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UNIVERSITY OF OTTAWA / UNIVERSITÉ D'OTTAWA

THE FOUNDATIONS OF RIGHTS IN THE POLITICAL THOUGHT OF
BERNARD BOSANQUET

A DISSERTATION SUBMITTED TO
THE SCHOOL OF GRADUATE STUDIES AND RESEARCH
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY
DEPARTMENT OF PHILOSOPHY

BY
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OTTAWA, ONTARIO

JULY, 1993



William Sweet, Ottawa, Canada, 1993



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ABSTRACT

In 19th century Anglo-American political philosophy, one finds an important debate concerning the nature, source and limits of rights. Two of the dominant views here were the utilitarianism of Jeremy Bentham and J.S. Mill and the rights-based political thought of Herbert Spencer. While there are significant differences between them, both arguably reflect a perspective that is both liberal and individualist.

A response to these views--one that is sometimes taken to be fundamentally incompatible, if not entirely incommensurable, with the Anglo-American liberal tradition--is found in British idealist political thought. The most developed statement of this is, arguably, that of the British philosopher and social reformer, Bernard Bosanquet (1848-1923). Bosanquet argues that, to provide an adequate account of the nature, source and limits of human rights, one must abandon many of the individualist assumptions of his contemporaries.

The question I address, then, is whether Bosanquet's theory of rights is a plausible response to (if not also more adequate than) the 'liberal individualist' views of Bentham, Mill and Spencer. In other words, does Bosanquet address the problems that he finds in these liberal individualist accounts of rights and does he provide a plausible alternative to them?

My focus here is primarily, but not exclusively, historical. Moreover, I argue that a complete account of Bosanquet's theory of rights requires an elaboration of the "metaphysical theory of the nature of social reality"--"the social ontology"--on which it is based. Thus, in order to answer the question motivating this study, not only do I discuss Bosanquet's theory of rights in relation to the problems in the views of his contemporaries, but also show how it is related to his more general metaphysical concerns.

In Chapter 1, "The Foundation of Rights in 'Theories of the First Look'," I set the stage for my reconstruction and presentation of Bosanquet's theory of rights. I begin with a brief description of the accounts of the nature of rights given by Jeremy Bentham, J.S. Mill and Herbert Spencer, and of some of the 'liberal individualist' presuppositions which they share--specifically, concerning the nature of the individual and of law. I then outline several criticisms that Bosanquet does (or might) raise against these views. This will allow the reader to understand how Bosanquet saw these "theories of the first look" and will help to see what Bosanquet locates as the tendentious issues.

In Chapter 2, "Bosanquet's Theory of Rights," I reconstruct Bosanquet's theory of rights and respond to a number of criticisms directed directly to it. I suggest that the plausibility of Bosanquet's theory (and of many of the criticisms directed to it) depends upon other concepts that have

their roots in logic, epistemology or metaphysics (sc., those described as constituting the 'social ontology'). Thus, a full articulation of Bosanquet's theory of rights, as well as an assessment of the standard criticisms of his work, requires a close analysis of some central concepts that he uses.

I turn to these issues in Chapters 3 and 4, "Bosanquet's Social Ontology of Rights I: Teleology, the Individual and the Real Will" and "Bosanquet's Social Ontology of Rights II: Society and the State". Here I provide and discuss what seem to be the key elements in the 'ontological' or 'metaphysical' background to Bosanquet's position. In the process, I argue that many of the criticisms of these concepts that bear directly on Bosanquet's theory of rights, in fact, fail, because they rest on an incomplete and inadequate understanding of his argument.

In the concluding chapter, "Bosanquet's Theory of Rights: An Assessment" (Chapter 5), I show how Bosanquet's view avoids or responds to the problems he has identified in the theories of rights of Bentham, Mill and Spencer. As well, I consider a number of additional criticisms to Bosanquet's account of rights and to the social ontology that underlies it, suggest how he might answer them, and indicate some additional issues that remain to be explored. These remarks will also help one better to situate Bosanquet in the history of political thought.

