POLITICAL POLITICAL THEORY

1. 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,” 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 [between them] consists in the character and conduct of the governors, [then ] most political disputes would be at an end, and all zeal for one constitution above another, must be esteemed mere bigotry and folly.” 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.”

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. 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.”

Political writers [said Hume] 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 … than private interest. By this interest we must govern him, and, by means of it, make him, 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

1 David Hume, “That Politics may be Reduced to a Science,” in Essays: Moral, Political Literary

2 Max Weber, Politics as a Vocation.
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.  

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,—this idea is familiar to Americans from James Madison’s discourse about the separation of powers in *Federalist* #51—

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.

But that is anticipated exactly in the Humean essay I have been quoting from, written a generation earlier than Madison.

2. 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 not impossible if everything depended on individual character. No political science, just bedside biographies. Fortunately, however, 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.

Now, the chair whose sixth occupancy we are inaugurating this afternoon is not devoted to political science; it is devoted to social and political theory. But with regard to the theory of politics, 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

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4 *Federalist*, 51. See also Kant’s insistence in the essay on *Perpetual Peace* that “[t]he problem of organizing a state … can be solved even for a race of devils, if only they are intelligent.” According to Kant, the problem is this: "Given a multitude of rational beings requiring universal laws for their preservation, but each of whom is secretly inclined to exempt himself from them, to establish a constitution in such a way that, although their private intentions conflict, they check each other, with the result that their public conduct is the same as if they had no such intentions.”

5 Hume cite
politics demands a set of virtues quite different from those extolled in the Christian tradition,\textsuperscript{6} or the claim of some political theorists that neither a democracy nor a republic can survive without the prevalence of certain virtues of self-restraint among the politically active section of the population.\textsuperscript{7} 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 the revealed unwillingness to sacrifice anything for their country? So, which is it? —structures or character? institutions or virtue?

\textbf{3. G.A. Cohen}

My predecessor in this Chair was G.A. Cohen, who was a friend, and I want to pay tribute to his work and the contribution he made to political philosophy in Oxford. Those who have been following the posthumous emergence of collections of his articles, edited by Michael Otsuka and others, know how much political philosophy was enriched by his steadfast and uncompromising focus on equality and the virtues necessary to sustain it.\textsuperscript{8}

One of the most striking arguments pursued by Gerry Cohen involved a version of our Humean question. He asked: when we are considering what is necessary for a just society, should we consider only changes to the society’s institutional structure or must we consider also changes at the level of the virtues possessed by the members of the society that we want to make more equal?\textsuperscript{9}

It is not exactly an either/or question, since institutions don’t 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, men as they are, and laws as they might be?\textsuperscript{10}

\textsuperscript{6} Machiavelli, \textit{The Prince}

\textsuperscript{7} Cites. Harrington? Montesquieu.

\textsuperscript{8} Cite to Otsuka collections.

\textsuperscript{9} Cohen,
Cohen focused this question on a particular suggestion by John Rawls, to the effect that social justice, the amelioration of the position of the worst-off group in society might require inequality. The talented may require incentives to exercise their talents—a doctor, for example, may need to be paid many times more than a poor person in order to persuade him to offer his medical services to the poor. Any attempt to lower doctor’s salaries in the interests of equality would make the people they serve even worse off, because that low salary would deprive doctors of the incentive they presently have to exercise their skills. That was Rawls’s position.\(^\text{11}\)

And Cohen’s response was that this assumes that 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. Cohen believed that we should rethink this assumption and that we should consider the pursuit of social justice in a society where there is not this gap between social and individual ends.\(^\text{12}\) So I guess he is addressing a version of Hume’s question: we have to look at individual virtue and not just the basic structure.

Except 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. Rawls says we can confine our attention to these; Cohen says we also have to look at the character and motivation of those who live and work within them.

Not only that, but everything that Cohen said about the claims of virtue and 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,”\(^\text{13}\) Professor Cohen identified 3 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

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12 Cohen cite

and ideals. He was much less interested, theoretically, in the political processes that would be required for the pursuit of these ends.  

4. The dominance of justice
And that is not untypical of modern political theory. It indicates, I think, 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, and liberty, 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 virtues of individuals 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 seek to promote.  
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 this country—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 John 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 Otsuka, Michael Walzer, a number of our colleagues at Oxford, and of course Gerry Cohen too.  
All of this is focused on topic 3, the aims and policies of a good society and the basic structure of its political economy; precious little attention is paid in the justice-industry to questions about political process, political institutions and political structures.

