as Kant's principle of right is an element within that category of social rules through which the individual's freedom is realised, and at the same time to posit the social conditions which are necessary for the formulation of such a framework of rules is to imply that there at least two important strands of thought, or, more precisely, conditions which have to be met before the formulation and legitimation of rules within a political community are properly constituted and understood. In order to explore this dualism it is appropriate to consider the conception of politics and the state described by Jean-Jacques Rousseau in 'The Social Contract'. Of special significance in this respect is the notion that the legitimation of law in a political society is to be traced to its matrix within the body politic, the Sovereign, and to its expression through the medium of the 'general will'. The notion of the 'general will' also focuses attention on the crucial problem which centres on the nature of the individual's obligation to obey the laws of the state and the extent to which the state may legitimately exercise authority over him.

However, before proceeding to deal directly with these matters it is necessary first to comment on the nature of Rousseau's theory and its relationship with the ideal model adopted here. There is a congruence between the two which brings with it its own particular difficulties - difficulties mainly of an interpretive nature. For example, consider the mode of association
presented in this model. It has been argued consistently throughout this work that personhood is an achievement necessarily connected, both logically and practically, with the existence of society. The inter-relationship and inter-dependence which exists between the individual and society has already been explored in connection with the development of the Hegelian notions of Sittlichkeit and volksgeist. It has been argued that the ties which bind the individual to the state in terms of the moral obligation to which he is subject are based on the desire for freedom and the requirement that freedom is most likely to be achieved within an environment which is understood. Such an environment is likely, in fact, to be that into which the individual was born and reared. It follows from such conclusions that neither the legitimacy of the state's authority nor the basis of the individual's obligation to the state is founded in a contract of any sort. The central contention is that the individual is bound to the state in terms of a necessity which is part and parcel of the attainment of personhood and that it would be misleading to introduce into such a mode of association the voluntary element which appears to be implied by contract theory.

In this respect, it is of interest that Rousseau, apparently an advocate of contract theory, is, in fact, ambivalent in his approach to the problem of association. It is certainly the case that he makes use of the familiar contrast between civil society and a state of nature, and that he uses the concepts of
'contract', 'compact' and 'treaty' to indicate, variously, the nature of the relationship between individual and state. But, significantly, although 'rights' appear in his argument, they are not central to his thesis. For example, Rousseau does not begin by explicitly establishing as necessary assumptions the specific rights which are to be upheld or surrendered in establishing the contract. His statement of the problem to be considered leaves the matter of rights implicit, if they are there at all:

'The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain free as before.' (1)

The tenor of the language lacks the conviction which would be appropriate to a theorist who holds that men have certain and inalienable rights which must be protected. Rousseau's language is more tentative, expressing ends such as the protection of the individual and his property as well as the autonomy and freedom of the individual as desirable ends in view rather than rights which need to be enshrined. Or again, in Rousseau's solution to the problem the terminology is significant:

'Each member of us puts his person and all his power in common under the supreme direction of the general, and, in our corporate capacity, we receive each member as an indivisible part of the whole.' (2)
Once more, although Rousseau is ostensibly describing the terms of the contract, it is noticeable that his description does not resolve itself into the respective rights and duties of the state and subject, but, rather, he may be understood as stating, albeit opaquely, the logical consequences for the individual if and when a political community is established. Furthermore, Rousseau illustrates his account of the emergence of a political society with examples which indicate that the political community is the outcome of a process of political evolution rather than a contractual event.

He comments on the significance of the family as offering the most primitive model for the eventual emergence of a free society. Such an example is revealing because the family can be understood as a corporate body in embryo within which the members are bound each to the other by the ties of affection and mutual dependence.

It is the case that the development of claims to rights in such a mode of association would be a signal that the ties which bind the participants are disintegrating. Rights tend to be the posited safeguards for individuals understood in atomistic terms.

In the same chapter, Rousseau also comments on the institution of slavery:

'Nothing can be more certain than that every man born in slavery is born for slavery. Slaves lose everything in their chains, even the desire of escaping from them: they love their servitude, as the comrades of Ulysses loved their brutish condition.' (3)
The significance of these examples is that each draws on the social nature of man as he is viewed in specific contexts (i.e., the family and the state of slavery). The attitudes ascribed to men in each case, whether it be independence and a love of freedom which is engendered by the family, or the opposite which a state of slavery encourages, are the outcome of the specific nature of the particular context. Such examples and the points they illustrate are, strictly, irrelevant to a theory of contract association which needs only to be concerned with working out the form of the contract to be entered into, i.e., agreement on the rights to be retained and surrendered to authority in exchange for the measure of security to be obtained. It is, in other words, predicated on the assumption that a mode of association needs to be brought into existence and that it can be worked out using rational considerations only.

Observations of the kind that the family may contain within it the conditions which foster autonomy, and the institution of slavery the conditions which sap the desire for freedom have no place in a model which is theorem-like in its structure. In fact, any other existing mode of association is likely to conflict with the imperatives created by an association based on a recognition of rights.

It is clear that Rousseau is fully alive to the effects on the consciousness of the individual of the institutions which exist at any given time. Indeed, later in 'The Social Contract', his extended comments
on the constitution and law of ancient Rome give
evidence both of his sense of historical precedent
and his awareness of the importance for the individual's
attitudes and beliefs of the current social and political
climate of opinion and framework of accepted beliefs
which pertain at given periods of history. Thus,
although Rousseau's model is framed within the terminology
of classical contract theory and it retains the essentially
normative character of such theory, nevertheless it is
shot through with an awareness of man's social nature
and the extent to which the individual is shaped by the
institutions within which he lives and the historical
conditions which obtain. To that extent it can reasonably
be claimed that his philosophy is open to interpretation
in terms which are not entirely dissimilar to those which
characterise the relationship between man and state
adopted in this work, particularly insofar as the conditions
which underlie the terms of the association present in
'The Social Contract' are similar to the moral and, to
a certain extent, sociological considerations dwelt on
here.

It is the case that Rousseau is at one and the
same time both rich in his political thought and ambiguous
in its expression. As such, he remains in constant need
of interpretation. That being the case, while there is
no intention to force an interpretation of 'The Social
Contract' into, say, an Hegelian mould, it is legitimate
to interpret specific aspects, where they will bear the
burden of such interpretation, in a manner which emphasises
their congruence with the present thesis.
3. The foregoing observations find their full significance when the matter of Rousseau's notion of the 'general will' is approached, as this is the concept which touches most centrally on the problem of political authority of present concern. However, the problem itself needs to be stated carefully and this requires a restatement of the conclusions and assumptions within which it is embedded.

It is argued that in social and political terms, 'freedom' is to be understood as the state in which men live by laws for which they, and they alone, are responsible in the sense that they have endorsed them. In a society or state embodying this principle it will follow that the legitimising source of all law must reside within the political community. Ideally, the population of such a community and that of the state will be one and the same. To suggest that the political community is the source of legitimacy is to imply that sovereignty and, hence, ultimate authority resides within the body politic. As a matter of practical necessity, in order to impose a period on the time allowed for discussion and amendment, all laws must have been the subject of legislation by agreed procedures (whatever they may be) by which the body politic gives the imprimatur of legitimacy to the law(s) in question. It is the validity of the legitimising process which imparts to law its de jure authority - de facto recognition is another matter.
As law engendered in this way is the proof whereby a political community can be said to have existence, it would appear that the individual who is a member of such a community is thereby bound to accept and obey all laws which have been subject to the legitimating process. If the individual were not obligated in this way, it is difficult to see any substantive force that law could have in ordering the affairs of the state, and the political community would be liable to dissolution into anarchy or some other, probably authoritarian, form of government. In other words, it is a necessary condition for the continued existence of a political community that the individual recognise that his interests are best served by upholding the law. To say this much is not to imply that the individual has entered into a contract which obligates him in legal or quasi-legal terms, but is, rather to suggest that the continued existence of a political community demands a sophisticated sense of civic responsibility if the continued existence of such a community is desired. A political community represents a way of life—a way of life, it has been argued, which offers the greatest opportunities for the realisation of freedom in personal terms as compared with other possible forms of social and political organisation. This being the case, the maintenance of the conditions for the realisation of freedom demands the continued existence of the political community. To that extent, the individual must be prepared to acknowledge the importance
of law as it embodies, in some sense, the will of the community as a whole as against the realisation of personal interests where they conflict with the law. At the very least, the individual must understand and recognise the significance of law for social life generally, and must be prepared to accommodate his judgments to include its demands.

4. It is tempting to conclude, in fact, that where a political community exists as being the social organisation best suited to the realisation of freedom, the law is paramount and that the individual is under a permanent obligation to accept the supremacy of the law if he wishes the way of life in the political community to endure. Such a conclusion would be both consonant with J.A.L. Austin's positivistic view that the law is the command of the sovereign, the sovereign in this case being the political community, and with the more authoritarian interpretation of Hegel which stresses the supremacy of the state and reduces individual freedom to the 'freedom' to obey the state. However, before examining the implications of such a conclusion and its preceding rationale, there are two justificatory points to be made on the case as it stands. In the first place, it has been argued in the previous chapter that public discussion is essential to the decision-making process within a political community. There must not only be freedom of speech but the health of the body politic depends on advantage being taken of such a freedom to explore publicly the issues which are relevant to
whatever legislation or action is proposed. To that extent, law which finally emerges with statutory force is the result of a participatory process and is not an imposed and arbitrary decree as far as any individual citizen is concerned. The individual would have the opportunity to put his point of view; indeed, as a citizen, he will have an obligation to voice his objections or reservations. As such, he will have been a participant in the legislative process even though the result may not be to the satisfaction of any one person.

Secondly, although the conclusion reached would appear merely to reinforce the objection to the paradox by which the individual is required to sacrifice real freedom of action in order that freedom in some general and ill-defined sense be obtained, such an objection is too coarse-grained stated in these terms. It is possible to conceive of individual freedom in terms of complete freedom of action, but such freedom can only be bought at the price of sacrificing justice and must, by its nature, be fragile and limited to the few. A tyrant or dictator may be free in these terms, but such a concept of freedom has little to do with the problem of the freedom of the individual in society. Given that the present concern is with freedom in society or the state and given the imperfections of men, it will be the case that freedom and constraint necessarily go hand-in-hand. The enquiry into anarchism has demonstrated the contradictions implicit in the notion of a society which is not regulated by rules which
are themselves constraining mechanisms. What is of importance is not the fact that there are rules, but their character, source and means of legitimation.

5. That said, the conclusion suggested in the first paragraph of the preceding section is too extreme in that it does not allow for the reality of principled objection to, and rejection of law, and the case on which it is based is ambiguous in important respects. It is this latter consideration which will be examined first. In particular, what has been referred to as the 'legitimating process' inherent in the establishment of law is far from clear. At the heart of the notion of legitimation in this context is the assumption that law which is engendered by the political community embodies within it the will of the community and it is this which imparts to it its legitimacy and its authority. It is, of course, precisely this notion which Rousseau developed in his concept of the 'general will', and it is this which must now be considered.*

* The danger which is present, particularly in a representative democracy, of oppressive power being wielded by the government in the name of the general will is discussed by Bertrand de Jouvenal in *On Power*, Beacon Press, Boston, 1962, pp. 254-279.
The difficulty inherent in discerning in a corporate body such as the state an identifiable entity conceived of in terms which indicate that it is to be thought of as being more than the sum of the individual parts which make the whole has already been faced in connection with the exploration of the Hegelian notions of Sittlichkeit and volksgeist. Where legislation is concerned, the difficulty is compounded as there are no empirical data, such as identifiable national characteristics, which are relevant to the notion of 'will' in this context.