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This study had its inspiration while I was a student at the University of Manitoba in Arthur Schafer's graduate seminar on political philosophy. Liberal individualism did not seem a tenable view to me then, but my central problem was to find a satisfactory--or, at least, more satisfying--alternative. In Leslie Armour's 'Metaphysics' seminar (on 'The Shared Mind') at the University of Ottawa, I had the opportunity to look seriously at a movement often ridiculed--British idealism--and saw in it something that seemed to illuminate many of the issues I was concerned with. Since then, professional and personal responsibilities and studies in other fields have occasionally diverted me from this project, but I cannot help but feel that, in some way, they ultimately contributed to it.

I would like to express my thanks to the many people who helped in the preparation of this study. First, to Leslie Armour, who took on the task of directing this work, for his encouragement, advice and support. The breadth and depth of his knowledge of the idealist tradition has helped enormously in my coming to appreciate its fruitfulness and in enabling me to better situate my own reflections. To Hilliard Aronovitch, Peter P. Nicholson and Luc Ferry who read drafts of sections

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LIST OF ABBREVIATIONS*

AF	Jeremy Bentham, <u>Anarchical Fallacies in The Works of Jeremy Bentham</u> , (ed. John Bowring), Vol. 2.
IPML	Jeremy Bentham, <u>An Introduction to the Principles of Morals and Legislation</u> , (ed. J.H. Burns and H.L.A. Hart).
PIV	Bernard Bosanquet, <u>The Principle of Individuality and Value</u> .
PTS	Bernard Bosanquet, <u>The Philosophical Theory of the State</u> , 4th. ed.
VDI	Bernard Bosanquet, <u>The Value and Destiny of the Individual</u> .
KG	Bernard Bosanquet, "The Kingdom of God on Earth", in <u>Essays and Addresses</u> .
FS	Bernard Bosanquet, "The Function of the State in Promoting the Unity of Mankind" in <u>Social and International Ideals</u> .
LFI	Bernard Bosanquet, "Do Finite Individuals possess a substantive or an adjectival mode of being?", in <u>Life and Finite Individuality</u> , (ed. H. Wildon Carr), <u>Proceedings of the Aristotelian Society</u> , supp. vol. I.
SS	Bernard Bosanquet, <u>Some Suggestions in Ethics</u> .
LPPO	T.H. Green, <u>Lectures on the Principles of Political Obligation</u> .
L	John Stuart Mill, <u>On Liberty</u> .
U	John Stuart Mill, <u>Utilitarianism</u> .
MS	Herbert Spencer, <u>The Man versus the State</u> .

* For complete data on these works, see bibliography

INTRODUCTION

Two of the dominant views in 19th century Anglo-American political thought were the utilitarianism of Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873) and the natural rights-based political philosophy of Herbert Spencer (1820-1903). A central concern of these authors was to establish the limits of state action and, in the process, they saw that they had to address the question of the nature, source and limits of 'rights'. There are, of course, a number of differences in their respective arguments and conclusions, but one can maintain that they all reflect a perspective that is both 'liberal' and 'individualist'.

A response to these views--one that is sometimes taken to be fundamentally incompatible, if not entirely incommensurable, with the Anglo-American liberal tradition--is found in British idealist political thought. The most developed statement of this 'school' is, arguably, to be found in the work of the British philosopher and social reformer, Bernard Bosanquet (1848-1923). Like many of his fellow idealists (notably T.H. Green, D.G. Ritchie, William Wallace, John Watson and, to a lesser degree, F.H. Bradley), Bosanquet holds that, to determine the relation between the state and the

individual and to provide an adequate account of the nature, source and limits of human rights, one must abandon many of the assumptions of the 'individualists'.

The question I address in this study, then, is whether Bosanquet's analysis of rights is a plausible counter to (if not also more adequate than) those of the 'liberal individualist' theories of Bentham, Mill and Spencer. In other words, does Bosanquet address the problems that he finds in their accounts of rights and does he provide a tenable response to them?