14 There is not much discussion by Cohen of political institutions—apart from brief discussion in Rescuing Justice and Equality 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.” (p. 385)

15 Terminology can be a problem: Of course we can 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, but then we are not talking about personal characteristics in the way that Hume is, although we may be talking about personal characteristics in the way that Cohen was.

I want nothing I say here tonight to be heard as denigrating the study of justice and equality by my mentors, friends, and colleagues. I too have contributed to the project, including an article exploring and defending the idea of the primacy of justice among the values that may be explored in political philosophy. But I worry that it is a little one-sided.

5. Isaiah Berlin

Sometimes it seems that political theory is understood as just applied moral philosophy—as it seems to have been, for example, in Isaiah Berlin’s understanding. Berlin, as you know, also held this chair (from 1957 till ‘67). 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.”

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.

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, and big picture diagnosis of the pathologies of certain general currents of thought about man in society. Again: I don’t want to convey the impression that any of this is unimportant. Even so, I think there are problems with Berlin’s specification of this agenda for political philosophy.


19 Berlin said: “Political philosophy is in essence moral philosophy applied to social situations.” True, he does go 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 gives no indication that these are worth study in their own right.

20 Berlin cite

21 E.g. in Berlin’s 1950 essay “Political Ideas in the Twentieth Century.”
To read almost any of his work is to read essays that are resolutely uninterested in the political institutions of liberal society. Beyond airy talk of freedom and openness, Berlin was just not interested in exploring the ways in which liberal or democratic political institutions might accommodate the pluralism he thought so important in human life.\textsuperscript{22} Invited by his interviewer to consider “What possible support can your theory of pluralism give to the problem of democracy?”—he simply repeated the commonplace that “[d]emocracy need not be pluralistic,”\textsuperscript{23} indicating, by his immediate focus on that the prospect of the tyranny of the majority, how Berlin’s own understanding of political theory has inherited philosophy’s ancient grudge against democracy, nurtured since the trial and execution of Socrates.

6. 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, in his 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.\textsuperscript{24}

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—Hobbes’s question about “the securing of order, protection, safety, trust, and the conditions of cooperation.” Williams was helping us cultivate or recall a sense of different and distinctive ends for politics—different from justice, for example. His was not an attempt to locate the distinctive subject-matter of political theory in the realm of political institutions.\textsuperscript{25}

\textsuperscript{22} Rawls says: “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.” (PL, __).

\textsuperscript{23} Berlin, Interview.

\textsuperscript{24} Williams, “Realism and Moralism”

\textsuperscript{25} The same is true, I think, for Raymond Geuss’s book, Philosophy and Real Politics: it is a refreshing tilt away from what the author calls an “ethics-first” (p. 9) conception of political philosophy, but it is a tilt more towards a philosophy of political action than towards a philosophy of the structures and processes that are needed to house our acting together under circumstances of moral and political disagreement.
7. Topics and principles

It is time to lay my own cards on the table. I think institutions are massively important. Exactly because we disagree in our ethical and political aims, we need to inquire into the structures that house and refine our disputes and the processes that 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.26

First and foremost we need to understand the foundations of democracy; but not only democracy, and not just democracy in a crude undifferentiated sense: we need to understand democratic representation and democratic political parties.27 We need to theorize the difference between a democratic legislature, a democratic administration, and courts in a democracy. And the difference between different sorts of democratically elected officials: an elected President, elected law-makers, and even (God help us!), 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: traditional, even fuddy-duddy topics that I worry we have lost sight of: like federalism and devolution; the choice between unicameral and a bicameral parliament; sovereignty; the separation of powers; checks and balances; the independence of the judiciary; the principle of loyal opposition; and the rule of law. Those are the big ones and there are a bunch of lesser principles too like civilian control of military (think of S.E. Finer’s great book, The Man on Horseback),28 the separation of church and state, constitutional monarchy, 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, we need to complement and inform that work with an understanding of the mechanisms through which ideals of justice 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 aims, and orchestrate what is done about whatever aims we can settle on.

26 Cf. Waldron, Law and Disagreement, pp.___.

27 Others concerned about this gap: e.g. Nancy Rosenblum’s recent and important book titled On the Side of the Angels: An Appreciation of Parties and Partisanship (2008); there Rosenblum speaks out about the lack of interest in political parties in modern political theory.