Rousseau is quite specific in differentiating the general will from the will of all:

'There is often a great deal of difference between the will of all and the general will; the latter considers only the common interest, while the former takes private interest into account, and is no more than the sum of particular wills: but take away from these same wills the pluses and minuses that cancel one another, and the general will remains the sum of the difference.' (4)

Furthermore, even though he seems to suggest that the general will is exercised through assemblies of the whole people, nonetheless the actions of such an assembly are of themselves no guarantee that they will result in an expression of the general will:

'...the general will is always upright and always tends to the public advantage; but it does not follow that the deliberations of the people always have the same rectitude. Our will is always for our own good, but we do not always see what that is; the people is never corrupted but it is often deceived, and on such occasions only does it seem to will what is bad.' (5)
It follows that if it is possible for the political assembly as a whole to be mistaken in its perception of the general will, it will also be possible for the majority to be mistaken where there is a difference of opinion, or, conversely, for the minority or even the lone individual to be the agency through which the general will finds expression. It is significant in this respect that Rousseau accords a degree of respect amounting to reverence to the man who fulfils the role of legislator. Although the legislator lacks the authority of sovereignty, it is clear that he has to have penetrating and disinterested insight into, and understanding of, those laws or constitutions which are in the best interests of the society he serves. In other words, although Rousseau does not explicitly attribute this to him, it would appear that he is a major source for the expression of the general will:

"In order to discover the rules of society best suited to nations, a superior intelligence beholding all the passions of men without experiencing any of them would be needed. This intelligence would have to be wholly unrelated to our nature, while knowing it through and through; its happiness would have to be independent of us, and yet ready to occupy itself with ours; and lastly, it would have, in the march of time, to look forward to a distant glory, and, working in one century, to be able to enjoy the next. It would take gods to give men laws." (6)
It is the specific role of the legislator to draft law, but in the absence of such an exceptional individual there is no reason to suppose that any member of the body politic may, on occasion, even unknowingly, give expression to that which is in the best interests of the community as a whole and, as such, be voicing the general will. This gives rise to two difficulties: (a) how is the general will to be differentiated from that which is merely an expression of individual wills, and (b) what is the relative status, in terms of legitimacy, of that which is an expression of the general will as opposed to that which is not but which may, in fact, be law?

6. The importance of the first question is paramount because the expression of the general will is binding upon the individual in absolute terms:

'...whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than that he will be forced to be free; for this is the condition which, by giving each citizen to his country, secures him against all personal dependence. In this lies the key to the workings of the political machine; this alone legitimises civil undertakings, which, without it, would be absurd, tyrannical and liable to the most frightful abuses.' (7)

In this passage, Rousseau emphasised that the state is justified in using force to coerce the individual who flouts the expression of the general will; the clear implication is that the individual has an absolute obligation to obey that law within which the general will is embodied. It can only be in conditions which
cloud the individual's judgment of where his duty lies that he could be led to disobey; in particular, the pursuit of private interest may lead the individual to attempt to put aside his public duty. The use of coercion can then be understood as the assertion of the authority of the Sovereign, an authority which is necessary if the rule of law and, hence, the cohesion of the social unit, viz., the political community, is to be maintained. In that sense, the notion of being 'forced to be free' becomes intelligible as the imposition of such constraints on the freedom of the individual are necessary to maintain the conditions within which a free or political society can continue to exist.*

* The implication of interpreting the notion of being 'forced to be free' in these terms is that the use of coercion is not just an expedient or unfortunate but necessary evil as suggested by Utilitarian political philosophy; rather, coercion is logically entailed by the overriding claims for the preservation of freedom and justice. So understood, Rousseau's philosophy is entirely consistent with Kant's:

'...if a certain use to which freedom is put is itself a hindrance to freedom in accordance with universal laws (i.e., if it is contrary to right), any coercion which is used against it will be a hindrance to a hindrance of freedom, and will thus be consonant with freedom in accordance with universal laws - that is, it will be right. It thus follows by the law of contradiction that right entails the authority to apply coercion to anyone who infringes it.' Kant, I., 'The Metaphysics of Morals' in Kant's Political Writings, (ed. Reiss, H.), C.U.P., 1970 p. 134.
The appropriate analogy here is with the Kantian concept of the autonomous man who is 'free' when he acts in accordance with the moral law, but who ceases to be autonomous when his desires or other considerations deflect his will from acting in accordance with the moral imperative. For Kant, it is crucial that the individual can choose and that autonomy is gained in an act of will which is the personal concern of the individual alone, but then the context is one of private, individualistic morality. Rousseau, on the other hand, is dealing with social relations, and, in particular, the conditions which are required to uphold a specific, if ideal, set of social relationships, namely, the political state of affairs which has to pertain if freedom in a social sense is to be secured. In such conditions, obedience to the law is a matter of public concern because if it is undermined the whole society will be at risk.

7. But how is a genuine expression of the general will to be recognised? To answer this question it is necessary to examine more closely the vehicle through which it is known, that is, the law. That the law is to be identified, in Rousseau's theory, with the general will is unambiguous:

'The sovereign, having no force other than the legislative power, acts only by means of the laws; and the laws being solely the authentic act of the general will, the Sovereign cannot act save when the people is assembled.' (8)
The concluding remark in the above quotation again underlines Rousseau's conception of society understood in terms of relationships arising from actual association within an assembly of the whole community. But when he considers the characteristics of law, other considerations surface:

'But when the whole people decrees for the whole people, it is considering only itself; and if a relation is then formed, it is between two aspects of the entire object, without there being any division of the whole. In that case the matter about which the decree is made is, like the decreeing will, general. This act is what I call law.' (9)

The reasoning here gives rise to the conclusion that the defining characteristic of law is its generality or universality; that is, that law is only law if and when (a) it is engendered by the whole of the sovereign populace, and (b) the rule which so emanates is universal in its application to that populace. To put it in Rousseau's language 'the law unites universality of will with universality of object' (10). That which does not so originate or that which does not have this general scope is not law but is 'a decree, an act, not of sovereignty, but of magistracy' (11). Once more the distinction surfaces which runs throughout 'The Social Contract', viz., the clear differentiation between the spheres of private or particular wills and those which
are the province of civil affairs - the public and the general will.*

It has already been noted in section 3 that it is the legislative procedure, in this case the sovereign assembly, which imparts to law its de jure legitimacy. It is the second defining characteristics, the universality of jurisdiction which goes some way towards establishing the criteria necessary for the differentiation of the general from the particular will. The matter may be viewed in the following way. If the raison d'être of a political community is the formulation and legitimation of the rules by which its members live, it follows that such rules must be framed in accordance with principles which may be held to govern right conduct. Right conduct here, of course, does not carry with it the implication of moral worth understood in individualistic terms, but right in accordance with that necessity which is the logical outcome of the rationale underpinning the existence of the political community itself. In other words, as has been posited earlier, the basis on which a

* Although the notion of magistracy in Rousseau's terms is clear, it also implies a further differentiation within the body politic. Executive functions concerned with the implementation of law and the management of the state will also be acts of magistracy unless or until such acts are shown to be valid expressions of the general will. The implication is that the exercise of authority within the state will be subject to the limitation that authoritative decisions must be shown to be consistent with the law in that they authentically express the general will. In a political community, the final validation would be through the vigilance and critical capacities of the citizens.
political community rests is the desire for freedom, in particular, the freedom of men to live according to rules or laws for which they and they alone are responsible. If freedom is the basis for the state, that principle which most adequately expresses both the underlying ideal and the form within which it should be translated into law is Kant's formulation of the universal principle of right:

'Every action which by itself or by its maxim enables the freedom of each individual's will to co-exist with the freedom of everyone else in accordance with a universal law is right.'(12)

The principle is formal insofar as it encapsulates the criterion of civil right against which all external actions (not wills) must be consistent; it is also formal in that it is not only rationally derived from the considerations which are necessary for the preservation of freedom, but from its universal quality which is a necessary feature of its status as a fundamental principle. It follows that in a political community which must place value on equality of consideration and respect for reason in the framing of law, such a principle will inform the legislative process. Law which is partial or which discriminates against members or sections of the community without sufficient reason will offend against the criterion in respect of both universality of application and the just enjoyment of freedom.
What is significant in Rousseau's thinking is that his defining characteristic in respect of the generality of law is entirely consistent with the Kantian requirement for universality as expressed in the principle of right, but that, for Rousseau, the requirement for universality is derived not from an a priori consideration of the logic of law and freedom, but from a consideration of the social processes which result in the formulation of law. Rousseau's criterion of universality derives from the constant political need in the framing of law to disregard sectional or individual interests and to consider only those of the whole community — it can only be in these conditions that the general will can be expressed. So it is that the universality of law is the logical conclusion of a process in which the community is conceived of as a corporate body which is the author, in the strict sense of being the originator, of its own laws. It also follows that as the 'laws are, properly speaking, only the conditions of civil association' (l3) the expression of that association in the language of politics will also be characterised by rationality and universality, even though these may be perverted on occasion to suit the wills of sectional or individual interests.

What is more, even though the requirement, which Rousseau insists upon, for a legislator will be criticised, it is clear in the conception of this superior being that the qualities which are desired are those of rationality, impartiality and an incisive understanding
of the requirements of both law and community. That being so, it is legitimate to conclude that above all the general will is an expression of rational will. Law which is consistent with the demands of freedom and rationality will, therefore, be judged to be a true expression of the general will; on the other hand, law which is tainted with the contingencies of the partial or the arbitrary may be judged to be no more than an expression of individual wills in which faulty judgment or sectional interest is displayed.

It is in these terms, it can be concluded, that the notion of the general will is to be understood and it is in these terms that the criterion emerges whereby expression of the general will as opposed to the particular will may be distinguished. But what is of particular importance for the model of an ideal political community presented here is that there need be no disjunction between the social process by which law is formulated and the formal criterion by which the validity of the law, qua law, is to be judged in a free society. It is this criterion which is the lynch pin, because although Rousseau presents a model of a specific society in that it must be relatively small in order to meet in general assembly, once the criterion is established whereby the general and particular wills may be differentiated, the mode of association can be left open in terms of its specific organisation and procedures; what must remain constant in the mode of association is a wholehearted attachment to the supremacy of freedom and rationality
as the values which should permeate all stages in whatever social processes are devised for the formulation and legitimation of law.

