

# Political Political Theory: An Inaugural Lecture\*

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## I. HUME ON PERSONS VERSUS INSTITUTIONS

IT is a question, said David Hume, “whether there be any essential difference between one form of government and another and, whether every form . . . may not become good or bad, according as it is well or ill administered,”<sup>1</sup> administered well by men of virtue—that is, people of good character, wisdom, and high principle—or administered badly by fools and knaves who know or care nothing for justice and the common good. “Were it once admitted,” Hume continued, “that all governments are alike, and that the only difference consists in the character and conduct of the governors, most political disputes would be at an end, and all zeal for one constitution above another, must be esteemed mere bigotry and folly.”<sup>2</sup> Hume imagines people who take that view adopting the maxim of Alexander Pope in the *Essay on Man*: “For forms of government let fools contest / Whate’er is best administer’d is best.”<sup>3</sup>

Institutions or the character of those who inhabit them? Should students of politics make a study of the one or the other? Both, surely, would be the obvious answer. They should understand something of political virtue and the demands that the requirements of good government make on the character of those who take on responsibility for public affairs, even if it is no more than the ethic of responsibility that Max Weber recommended.<sup>4</sup> But maybe there is a special reason for studying institutions: to understand the ways in which institutional forms can be designed so as to outwit and outflank what Hume called “the casual humours and characters of particular men.”<sup>5</sup>

Political writers have established it as a maxim, that, in contriving any system of government, and fixing the several checks and controuls of the constitution, every man ought to be supposed a knave, and to have no other end, in all his actions, than private interest. By this interest we must govern him, and, by means of it, make him,

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<sup>1</sup>David Hume, “That politics may be reduced to a science,” in Hume, *Essays: Moral, Political Literary*, ed. E. F. Miller (Indianapolis: Liberty Classics, 1985), p. 14.

<sup>2</sup>Ibid., pp. 14–15.

<sup>3</sup>Ibid., p. 14n.

<sup>4</sup>Max Weber, “Politics as a vocation,” *From Max Weber: Essays in Sociology*, ed. H. H. Gerth and C. Wright Mills (Oxford: Oxford University Press, 1958), pp. 120–6.

<sup>5</sup>Hume, “That politics may be reduced to a science,” p. 15.

notwithstanding his insatiable avarice and ambition, co-operate to public good. Without this . . . we shall in vain boast of the advantages of any constitution, and shall find, in the end, that we have no security for our liberties or possessions, except the good-will of our rulers; that is, we shall have no security at all.<sup>6</sup>

The idea that we can devise structures and processes to balance the self-interest of men against one another to promote the common good, even when that is not the prime aim of the individuals whose political habitat we are designing, is familiar to Americans from James Madison's discourse about the separation of powers in *The Federalist Papers*:

Ambition must be made to counteract ambition. . . . It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary.<sup>7</sup>

It is anticipated precisely in the Humean essays I have been quoting from, written a generation earlier than Madison.

## II. CHOICES FOR POLITICAL THEORY

One of the places in which Hume pursued the considerations I have mentioned is in an essay devoted to the question of whether politics may be reduced to a science. Hume seems to have believed that political science would be impossible if everything depended on individual character. No political science, just bedside biographies. However, fortunately for the scientist, "the force of laws, and of particular forms of government," is so great and has "so little dependence . . . on the humours and tempers of men, that consequences almost as general and certain may sometimes be deduced from them" as those we can deduce in the natural and mathematical sciences.<sup>8</sup>

Now, the chair whose sixth occupancy was inaugurated in this lecture is not devoted to political science; it is devoted to social and political theory. But with

<sup>6</sup>David Hume, "On the independence of parliament," *Essays: Moral, Political Literary*, p. 42.

<sup>7</sup>James Madison, "Federalist No. 51," in James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers*, ed. I. Kramnick (Harmondsworth: Penguin, 1987), p. 319. See also Immanuel Kant's insistence in the essay on *Perpetual Peace* that "[t]he problem of organizing a nation is solvable even for a people comprised of devils, if only they possess understanding." According to Kant, the problem is this: "So order and organize a group of rational beings who require universal laws for their preservation—though each is secretly inclined to exempt himself from such laws—that, while their private attitudes conflict, these nonetheless so cancel one another that these beings behave publicly just as if they had no evil attitudes"; Immanuel Kant, *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis: Hackett, 1983), p. 124. For some skepticism about Madison's version of this idea see Daryl Levinson and Richard Pildes, "Separation of parties, not powers," *Harvard Law Review*, 119 (2006), 2312–86, at p. 2317: "Madison's vision of competitive branches balancing and checking one another has dominated constitutional thought about the separation of powers through the present. Yet it has never been clear exactly how the Madisonian machine was supposed to operate."

<sup>8</sup>Hume, "That politics may be reduced to a science," p. 16.

regard to the political theory, there are similar choices to be made. Where should we direct our philosophical energies? Should we focus on institutions? Or should we focus on the virtues—looking, for example, to test Machiavelli's claim that politics demands a set of virtues quite different from those extolled in the Christian tradition,<sup>9</sup> or the claim of some political theorists that republican and democratic forms of government cannot survive without the prevalence of certain virtues of self-restraint among the politically active section of the population?<sup>10</sup> Is that correct? Or is there a version of the Hume/Madison thesis for subjects as well as their rulers? Can we so design our institutions in a modern democracy that a democratic constitution can survive the corruption of the people, their obsession with material wealth, and their revealed unwillingness to sacrifice anything for their country? What matters—structures or character, institutions or virtue?

### III. G. A. COHEN

My predecessor in the Chichele Chair of Social and Political Theory was G. A. Cohen. One of the most striking arguments pursued by Cohen in his recent work involved a version of our Humean question. Cohen asked: when we are considering what is necessary for a just society, should we consider only the possibility of changes to the society's institutional structure or must we consider also the possibility of changes at the level of the virtues possessed by the members of the society that we want to make more equal?<sup>11</sup> It is not exactly an either/or question, since institutions do not change by magic. We cannot imagine the changes that would be necessary to make the basic structure of our society more equal without changes of heart on the part of those who have control the institutions and on the part of those who pressure them and vote for them or against them. Still Cohen pressed a version of Hume's question. Apart from whatever changes of heart are necessary to generate institutional change, can a society really be just if we imagine only its structures being changed, not the character of the citizens—in Rousseau's formulation, taking men as they are and laws as they might be?<sup>12</sup>

Cohen focused this question on a particular suggestion by John Rawls, to the effect that one of his principles of social justice, calling for the amelioration of the position of the worst-off group in society, might require inequality. The talented

<sup>9</sup>Machiavelli, *The Prince*, ed. Q. Skinner and R. Price (Cambridge: Cambridge University Press, 1988), chs 15–19, pp. 54–72.

<sup>10</sup>See, for example, Montesquieu, *The Spirit of the Laws*, ed. A. M. Cohler, B. C. Miller and H. S. Stone (Cambridge: Cambridge University Press, 1989), bk III, ch. 3, pp. 22–4.

<sup>11</sup>G.A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), pp. 68–86, 116–50.

<sup>12</sup>Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (Harmondsworth: Penguin, 1968), p. 1.

might require incentives to exercise their talents—a doctor, for example, might need to be paid many times more than a poor worker in order to persuade him to offer his medical services to the poor. Any attempt to lower doctors' salaries in the interests of equality would make the poor people they serve even worse off, because that low salary would deprive doctors of the incentive they presently have to exercise their skills in poor areas of the country. That was Rawls's position.<sup>13</sup>

Cohen's response was that this assumes the doctor's approach to the matter is wholly self-interested, and that he (the doctor) is not imbued, in his daily life, with the spirit of equality or concern for the worst-off group which is supposedly motivating the Rawlsian enterprise. Rawls was happy to proceed on that basis. But Cohen believed that we should rethink this assumption and consider the pursuit of justice in a society where there is not this gap between social and individual ends.<sup>14</sup> So I guess Cohen is addressing a version of Hume's question: his answer was that we have to look at individual virtue and not just the basic structure.