28 S.E. Finer’s great book, The Man on Horseback
I don’t argue this for the sort of reason that Hume argued for the primacy of institutions over virtues; the Hume/Madison argument that we can set up institutions to produce good results whatever the state of individual virtue in the polity.\textsuperscript{29} I have no version of that for the choice between an emphasis on institutions and an emphasis on justice. In jurisprudence, Lon Fuller toyed with something like this on the rule of law: he thought that if you do things the right way—follow the right formal, procedural, and institutional pathways—you are more likely to end up doing the right thing. If you do things explicitly, coherently, 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.\textsuperscript{30} It’s an intriguing hypothesis, but the consensus in legal philosophy is that it cannot be pushed very far.\textsuperscript{31}

Nor is my emphasis on institutions as opposed to ultimate aims born of 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—John Rawls and Robert 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 debates.\textsuperscript{32} And if that’s 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\textsuperscript{33} and in nation-building (whether we are overhauling our own constitution or trying to establish one in Iraq or Afghanistan), it matters what processes we set up. Institutions make a difference,

\textsuperscript{29} See section 1 above.


\textsuperscript{31} Cite some critics of Fuller: Kramer?

\textsuperscript{32} Cf. Waldron, \textit{Law and Disagreement}.

\textsuperscript{33} Legal process school—principle of institutional competence—get a good quote from Hart and Sacks.
not just to the political game but, through the inclusiveness of the order they establish, to the security, prosperity and open-ness 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.34

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7. The value of institutions

OK, you may say; but isn’t the study of institutions and political processes a matter for empirical political science? Isn’t it a matter for the Gladstone Professor of Government not the Chichele Professor of Political Theory?

Well, yes and no; yes, certainly it is a task for political science. The study of how politics actually works within the institutions 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.

But that doesn’t preclude the reflective interest of political theory. Institutions are theoretical matters too. And not just for what is sometimes called “positive” political theory.35 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: Scotland; reform of the House of Lords; and our relation 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 the basis for our assessment of existing institutions—our parliament, the monarchy, the courts, the administration, the political parties, our division into nations, 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 are the straightforward pragmatic or consequentialist values that our realist colleagues in empirical political science are comfortable talking about. There are layers and layers of additional value to be considered.

Certainly consequential assessment of institutions is important; and it’s complicated. One the one hand there is our assessment of the output of a given institution (compared to the different output that a different institution or institutional system might have yielded). Assessing this means mapping values

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35 Cite some typical work. Ferejohn?
like justice, equality, liberty, and aggregate prosperity onto the laws or effects of administering the laws, and onto our policies and the social results of implementing our policies. As Rawls put it in *A Theory of Justice*, “The fundamental criterion for judging any procedure is the justice of its likely results.”

Second, there are the side-effects of the operation on people, often good side-effects, like the educational effects that John Stuart Mill, or in 20th century political theory Carole Pateman, expected from participatory democracy.

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. I mean efficiency. Recently there has been discussion of how much more an elected House of Lords would cost the taxpayer than the present unelected version. Why? Well, we need to understand this, in a way that perhaps the budget people from Treasury do not. It is not because an elected chamber is more profligate. It is because people may want to elect individuals who have to give up their jobs to become legislators, people who can’t just make do on an allowance. This has always been a problem with candidates for office who are not independently wealthy.

In general, we have to be very careful with this sort of cold-eyed budgetary approach, applying 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, 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. And in general, the efficiency approach to political institutions has engendered in New Zealand 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, then there can be no real objection to truncated formal parliamentary debate by repeated use of urgency and closure motions. It is a sorry spectacle.


37 Cite to Mill, CRG and Pateman, *Participation and Democratic Theory*.

38 Newspaper cite on this.

39 Refer to some book length study on this.
OK; so those are some layers of consequentialist analysis. But then we have to examine, and this is much subtler and more difficult, the elements of non-consequential assessment—the deeper layers of dignitarian value, for example, that explain why certain processes—like democratic decision-making—are important quite apart from their outputs and quite apart from their efficiency. Aren’t we bound to consider also the way that 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 centers of intelligence, 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.41

The same is true in our elective institutions. In his great book, Considerations on Representative Government, John Stuart 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.42

Dignity, respect; these are not just philosophical theses about Kantian values.43 The respect and dignity that are embodied in some political systems, 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 from or hope for, so far as their political institutions are concerned.\textsuperscript{44}

If I may use a literary example: Mrs. Gaskell in her 1848 novel \textit{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.\textsuperscript{45}

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.”\textsuperscript{46}

But, then, as Mrs. Gaskell says, though they 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.”\textsuperscript{47} And John Barton returns to Manchester crushed and in silent despair: “Tell us what happened

\textsuperscript{44} OR, if we want to continue working under the auspices of justice, someone must remember that the distribution of political power in a community is itself an issue of justice, quite apart from the results of its exercise. The most powerful and protracted application of Aristotle’s discussion of justice in Book Five of the \textit{Nichomachean Ethics} is to be found in the middle chapters of Book III of the \textit{Politics}, where he asks: “[O]ught the good to rule and have supreme power?” and answers, “But in that case everybody else, being excluded from power, will be dishonored.”