8. So far, the discussion has proceeded on the assumption that all rules which are legitimated by the body politic and which are compatible with the criteria of freedom and rationality are law, and that the business of the political community is limited to the creation of law in these terms. However, the sovereign body, and, even more likely, the executive arm of the sovereign body, government, will promulgate rules whose scope is not general and which may be directed towards particular groups or even particular persons in society. Rousseau admits both the existence and validity of such measures:

'*even what the Sovereign commands with regard to a particular matter is no nearer being law, but is a decree, an act, not a sovereignty, but of magistracy.*' (14)

In other words, a distinction may be drawn between what may be called the rules which govern right conduct, which are universal in scope and which are informed by the principle of universal right, and those rules which are limited in scope and whose necessity is dictated by the need to achieve specific ends. In a paper devoted to the analysis of the categories of social rules, Professor F.A. Hayek explicates this distinction and offers a terminology to accommodate it:

'By nomos we shall describe a universal rule of just conduct applying to an unknown of future instances and equally to all persons in the objective circumstances described by
the rule, irrespective of the effects which observance of the rule will produce in a particular situation. Such rules demarcate protected individual domains by enabling each person or organised group to know which means they may employ in the pursuit of their purposes, and thus to prevent conflict between the actions of the different persons. Such rules are generally described as 'abstract' and are independent of individual ends. They lead to the formation of an equally abstract and end-independent spontaneous order or cosmos.

In contrast, we shall use thesis to mean any rule which is applicable only to particular people or in the service of the ends of rulers. Though such rules may still be general to various degrees and refer to a multiplicity of particular instances, they will shade imperceptibly from rules in the usual sense to particular commands. They are the necessary instrument of running an organisation or taxis.'(15)

The distinction involved invites comparison with Michael Oakeshott's notions of enterprise and civil associations (already examined in chapter 2). As has been noted, a political community does not exist for a specific purpose other than the realisation of freedom; to that extent it is end-independent and the rules which emanate from it will govern conduct as and when the circumstances in which the conduct is enacted and the rule applies are held to be relevant. The rules of a political community or a civil association will preserve this character, termed 'nomos' by Hayek. Enterprise association, on the other hand, is end-directed and the rules engendered
will be directed towards the achievement of that end; the rules will be managerial in character and, as such, will be consistent with the rules termed 'thesis' by Hayek.

That a political society can change its function from being a civil association concerned with nomes to an essentially managerial society concerned to achieve specific ends would appear to present no fundamental difficulty. Rousseau suggests that in his model of a relatively small assembly such a change in the mode of association is simply to be achieved by an act of will:

'...merely by virtue of a new relation of all to all, the citizens become magistrates and pass from general to particular acts, from legislation to the execution of the law.

This changed relation is no speculative subtlety without instances in practice: it happens every day in the English Parliament, where, on certain occasions, the Lower House resolves itself into Grand Committee, for the better discussion of affairs, and thus, from being at one moment a sovereign court, becomes at the next a mere commission.' (16)

It is more probable that, typically, the so-called acts of magistracy will be delegated to the executive, i.e., the government of the state.

What is of crucial importance, however, is the relationship between the two rule categories. In the model of a political community developed here, there can be no doubt that the sovereignty of the political
community should be paramount in that the executive should be accountable for its acts of magistracy to the sovereign body. It follows that rules (thesis) engendered by the executive should neither take precedence over nor conflict with law (nomos) which is an expression of the general will. A demonstration of what may be termed the supremacy of sovereignty over magistracy is exemplified in way in which the Prevention of Terrorism Act has to be renewed at stated intervals precisely because it abridges civil liberties and gives extra powers to the security forces. There can be no greater internal danger, short of outright subversion, than that the political community should mistake its function in favour of exercising an exclusively managerial role or that it should allow executive acts and rules to over-ride the principles inherent in law, especially, to use Rousseau’s terminology, where such law is an expression of the general will.

Summary

The discussion in this chapter has centred on two topics: (a) the legitimising of law through the legislative process, and (b) the conditions necessary for the characterisation of law as the guide to right conduct in a free society. In order to explore these areas, Rousseau’s theory of the state as presented in ‘The Social Contract’ has been examined with particular relevance to its capacity to illuminate and develop the ideal model presented here. Rousseau’s theory has
been shown to be based on the assumption of corporate association, not contract theory. Also it has been demonstrated that the qualities inherent in law, understood as an expression of the 'general will', are consistent with Kant's universal principle of right, especially with regard to universality and rationality. On this basis it has been argued that the de jure legitimation of law within the ideal model does not need to be based on the existence of a relatively small political community as is assumed by Rousseau, but that public agreement on the procedures by which law is formulated is sufficient. Also, the universal principle of right offers a criterion by which legitimacy of law may be judged — legitimacy as judged by its consistency with its function as a guide to right conduct as opposed to furthering sectional or individual interest. The distinction between the notion of law as the guide to right conduct and rules or decrees which are necessary to bring about specific ends has been discussed with an insistence on the supremacy of the former.
References


(2) ibid. p. 175

(3) ibid. p. 167

(4) ibid. p. 185

(5) ibid. pp. 184-5

(6) ibid. p. 194

(7) ibid. p. 177

(8) ibid. p. 236

(9) ibid. p. 192

(10) ibid. p. 192

(11) ibid. p. 192


(13) op. cit. p. 193

(14) ibid. p. 192


(16) op. cit. p. 244.
Chapter 11

Universality and Right

1. The examination of the factors contributing to the legitimacy of law in a political community has, so far, been focused on two elements, viz., the extent to which legitimacy depends on agreement concerning the processes through which law is formulated and ratified, and the formal characteristics which must inhere within the law for it to be judged consistent with the demands of freedom implicit in the notion of a political community. Stress has been placed on the role of procedures or the modes of association in the realisation of de jure legitimacy, while the formal criteria for judging the consistency of law with the demands for freedom begin to offer the means by which limitations can be placed on the scope of law even though it may, in other respects, be considered legitimate. As they stand, these conclusions are insufficient in themselves either to offer a complete account of the legitimation of authority within a political community or to offer a substantive rationale on which the grounds obligating the individual to accept and obey the law can be challenged.

It is the latter consideration which will be examined first. In particular, the adequacy of universality as a criterion by which to judge the adequacy of law in terms of civil right or justice must be subjected to scrutiny. To this end, the respective notions of, and implications arising from, universality
as it is employed by Rousseau and Kant will be examined, and, in the light of this examination, an interpretation of universality will be offered which is consistent with the requirements of the ideal model.

2. It is helpful, initially, to return to that aspect of Rousseau's theory in which the legitimacy of law is to be understood as arising from an agreed procedure or mode of association. In Rousseau's terms, law should be the embodiment of the general will; if it is less than this it is merely the expression of particular wills. The problem is how the one is to be differentiated from the other. In the previous chapter, the argument was developed that Kant's universal principle of right appeared consistent with the characteristics of law in terms of both generality of inception and generality of application, and on this basis the principle could function as the means by which the one could be differentiated from the other. Rousseau, however, does not attempt directly to develop the criterion of universality as a means of distinguishing the embodiment of the general from the particular will; instead, he has recourse to the notion of the legislator as the man with the qualities necessary to frame law which faithfully reflects the general will. Such a person has the god-like qualities of supreme disinterestedness, and the ability to discern that which is truly in the public interest and to translate it into law:
In order to discover the rules of society best suited to nations, a superior intelligence beholding all the passions of men without experiencing any of them would be needed. This intelligence would have to be wholly unrelated to our nature, while knowing it through and through; its happiness would have to be independent of us, and yet ready to occupy itself with ours; and lastly, it would have, in the march of time, to look forward to a distant glory, and working in one century, to be able to enjoy the next. It would take gods to give men laws. (1)

It is a conception which invites comparison with Plato's guardians in terms of the intellectual and moral qualities required; but while Plato's Republic is founded in a metaphysic and an epistemology which enables him to conceive of the emergence and education of such superior beings in terms of the internal consistency of his model, for Rousseau, the appearance of the legislator is apparently left to the vagaries of chance. That great lawmakers have appeared from time to time in history gives substance to the ideal of such intellectual qualities and civic virtues being encompassed by one man, but that such a being should be required in a political community in which ultimate responsibility for the law resides within the community is profoundly unsatisfactory. The need for a legislator in a society unused to political discourse would be entirely understandable, but the vernacular language of politics contains within it the
characteristics which are consistent with the framing and application of law, viz., the assumptions of universality in its scope and equality in its application. In other words, it should be within the competence of a political community to frame its own laws as well as ratify them.

Of greater significance are the implications for a political community should such a legislator be lacking. If the community itself cannot differentiate between law which is an expression of the general will and that which is not, it follows that the continued existence of the political community as the embodiment of the values of justice and freedom must be in a state of continual jeopardy. Should, for example, the state of affairs come about in which the political community conceives of itself in managerial terms then the laws which result will be narrowly end-related and bear the character of decrees (thesis). Or if the pursuit of sectional interest becomes uppermost, once more the law, and with it the community, will degenerate — the former into unjust decrees, the latter into a mere collection of competing interests. It is at least arguable that in contemporary politics the problem is mirrored in situations such as that in South Africa where the minority effectively legislate in their own interests and against those of the majority. Such a situation could be interpreted as being a case in which the general will has been subordinated to the pursuit
of sectional interest with the result that the state is diminished as a political community. It is in these terms that the need for a legislator is to be understood, and in these terms it can be seen that such a solution is profoundly unsatisfactory.

Such a criticism of the role of the legislator is to accept the description offered by Rousseau in literal terms, that is, to accept that the notion of a legislator is offered by Rousseau as a practical solution to the problem of ensuring that the laws of his political community will be just laws and accurate reflections of the general will. Later, in this chapter, a different interpretation will be suggested which avoids these difficulties and which illuminates the ideal model developed here.

3. Even though it is possible to maintain that it should be within the capacities of a political community to frame its own laws, the problem of distinguishing that which is consistent with the principles of freedom and rationality remains because Rousseau's insistence on the fallibility of men is valid. At this point the suggested solution, that is, the application of the universal principle of right, must be considered.

It has already been noted that the Kantian principle of right is consistent with the criterion of universality employed by Rousseau. However, Kant's universality apparently goes beyond Rousseau's concept in certain important respects. Universality in the Rousseauian sense is to do with the generality of
application; that is, the difference between a law and a decree is that the former must apply, either actually or potentially, to everyone within the society and the latter singles out, in terms of application, a particular person or group. By this criterion, a law is to be recognised as a law and not a decree if its scope is implicitly universal:

'* as the law unites universality of will with universality of object, what a man, whoever he be, commands of his own motion cannot be a law; and even what the Sovereign commands with regard to a particular matter is no nearer being a law, but is a decree, an act, not of sovereignty, but of magistracy.*'(2)

'Universality of object* is exemplified in the case of a law protecting certain forms of wild life as it applies to all and defines conduct which is permissable in that area of life. An example of this kind, together with examples like the laws defining acts of murder, rape, theft and so on, illustrate the strongest form of universality of application. At the opposite extreme, the naming of a specific person or group as being subject to specific constraints for some particular reason bears the character of a command and not of law.