Admittedly, while the nature, source and limits of rights was an important issue, and while he referred to it in several of his political works, it was not Bosanquet's primary preoccupation. Moreover, while seriously concerned with the social and political events of his time, he rarely provided any detailed response to the criticism of his political thought. Nevertheless, there are resources in Bosanquet's work that enable his readers to see what this response would be and, given his analysis of rights and his comments on allied topics (such as the nature of liberty, the limit of state action and the basis of political obligation), it is clear that Bosanquet has a systematic theory of rights.

My focus here, therefore, will be primarily, but not exclusively, historical, and the method analytical and reconstructive. Moreover, I argue that a complete account of Bosanquet's theory of rights requires an elaboration of the

"metaphysical theory of the nature of social reality"--what Carol Gould has called, "the social ontology"¹--on which it is based. Thus, in order to answer the question motivating this study, I will not only discuss Bosanquet's theory of rights in relation to the problems he saw in the views of his contemporaries, but will also show how his account is related to his general metaphysical principles.

1. Idealist Political Thought: Bosanquet and Green

The political philosophy of the British idealists in general, and of Bosanquet in particular, has been the subject of much misunderstanding and prejudice. In Anglo-American philosophical circles it has, in recent years, been almost entirely forgotten. Still, its practical influence was profound in Great Britain and her Empire from the late nineteenth until the mid-twentieth centuries and its effect outside of professional philosophical circles was significant.²

If one were to list the major representatives of British idealist political thought, two names would appear consistent-

¹ Marx's Social Ontology: Individuality and Community in Marx's Theory of Social Reality, (Cambridge, 1978).

² According to Stefan Collini, until the 1920s, "[a]n attack on the neo-Hegelian theory of the state became almost a rite de passage for the budding social scientist" (see Collini, "Sociology and Idealism in Britain: 1880-1920," Archives européennes de sociologie, 19 (1978), pp. 3-50, at p. 27, n. 27).

ly: T.H. Green and Bernard Bosanquet.³ Green (1836-1882), successively Fellow, Tutor and Professor at Balliol College, spent the whole of his adult life at Oxford (from 1860 until his death), yet he influenced a large number of students who became not only academics, but clerics, diplomats and politicians.⁴

Bosanquet was one of Green's students at Oxford.⁵ He was Fellow of University College, Oxford⁶ between 1871 and 1880, Professor at the University of St Andrews in Scotland (1903-1908) and a leading figure of the Charity Organisation Society, in London, in the 1880s and 1890s. Although Green may be better known (perhaps because he is often considered one of the spiritual fathers of what was to become the British Labour Party⁷), the influence of Bosanquet was at least equally important. His political thought is, moreover, more developed than that of Green. Green's death at the age of 46 left his

³ See P. Laslett and P.W. Cummings, "Political Philosophy, History of," in Paul Edwards, ed. The Encyclopedia of Philosophy (New York: The Free Press, 1967), Vol. 6, pp. 370-387, p. 382.

⁴ See Melvin Richter, The Politics of Conscience: T.H. Green and his Age, (New York: Macmillan, 1963), p. 377, n. 4.

⁵ At his arrival at Oxford in 1867, Bosanquet was described by Green as "the most gifted man of his generation" (see J.H. Muirhead (ed.), Bernard Bosanquet and his Friends, [London, 1935], p. 19).

⁶ Interestingly, Bosanquet was selected for this post over his fellow student F.H. Bradley.

⁷ See Adam Ulam, The Philosophical Foundations of English Socialism, (London: Harvard University Press, 1951), Chapter 2.

Lectures on the Principles of Political Obligation uncompleted and, apart from some brief sections in his Prolegomena to Ethics, he produced only a few essays on political topics. Bosanquet, however, lived until 75 and, of his more than 20 books and 140 articles,⁸ many bear directly or indirectly on his social and political thought.

More important, perhaps, was the fact that Bosanquet was able to draw on the philosophical response to the ideas of Green and the 'first generation' of idealists, as well as on the lessons of the events of the late nineteenth and early twentieth centuries. Further, not only was Bosanquet well-informed of the political situation on the continent and in the United States, but his interests extended to economics and social welfare.⁹ This background, then, provided him with a broader base from which to reply to the challenges of both philosophers, like Mill and Spencer, and social reformers, such as Sidney and Beatrice Webb and the founder of the Salvation Army, General William Booth.