Except that it is not quite the Humean question. For Cohen was not contrasting an interest in virtue with an interest in forms of government. When he talked of institutions, he meant the institutions of political economy: the market, the system of property, the structure of corporations, the welfare state, and things like the health system and the education system that determine people's chances in life. It was Rawls's view that we could confine our attention to these; Cohen said we also had to look at the character and motivation of those who live and work within them. Not only that, but everything Cohen said about the claims of virtue and about the claims of institutions was said in the shadow of his theorizing about justice. It was ultimately justice (or equality) that mattered for Cohen, not democracy or legislatures or the legal system or the separation of powers. In a paper entitled "How to do Political Philosophy,"<sup>15</sup> Cohen identified three questions that he thought were crucial: (i) What is justice? (ii) What should the state do? (iii) Which social states of affairs ought to be brought about? Those were all questions of aims and ideals. He was much less interested, theoretically, in the political institutions and processes that would be required for the pursuit of these ends.<sup>16</sup>

<sup>13</sup>See John Rawls, *A Theory of Justice*, rev. edn (Cambridge, MA: Harvard University Press, 1999), pp. 67–8.

<sup>14</sup>Cohen, *Rescuing Justice and Equality*, pp. 121 ff.

<sup>15</sup>Cohen, *On the Currency of Egalitarian Justice*, ed. M. Otsuka (Princeton, NJ: Princeton University Press, 2011), pp. 235–55, at p. 227.

<sup>16</sup>There is not much by Cohen on political institutions—apart from some brief discussion of the proposition that fair value of political equality might require substantial material equality in the Rawlsian scheme: "I believe that . . . election regulation, of a sort that Rawls would endorse, can produce political democracy under a wide inequality of income and wealth" (Cohen, *Rescuing Justice and Equality*, p. 385).

## IV. THE DOMINANCE OF JUSTICE

This is not untypical of modern political theory. I think it indicates that we have to expand Hume's two-fold choice between an emphasis on virtue and an emphasis on institutions. There is also a third option, perhaps the most important one. Maybe our main focus ought to be not on virtue, not on institutions, but on the aims and ideals that direct our politics. I mean ideals like justice, equality, human rights, toleration, liberty, community, prosperity, wealth-maximization, and the common good. We need to replace Hume's dichotomy with a *tri*-chotomy. The question now is whether we should direct our theoretical energy to questions about (1) the individual virtues that good governance requires, or (2) the political institutions that are needed in a good society formed of humans rather than angels, or (3) the ends and ideals that a good society should be seeking to promote.<sup>17</sup> I think it is fair to say that, for some time now, the focus in political theory—both in our teaching and in our writing, particularly in the UK—has been on (3), the ends and ideals that a good society should seek to promote.

Indeed, an enormous amount of energy has been devoted and is being devoted to normative argument and conceptual analysis about the ends of political action—beginning most prominently with Rawls's detailed and articulate theory of justice, published in 1971. Rawls's work has inspired a whole industry comprising thinkers as diverse as Robert Nozick, Ronald Dworkin, Amartya Sen, Michael Walzer, and of course G. A. Cohen too.<sup>18</sup> These theorists examine not only justice but the idea of equality in relation to justice; they ask about the currency of equality (what sort of equality we should be aiming for); they ask about whether equality should be our aim or, instead, a priority of concern for the needs of those who are worst off; and they respond to critics of equality, by examining the importance of individual choices in determining unequal outcomes; and the moral significance of brute bad luck in relation to equality and justice. All of this is focused on topic (3), the aims and policies of a good society and the basic structure of its political economy. Some of this theorizing about our ideals is also projected out into the world—in the study of global justice, for example, and the conditions for being able to say that gross disparities in life chances between people in different parts of the world add up to something like injustice.

<sup>17</sup>Terminology can be a problem here, because it is possible to use the language of virtue to refer to something like justice. We can say with Rawls that justice is the first virtue of social institutions (*A Theory of Justice*, p. 3), but then we are not talking about personal characteristics in the way that Hume was, although we may be talking about personal characteristics in the way that Cohen was.

<sup>18</sup>See, for example, Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974); Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2002) and *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2002); Amartya Sen, *The Idea of Justice* (Harmondsworth: Penguin, 2009); Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983); and Cohen, *Rescuing Justice and Equality*.

In itself this is all fine and valuable work. I want nothing I say here to be read as denigrating the study of justice and equality by my colleagues. I too have contributed to the project, including an article exploring and defending the idea of the primacy of justice among the values and ideals that may be explored in political philosophy.<sup>19</sup> But I worry nevertheless that it is a little one-sided. For precious little attention is paid in the justice-industry or the equality-industry to questions about political process, political institutions, and political structures, including the structures, institutions, and processes that might be implicated in the pursuit of justice or equality at a national or global level.

## V. ISAIAH BERLIN

Sometimes I worry that political theory is understood as just applied moral philosophy. Apart from his work in the history of ideas, this seems to have been the view of another of my Chichele predecessors: Isaiah Berlin, who held the chair from 1957 until 1967. Asked in a 1997 interview a few months before his death, “What do you think are the tasks of political philosophy?” Berlin replied: “To examine the ends of life,”<sup>20</sup> and he added that “[p]olitical philosophy is in essence moral philosophy applied to social situations.”<sup>21</sup> Admittedly, Berlin went on to say that the social situations to which moral philosophy is applied “of course include political organization, the relations of the individual to the community, the state, and the relations of communities and states to each other.” But he gave no indication that these were worth study in their own right.<sup>22</sup>

The business of political philosophy is to examine the validity of various claims made for various social goals, and the justification of the methods of specifying and attaining these. . . . It sets itself to evaluate the arguments for and against various ends pursued by human beings. . . . This is the business of political philosophy and has always been such. No true political philosopher has omitted to do this.<sup>23</sup>

In fact Berlin himself undertook a rather larger agenda than this, looking not just at the ends of life but at broad *zeitgeist* issues such as the clash between romantic nationalism and human individualism,<sup>24</sup> and big-picture diagnosis of the pathologies of certain general currents of thought about man in society. Once again, I don’t want to convey the impression that any of this is unimportant. But

<sup>19</sup>See Jeremy Waldron, “The primacy of justice,” *Legal Theory*, 9 (2003), 269–94.

<sup>20</sup>Ramin Jahanbegloo, *Conversations with Isaiah Berlin* (New York: Charles Scribner’s Sons, 1991), p. 46.

<sup>21</sup>*Ibid.*.

<sup>22</sup>I am told—by Peter Pulzer, in conversation—that Berlin had a considerable interest in political institutions, in the US, in the UK, and elsewhere, even if it did not make its way into his published writings. But see Berlin’s introduction to *Washington Despatches, 1941–45: Weekly Political Reports from the British Embassy*, ed. H. G. Nichols (Chicago: University of Chicago Press, 1981), many of which he had himself written.

<sup>23</sup>Jahanbegloo, *Conversations with Isaiah Berlin*, pp. 46–7.

<sup>24</sup>See, e.g., Isaiah Berlin, “Political ideas in the twentieth century,” in Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), pp. 1–40, at p. 21.