Between these extremes there will be an imperceptible shading of the degrees of universality a law may disclose before it sheds completely the character of being law. This shading is mainly the consequence of the creation of categories of persons who are specifically subject to the provisions of the law. Rousseau notes this
attribute of law in the following terms:

'...law considers subjects en masse and actions in the abstract, and never a particular person or action. Thus the law may indeed decree that there shall be privileges, but cannot confer them on anybody by name. It may set up several classes of citizens, and even lay down the qualifications for membership of these classes, but it cannot nominate such and such persons as belonging to them; it may establish a monarchical government and hereditary succession but it cannot choose a king, or nominate a royal family.' (3)

Thus the law is not necessarily weakened in its status qua law by its necessity to create classes or categories of persons. However, though Rousseau does not consider this, the process of category-creation may be, in turn, characterised as being more open-ended or more closed-ended depending on the nature of the case. A law making the wearing of seat belts compulsory for all drivers of cars and their passengers is open-ended as this is a category within which all the members of a community may find themselves included at some time or other. As such, it remains a strong case of universality of application in the sense that the universality applies not only to the class of drivers and passengers, per se, but also, implicitly, to the whole community insofar as all are eligible for inclusion in this class. On the other hand, a law introducing conscription for all eighteen year old men is weaker in terms of universality because although it applies to the whole category of eighteen year old men, its implicit scope of application is limited to a finite
section of the population, viz., those who are male and eighteen or under - all others must necessarily be excluded on the grounds of sex and/or age. The status of such a law, in terms of its consistency with the criteria of freedom and justice, will be ambiguous as the criterion of application has ceased to be even implicitly universal and for this reason it requires a special justification. It would appear that the more criteria are introduced which create categories standing in need of a special or ad hoc justification, the more suspect will be the status of the law as defined by the criterion of universality. Laws which define legal or illegal conduct in the most general terms will be more secure in their status than those which create specific categories of persons, particularly categories which are exclusive in their membership by virtue of some qualifying criteria.

4. Although there is nothing inconsistent between Rousseau's concept of universality and Kant's formulation of the universal principle of right, the respective notions of universality employed by each apparently differ in important respects. This is particularly the case if the assumption is made that each is concerned with developing a model which is self-consistent and does not stand in need of support or addition from other sources. In the first place, Rousseau's conception of universality derives from the conditions implicit in the mode of association outlined in 'The Social Contract',
that is, the requirement for universality is necessitated by the participation of free and equal individuals as associates in framing the laws which will regulate the functioning of their community. Kant, on the other hand, begins from a more strictly individualistic standpoint in the sense that all men, as rational individuals, are bound by the demands of pure reason. So universality, for Kant, derives not from a mode of association, but transcendentally from that which is the defining characteristic of all men, namely, reason. Moreover, man's freedom resides entirely in his capacity to free himself from the limitations of his empirical or corporeal condition by apprehending that reality disclosed by pure thought. To put the matter in more explicitly Kantian terms, it is through the insights of reason that the merely phenomenal can be pierced and knowledge of the noumenal gained.

That the universal principle of right is the product of pure thought and is an a priori principle is not in doubt:

'What is right? The jurist, if he does not wish to lapse into tautology or to base his answer on the laws of a particular country at a particular time instead of offering a comprehensive solution, may well be just as perplexed on being asked this as the logician is by the notorious question: 'What is truth?' He will certainly be able to tell us what is legally right within a given context, i.e., what the laws say or have said in a particular place and at a particular time; but whether their provisions
are also in keeping with right, and whether they constitute a universal criterion by which we may recognise in general what is right and what is unjust are questions whose answers will remain concealed from him unless he abandons such empirical principles for a time and looks for the sources of these judgments in the realm of pure reason.\footnote{4}

The problem lies in the extent to which the principle is capable of fulfilling its function as the criterion of just law. To begin with, it must be noted that in stating 'let your external actions be such that the free application of your will can co-exist with the freedom of everyone in accordance with universal law'\footnote{5} Kant places freedom at the heart of the principle and to that extent it is fair to claim that for Kant, the law is the means by which the autonomy of the individual is to be preserved and enhanced. But in contrast with the freedom of the good will which knows that which is in accordance with the moral law as delineated in the 'Groundwork of the Metaphysic of Morals', the freedom with which he is concerned in his theory of law is not the freedom of the will but with the freedom to act.

While it is possible within the purely moral philosophy to erect a convincing theory of moral duty in terms of what Kant calls 'pure knowledge'\footnote{6}, as he is there concerned mainly with explicating the nature of the individual's apprehension of his duty in terms of ratiocination, such a course is not open to him in connection with the political philosophy as freedom of action requires
a public arena within which to find expression — it demands a social context. In particular, if freedom of action is to be safeguarded, it must be known what actions are to be subject to the constraints of law and which are not. In other words, insofar as it is public conduct which is the subject of concern, then what counts as freedom is not a matter to be settled a priori, but it will depend on the specific freedoms which are valued and which may be embodied in the traditions of a given society. Even with so basic an example as the outlawing of theft, the right of the individual to enjoy his possessions is dependent on the mores of the society in question — tribal societies are known of which hold all possessions in common and so would have no concept of theft as it is usually understood. Furthermore, even if it is allowed that acts of violence against the person are not subject to cultural considerations (and this is by no means self-evident), it is the case that empirical knowledge of what constitutes an act of, say, murder is necessary for it to be the subject of legislation and, hence, subject to the criterion of the principle of right. If the principle is not to remain inert but is to prove capable of application is must necessarily take into account the empirical world.

5. It is the manner of its application to actual or proposed laws that the problem of the relationship between the a priori and the contingent world becomes critical. If it is granted, as has been argued, that
the embodiment of the principle through a recognition of actual freedoms is the case, then it must be shown how such an embodiment is achieved. If the example of theft is taken, it is clear that a prior assumption must be made that value is placed on the freedom of the individual to enjoy possessions which are rightfully his. It follows that a rule inhibiting the freedom of others to remove, arbitrarily, the individual's goods will be necessary for the preservation of the valued freedom.

As a transcendental principle, the implication is that the method of application must be essentially similar to that of the categorical imperative where moral law is concerned. That is, that by speculatively reflecting on a world in which the proposed maxim or, in this case, law has universal force, any element of self-contradiction in the law will be exposed immediately. The simplest demonstration is to take a contrary example. Suppose it is intended to pass a law legitimating the arbitrary taking of life - making murder legal. While it could be argued that such a course would be to increase the permissible freedom of action of all to kill others, the effect of universalising such a rule would be to make life for everyone insecure, and certainly to remove the possibility of free actions on the part of those who would be victims of such an ensuing state of affairs. In such a case, the injunction to act externally so that the exercise of free choice could harmonize with the
freedom of everyone else according to universal law would be contravened. It also follows that the contradictory of the postulated law would be consistent with the principle, that is, that a law aimed as securing the right of the individual to live free from the fear of arbitrary violence will accord with the spirit of the qualifying principle and can be universalised without inconsistency.

That the test of universalisation has recourse to empirical considerations is significant, emphasising once again the need for the principle to find embodiment, and hence interpretation, within a social context. Further, although the principle does not carry any necessary implication of furthering human happiness and is not utilitarian in that fundamental sense, it cannot escape the consequentialist aspect of the utilitarian case in that the social effects of legislation on specific matters has to be taken into account in that it has to be seen whether the legislation, in fact, brings about the desired extension of freedom.

While the test of universalisation can be shown to be capable of application as a criterion of justice in fairly straightforward cases of maxims aimed at protecting the individual from arbitrary violence, greater difficulty is experienced where legislation is proposed in other areas of life. To take an example used earlier, it would appear that legislation protecting certain species of wildlife would have the effect of limiting the freedom of action on the part of
some without any very obvious gain in freedom elsewhere unless the rather tenuous case is accepted that the freedom of all to enjoy the protected species will be enhanced. However, such an argument is unconvincing as the case in favour of protection is not essentially to do with freedom at all but is to do with the value placed on preserving certain species from extinction. The implication is that although it may be accepted that freedom can be held to be the primary value in a political community, it is possible, on occasion, for it to be subordinated to the requirements of other values in specific cases. To say this much is not to suggest that freedom is lost sight of, merely that in appropriate circumstances other values important in the life of the community have also to find expression.

Of a different order of difficulty is legislation in the field of industrial relations. Laws either legitimating the right to strike or outlawing such action present difficulties in the application of the Kantian criterion. The reason is that in terms of freedom of action, strike action extends and inhibits freedom at one and the same time. The freedom of the strikers is enhanced whereas the freedom of those affected by the strike will be restricted. In fact, legislation affecting either the rights of what may be called the 'no-rights' of groups as opposed to individuals is likely to be influenced strongly by the contingent context within which the legislation is proposed.
Considerations other than those to do with freedom will predominate. But even if it is granted that politics is fundamentally to do with individuals and their desire for freedom, arguments deploying freedom in these terms will be used both for and against the case, whichever form the legislation takes.

On the basis of such examples, and it is not difficult to multiply such difficult cases, it would appear that the universal principle of right is ineffective as a criterion of justice if its status as a principle of pure reason is to be safeguarded. Even cases involving personal violence are not immune from the necessity to have empirical data taken into account and this alone detracts from the a priori force of the principle. In fact, understood in these terms, it would appear that the Kantian approach to the problem of establishing the justice of law is particularly open to the Hegelian charge of vacuity. It must also be said that in *The Metaphysical Elements of Justice* Kant does not further his case by offering any substantial examples of the principle's application. This is a deficiency which has led one commentator (7) to deny that Kant has a theory of law at all. Indeed, Kant's reluctance to demonstrate the fully normative character of the principle of right as a criterion by which the validity of law may be judged in terms of its justice permits him to assert that 'it is the duty of the people to tolerate even what is apparently the most intolerable misuse of power' on the positivistic grounds that 'it is
impossible to conceive of their resistance to the supreme legislation as being anything other than unlawful and liable to nullify the entire legal constitution. (8) It is significant that both Rousseau and Kant, faced with the same problem of establishing unequivocally the distinction between just and unjust law in practical terms, offer apparently unsatisfactory solutions. Rousseau introduces the notion of the legislator, the objections to which have already been noted; and, Kant, by refusing to acknowledge the need for empirical content with its utilitarian implications, ultimately refuses to face the problem at all and has recourse to straightforward injunctions that the law must be obeyed at all costs. It is also significant that a philosophical approach which is based in an overt recognition of the social context, such as John Stuart Mill's, is not so fatally affected by this difficulty. Mill's principle of liberty (9) is more forthright in establishing the criterion by reference to which the individual liberty of men may be restricted. That said, the problem still remains of demonstrating that the universal principle of right fulfils an indispensable function within the legitimation of law in spite of its vulnerability to the charge of vacuity.

6. So far, the analyses of Rousseanian and Kantian approaches to the problem of justice have tended to emphasise the differences in their respective models. However, if the philosophies are interpreted
laying more stress on implicit considerations, not only
do the differences narrow but, as will be demonstrated,
each reinforces and illuminates the other in a way which
strengthens the tenability of each. Also it should be
borne in mind that the primary objective is to offer
interpretations which are consistent with, and buttress
the general model developed in this work. It is the
validity of the universal principle of right within
this context which is the end in view.