\textsuperscript{46} Ibid., p. 84.

\textsuperscript{47} Ibid., pp. 95-6.
when you got to th’ Parliament House,” says 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.”

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.”

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, 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*,
Willy Forbath, who teaches legal history in Texas, has gathered some observations
voiced by labor organizers and labor legislators in America in the 1890s and the
early years of the 20th century, when statute after statute, regulating working hours
and working conditions, was falling victim to judicial review. “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 them 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.”
“I would kill them all and see if that would be considered unconstitutional,” said
one Colorado mine-worker. These are insiders in a legislative institution
confronting a dismissive and high-handed rebuff by another institution. And again,
we need to evaluate all this not just in terms of the value or the justice of the laws

48 Ibid., p. 98.

49 Ibid., p. 96.

50 General cite to William Forbath, *Law and the Shaping of the American Labor Movement*.

51 Ibid., pp. 47 and 56.

52 Ibid., p. __.
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.\textsuperscript{53}

Somebody in our discipline has to have the job of reflecting 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 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 need a sophisticated philosophical understanding of the layers of value that are implicated in the assessment of our 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 Isaiah Berlin. But they are not to be neglected.

\textbf{9. Even beyond value: presence}

There are other layers too in the evaluation of our institutions. The importance of history and political aesthetics and the symbolic, ceremonial, maybe even the sacramental aspects of the processes we use for assembling and deliberating about the common good. There are questions of stability and longevity, 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.\textsuperscript{54}

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

\textsuperscript{53} There are elements of dignity too in the output of the institution, not just in the sense that certain policies and certain restraints are necessary to respect dignity – not having degrading treatment, perhaps respecting dignity in policies of elder care, or whatever or trade-offs etc.—but also in the message that is conveyed. Cf. Bernard Williams on the difference between treating those, with whom one disagrees, as opponents, which, Williams says,

\begin{quote}
    can, oddly enough, show more respect for them as political actors than treating them simply as arguers—whether as arguers who are simply mistaken, or as fellow seekers after truth. A very important reason for thinking in terms of the political is that a political decision—the conclusion of a political deliberation which brings all sorts of considerations, considerations of principle along with others, to one focus of decision—is that such a decision does not in itself announce that the other party was morally wrong or, indeed, wrong at all. What it immediately announces is that they have lost.
\end{quote}

\textsuperscript{54} Edmund Burke’s admonition against too frequent change: “By this unprincipled facility of changing the state as often, and as much … 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.” Also: Arendt, \textit{On Revolution}. 

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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 Hannah Arendt. (I know Isaiah 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.”55 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.”56 Sometimes quite 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.57

Let’s go back to what we want from our political institutions. We want there to be (in John Stuart 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,

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.” 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

55 Berlin, Interviews, __. See also JW on Arendt and Berlin in NYRB.

56 Arendt, The Human Condition, 52.

representative’s difference from and disagreement with what various others have to say.

Those of you who know the HBO TV series *The Wire*, may remember the episode at the beginning of Series 3, 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 “Motherf*cka’s got the floor” and “Chair ain’t recognize yo’ ass.”58 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.59 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.60

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


59 Weber, *Politics as a Vocation*: “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.”

through” in a way that would permit the question of their restructuring to be raised.\textsuperscript{61}

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 the actor. 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.\textsuperscript{62}

10. Political theory teaching
What if anything does this entail for the way we teach the theory of politics in Oxford, one of two compulsory politics papers in PPE?

It is partly a matter of orientation. I am conscious that for most of this lecture I have run the terms “political theory” and “political philosophy” together: my suggestion has been that 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 and 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 predecessors Gerry Cohen and Charles Taylor were comfortable, I think, with that orientation. Me, I am more happy with an orientation towards law. As well as an approach that sees political theory dovetailing with empirical political science.

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, the remaining two to be devoted to questions that are slightly more political and institutional in character, but only slightly: the obligation to obey the law, and the foundations 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, the

\textsuperscript{61} Ibid., pp. 360-3.

\textsuperscript{62} Arendt on social/political conditions of individual thought.
rule of law, the legal process, the role of the courts in modern governance, or the case for or against bicameralism. We are lucky if there is time for anything on representation.