I do think there are problems with this as a specification of an agenda for political theory.<sup>25</sup>

To read almost any of Berlin's work is to read essays that are resolutely uninterested in the detailed character of political structure. Beyond airy talk of freedom and openness, Berlin was unconcerned with the ways in which liberal or democratic political institutions might accommodate the liberty and diversity he thought so important in human life.<sup>26</sup> Invited by his interviewer to consider "[w]hat possible support can your theory of pluralism give to the problem of democracy?", Berlin simply repeated the commonplace that "[d]emocracy need not be pluralistic,"<sup>27</sup> indicating, by an immediate focus on the prospect of the tyranny of the majority, how his understanding of political theory had inherited philosophy's ancient grudge against democracy nurtured since the trial and execution of Socrates.

## VI. REALISM VERSUS MORALISM

So is that it? Is political philosophy just a study of the ends of life? Very recently, we have begun to get glimpses of a different view, for example in some of the essays that Bernard Williams wrote towards the end of *his* life. I have in mind Williams's critique of what he called "political moralism," of the alleged "priority of the moral over the political," the application of what is essentially moral philosophy to the resolution of social issues.<sup>28</sup>

But Williams's alternative was to turn away from moral ideals and to look for distinctively political ideals, like *security*. He was interested in the relation between legitimacy and what he called "the 'first' political question—Thomas Hobbes's question about 'the securing of order, protection, safety, trust, and the conditions of cooperation.'"<sup>29</sup> Williams was helping us cultivate or recall a sense of different and distinctive ends for politics—different from justice, for example.<sup>30</sup>

<sup>25</sup>The distinction between political theory and political philosophy didn't seem to make any difference to Berlin's agenda, for he also said that "political theory is about the ends of life, about values, about the goals of social existence, about what men in society live by and should live by, about good and evil, right and wrong"; Jahanbegloo, *Conversations with Isaiah Berlin*, pp. 57–8.

<sup>26</sup>Compare the following observation by John Rawls in *Political Liberalism* (New York: Columbia University Press, 1993), p. 197n: "For Berlin the realm of values is objective, but values clash and the full range of values is too extensive to fit into any one social world; not only are they incompatible with one another, imposing conflicting requirements on institutions; but there exists no family of workable institutions that can allow sufficient space for them all."

<sup>27</sup>Jahanbegloo, *Conversations with Isaiah Berlin*, p. 143.

<sup>28</sup>See Bernard Williams, "Realism and moralism," in a posthumous collection of his papers, *In the Beginning was the Word*, ed. G. Hawthorn (Princeton, NJ: Princeton University Press, 2006), pp. 1–17, at p. 8.

<sup>29</sup>*Ibid.*, p. 3.

<sup>30</sup>Again, there is nothing inappropriate about Williams's emphasis on values like security. For an attempt to analyse it using some of Williams's own work, see my essay "Safety and security," in Waldron, *Torture, Terror and Trade-offs: Philosophy for the White House* (Oxford: Oxford University Press, 2010), pp. 111–65, esp. at p. 150. Still one wants this work to be complemented by an account of the institutional contexts in which this value might be pursued.



His was not an attempt to locate the distinctive subject-matter of political theory in the realm of political institutions.

## VII. TOPICS AND PRINCIPLES

It is time to lay my own cards on the table. I think political institutions are massively important. Exactly because we disagree in our ideals and policy aims, we need to inquire into the structures that are to house and refine our disputes and the processes that are to regulate the way we resolve them, how we (in our millions) resolve disagreements over disparate aims that we severally regard as fundamentally important—without degenerating into fighting driven either by self-interest or worse still by the militias of self-righteousness.<sup>31</sup>

First and foremost we need to understand the foundations of democracy, but not just democracy in a crude undifferentiated sense: we need to understand democratic representation, electoral competition, and democratic political parties.<sup>32</sup> We need to understand the different ways in which the institutions of a modern political system are democratic and to theorize the difference between a representative legislature, an administration headed by a directly or indirectly elected government, and courts in a democracy. We need to appreciate the difference between different sorts of democratically elected officials: an elected president, elected law-makers, and even, in some American states, an elected judiciary.

But it is not only democracy. It is our responsibility as theorists of politics to reflect on a broader array of issues about constitutional structure. I mean traditional, even fuddy-duddy topics that I worry that we are in danger of losing sight of in British political theory<sup>33</sup>—topics like federalism and devolution; the choice between a unicameral and a bicameral parliament; sovereignty; the separation of powers; checks and balances; the independence of the judiciary; judicial review; the principle of loyal opposition; and the rule of law. Those are the big ones and there are a bunch of lesser principles too, such as civilian control of military (think of S. E. Finer's great book, *The Man on Horseback*),<sup>34</sup> the separation of church and state, and the neutrality of the civil service.

All of this, I believe, is important for us as political theorists to study and write about. Even if our main preoccupation remains with justice, liberty, and equality, we still need to complement and inform that work with an understanding of the

<sup>31</sup>I have argued this at length in Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999).

<sup>32</sup>See Nancy Rosenblum, *On the Side of the Angels: An Appreciation of Parties and Partisanship* (Princeton, NJ: Princeton University Press, 2008), where the author excoriates the lack of interest in political parties in modern political theory.

<sup>33</sup>I stress “*British* political theory” because there is much more emphasis on these topics in American legal and political theory than there is in the UK. This is largely because of the prominence of constitutional politics in the US.

<sup>34</sup>London: Pall Mall Press, 1962.



mechanisms through which these ideals—these ends of life—will be pursued. This is what I mean by *political* political theory—theory addressing itself to politics and to the way our political institutions house and frame our disagreements about social ideals and orchestrate what is done about whatever aims we can settle on.

I do not argue this on the sort of grounds on which Hume argued for the primacy of institutions over virtue; the Hume/Madison argument that we can set up institutional structures to produce good results whatever the state of individual virtue in the polity.<sup>35</sup> I have no version of that for the choice between a theoretical emphasis on institutions and a theoretical emphasis on justice. In jurisprudence, Lon Fuller toyed with something analogous on the rule of law: he thought that if you do things the right way—follow the right formal, procedural, and institutional pathways (that he called law's inner morality)—you are more likely to end up doing the right thing. If you do things explicitly, consistently, transparently, and with due process, you are less likely to find yourself administering injustice; bad things happen mainly in the dark, on this account, and unjust aims do not have the same coherence as good ones.<sup>36</sup> It is an intriguing hypothesis, but the consensus in legal philosophy has been that it cannot be pushed very far.<sup>37</sup>

Nor is my emphasis on institutions as opposed to ultimate aims based on any doubts concerning the ends of political life or any skepticism about justice and right answers. The fact is that whether these values are objective or not, we have disagreements about them; people who are thoroughly committed to their objectivity disagree about them. That means our philosophy departments have to accommodate disagreement—Rawls and Nozick working away in the same corridor in Emerson Hall at Harvard University—and philosophers have to also frame their disagreements in the way they organize conference panels and published symposia.<sup>38</sup> And if this is true of our professional life in the academy, how much more urgent is it in politics to structure an institutional environment to house and accommodate the rival views, all of whom are convinced that they are right—some of them wrongly, no doubt, but which ones (for the purpose of this structuring)?

Institutions matter, and in a moment I am going to talk about the variety of ways in which they matter. In legal systems and in nation-building (whether we are overhauling our own constitution or trying to establish a new one in Iraq or

<sup>35</sup>See text accompanying notes 6–8 above.