With this qualification, it is appropriate to
reconsider the role of the legislator in 'The Social
Contract'. It will be remembered that, ostensibly, the
legislator appeared to be introduced as a means of
over-coming the lacuna caused by the fallibility of
the body politic in expressing the general will and the
need to have the general will realised in law if the
continued existence of the political community is not
to be jeopardised. Understood in the historical and
incipiently sociological cast of much of Rousseau's
writing, it would appear that he is advocating the
legislator as a role which needs: to exist, rather like
a political institution, as a response to a practical
difficulty. But philosophically the notion of the
legislator can be understood not as a role but as a
personification of the qualities which may be held to
be necessary for the realisation of the general will.

In fact, the picture of the legislator which
emerges from Rousseau's description (10) is of an
intelligent, conceptually sophisticated, rational being.
He is disinterested in his concern for the well-being of the community, objective in his appraisals and impartial in his judgments. Finally, he is aware of the political needs of a free society, particularly the need not to serve sectional or individual ends, and is persuasive in eliciting acceptance of his recommendations. In essence, it is rationality cast in a practical mould, rationality made effective.

Kant, on the other hand, begins with rationality, particularly as it is defined by the criterion of universality. But it has been shown that universality, or more strictly, universalizability in a priori terms alone leads only to vacuity where the universal principle of right is concerned. If, however, the notion of universal law is interpreted as being that which is in accord with the demands of reason, then on this matter the convergence of Rousseau and Kant becomes apparent. To interpret the notion of 'universal law' in this way is, admittedly, to do some damage to Kant's conception of pure reason as the implication now admitted is that reason itself has to be situated in a content, and so the strict a priori character of Kant's use of 'universal law' is lost. However, even though the interpretation does not do justice to the extent of Kant's metaphysic, the universal principle of right becomes once more a practical principle capable of application within the framework of the ideal model. Similarly, in this context, the qualities evinced by Rousseau's legislator become the specific characteristics of rationality
needed for the realisation of justice or right in the laws of a political community.

There is a further aspect of their respective philosophies in which Kant and Rousseau complement each other. Central to the universal principle of right is the idea of freedom; indeed, the principle itself may be understood as a statement of the assumption that the freedom of the individual is the raison d'être of the law. But it must be remembered that the law is not concerned with the individual's sense of moral duty but with delimiting the extent to which the individual can rightfully exercise his freedom of action. The corollary of this is that the law not only constrains but it legalises and so creates the conditions within which freedom of action can be exercised as of right. Mary Gregor argues that the universal principle of right is to be understood as the defining principle through which the individual has 'the right to acquire rights in general' (11). Seen in this light, the principle implicitly recognises man in the context of social relationships in which individual actions impinge on the actual or proposed actions of others. It is to do with the outer freedom of individuals to pursue their own ends - not to determine these ends but to determine the framework of rules within which such personal ends may be pursued. Interpreted in these terms, the principle can be understood as underlining the essential rationale of men joined in a mode of association the purpose of which is to live by laws which are just, that is, laws
which protect and enhance the actual freedom of the individual. This, of course, is precisely the end which is sought within Rousseau's political society and which is recognised in the established mode of association within that society, and it is also, for that matter, the end in view of the model developed within this work.

Summary

The central problems examined in this chapter are the means by which law as, in Rousseau's terms, an expression of the general will may be differentiated from decrees which are the expression of individual wills; and the means by which law, in Kantian terms, embodying rightness or justice can be distinguished from law in which that quality is absent. In each case it is universality which is proposed as the criterion of right, but it is a notion of universality which differs significantly in each case. For Rousseau, universality is primarily universality of conception and of application. As a criterion it is shown to be capable of differentiating between extreme cases of law at its most general and of decrees at their most partial, but it is less effective in indicating the validity of laws which create categories of individuals, particularly where these categories are subject to exclusive qualifying criteria.

Kant's universal principle of right, on the other hand, has been shown to be open to the charge of vacuity. It has been demonstrated that the application of the principle necessarily requires interpretation in
empirical terms and, in particular, the insistence on freedom which is central to the principle, must be embodied in the specific freedoms which are valued in the social context of its application.

However, it has been further argued that relevant aspects of both Rousseau's and Kant's philosophies are open to interpretation which shows them to be complementary. It has been argued that Rousseau's notion of the legislator, criticised as a prospective role in society, is philosophically more productive if it is regarded as a personification of the qualities required for the realisation of just laws, qualities which are predominantly rational. Such a conception is congruent with Kant's stress on rationality, particularly if the notion of 'universal law' is understood in terms of practical reason rather than purely a priori reasoning. It has also been shown that the universal principle of right contains within it an implicit recognition of man in a social context in that the principle is concerned with the rightness of law, and law itself governs the outer freedom of men. To that extent, the principle implicitly recognises man in a mode of association with his fellows, a mode which is concerned with realising freedom and justice; and, to that extent, the central concern is congruent with mode of association developed by Rousseau in 'The Social Contract'.
References


(2) ibid. p. 192

(3) ibid. p. 192


(5) ibid. p. 133

(6) 'Pure knowledge is knowledge which is independent of all sense experience regarding both the content of the concepts and the connection asserted between them. For example, the proposition expressing the supreme principle of morality: a rational being as such will act in accordance with the principle of autonomy, is pure knowledge because, first, our concepts of a rational being and of the principle of autonomy are, in Kant's view, derived from reflection upon the activity of reason itself and not from sensuous experience, and secondly, the connections of these concepts is made by reason a priori and independently of sensuous experience.' Gregor, M., *Laws of Freedom*, Basil Blackwell, Oxford, 1963, pp. 4/5.


(8) op. cit. p. 145
(9) 'That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.' Mill, J.S., 'On Liberty' in Utilitarianism, Liberty and Representative Government, J.M. Dent & Sons Ltd., London, 1910, pp. 72/3.

(10) op. cit. p. 49

(11) op. cit. p. 46
Chapter 12

The Realization of the Rational State

1. So far, the idea of law has been presented in terms of it being understood as the means by which the extent of the individual's outer freedom is delimited, while the legitimacy of law has been seen in terms of the rightfulness of its claim on the individual to accept its constraining function. As far as legitimacy is concerned, it is the nature of this 'rightfulness' which has been examined. In particular, it has been argued that a major test of such rightfulness is to be found in the criterion of practical reason, in terms of which, Kant's universal principle of right has been interpreted. But to interpret it in terms of practical rather than pure or a priori reason is to imply that it is reason situated in a social context. It is the further implications of reason so situated which must now be examined.

The problem is to delineate the character of embodied reason which will determine both the nature of the individual's autonomy and the realization of the state in terms of the ideal model, that is, the association of men in a political community responsible for the laws by which they will live. It is a problem which Hegel resolved by positing historical stages culminating in the development of the modern state. This is the condition which is the achievement of a synthesis between the autonomous but subjective freedom
of the individual and the objective freedom, realised by virtue of the rationality of its articulation, of the social context, the state. Hegel states it in the following way:

'The state is the actuality of concrete freedom. But concrete freedom consists in this, that personal individuality and its particular interests not only achieve their complete development and gain explicit recognition for their right but they also pass over of their own accord into the interest of the universal; and, for another thing, they know and will the universal; they even recognise it as their own substantive mind; they take it as their end and aim and are active in its pursuit.' (1)

Freedom is attained through the individual's awareness that his personal freedom is a product of rationality and that rationality can determine the conditions of his outer freedom, that is, the social context within which he lives. The result of attaining a rationally articulated society or state is that the individual's subjective personal freedom is reflexively enhanced:

'The principle of modern states has prodigious strength and depth because it allows the principle of subjectivity to progress to its culmination in the extreme of self-subsistent personal particularity, and yet at the same time brings it back to the substantive unity and maintains this unity in the principle of subjectivity itself.' (2)

The freedom of the rational individual is complete because as both personal and outer freedom are grounded
in rationality there is no dichotomy. Stated in these terms, the Hegelian principle of the state is in accord with the principles developed and incorporated within the ideal model, which also has the purpose of seeking a harmonization of individual and civic freedom. In other words, Hegel's argument is consistent with the ideal model in that both posit the modern state as that in which the individual reaches his highest degree of freedom by living in and recognising the kind of society which brings about and maintains the conditions for that freedom.

But the similarity ends there because, for Hegel, the embodiment of rationality is based, ultimately, in a metaphysic which centres on the notion of Geist. Although Geist is not easily to be equated with more familiar or conventional conceptions of God, nonetheless the foundation of Hegel's metaphysic is unmistakably theological - the realization of the rational state can be interpreted as a facet of the wisdom and creativity of God*. Given that it is through reason that the universal

* Although it is the intention, in this chapter, to establish, on logical grounds, a case in favour of the growing manifestation of reason within the historical development of the state, the notion of Geist will stand interpretation in terms of one or more of the 'logos doctrines'. In particular, interpretations of the opening of St. John's Gospel appear to offer a Christian notion of 'logos' which bears resemblances to Hegel's 'Geist'. For an outline of the various 'logos doctrines' see Kerferd, G.B., 'logos', in The Encyclopedia of Philosophy, (Edwards, P. ed.), Macmillan, N.Y., 1967, Vol. 5, pp. 84/5.
is expressed, and this in itself is an expression of Geist, it is within the idea of the state differentiated into distinct estates or classes that Hegel claimed to perceive the subjective rationality of the autonomous individual synthesised with objective rationality as articulated in the make-up of the modern state. Rationality itself is an expression of Geist and so is, in Hegel's words, 'The march of God in the world, that is what the state is' (3), and this is manifested through the various stages of history culminating in Hegel's conception of the state.

It can be seen that, given the underlying metaphysic, it is possible, particularly using a persuasive interpretation of history, to construct a content within which to embody the rational criterion. But if the metaphysic is not accepted then any model of the state which attempts to incorporate Hegelian and Kantian principles will be in danger of being rendered vacuous unless the model also incorporates presuppositions which will allow the construction of a content. Such an underpinning is here supplied not by theological metaphysics, but by epistemology.

2. To establish these foundations it is helpful to return to elements in the early descriptions of the ideal model. In particular, it has been maintained that the political community is not teleological in character except insofar as it exists to embody the values of freedom and justice. But to deny a teleological design
does not mean that the workings of the state, both in its governmental functioning and legislative activity, is not end-directed. Both aspects of the state, legislature and executive, respond in their respective capacities to the imperatives created by the contingencies of life. The need for executive action arises, in the main, from the need to take specific actions in response to specific contingencies, and the implementation of policy (bearing in mind that the powers of the executive are derived from the sovereign body). The legislature, on the other hand, is mainly concerned with the formulation of law which is indeterminate in its future application, but even here the need for law is itself based in an awareness of the state and needs of society; in other words, the requirement that rules are necessary to achieve freedom and constraint arises from perceptions of existing situations. For example, changes in the law over the years in connection with marriage and divorce have been, partly at least, occasioned by changes in public opinion about the status and rights of women in the modern world. So it is that while there is no specific goal which it is the purpose of a political community to achieve, nonetheless it is the purpose of the state to meet whatever contingencies it is faced with and to deal with them in the light of its underlying principles.
Furthermore, it has been insisted that rationality is the basis upon which is founded the response of the political community to the problems it faces; also, the underlying principles expressive of freedom and justice are necessarily rational, and rationality is the basic constituent of those aspects of personhood to do with individuality and autonomy. But it is rationality situated in a social context and embodied with a specific content. In other words, rational understanding takes place within a way of life explicitly expressed through its language, presuppositions held, conceptual schemes developed, and the inherent social and moral values. However, rationality embodied in this way does not imply (and this has been maintained throughout this study) an espousal of a thorough-going cultural relativism in which knowledge and truth are simply that which is agreed within a particular society. Although coherence is an important criterion in the conception of truth, there is no contradiction involved in maintaining that there is objectivity in knowledge even though language and other social factors are extremely important influences on the terms in which the individual will perceive and understand the world. At the very least, objectivity is assumed to the extent that there exists independent checks on the claims to knowledge and truth in the relevant spheres in which such claims are made. In other words, it is maintained that knowledge is not just a matter of culturally agreed
beliefs, truth is not just a matter of convention or even coherence.