The central role played by Bosanquet in British idealist political thought is clear from the fact that the classical criticism of this tradition, The Metaphysical Theory of the

⁸ See Peter P. Nicholson, "A Bibliography of the Writings of Bernard Bosanquet (1848-1923)," in Idealistic Studies, 8 (1978), pp. 261-280.

⁹ Adam Ulam notes that The Philosophical Theory of the State "has a comprehensiveness and an awareness of conflicting political and philosophical opinions which give it a supreme importance in modern political thought. Bosanquet is both a political theorist and a political analyst" (Ulam, p. 50).

State by Leonard Hobhouse¹⁰, is principally a critique of Bosanquet. There is other evidence as well. The breadth of Bosanquet's philosophical work is obvious from the range of topics treated in his books and essays, and it is no surprise that, in his obituary in the Times, he was said to have been "the central figure of British philosophy for an entire generation."¹¹ J.H. Randall claimed that Bosanquet was "the most popular and the most influential of the English idealists"¹² and, according to François Houang, "les historiens britanniques le [that is, Bosanquet] présentent souvent comme un des penseurs les plus puissants et les plus originaux de la seconde moitié du XIXe siècle, comme le philosophe représentatif de ce néo-hégélianisme qui a marqué la pensée anglaise de 1870 à nos jours."¹³

2. Influences on Bosanquet's Political Thought

British idealist political thought is often thought to be largely Hegelian in character and Bosanquet's debt to Hegel is

¹⁰ London: Macmillan, 1918, p. 120. Of Hobhouse, Bosanquet wrote: "I don't think I shall read his book--I don't feel I learn much from him, and books are expensive since the war began; and time is not cheap" (See Muirhead, Friends, p. 21.)

¹¹ See Muirhead, Friends, p. 19.

¹² J.H. Randall, jr. "Idealistic Social Philosophy and Bernard Bosanquet," in Philosophy and Phenomenological Research, XXVI (1966), pp. 473-502; Reprinted in The Career of Philosophy, (New York, Columbia University Press, 1977), Volume 3, pp. 97-130, p. 114.

¹³ François Houang, Néo-hégélianisme en Angleterre: la philosophie de Bernard Bosanquet (1848-1923), (Paris: Vrin, 1954), p. 7.

obvious. Nevertheless, Bosanquet saw his own work as being in a tradition that traces its roots through Hegel, back to Kant, Rousseau and Plato. At the beginning of his philosophical career Bosanquet described Kant and Hegel as "the great masters who 'sketched the plan'".¹⁴ Yet he saw his greatest teacher to be Plato,¹⁵ and he often spoke of his theory as a classical theory (PTS xxvii).¹⁶ R.M. MacIver has described Bosanquet's theory as "an applied hellenism",¹⁷ and one of Bosanquet's early works was a commentary on Plato's Republic.¹⁸

Bosanquet saw the influence of the Greek tradition in both Rousseau's political thought and in later German philosophy. In Rousseau, he says, we find "the actual revival of the

¹⁴ Muirhead, Friends, p. 21.

¹⁵ See Muirhead, Friends, p. 21. Again, Bosanquet writes that "there is no sound political philosophy which is not an embodiment of Plato's conception" (PTS 6).

¹⁶ The continuity of British idealism with Greek philosophy has been signalled by J. H. Muirhead in The Platonic Tradition in Anglo-Saxon Philosophy, (London: Allen and Unwin, 1931). The "revival of Plato" in nineteenth century Britain is discussed in Frank M. Turner's The Greek Heritage in Victorian Britain (New Haven: Yale University Press, 1981). (Turner's cursory account describes Bosanquet as a disciple of "Platonic regimentation" [op. cit., p. 440].)

¹⁷ R.M. MacIver, "Society and the State," in Philosophical Review, XX (1911), pp. 30-45, p. 34. MacIver was one of the founders of American sociology, although he began his career in philosophy in Scotland at the University of Aberdeen.