<sup>36</sup>Lon Fuller, "Positivism and fidelity to law: a reply to Hart," *Harvard Law Review*, 71 (1957), 630–72, at p. 637. See also Lon Fuller, *The Morality of Law* (New Haven, CT: Yale University Press, 1964), ch. 2.

<sup>37</sup>For criticisms, see H. L. A. Hart, *The Concept of Law*, Second Edition (Oxford: Clarendon Press, 1994), pp. 206–7 and Matthew Kramer, *In Defense of Legal Positivism* (Oxford: Oxford University Press, 1999).

<sup>38</sup>Cf. Waldron, *Law and Disagreement*, pp. 224–31.

Afghanistan), it matters what processes we set up. Institutions make a difference, not just to the political game but, through the inclusiveness of the order they establish, to the security, prosperity and openness of the societies in which they are established. A recent book by Daron Acemoglu and James Robinson, *Why Nations Fail: the Origins of Power, Prosperity, and Poverty* is just the latest in a long line of persuasive arguments to this effect.<sup>39</sup>

### VIII. THE VALUE OF INSTITUTIONS

Very well, you may say, but isn't the study of institutions and political processes a matter for empirical political science? Well, yes and no. Certainly it is a task for empirical political science. The study of how politics actually work within the institutions and procedures we have established: that is the immense and challenging agenda of political science, one that I greatly respect and that political theorists should take much more notice of and dovetail their work with much more than they do.

But this does not preclude the reflective interest of political theory. Institutions are theoretical matters too. And not just for what is sometimes called "*positive*" political theory.<sup>40</sup> The study that I am envisaging is emphatically normative. For we have *choices* to make about our institutions and processes. (Look at the agenda for political and constitutional reform in the UK right now: the referendum about independence for Scotland; the reform of the House of Lords; and Britain's relation to the European Union and also to the European Court of Human Rights.) We bring to those choices reasons of various kinds and the reasons in turn implicate values and principles that are also the basis for our assessment of existing institutions—parliament, the monarchy, the courts, the administration, the political parties, the country's division into nations with devolved legislatures, our international laws and institutions.

Moreover—and this is very important—not all of the values that are at stake in our understanding of institutions and institutional choices are the straightforward pragmatic or consequentialist values that our realist colleagues in positive political theory or empirical political science are most comfortable talking about. There are many layers of additional value to be considered. Certainly consequential assessment of institutions is important. And it is complicated. On the one hand, there is our assessment of the output of a given institution (compared to the different output that a different institution or a different system of institutions might have yielded). Assessing this means mapping values like justice, equality, liberty, utility, and aggregate prosperity onto the social results of implementing our policies. As Rawls put it in *A Theory*

<sup>39</sup>Daron Acemoglu and James Robinson, *Why Nations Fail* (New York: Crown Publishing, 2012).

<sup>40</sup>See, for example, David Austen-Smith and Jeffrey S. Banks, *Positive Political Theory I: Collective Preference* (Ann Arbor: University of Michigan Press, 2008).

of *Justice*, “[t]he fundamental criterion for judging any procedure is the justice of its likely results.”<sup>41</sup> On the other hand, there are the side-effects of the operation of our institutions on people—often good side-effects, like the educational impact that John Stuart Mill or, in twentieth century political theory, Carole Pateman expected from participatory democracy.<sup>42</sup>

Third, and still in the realm of consequences, there is the analysis of the cost of operating a given institution—salaries, buildings, and so on. Recently there has been discussion in Britain of how much more an elected House of Lords would cost the taxpayer than the present unelected version.<sup>43</sup> Why? Well there are different ways of understanding this. Sometimes it is just a matter of efficiency: are the costs of a second chamber worth the value that it adds to our political process? But democratic theorists may have a different perspective on legislative costs. Whichever house of the legislature you are talking about, people may want to elect individuals who have to give up their jobs to become representatives and who cannot just make do on a daily “allowance.” This has always been a problem with candidates for office who are not independently wealthy. So theoretical scrutiny of even this matter of institutional efficiency adds a dimension we might otherwise miss. In general, we have to be very careful with the sort of cold-eyed budgetary approach that applies a ruthless value-added test for each step or phase in our institutional politics. In my home country, New Zealand, it was budgetary considerations that explained the abolition of the upper house, the Legislative Council, in 1950,<sup>44</sup> and in recent years a similarly ruthless efficiency-based approach has led to the elimination of a Parliamentary quorum in the House of Representatives, not to mention the elimination of any requirement that members have to be personally present in the chamber in order to vote (what a waste of their time, it is said, when it could be spent more efficiently somewhere else); the Whips just call out their nominal party strength whenever there is a division. In general, in New Zealand, the efficiency approach to political institutions has engendered the growth of a bullying mentality that insists that, since the government is almost always bound to get its way in the House of Representatives, there can be no real objection to the truncation of formal parliamentary debate by repeated use of urgency and closure motions. It is a sorry spectacle.<sup>45</sup>

<sup>41</sup>Rawls, *A Theory of Justice*, p. 230.

<sup>42</sup>John Stuart Mill, *Considerations on Representative Government*, in Mill, *On Liberty and Other Essays* (Oxford: Oxford University Press, 1998), pp. 238–56 and Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970).

<sup>43</sup>See, most recently, “House of Lords reform ‘will cost taxpayers £500 million’,” *Daily Telegraph*, July 3, 2012.

<sup>44</sup>See the account in William Keith Jackson, *The New Zealand Legislative Council: a Study of the Establishment, Failure and Abolition of an Upper House* (Toronto: University of Toronto Press, 1972).

<sup>45</sup>For a broad and critical account, see Jeremy Waldron, *Parliamentary Recklessness: Why We Need to Legislate More Carefully*, The 2008 John Graham Lecture (Auckland: Maxim Institute, 2008).

So those are some layers of consequentialist analysis, which we as theorists should participate in. But then we have to reflect as well—and this is subtler and more difficult—on certain elements of *non*-consequential assessment. Here I have in mind the deeper layers of dignitarian value, for example, that explain why certain processes like democratic decision-making and the rule of law are important quite apart from their outputs and quite apart from their efficiency. We have to consider ways in which various institutional alternatives embody various kinds of respect for the persons upon whom and in whose name our laws and policies are administered—respect for them as persons, as agents, as centers of intelligence, and respect for their dignity as individuals.

In a courtroom, to take one illustration, we justify the rigid procedural safeguards that are imposed, not just because (consequentially) they make accurate verdicts more likely, but also because of the tribute they pay to the dignity of the person on trial. Deciding what to do about a suspected offender is not like deciding what to do about a rabid dog or a dilapidated house. This is a *person* who is on trial. He will have a case of his own to make, his own version of the facts or his own legal argument to present, and room has to be made for respecting all that whether we think it promotes truth-finding or not.<sup>46</sup>

The same is true in our elective institutions. In his great book, *Considerations on Representative Government*, Mill pondered the arguments about outcomes but he also insisted that,

[i]ndependently of . . . these considerations, it is a personal injustice to withhold from any one . . . the ordinary privilege of having his voice reckoned in the disposal of affairs in which he has the same interest as other people. If he is compelled to pay, if he may be compelled to fight, if he is required implicitly to obey, he should be legally entitled to be told what for; to have his consent asked, and his opinion counted at its worth. . . . Every one is degraded . . . when other people . . . take upon themselves unlimited power to regulate his destiny. . . . Every one has a right to feel insulted by being made a nobody, and stamped as of no account.<sup>47</sup>

Dignity, respect; these are not just philosophical theses about Kantian values.<sup>48</sup> They are institutional concerns. The respect and dignity that are embodied in some political systems and the indignity, humiliation, and dismissiveness embodied in others are among the most important values that there are—not least because they entangle themselves with and intensify what people fear or hope for, so far as their political institutions are concerned.