These elements - politics understood as a response to problems, the importance of rationality situated in a social context, the partnering of socially determined frames of reference with objectivity in the pursuit of truth - are all elements in the epistemological framework within which this study is developed. Such elements have, however, remained either implicit or have been expressed in a piecemeal fashion as required by the issues raised in this study. It is now appropriate to offer a more systematic account of the epistemological basis, and here it is argued that Popperian epistemology offers an account which is largely in agreement with the presuppositions mentioned above. In particular, three specific areas of Popper's theory invite such an interpretation; these are (a) its evolutionary aspect, (b) the 'three worlds' categories, and (c) the contention that all perception is theory-soaked. Each of these aspects will be examined in turn.

3. Popper's evolutionism is based in the biological observation that the prime function of all organisms is to survive and that the need to obey this imperative demands of all life a perpetual engagement in problem-solving:

'All organisms are constantly, day and night, engaged in problem-solving; and so are all those evolutionary sequences of organisms - the phyla which begin with the most primitive forms and of which the now living organisms are the latest members.' (4)
Although it is expressed here in biological terms, the process of adaptation in the face of problems posed embraces the whole of the living world from the most basic form of life to man:

'Yet clearly it is in science that we are most conscious of the problems we try to solve. So it should not be inappropriate to use hindsight in other cases, and to say that the amoeba solves some problems (though we need not assume that it is in any sense aware of its problems): from the amoeba to Einstein is just one step.' (5)

Popper translates the notion of biological problem-solving into an epistemological formula or tetradic scheme:

\[ P_1 \rightarrow TS \rightarrow EE \rightarrow P_2 \]

\( P_1 \) stands for the initial problem, \( TS \) for the tentative solution, \( EE \) for error elimination as applied to the tentative solution, and \( P_2 \) is the situation which arises from the previous stages and which may, in fact, constitute another problem. One commentator (6) has noted that it is essentially a feed-back process in which past experience continually informs and alters the present rather than being cyclic or dialectical in character.

When the organism in question is a society or state then there is no intrinsic difficulty in including it within the general scope of Popper's evolutionary problem-solving. Popper himself in his description of the Open Society implicitly endorses the problem-solving approach in his advocacy of piecemeal engineering as the most effective response to the problems which beset
society rather than, say, Utopianism:

'...blueprints for piecemeal engineering are comparatively simple. They are blueprints for single institutions, for health and unemployment insurance, for instance, or arbitration courts, or anti-depression budgeting, or educational reform. If they go wrong, the damage is not very great, and a re-adjustment not very difficult. They are less risky, and for this reason less controversial. But if it is easier to reach a reasonable agreement about existing evils and the means of combating them than it is about an ideal good and the means of its realisation, then there is also more hope that by using the piecemeal method we may get over the very greatest practical difficulty of all reasonable political reform, namely, the use of reason, instead of passion and violence, in executing the programme.' (7)

In this context, it might be objected that 'organism' is an inappropriate term to indicate the kind of preferred society described by Popper as it is a concept which he specifically uses to indicate closed societies, particularly tribalistic cultures in which the relationships which bind people together are 'semi-biological ties - kinship, living together, sharing common efforts, common dangers, common joys and common distress' (8). Nonetheless, even an open or abstract society of the most individualistic, depersonalised kind envisaged by Popper must still be recognisable as a society, per se, and so must maintain a form of unity which enables it to be termed 'organism' with some
justification. The point is that a primitive or authoritarian society described as an 'organism' appears to be eligible for inclusion within the general evolutionary scope of Popper's theory in that it is a form of social organisation adapted to meet the contingencies of its time. But there is no reason to suppose that the model of the Open Society stands in any way outside this scope in that it represents the possibility of yet another, more successful organism. By the same token, the ideal model of a political community presented here may be taken as yet another possible organism which is devoted to the preservation of, not just the individuals who comprise the community, but the values of freedom and justice within a problem-solving context. Indeed, once the semantic propriety is accepted that, in this context, any state may be termed an organism, then it is particularly apt that the Open Society should be so termed as it is the example, par excellence of socially situated problem-solving.

There is also the fact that modern states and, for that matter, philosophical models, are influenced in the form they take by that which has gone before. Popper specifically acknowledges the debt which Western civilisation owes to the Greeks (9), and no new state is brought into being (such as the United States of America) and no radical changes to the constitutions of existing states takes place in an historical vacuum. This does not mean to say that history presents a progression of
forms of government beginning with authoritarian tribalism and working towards something like, in modern democracies, an Open Society. The contingencies which attend the circumstances in forms of government are cast are too complex to allow anything as cumulatively hierarchical as this. But it is the case that the examples provided by the democracy of ancient Athens, the authority invested in the divine right of kings in feudal times, and the rise and fall of modern dictatorships, to mention some of the forms of government which have existed, form part of the general political tradition of Western Europe, and no innovation in government can be instituted without some knowledge of the strengths and weaknesses of its forerunners. What is more, there is good reason to believe, with Popper, that Western democratic forms of government have proved most successful, so far, in such terms as raising the standard of living of their populations and of promoting the values of freedom and justice; so, it can be argued, that with all the setbacks and vicissitudes to which states have been subject in the course of their histories, nonetheless there is an evolutionary trend to be observed in that as history unfolds a cumulative store of political knowledge is passed on which affects present constitutional and political practice. Hegel uses the phrase 'the cunning of reason' to indicate the extent to which individuals may unconsciously be held to be the vehicles of Geist, but it is a phrase which is capable of indicating the extent to which knowledge of past practice helps to shape
present and future forms of government.

The further implication is that once values such as freedom and justice are introduced as criteria by which the legitimacy of a form of government is to be judged in normative terms, it can then be maintained that history discloses a hierarchy. This is a matter which Aristotle discussed when he stated that the first object of the science of politics is to 'consider which form of government is best in the absolute sense and what qualities that form must have in order to approximate most closely to the ideal when no external impediment intervenes' (10). Once equipped with a 'principle of virtue' (11) it becomes possible, as Aristotle argued in Books III and IV of the 'Politics', to judge which forms of government approach the ideal most closely and which deviate most widely. It is in these terms that a hierarchy is disclosed. Moreover, once the idea of a principle of virtue is accepted with its implications of hierarchy and progression in historical terms, then Hegel's belief in the moral superiority of the rational state over other forms of government is not so very far from Popper's espousal of the Open Society as that which most embodies rationality in its response to the problems of the time, even though, given his strictures on Hegel, it is a comparison which Popper may not relish.

4. The notion that if not a progression, then at the very least a trend in political development or evolution is discernible is given added substance if Popper's productive notion of a third world is accepted.
Popper indicates the nature of this world in these terms: '.....the world consists of at least three ontologically distinct sub-worlds; or as I say, there are three worlds: the first is the physical world or the world of physical states; the second is the mental world or the world of mental states; and the third is the world of intelligibles, or, of ideas in the objective sense; it is the world of possible objects of thought: the world of theories in themselves, and their logical relations; of arguments in themselves; and of problem situations in themselves.' (12)

The second world of individual mental activity is the mediator between the first world of objects and the third world of human ideas made objective by virtue of their being established in autonomous terms. Thus language is a third world construction which exists autonomously in relation to any given individual's subjective experience of it, but also the use of language by the individual in connection with his appreciation or perception of the objects of the first world will largely determine the terms in which that appreciation or perception is understood.

It also follows that not only is the individual's conception of the first world affected by the theories, assumptions and conceptual structures which he adopts, but his view of himself will be so affected. The largely socially derived nature of personhood has been insisted on earlier in this work; in other words, insofar as rationality is itself embedded in linguistic forms,
the individual needs to be initiated into a linguistic community of some kind for his individuality and self-consciousness to develop. But the linguistic community is only one element, even if it is the necessary element, which affects the individual's conception of both himself and the outside world. The many other facets of the third world will also be influential—the customs, the laws, the state of knowledge, the religious beliefs and the political ideas as well as the institutions within which all these are embedded. All these and many more will inform individual self-consciousness and all are open to change and transformation by individual consciousness as a result of involvement in the problem-solving process. Understood in these terms, the notion of the third world and its effect on individual consciousness is consistent with the presuppositions of the ideal model.

There is, however, one aspect of the third world which is likely to cause difficulty for any society, including a political community. This is the autonomous status which ideas have within the notion of the third world; an autonomy which is reinforced if Popper's contention is accepted that knowledge is not dependent for its status, qua knowledge, on its being 'possessed' by individual minds, but that it occupies a public domain and its existence is ensured by it being recorded rather than by it being known by any particular individual. The continuing presence of autonomous ideas, theories and ideologies must present the state with a continual threat
of instability, and a political community in particular cannot censor or stifle the propagation of ideas*. But a political community will only be threatened by damaging ideas if the community itself either loses sight of or loses the will to protect its attachment to freedom and justice within a rational way of life. This does not preclude the right and duty of a political community to protect itself against attempts by an unrepresentative minority to force, say, a totalitarian ideology on it.

5. Finally, and most productively, the Popperian argument that all perception is theory-drenched dovetails with the three worlds aspect of his philosophy. Popper attributes even to lowly forms of life the capacity to meet the problems of life with theory-like expectations already built into their sense organs:

'Sense organs incorporate the equivalent of primitive and uncritically accepted theories. Moreover, there is no theory-free language to describe the data, because myths (that is, primitive theories) arise together with language. There are no living things neither animals nor plants without problems and their tentative solutions which are equivalent to theories ....

Thus life proceeds, like scientific discovery, from old problems to the discovery of new and undreamt-of problems. And this process - that of invention and selection -

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* The notorious public book-burnings which took place in Nazi Germany testify to the ruling party's awareness that a threat existed in that form.
contains in itself a rational theory of emergence. The steps of emergence which lead to a new level are in the first instance the new problems (P₂) which are created by the error elimination (EE) of a tentative theoretical solution (TT) of an old problem (P₁).