And of course the first set of issues are important. Our student need to be fluent in arguments about justice, liberty, and equality, particularly if that can be brought to be 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 to enter the academic profession. At the same time, one wonders whether the vast majority of our PPE students, who will not become lecturers but will take up positions in business and industry, in journalism or think-tanks, in the arts or in public life, are being given the preparation that they need in the theory of politics.63

I mentioned that the United Kingdom 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 our political decision-making. Political theory students in America are prepared as a matter of course for a debate about judicial review and the challenge to democracy that it gives rise to—something that will come to a head in the forthcoming Supreme Court decision about Obama’s health care legislation.64 But are our students prepared to debate the British equivalent of these issues, on issues like prisoner voting, for example?

Last—and right now—there is the question of further reform of the House of Lords: the expulsion of most of the hereditary peers;65 the precipitation out of the judges; the retention of the bishops; and the 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.66 They will know the crude terms in which

63 On the political theory panel, in the Department of Politics and international Relations, we are presently giving strong consideration to a reform of the compulsory paper in political theory to accommodate concerns like these, alongside the more traditional study of the ends of political life—maybe contemplating division into two papers.

64 Name of litigation.

65 1999 legislation.

66 Cite to Mill and Bentham, and JW on “Bicameralism”
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: 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? 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?67

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,68 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.69

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? 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 United Kingdom 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

67 Can you only have such an independent second chamber in a federal system? If so what are to make of the other 49 independent second chambers in the American states: Massachusetts is not a federation, nor is California; yet they both have an independent second chamber.

68 Cite to JW, Dignity of Legislation.

69 JW paper on “Separation of Powers.”
we cannot do that without examining all the layers of value that, as I said a few minutes ago, are relevant to institutional assessment.

11. Political theory and the canon

None of what I have said is new: in some ways it is quite old-fashioned. Certainly the issues I have raised—not just about the Lords, but about political institutions generally—are those that the dominate the canonical writers 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.\(^70\) In the early modern tradition, we have Hobbes on the structure of sovereignty and the absolutist challenge to the rule of law.\(^71\) There is John Locke with his paradoxical combination of legislative supremacy and legislative constraint; and his views on separation of powers;\(^72\) 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.\(^73\) And, opposed to Rousseau, we have James 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.\(^74\) There is the work of Hegel that Charles Taylor introduced us to, when he was Chichele Professor, when I first came to Oxford in 1978.\(^75\)

Of course there is a case for studying these issues directly, not just as ventriloquists for dead white males from the 17\(^{th}\), 18\(^{th}\), and 19\(^{th}\) centuries. There is a case for having a modern paper on theory of politics that encourages our students to approach it in their own 21\(^{st}\) century voices. But at present that is not what we do. Instead we study different topics—Rawls’s theory, the 57 different varieties of luck-egalitarianism and global justice—neglecting the issues of structure and

\(^70\) Aristotle, *Politics*, plus *Constitution of Athens*.

\(^71\) Hobbes pin-cite.

\(^72\) Locke, *Second Treatise*, pin-cite.

\(^73\) Rousseau, SC and Bernard Manin’s book

\(^74\) Federalist Papers, # 10.

\(^75\) Charles Taylor, *Hegel and Modern Society*.  

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process and sovereignty and constitution set out in *Leviathan*, or *The Social Contract*, *The Federalist Papers* or the *Two Treatises of Government*. On this, 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, he seems to have chosen deliberately to focus on precisely those aspects of Mill’s output that had least to do with representative government and precisely those aspects of *Spirit of the Laws* that were furtherest from Montesquieu’s concerns about the structures and processes of government. Berlin had work of his own to do in the history of ideas; I know that; but in retrospect, the balance seems a little one-sided.

12. Conclusion

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, 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 [like fear and terror] are requisite to establish it, this is what every capacity may reach.

Despotism is not quite a default position. But it is one that is least characterized by institutional complexity, and 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”—was inclined to agree. He believed, as we have seen, that forms and

76 Berlin, “Montesquieu,” in *Against the Current*. Also Berlin’s Mill essays.


78 Ibid., p. __.

79 Cite in the Carrithers, Moshe, and Rahe collection, p. 3
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?  

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 and balances to constrain him; just the acclamation of a leader whose qualities and policies happen to appeal to the people. 

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 even sometimes require the government to retire from the field defeated, when its victory, in some courtroom or legislative battle was supposed to be in political terms 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 more decisive executive politics that eschews the laborious channels of an inconvenient constitutionalism. I am not laying odds on who is right. But I am saying that we should reasonably expect the theory of politics, as it is taught in this university, to make a contribution to this debate, the political politics of which now confront us at every turn.

80 Hume cite.

81 Ibid., p. __.