<sup>46</sup>See the discussion in Jeremy Waldron, “How law protects dignity,” *Cambridge Law Journal*, 71 (2012), 200–22, esp. pp. 208–12.

<sup>47</sup>Mill, *Considerations on Representative Government*, pp. 329, 335.

<sup>48</sup>Cf. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, ed. M. Gregor (Cambridge: Cambridge University Press, 1998) 42–3 (4: 435 in the Prussian Academy Edition of Kant’s works). See also Jeremy Waldron, *Dignity, Rank and Rights* (New York: Oxford University Press, 2012), pp. 23–7.

May I use a literary example? Elizabeth Gaskell in her 1848 novel *Mary Barton* tells of the time when desperate and impoverished mill-workers all over England resolved to take their case to Parliament.

[T]he starving multitudes had heard that the very existence of their distress had been denied in Parliament; and though they felt this strange and inexplicable, yet the idea that their misery had still to be revealed in all its depths, and that then some remedy would be found, soothed their aching hearts, and kept down their rising fury. So a petition was framed, and signed by thousands in the bright spring days of 1839, imploring Parliament to hear witnesses who could testify to the unparalleled destitution of the manufacturing districts. Nottingham, Sheffield, Glasgow, Manchester, and many other towns, were busy appointing delegates to convey this petition, who might speak, not merely of what they had seen, and had heard, but from what they had borne and suffered. Life-worn, gaunt, anxious, hunger-stamped men, were those delegates.<sup>49</sup>

And she writes of the initial pride of Mary Barton's father, John, at being selected as one of those delegates—"the . . . gladness of heart arising from the idea that he was one of those chosen to be instruments in making known the distresses of the people."<sup>50</sup> But, then, as Mrs. Gaskell says, though the delegation went down to London, "Parliament . . . refused to listen to the working-men, when they petitioned, with all the force of their rough, untutored words, to be heard concerning the distress which was riding, like the Conqueror on his Pale Horse, among the people."<sup>51</sup> And John Barton returned to Manchester crushed and in silent despair: "Tell us what happened when you got to th' Parliament House," said a friend of the family. After a little pause, John answered,

'If you please, neighbour, I'd rather say nought about that. It's not to be forgotten, or forgiven either . . . As long as I live, our rejection that day will bide in my heart; and as long as I live I shall curse them as so cruelly refused to hear us; but I'll not speak of it no more'<sup>52</sup>

—except to say to his daughter when they were alone: "Mary, we mun speak to our God to hear us, for man will not hearken; no, not now, when we weep tears o' blood."<sup>53</sup> An institution is not just a sociological construct; it is a human entity that confronts human pleas, human claims, human proposals, and human petitions. And in that confrontation there is room for respect and dignity and for degradation and insult; and neither of these may be ignored in our theoretical assessment of the institutions we have.

There is room for indignity, too, in the relation between institutions. In a remarkable book called *Law and the Shaping of the American Labor Movement*, William Forbath, who teaches legal history in Texas, has gathered some

<sup>49</sup>Elizabeth Gaskell, *Mary Barton* (Oxford: Oxford University Press, 2006), ch. viii, pp. 83–4.

<sup>50</sup>*Ibid.*, p. 84.

<sup>51</sup>*Ibid.*, pp. 95–6.

<sup>52</sup>*Ibid.*, p. 98.

<sup>53</sup>*Ibid.*, p. 96.

observations voiced by labor organizers and labor legislators in America in the 1890s and the early years of the twentieth century, when statute after statute, regulating working hours and working conditions, was falling victim to judicial review.<sup>54</sup> “It has been preached to the men that legislation was the only proper means to secure relief. They were led to believe they could win at the ballot box, and they believe they did win,” but the Courts struck their enacted laws down as unconstitutional. “[W]e have tried different laws,” said another labor organizer, “and we have tried framing the laws in different ways . . . and it appears we have always been defeated by the Courts.”<sup>55</sup> “I would kill them all and see if that would be considered unconstitutional,” said one despairing Colorado mine-worker (according to a company spy).<sup>56</sup> These are *insiders* in a legislative institution confronting a dismissive and high-handed rebuff by another institution. And again, we need to reflect on all this not just in terms of the value or the justice of the laws that were struck down, but also the bitter indignity of the treatment meted out to these working men and labor politicians in the political life of the communities to which they belonged.

Somebody in our discipline has to have the job of reflecting in these terms on our institutions and our choices among institutional alternatives. The public lawyers do some of it; and if I had my way there would be a much closer connection between political theory and law (even if that were at the expense of the connection between political theory and philosophy). But really, we need both. We certainly do need a sophisticated philosophical understanding of the layers of value that are implicated in the assessment of political institutions. Somebody has to make sure that we do not lose sight of the dignitarian and ontological elements. Someone has to consider how these questions of honor and dignity, political justice and respect, stand alongside the criteria we use (like Rawlsian justice) for evaluating the output of our politics. They don’t fit easily together—that much, we can accept from the value-pluralism of Berlin. But they are not to be neglected.

## IX. EVEN BEYOND VALUE: PRESENCE

There are other layers too in the evaluation of political institutions. I mean the importance of history, of political aesthetics and the symbolic, ceremonial, maybe even the sacramental, aspects of the processes we use for assembling and deliberating about the common good.<sup>57</sup> There are questions of stability and

<sup>54</sup>William Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge, MA: Harvard University Press, 1991). Forbath lists more than 170 instances in which state or federal statutes of this kind that were struck down during this period (*ibid.*, pp. 177 ff.).

<sup>55</sup>*Ibid.*, pp. 47, 56.

<sup>56</sup>*Ibid.*, p. 47n.

<sup>57</sup>See, e.g., Ajume Wingo, *Veil Politics in Liberal Democratic States* (Cambridge: Cambridge University Press, 2003), ch. 1.

longevity,<sup>58</sup> about the importance of constitutional reformers being able to look on their work, as Hannah Arendt put it, with the eyes of generations to come.<sup>59</sup>

And if we want to go even deeper, there are layers of reflection about the ontology of political institutions—the ordering presence that they have among us in what might otherwise be a crushing scramble for individual advantage, the roar of millions of blind mouths, shouting slogans and threats at one another, bellowing to get out of each other’s way—each convinced that we can forget about processes, that it is only the interest or the justice of the outcome that matters.

Here I draw very heavily on the work of Arendt. (I know Berlin never had any time for the person he called “the egregious Hannah Arendt”: “I do not greatly respect the lady’s ideas,” he said and, though himself neither the most rigorous nor consecutive thinker, his verdict was that “[s]he produces no arguments, no evidence of serious philosophical . . . thought. It is all a stream of metaphysical free association.”<sup>60</sup> This is one of many disagreements I have with Berlin. I have been entranced by Arendt’s work since the days of the great *Hannah Arendt Reading Group* in Edinburgh in the 1980s.) That politics needs housing and that building such accommodation can be equated with the framing of a constitution—this is an image that recurs throughout Arendt’s writings. Sometimes it is less a metaphor of bricks and mortar than of the furniture that enables us to sit facing one another in politics, separated but brought into relation with one another in just the right way. “The public realm [that] . . . gathers us together and yet prevents our falling over each other, so to speak.”<sup>61</sup> Sometimes this is quite literal: whether in the design of legislative chambers or the shape of the table at the Paris peace talks during the Vietnam War.<sup>62</sup>

Let us go back to what we want from our political institutions. We want there to be (in Mill’s words)

[a] place where every interest and shade of opinion in the country can have its cause even passionately pleaded, in the face of the government and of all other interests and opinions, can compel them to listen, and either comply, or state clearly why they do not.<sup>63</sup>

<sup>58</sup>Here I have in mind Edmund Burke’s admonition against too frequent change: “By this unprincipled facility of changing the state as often, and as much, and in as many ways, as there are floating fancies or fashions, the whole chain and continuity of the commonwealth would be broken. No one generation could link with the other. Men would become little better than the flies of a summer”; *Reflections on the Revolution in France*, ed. J. C. D. Clark (Stanford, CA: Stanford University Press, 2001), p. 259.