While the argument that the sensory perceptions of all forms of life are theory-drenched in their approach to the problems they encounter may be open to objection, the contention that human life, the life of language-users, is so theory-laden is entirely acceptable. Without denying the objective existence of first world objects, the meaning which such objects have to the subjective consciousness of the language-user will be determined by the presuppositions which he brings with him. This is exemplified if one considers the number of different beliefs which, in an historical time-scale, have affected perceptions of the same object, the sun; and even within the developing tradition of western scientific knowledge, that same object has undergone a number of changes in the form in which it has been understood. It follows that if the objects which may be said to have existence in the first world are subject to theoretical interpretation, then the features which characterise the third world, being in themselves the creations of man's intellectual and creative abilities, must by their nature be considered to be theory-drenched.
in their conception as well as in the ways in which they are subsequently perceived.

Obviously included within the scope of such third world products will be ideas, institutions, values and concepts which constitute the political domain. Of particular importance will be the presuppositions which will inform the public concept or concepts of freedom and justice. These are notions, it has been argued, which are the direct product of man's self-consciousness and rationality, but the form which they take will be situated within the prevailing framework of knowledge and belief. To interpret Popper's contention that all perception is theory-drenched in this way is to establish a theoretical congruence with Michael Polanyi's argument that, in science, 'all judgments take place within an interpretive framework, and can only be understood and estimated by reference to it' (14). Although Polanyi's case is directed towards science, that is only a particularly sophisticated area of judgment-making and there is no reason to suppose that the general case is not applicable to that area of life concerned with the making of political judgments.

* By virtue of the differing times and conditions within which a culture progresses and its heritage accumulates, it is likely that the original perceptions of its creations will differ markedly from those which follow. For example, the cave paintings of Lascaux were unlikely to be thought of in terms of aesthetic appreciation by the originators. Their original significance was likely to have been magical or ritualistic.
The main difference is likely to be that whereas within science there is likely to be greater unanimity for most of the time as to what constitutes the accepted framework of reference or paradigm, in politics there will be a variety of such frameworks. It is a variety which will have its genesis in various political ideologies, in religious beliefs, and in the traditions which inhere within a particular society. It is a variety which will find expression not only in the proposed solutions to the problems which the political community faces, but which will also affect the terms in which the problems may be perceived, and may even, occasionally, determine the very nature of a problem.

It is, of course, the specific function of a political community to address itself, through its procedural mechanisms, to the problems with which society is faced, and it is through the political community that the arguments based on the various persuasions will find expression and possible resolution. Similarly, it is through public debate within the political community that the content which may be given to key concepts such as freedom and justice will find expression in the specific freedoms which are held to be worthy of being upheld and the specific terms in which justice is to be understood through its embodiment in law. In other words, the vacuity of the Kantian universal principle of right is avoided by giving it a content, not a content which is a priori in origin, but
a content which is based in the concrete terms in which the notions of freedom and justice are understood at any given time.

In the ideal model, the ideals of reason and truth will be held to be the criteria which all proposals and rationales should have to meet in public debate, and, once more the necessity for complete freedom of speech in this respect is underlined. But, even in an ideal model, reason and truth are not and cannot be standards which are available independent of the general context. What is more, the epistemological basis of the model does not require that this be so. Although the conditions of public debate should be sufficient to disclose inconsistencies or falsehoods when they are proffered within arguments, what will count as a good reason or what will count as a preferred solution to a problem, or, for that matter, what will count as a preferred interpretation of freedom or justice will be a matter of judgment. And in such judgment-making, the criteria of reason and truth will be embodied within the various paradigms or interpretative frameworks.

The immediate objection which presents itself is that of circularity. If standards of truth and reason are themselves embedded within the various interpretive frameworks, it would appear that there is no criterion available capable of differentiating between them. The criterion of truth would appear to be consistency. This, in fact, is the nature of the case, but it is not the whole case. The contention is
that in the conditions within which a decision is taken there is no equality of status among all possible frameworks of reference. The plausibility or esteem with which each is held will be affected by the course of its history. A paradigm which has been fruitful in providing policies or laws which have met past contingencies with success is likely to command greater support within the community than one which has not been successful or one which has not been tested. So it can be held that with the evolutionary development of society in terms of it meeting successive contingent problems, both the proposed solutions and the critical standards which are brought to bear will themselves be heavily influenced by the historical course of the society in question in that at any one time there is likely to be a single or a very limited number of dominant frameworks which supply acceptable critical criteria in terms of reason and truth, and which supply acceptable solutions for dealing with the problems of society. In these terms it can be maintained that consistency is tested by the de facto results of the solutions which are generated by an interpretive framework a conclusion which is consistent with the underlying problem-solving epistemology.

Both the variety of problems with which a state is likely to be faced and the possible plurality of responses available has important implications for the ideal model. The critical point in such a state of affairs will be engendered by the imperatives created by the requirement for practical decision-making. The
particular procedural devices adopted by the body politic for the purpose of setting a period on discussion and reaching decisions will ensure that, as a matter of fact, rationality and truth as embodied in a preferred view or paradigm will predominate; a view which will, in turn, be reflected in the law or policy adopted. In other words, the exigencies imposed by procedural mechanisms and a set time-scale require the emergence of preferred views and preferred solutions. However, to introduce procedural mechanisms which effectively limit discussion and enquiry is to admit that, especially in politics, absolute standards are not available and that being so, mistakes may be made, skillful rhetoric or persuasion may triumph over a more dispassionately argued case, and even when the best possible solution is adopted it may still prove inadequate to the situation. The virtue of Popper's Open Society is that the rationality of its underlying epistemological assumptions is reflected in a sufficiently flexible attitude of mind and institutions which enable mistakes to be corrected, policies discontinued or reversed, or laws to be repealed or amended in the light of consequent situations (P2).

A form of government which does not share this dedication to rationality and flexibility will have a built-in predisposition to continue with, and continue to justify, unsuccessful policies or solutions long after their deficiencies have been made manifest. It is a recognition that problem-solving is both rational and realistic in this sense that frees politics from the supposed need
for absolute standards and absolute solutions. It also follows that as Popperian epistemology has been adopted as being both appropriate to and consistent with the requirements of the ideal model, that this aspect of the Open Society should be incorporated into the ideal model. Furthermore, the greater the awareness on the part of the political community that its own deliberations and decisions are fallible, and the greater the awareness that attempted solutions themselves create new situations and, hence, the possibility of new problems, the greater will be the effectiveness of the community in actually achieving its goals and realising its values.

6. There is one aspect of the relationship between the ideal model and the epistemological underpinning which requires some examination. That is the extent to which it can be maintained that the virtues of justice and freedom are implied by the epistemological presuppositions. In other words, is there a logical connection between problem-solving in a social and political context and the values of freedom and justice or is the relationship purely contingent? In suggesting, tentatively, that there is such a logical connection, it must immediately be admitted that there is no straightforward entailment involved, such connection as there is exists by virtue of various arguments.

First of all, problem-solving as an activity implies an open-minded devotion to rationality, howsoever situated, as the means by which solutions may be achieved. It has, however, been argued throughout this work that
both the morally inspired concern for justice and the self-
conscious state of autonomy which is the basis for the
concern for individual freedom are both derived from
man's rational capacities. It follows that insofar as
the model assumes that the political community is composed
of men (problem-solvers) with moral sensibilities and
not psychopaths or Kantian 'devils' that there is a logical
connection to be made between the activity of problem-
solving and the suggested values. Freedom and justice
can be held to be the model's immanent values insofar
as the political community is composed of men with moral
perspectives, as all problem-solving will be conducted
within such perspectives.

Secondly, while it can be maintained that
problem-solving as an activity, sui generis, does not in
itself entail the acceptance of any values other than a
commitment to rationality, it can be maintained that
where social problems are concerned, neither the problem
to be solved, the nature of the proposed solution, nor
the means to bring this about take place within a value-
free climate. Problems, solutions and proposed courses
of action all involve choices which will necessarily
reflect differing views, differing scales of values and
differing priorities; a state of affairs which, it has
been argued, is part of the raison d'être of a political
community. But if, as a matter of practical necessity,
social problem-solving implies a consideration of values,
then it is the values which a political community exists
to realise which must be reflected in the problem-solving
activities of such a community. In other words, whatever
the nature of the problem, the proposed solution or the
proposed means of attaining the solution, the realisation
of freedom or justice cannot be jeopardized and should
be pursued. Once more, within the context of the ideal
model, it can be argued that social and political problem-
solving, as indicative of the underlying epistemology,
will have imparted to it a concern for freedom and justice
by the nature of the social context within which the
problem-solving takes place. To the extent that this
indicates a necessary involvement with these values, so
it can be maintained that within the context of the model
there is a logical connection between the epistemological
assumptions and the realisation of freedom and justice.
7. Finally, the epistemological basis of the ideal
model serves not only to provide a content for the other-
wise highly abstract categories of freedom and justice,
which have been posited as integral to the model, but
it also allows for the completion of the description of
the functioning of authority within the model. So far,
the emphasis has been placed on the de jure legitimacy
of law, that is, the right of law not only to constrain
but to elicit from those subject to it a sense of duty
or obligation to its terms or to those offices and officers
through which it is expressed. Moreover, a normative
element has been built into this feature of the model
in that it has been argued that in a political community
the legitimacy of law is derived from its function as
the means by which the outer freedom of the individual
is established and the basis it provides on which the individual may claim rights.

But, given the problem-solving epistemology, if the enactment of law is conceived of as being a response to a problem, albeit a problem which necessarily involves a consideration of freedom and justice in its proposed solution, the proof that the problem has been solved in these terms will only become apparent when it is seen how it works in practice. This assertion is consistent with, and is derived from the foregoing arguments concerning the nature of problem-solving introduced at the beginning of this chapter. As has been emphasised, it is a strength of Popperian epistemology that it takes into account the unpredictability of social action both in achieving its desired ends and in provoking unanticipated consequences.

Understood in these terms, it is possible for a law in its enacted form to be otherwise legitimate yet still fail to secure recognition by the political community at large or in some other way disclose itself as being deficient in realising the expectations which were present in its inception.* In such a case the failure to achieve

* An interesting example of a law which proved itself to lack de facto recognition was the Industrial Relations Act of 1971 which was blatantly contravened on two occasions by small groups of dockers who defied an order made under this act forbidding the 'blackening' of goods carried by certain road hauliers. Although arrested, the men on both occasions were quickly released as the arrests threatened to trigger widespread dock strikes. The actions
de facto recognition may be taken as the judgment of the community that the law was fundamentally misconceived in that it is not recognised as being in the interests of society. One way of expressing this deficiency is to state that the law, in practice, is shown not to be an adequate expression of the general will in that either in its stated form or in its interpretation by the judiciary it does not meet the terms in which freedom or justice is currently understood or that the legislators did not adequately foresee the circumstances in which the law would be applied. Once more, if the model is understood in problem-solving terms, then the law in question can be seen as simply having failed and to be in need of reinterpretation, amendment or withdrawal.