<sup>59</sup>Hannah Arendt, *On Revolution* (New York: Viking Press, 1963), p. 199.

<sup>60</sup>Jahanbegloo, *Conversations with Isaiah Berlin*, p. 82. See also Jeremy Waldron, “What would Hannah say?” *New York Review of Books*, March 15, 2007.

<sup>61</sup>Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), p. 52.

<sup>62</sup>Cf. Jeremy Waldron, “Arendt’s constitutional politics,” *The Cambridge Companion to Hannah Arendt*, ed. D. Villa (Cambridge: Cambridge University Press, 2000), p. 205.

<sup>63</sup>Mill, *Considerations on Representative Government*, p. 283.



We want there to be a place for talk as well as decision, particularly when, as Mill puts it, “the subject of talk is the great public interests of the country, and every sentence of it represents the opinion either of some important body of persons in the nation, or of an individual in whom some such body have reposed their confidence.”<sup>64</sup> But we cannot have this without procedural rules and processes that enable deliberation among people who have been assembled precisely on account of their diversity and disagreement. Rules of order that are needed precisely because we are not transparent to one another and we disagree radically with one another, yet nevertheless we want to be able to listen and respond to each representative’s disagreement with what various others have to say.<sup>65</sup>

Those who know the HBO TV series *The Wire* may remember the episode at the beginning of the third series, where the drug lord Stringer Bell introduces parliamentary procedure, *Robert’s Rules of Order*, to try to make meetings of his lieutenants and his drug dealers more orderly and more productive—yielding a wonderful array of quotes like “Motherfucka’s got the floor” and “Chair ain’t recognize yo’ ass.”<sup>66</sup> It’s not exactly John Stuart Mill; it is exactly what I’m talking about.

Max Weber spoke of an ethic of responsibility in politics.<sup>67</sup> Part of that is the duty of respect for the structures and procedures that frame the political enterprise and that make deliberation and action with others possible. Since the invention of politics, some politicians have thrived on institutional irresponsibility. In a remarkable biography published originally in 1982, the German historian Christian Meier wrote this about Julius Caesar:

Caesar was insensitive to political institutions and the complex ways in which they operate. . . . Since his year as consul, if not before, Caesar had been unable to see Rome’s institutions as autonomous entities. . . . He could see them only as instruments in the interplay of forces. His cold gaze passed through everything that Roman society still believed in, lived by, valued and defended. He had no feeling for the power of institutions . . . , but only for what he found useful or troublesome about them. . . . In Caesar’s eye’s no one existed but himself and his opponents. It was all an interpersonal game. . . . The scene was cleared of any suprapersonal elements. Or if any were left, they were merely props behind which one could take cover or with which one could fight.<sup>68</sup>

<sup>64</sup>Ibid.

<sup>65</sup>See Waldron, *Law and Disagreement*, ch. 4, pp. 69–87.

<sup>66</sup>David Simon et al., *The Wire* (HBO Television), series 3, episode 1: “Time after time.”

<sup>67</sup>Weber, *Politics as a Vocation*, p. 120: “We must be clear about the fact that all ethically oriented conduct may be guided by one of two fundamentally differing and irreconcilably opposed maxims: conduct can be oriented to an ‘ethic of ultimate ends’ or to an ‘ethic of responsibility.’ [T]here is an abysmal contrast between conduct that follows the maxim of an ethic of ultimate ends—that is, in religious terms, ‘The Christian does rightly and leaves the results with the Lord’—and conduct that follows the maxim of an ethic of responsibility, in which case one has to give an account of the foreseeable results of one’s action. . . . Politics is a strong and slow boring of hard boards.”

<sup>68</sup>Christian Meier, *Caesar*, trans. David McLintock (New York: Basic Books, 1995), pp. 358–9.

Meier's judgment of Caesar is complicated by his understanding that other participants in Roman politics had the opposite vice. They failed to grasp that the decrepit institutions of the Republic did need to be seen and maybe even "seen through" in a way that would permit the question of their restructuring to be raised.<sup>69</sup>

But the point I want to make is that there is something reckless, even pathological, about a mode of political action in which the walls and structures intended to house actions of that kind become suddenly invisible, transparent, even contemptible to a given statesman. Such drastically unmediated proximity—"Now there is just you, and me, and the issue of my greatness" or "Now there is just you and me and our interest in justice"—is alarmingly like the press of millions of bodies against each other that Arendt associates with the destruction of thought and deliberation in mass society.<sup>70</sup>

## X. POLITICAL THEORY TEACHING

This article began life as an Inaugural Lecture in Oxford and readers may be interested in what my analysis entails for the way we teach the theory of politics in Oxford, one of two compulsory politics papers in *Philosophy, Politics, and Economics* (PPE)?

It is partly a matter of orientation. I am conscious that for most of this article I have run the terms "political theory" and "political philosophy" together. My suggestion has been that even if there is a difference between them, both need to be more political—in the sense of focusing on issues of institutions as well as the ends, aims, and ideals of politics, like justice. But what I am suggesting may involve a slight redirection of interdisciplinary energy. Political philosophy is surely a branch of philosophy; and, inasmuch as our teaching in the theoretical side of PPE presents itself as political philosophy, we naturally orient ourselves towards the Philosophy Department. My predecessor Cohen was comfortable, I think, with that orientation. Me, I am happier with an orientation towards law, and also (as I said) with an approach that looks for political theory to dovetail its concerns with those of empirical political science.

At present, when we give undergraduate lectures and tutorials in this subject, we are careful to ensure that our students understand contemporary arguments about equality, about rights, about liberty, and about justice (including recent arguments about global justice—the expansion of justice from the domestic to the international realm). We would normally expect six out of eight tutorials to be devoted to these topics, with the remaining two devoted to questions that are slightly more political and institutional in character, but only *slightly*. Our students study the obligation to obey the law, and the philosophical foundations

<sup>69</sup>Ibid., pp. 360–3.

<sup>70</sup>Arendt, *On Revolution*, p. 89.

of democracy. As things stand, we have not devoted any substantial time in this curriculum to institutional principles such as constitutionalism, the separation of powers, the nature of sovereignty, international law, the rule of law, the legal process, the role of the courts in modern governance, and the case for or against bicameralism. We are lucky if there is time for anything on representation.

Of course the first set of issues is important. Our students do need to be fluent in arguments about justice, liberty, and equality, particularly if that can be brought to bear on the work they are doing on political economy. This is especially so for those who are looking to go on to graduate work and perhaps enter the academic profession. At the same time, one wonders whether the vast majority of our PPE students, who will not become lecturers but who will take up positions in business and industry, in journalism or think-tanks, in the arts or in government, are being given the preparation that they need in the theory of politics.

I mentioned earlier that the UK faces unprecedented issues of constitutional reform and institutional design. There is the possible secession of Scotland: what are the theoretical dimensions of the debate about the scope and timing of a referendum? There is the establishment of a UK Supreme Court and the perceived increase in judicial activism associated with it, under the auspices of the Human Rights Act, or the great debate about the influence of the European Court of Human Rights in Britain's political decision-making. Political theory students in the US are prepared as a matter of course for a debate about judicial review and the challenge to democracy that it gives rise to. But are *our* students in Oxford prepared to debate the British equivalent of these issues, on questions like prisoner voting, for example?<sup>71</sup>

Over the past year or so, there has been great discussion about further reform of the House of Lords: the expulsion of most of the hereditary peers; the precipitation out of the judges; the retention of the bishops; and a debate about whether we want a mostly elected upper house or an appointed one or some combination of the two. My impression is that students of the theory of politics emerge from their tutorials and lectures untouched by and unfamiliar with any of the detailed theoretical arguments that are relevant to Lords reform—arguments by Mill and Bentham on the topic of bicameralism, for example.<sup>72</sup> They will

<sup>71</sup>The decision of the European Court of Human Rights in *Hirst v United Kingdom (No 2)* [2005] ECHR 681, requiring the UK parliament to revisit the provisions of its electoral legislation that disenfranchised prisoners, provoked a considerable backlash in Britain against the interference of courts in domestic constitutional issues.

<sup>72</sup>Mill, "Of a second chamber," *Considerations on Representative Government*, ch. 13. *Jeremy Bentham to his Fellow-Citizens of France, on Houses of Peers and Senates* (London: Robert Heward, 1830), XII §1 and XIII §8 (pp. 39 and 44 respectively); available at <[http://oll.libertyfund.org/?option=com\\_staticxt&staticfile=show.php%3Ftitle=1925&chapter=116768&layout=html&Itemid=27](http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1925&chapter=116768&layout=html&Itemid=27)>. I discuss both these texts in Jeremy Waldron, "Bicameralism and the separation of powers," *Current Legal Problems*, 65 (2012), 31–57.

know the crude terms in which these issues are debated in the newspapers, but they will have nothing distinctive from their training in the theory of politics to contribute to the debate.

For example: why exactly was it important to move the judges out of the House of Lords? Separation of powers, you will say. Alright, then: are there any other issues of the separation of powers that are relevant to Lords reform? For example, do we want to reproduce in a second chamber the same executive dominance that we see in the lower house? In Britain, the Cabinet dominates the House of Commons, more or less by constitutional definition. Is that why certain people want to maintain the ascendancy of Commons, because it is the one chamber that the executive can continue to dominate? Is it possible that our upper house could be a genuinely independent legislative assembly, like the US Senate, for example? Or are we wary of setting up such an entity in the midst of our Westminster system?

What would it be like to have the genuinely independent legislature that is promised by the ideal of the separation of powers? That is, an institutional setting where assembled representatives of the people could consider and debate, in a resolutely general way, carefully and through formalized deliberation, the laws that we want to be governed by, without worrying all the time about their prospects for Cabinet office? It is hard, under the best of circumstances, to maintain the focus at this general level. But that is what legislatures are for, at least in our *theory* of governance, and the separation of powers is supposed to facilitate that by making it harder for those whose focus is more on the day-to-day issues of administration to insinuate their executive and political agenda.<sup>73</sup> Should any of this be relevant to House of Lords reform? Or have we given up on the separation of powers, preferring a more compressed, undifferentiated, unarticulated exercise of political power and political accountability?<sup>74</sup> On the other hand, if we *do* want to pay some tribute to the separation of powers, can we really look forward to an *independent* second chamber in our Parliament if its members are not elected but appointed as a result of cronyism, rewards for favors, and government patronage?

For now, these are questions not answers. But I believe the citizens of the UK ought to be thinking along these lines—as should our theorists and our students. We need to deepen everyone’s sense of what is at stake here: and we cannot do that without examining all the layers of value that, as I said a few minutes ago, are relevant to institutional assessment.

<sup>73</sup>I discuss this further in Jeremy Waldron “Separation of powers or division of power,” *Boston College Law Review*, forthcoming; available at <<http://ssrn.com/abstract=2045638>>.

<sup>74</sup>Cf. Eric Posner and Adrian Vermeule, *The Executive Unbound* (New York: Oxford University Press, 2011).

## XI. BEYOND OXFORD

My concerns in this article, however parochial they were in their inception, actually take us far beyond Oxford: they have to do with the orientation of political theory generally. I have a foothold in the academic world of the United States as well as the United Kingdom, and I must say that there is greater receptivity in the US to institutional political theory—what I am calling *political* political theory—than there is in Britain.

Partly it is because the distinction between political theory and political philosophy is more pronounced, though some of the best work on democratic structures in recent years has emerged from US philosophy departments: I have in mind David Estlund's work on the epistemic dimension of our attachment to democracy and Tom Christiano's writing on the relation between democracy and political equality.<sup>75</sup> Detailed work on the justification and the normative dimensions of democratic institutions occupies a large part of the space that I have in mind when I talk about *political* political theory, and theoretical reflection on it is no doubt sponsored and sustained in the US by keen awareness of the possibly counter-majoritarian aspect of constitutional review, which plays such an important role in political life in that country.

Even those of us who are inclined to impugn the democratic credentials of judicial review are convinced that it is not a simple matter, and theoretical attempts to grapple with this have led to a deepening and an enrichment of our contestation about the true nature of democracy.<sup>76</sup> The debate is deepened also by the work of political theorists like Charles Beitz, writing about political equality and the extent to which it can and cannot underpin a purely procedural account of democracy, and Dennis Thompson bringing to vivid life theoretical issues about electoral justice (as opposed to justice generally) in the American polity.<sup>77</sup> Beyond democracy itself, we need much better theoretical understanding of the role of adjacent institutions and practices too: I have already mentioned Nancy Rosenblum's admirable work on political parties, breaking through a whole reef of theoretical indifference to that subject, which illuminates not only democratic competition but ideas about loyal opposition in American politics as well. Some of this work might be described as a cross-over from empirical political science to political theory: but I prefer to see Thompson's work, for example, and Rosenblum's as an attempt to reunite the study of political aims and political

<sup>75</sup>See David Estlund, *Democratic Authority* (Princeton, NJ: Princeton University Press, 2008) and Tom Christiano, *The Rule of The Many* (Boulder, CO: Westview Press, 1996) and *The Constitution of Equality* (Oxford: Oxford University Press, 2008).

<sup>76</sup>See Jeremy Waldron, "The core of the case against judicial review," *Yale Law Journal*, 115 (2006), 1346–407 and Ronald Dworkin, *Freedom's Law* (Oxford: Oxford University Press, 1996), Introduction and chs 17–18.

<sup>77</sup>Charles Beitz, *Political Equality* (Princeton, NJ: Princeton University Press, 1989) and Dennis Thompson, *Just Elections* (Chicago: University of Chicago Press, 2002). Some comments in Thompson's "Preface" (*ibid.*, pp. viii–ix) about the importance of institutional political theory exactly match the sentiments in this article.

institutions under theoretical auspices that lose nothing in the way of ethical sensitivity and philosophical sophistication by being applied carefully and thoughtfully to real world institutional questions.

And that, it seems to me, is worth emphasizing, on both sides of the Atlantic. Political theory loses nothing if it is taught from start to finish in a way that focuses on questions about institutions, structures, and processes. It loses nothing by being made intelligible to our empirical colleagues and open to their input and interests. We political theorists lose nothing when we insist that our particular concerns and the values and principles that we particularly emphasize are concerns in the first instance about elections, parties, legislatures, courts, states, regimes, and agencies. We are political theorists, not poets, and though the values embodied in our reflections go well beyond the calculation of consequences, they are nevertheless political values, not the ends and virtues of ethical life.