The conclusion is that the actuality of the law's legitimacy and authority is not established until it has de facto force; in other words, the final test of the legitimacy of the law is its actual application, not the mere fact that the law has formal or procedural legitimacy, but the fact that it has effective force in society. Such effective force is demonstrated by its acceptance as acceptance implies that it is in accord with the will of both judiciary and government in this case undermined the express provisions of the Act and so displayed a lack of confidence in its implementation. Apart from that the Act aroused the hostility of both the trades union movement and the Labour Party and was subsequently repealed. For details of this case see J.A.G. Griffith, Politics of the Judiciary, Fontana, 2nd Edition, 1981, pp. 74-80.
to outer freedom, i.e. it is more than just the sum of individual acceptances but that it is reason situated, its universality is embodied and hence has a force, sui generis, quite different from the subjective wishes or opinions of the individuals who make up the state.

Summary

So far, the enquiry into freedom and authority within the state has been carried out in predominantly formal or abstract terms. The task addressed in this chapter has been to supply a content to the formal categories which have been developed. To this end, the problem-solving epistemology of K.R. Popper has been endorsed as being consistent with the presuppositions contained within the ideal model. This consistency has been shown by demonstrating the applicability of three relevant key aspects of Popper's theory to the model: the evolutionary aspect, the third world notion, and the argument that all perception is theory-laden. It has been argued that it is the interpretive framework of the time and state of society which will supply the content to the principles of freedom and justice, and that where there is disagreement or contradiction it is the specific task of the political community to resolve these difficulties. It has also been argued that there is a logical connection between problem-solving and freedom and justice within the context of the model. Finally, in accordance with the acceptance of problem-solving as the basic epistemology, it has been argued that the final
phase in the legitimation of law and the acceptance of authority will lie in the de facto acceptance of law by the community and this completes the expression of the general will of the community.
References

(2) ibid. p. 161
(3) ibid. p. 279
(5) ibid. p. 246
(8) ibid. p. 173
(9) ibid. p. 171
(11) ibid. p. 104
(12) op. cit. p. 154
(13) op. cit. p. 146
Chapter 13

Conclusion

1. The world of politics presents to the observer a confused, ambiguous and often contradictory series of events, procedures, activities, prescriptions and theories. Yet from this apparent chaos there is discernible a continuing concern with a restricted range of matters centering on notions such as freedom, equality, justice, authority and legitimacy. Moreover, the importance of such a concern in men's lives is not to be doubted when the passionate intensity with which the ideals of, say, freedom or equality, have been pursued - a pursuit which has required a life-long devotion, even, on occasion, life itself.

While the political philosopher cannot fail to be touched by this passion, the first concern, as has been argued in the introduction to this work, must be with understanding the activity of politics. And this requires an attempt to strip away what may be considered to be the obfuscating contingencies, to isolate the essential elements in the activity, and to consider critically the major concerns of the activity. In other words, a philosophical model of politics must be erected which is capable of demonstrating, unambiguously, the central features of political activity, and which will provide a context within which the central concerns of politics can be explored. The model is the interpretative medium through which politics is rendered intelligible in theoretical or principled terms, the test of its adequacy...
being the extent to which it generates an understanding of the political reality. Finally, there must also be, in common with any philosophical enquiry, an attempt made to establish the epistemological basis upon which the enquiry is grounded. This not only establishes the model as being deeply-based but helps in the pursuit of what is, for this writer, a phenomenologically inspired imperative to attempt to expose the presuppositions which imbue the enquiry.

However, an enquiry into the freedom of the individual and the authority of the state carried out in these terms will be productive of arguments, implications, conclusions and ad hoc comments which are embedded in the structure of the model - the model, in turn, being subject to continuous development. This being the case, such arguments or conclusions which are the outcome of this enquiry cannot be presented as a summation without the distortion involved in detaching them from the general philosophical framework. To overcome this difficulty, the principal issues, arguments and conclusions will be indicated within the context of a brief resume of the development of the ideal model, although the issues touched upon will inevitably stand instead of reference to the appropriate chapter in the text for their full development and clarification.

2. The principal feature of the model developed in this work is that politics is understood in terms of a mode of association - in particular, the notion of a political community is posited. Such a community is
composed of citizens in which citizenship is defined in terms of determinate rights enshrining the freedom and equality of its members as political agents. The function of the political community is essentially association for the purpose of the production of rules or law which will govern the conduct of, and delimit the areas of freedom available to the community. This concern with rules or law imparts to political discourse its characteristic quality, viz., a concern with the general interest of the community as a whole as opposed to the private interests of any of its constituent members.

In order to situate the model within a recognisable social context, the notion of the 'state' has been introduced as being the appropriate social unit within which the political community exists. The state is held to be not just the government, but the whole population subject to the laws and constitution enacted by the political community. In ideal terms, the political community and the population of the state will be one and the same, but in less than ideal terms such a conterminous identity is neither possible nor necessary.

By situating the political community within a determinate society as is offered by the state, it becomes possible to develop a sophisticated concept of personhood through which the relationship between individual and state can be examined within different categories of experience. In the first place, the
Hegelian notion of Sittlichkeit is introduced as indicative of the individual's subjective sense of obligation to the state. By positing personhood as being partly, at least, determined by the socialising processes within the native society it is possible to offer an analysis of Sittlichkeit in terms of the logical relationship between individual and state. It is argued that the sense of trust and identity which exists between individual and state arises from the extent to which the state comprises that milieu which is best understood by the individual as its mores are part and parcel of the individual's consciousness. Moreover, insofar as the contents of the individual's consciousness are determined by the parent society, so the state will form that most-favoured milieu within which the individual's needs, wants and desires will find satisfaction. Furthermore, it is maintained that the development of rationality with its capacity for engendering abstract thought and the ability to conceive of different possibilities constitutes the logical condition for the development of personhood understood as the embodiment of a freedom-seeking will. As it is argued that freedom itself is only intelligible within a rule-governed situation, it follows that the rule-governed context which is best understood will be that within which freedom is most likely to be realised. Sittlichkeit is the summation of all these elements conspiring within the individual to produce a sense of identity with, and obligatedness towards, the parent state.
It is further argued that as the individual's relationship is founded in understanding and the will to freedom, the state, as a rule-governed complex of affairs, will have an inherent tendency towards stability, as change, particularly rapid or revolutionary change, will threaten the basis on which understanding rests. Anyway, rules which change too rapidly begin to lose their prescriptive force as rules. Also, as has already been demonstrated, authority itself is a practical necessity deriving from the inherent imperfections of rule-governed situations and this in itself will be a factor which tends to promote stability.

Tradition is a powerful source of both stability and legitimacy. In the context of the ideal model it is the notion of presumptive tradition which is the relevant concept as this employs the notion of tradition which carries with it prescriptive force. But although tradition can legitimise existing rule-governed practices, its connection with authority is subtle in that it cannot only be a source of authority's legitimation, but it requires embodiment in authority for its continual re-interpretation.

The analysis of tradition's relationship with authority also helps to explain how it is that the rule-governed fabric of the state can remain relatively undisturbed in spite of governmental upheavals. Such situations help to underline the distinction which is to be made between the authority of government and the legitimacy of government; both subsume the notion of
'rightfulness' but the latter emphasises the legal or constitutional aspect whereas the former stresses the de facto effectiveness of government in commanding obedience.

The next major addition to the model is the development of the notion of personhood to include the propensity towards individualism, i.e. the individual understood not only as a self-regarding but as self-determining, particularly with regard to the realisation of freedom. In other words, the individual is understood as a fully autonomous being in the context of his relationship with the state. The particular facet of autonomy which is significant is the extent to which the notion of the morally autonomous man responsible for his own conduct challenges the authority of the state insofar as the state is a source of heteronomy as far as the autonomous individual is concerned. Here, it is argued that to posit a challenge in these terms is misconceived in that it occludes moral and political duties when, in fact, the moral and the political are categorically different areas of rule-governed conduct. Moreover, to deprive the state of any authority in deference to the individual judgments of its constituent individuals would be to engender a potentially rule-less situation which, in turn, would render incoherent the individual's capacity to structure his life in terms of moral rules.
It follows from these conclusions that insofar as the state is the necessary embodiment of the conditions within which morality becomes possible, then the individual has a moral duty to preserve or bring about a socially rule-governed situation. Moreover, insofar as universality and right imbue the citizen's conception of law, these attributes or qualities derive from the moral capacity of the individual to externalise private moral rules. It is in these terms that the moral impinges on the public life, and it is in these terms that the notion of Sittlichkeit is developed further.

As it is one of the main functions of the political community to create its own laws and as the attributes of law, universality and justice, have already been touched upon, it is appropriate to enquire into the political implications involved. In this respect, a consideration of Rousseau's 'The Social Contract' produces insights. The notion of the 'general will' has been analysed in terms of universality and right, and, as such, has been shown to be consistent with the Kantian universal principle of right. It is suggested that the universal principle of right appears to offer a criterion by which to judge the extent to which law may be held to be just and so in accordance with the spirit of the 'general will'.

However, there are difficulties involved in any attempt to apply the principle of right to positive law. In Rousseauian terms, any attempt to apply universalisability as a criterion of right only appears
to be effective in discriminating extreme cases of law understood as an expression of the 'general will' from obvious expressions of sectional interest masquerading as law. In Kant's case, the objection is simply that the principle is open to the charge of being vacuous. But it is argued that the principle of right can be rescued from these objections if, in the first place, Rousseau's 'legislator' is understood as a personification of the qualities required for the conception of just law, qualities which are consistent with Kant's stress on the rationality and universality of law. Moreover, it is maintained that the principle of right can avoid vacuity by being given a content, a content derived from the social context within which it is situated. It is the specific function of the political community to realise this state of affairs by being clearly aware of its function as the agency through which justice and freedom are realised.

Finally the model is explicitly situated within its epistemological pre-suppositions. The suggestion is that as the model of a political community embodies a concern for rational action within a problem-solving function, it is particularly amenable to many of the epistemological features present in the philosophy of Karl Popper. In particular, a case is suggested which attempts to secure a logical connection between problem-solving as a fundamental political presupposition and freedom and justice as understood within the context of
the model. Also, if legislation is interpreted in problem-solving terms, it becomes possible to conclude that the legitimation of law and the acceptance of authority are both completed by the de facto acceptance of law within the state. This is consistent with Popper's 'third world' notion and with the notion of the 'general will' examined earlier in the study.

3. At its level of greatest abstraction, that is at the level of philosophically speculative theorising, an attempt has been made to create a model and to offer insights into the political mode by suggesting an interpretation and synthesis of relevant aspects of Hegelian, Kantian and Rousseaunian philosophies. The completion of the model and the implications which stem from it has taken the form of a proposed affinity with modern Popperian epistemology. This, possibly, unlikely cadre of constituent philosophies is held to cohere by virtue of reasonable interpretation and valid arguments. Such an approach is based on the conviction that philosophical insight generates new philosophical understanding; in other words, philosophy is more of a seamless coat than a cursory reading of various philosophers would seem to indicate.

At the more practical level, that is of the model's actual functioning, the essential requirement harks back to Aristotle in the insistence that the political health of any community, the model's included, depends on the clear-headed, self-conscious and willing
participation in the duties of citizenship by the constituent population. The extent to which free-speech is defended, the degree of rationality brought to bear on the consideration of issues, and the extent to which toleration is valued are all tests of the health of the political community. It is this aspect which touches existing political realities most obviously and most pertinently.
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