## XII. POLITICAL THEORY AND THE CANON

None of what I have said in this article is new: in some ways it is quite old-fashioned. Certainly the specific issues I have raised—about the rule of law, democracy, bicameralism, dignity in political participation, and the political process generally—are issues that have dominated the canonical writings of the philosophers we study in the history-of-ideas side of our discipline.

I have mentioned Mill a few times, particularly his *Considerations on Representative Government*—still the most important book on democracy in our tradition. But the study of political institutions has been the focus of the theory of politics since Aristotle. In the early modern tradition, we have Hobbes on the structure of sovereignty and the absolutist challenge to the rule of law. There is John Locke with his paradoxical combination of legislative supremacy and legislative constraint and his views on separation of powers. We have Rousseau on the difference between democratic law-making and democratic government, and his repudiation of representation at least so far as the first of these functions is concerned. And, opposed to Rousseau, we have Madison, of course, on the ways in which a popular republic can establish itself over a country of wide extent without becoming trapped in the pitfalls of direct democracy.

Of course there is a case for studying these issues directly, not just as ventriloquists for dead white males from the seventeenth and eighteenth centuries. There is a case for developing a political theory curriculum that encourages our students to approach the questions I have mentioned in their own twenty-first century voices. But at present that is not what we do (not in Oxford, at any rate). Instead we study different topics—Rawls's theory, the 57 different varieties of luck-egalitarianism, and global justice; we neglect the issues of structure, process, sovereignty, and constitution set out in *Leviathan*, or *The Social Contract*, *The Federalist Papers* or *Two Treatises of Government*. In this regard, by the way, it is quite remarkable that in all his great essays on history of

ideas, Isaiah Berlin managed to avoid precisely those thinkers who were interested in political institutions. Or, in the case of Mill and Montesquieu, whom he did write about, Berlin seems to have chosen deliberately to focus on precisely those aspects of Mill's output that had least to do with representative government and those aspects of *The Spirit of the Laws* that were furthest from Montesquieu's concerns about the structures and processes of government.<sup>78</sup> I know that Berlin had distinct work of his own to do in the history of ideas; but in retrospect, the balance seems a little one-sided.

### XIII. HUME AGAIN, AND MONTESQUIEU

Montesquieu had a theory about all this. He believed that a lack of interest in forms, processes, and structures was typical of a society *en route* to a despotic form of government. And he said that, notwithstanding most people's love of liberty, most nations are subject to despotic government.

This is easily accounted for. To form a moderate government, it is necessary to combine the several powers; to regulate, temper, and set them in motion; to give, as it were, ballast to one, in order to enable it to counterpoise the other. This is a masterpiece of legislation; rarely produced by hazard, and seldom attained by prudence. On the contrary, a despotic government offers itself, as it were, at first sight; it is uniform throughout; and as passions only [*such as fear and terror*] are requisite to establish it, this is what every capacity may reach.<sup>79</sup>

Despotism is not quite a default position in Montesquieu's scheme of things. But it is the one least characterized by institutional complexity, and it makes the least demands on our institutional imagination.

David Hume, who admired Montesquieu—in a letter he predicted that Montesquieu's work would in due course be regarded as “the wonder of all centuries”<sup>80</sup>—was inclined to agree. He believed, as we have seen, that forms and processes were important in public life as in private life. Even in the ordinary conduct of business,

[i]n the smallest court or office, the stated forms and methods, by which business must be conducted, are found to be a considerable check on the natural depravity of mankind. Why should not the case be the same in public affairs?<sup>81</sup>

But in politics, nevertheless, “it may be proper to make a distinction.” In an absolute government, said Hume, everything depends very much on the personal quality of the ruler, because there are no intermediate structures and no checks

<sup>78</sup>See Isaiah Berlin, “John Stuart Mill and the ends of life,” in Berlin, *Liberty*, p. 218 and Isaiah Berlin, “Montesquieu,” in Berlin, *Against the Current: Essays in the History of Ideas* (Princeton, NJ: Princeton University Press, 2001), 130–61.

<sup>79</sup>Montesquieu, *The Spirit of the Laws*, p. 63.

<sup>80</sup>The letter is cited in the introduction to David Carrithers, Michael Mosher and Paul Rahe, “Introduction,” *Montesquieu's Science of Politics* (New York: Rowman and Littlefield, 2001), p. 3.

<sup>81</sup>Hume, “That politics may be reduced to a science,” p. 24.



and balances to constrain him; just the acclamation of a leader whose qualities and policies happen to appeal to the people.<sup>82</sup>

The deliberative and deliberate processes of a free society slow things down; their articulated and articulate structures stretch things out; they cost money for salaries and furniture and buildings; they provide an irritating place for the raising of inconvenient questions; at their best they respect the dignity of the poorest he or the poorest she that is in England by providing a place for their petitions to be heard. The political institutions of a free society sometimes even require the government to retire from the field defeated, when its victory, in some courtroom or legislative battle, was supposed by political insiders to be a foregone conclusion. I think *all of this* is to be valued and cherished. Some colleagues and some politicians disagree; they celebrate the decline of parliamentarism and the rise of a more decisive executive politics that eschews the laborious channels of an inconvenient constitutionalism.<sup>83</sup> I am not laying odds on who is right. But I am saying that we should reasonably expect the theory of politics, as we teach it and write it, to make a contribution to this debate, the political politics of which confront us now at every turn.

<sup>82</sup>Ibid., p. 15.

<sup>83</sup>Again, see Posner and Vermeule, *The Executive Unbound*.

This paper was given as an "Inaugural Lecture" for the Chichele Professorship of Social and Political Theory" at Oxford University on May 3, 2012. Political theorists study (1) political virtue, (2) political processes and institutions, and (3) political ideals (like justice, liberty, and equality). Since the time of Hume, Madison, and Kant, it has been thought that (2) is more important than (1), because maybe we can set up institutions that work for the general good whatever the state of virtue of the people who administer them. In this context, political ideology is seen as a system of political views, ideas and directives, including those of the public authorities. The following functions of public political ideology, formed by representatives of professional and ruling groups specializing in ideological issues as an element of the informational and communicational support of political processes, can be distinguished: the reflection and representation of group interests; provision for or support of the political course pursued by the ruling social group, political power or party; boosting the support of. While the political theory of partisanship is growing, its concerns to date have been elsewhere: on the norms of adversarialism on the one hand, on intraparty ties on the other.

Footnote 2 Political science has a wealth of material on electoral pacts, yet has tended to focus overwhelmingly on just one manifestation of alliance – the government coalition – and has made normative considerations a secondary concern, generally restricted to questions of voter choice. This neglect of the normativity of alliance is problematic on several counts.

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Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back [The General Theory of Employment, Interest and Money, Chapter 24]. So this course will be devoted to the study of those – academic scribblers – who have written books that continue to impress and create the forms of authority with which we are familiar. But one thing we should not do, right, one thing we should not do is to approach these works as if they provide, somehow, answers, ready-made answers to the problems of today.

1. Fourth Political Theory. Its symbol means number 4 and the sign of Jupiter the planet of Order and Monarchy. It is patriarchal Indo-European symbol of the God of the Heaven -- Dyaus, Zeus, Deus. 2. Any Political Theory is defined by the paradigms of History - being fully dependent of them. So in order to understand 4PT correctly we need to consider what three basic paradigms are: Pre-Modernity (traditional society). Modernity (modern society). Post-Modernity (a kind of post-society or dis-society where all social ties and all forms of collective identity – including gender - are destroyed,