¹⁸ A Companion to Plato's Republic for English Readers: Being a Commentary adapted to Davies and Vaughan's Translation, (New York: Macmillan, 1895).

full idea of human nature"¹⁹ that one finds in Plato, and he considered the Hegelian analysis of objective spirit as "a magnified edition... of Plato's Republic" (PTS 237). Yet Bosanquet believed that Greek classical philosophy did not guarantee the value of the human individual--a value that was to have an important role in his political thought. Here, then, Jean-Jacques Rousseau became especially important for Bosanquet. It was from his work that Bosanquet borrowed the idea of the 'general will' and Bosanquet found his emphasis on liberty as the essence and quality of the human person to be particularly valuable and pertinent in outlining the nature of state action (see PTS 218 and 221).

Although not as frequently noted, one must not overlook the traces of Kant's work in Bosanquet's political thought. For example, Bosanquet's emphasis on the moral development of the human individual and on limiting the state from directly promoting morality clearly reflects his reading of Kant and the Kantian influences on Green. Moreover, the 'best life', that Bosanquet describes as the 'end' of the individual and of the state alike, approximates, he believes, what Kant referred to as 'the kingdom of ends'²⁰. Indeed, even Bosanquet's justification of the authority of the state can be seen as a reflection of a Kantian imperative--that one wills the state

¹⁹ The Philosophical Theory of the State, 4th. ed., (London: Macmillan, 1923), p. 12.

²⁰ "The Kingdom of God on Earth," in Essays and Addresses, (London, 1889) pp. 108-130.

as a necessary means to the moral end. It is, perhaps, an important corrective to the study of Bosanquet's thought to be reminded of the role played in it by Kant's philosophy.

3. The Reputation of Bosanquet's Political Thought

One might well ask why Bosanquet's political thought has suffered from so much neglect. Perhaps one of the major reasons for this is that the early criticisms of L.T. Hobhouse, Harold Laski, R.M. MacIver, G.D.H. Cole and C.E.M. Joad, among others, were so influential that, even today, they are generally held to be conclusive. Others have claimed that Bosanquet's association with the majority report of the Royal Commission on the Poor Laws (1905-1909) (his wife, Helen, was a member of the Commission) and his apparent championing of the nation state placed him as a Victorian thinker whose contribution to political thought was outdated almost as soon as it had been published.²¹ Others, still, see in Bosanquet's philosophical idealism a tendency towards a 'conservative', if not a 'statist', political philosophy,²² and the fact that

²¹ According to Adam Ulam, "[w]hen Bosanquet wrote, it was already becoming anachronistic to discuss political problems in terms of internal politics only" (Ulam, p. 69).

²² See Karl R. Popper, The Open Society and its Enemies, 2 vols., (New York, 1963), Vol. 2, p. 79. This, of course, is also the view of Hobhouse. Both Hobhouse and Popper saw 'idealism' as reflecting principles that led to war and, as Leslie Paul notes, "[p]erhaps, too, the collapse of idealism as a great school of philosophy in England was not unconnected with the First World War. This threw a fierce light on German scholarship." (See Leslie Paul, The English Philosophers, (London, 1953), p. 267.)

idealism, as a general philosophical approach, appeared to go into eclipse after the 1920s is also, no doubt, a contributing factor.²³

Still, given the increased interest during the past twenty years, in Hegel, T.H. Green and, more recently, F.H. Bradley²⁴ and given the reevaluation of the significance of their work and its place in the history of philosophy, it seems appropriate to consider whether these criticisms of Bosanquet's thought--particularly those related to his political philosophy--are tenable. Moreover, (although I cannot pursue this directly in the present study), if there are significant similarities between the analyses of rights given by Bentham, Spencer and J.S. Mill and those that predominate in contemporary analytic political thought, and if Bosanquet's account was to prove to be a viable alternative to his liberal individualist predecessors, it may also provide a

²³ According to Leslie Paul, "[a]bout the time of Bosanquet, the Absolute finally blew up. Perhaps there is a parallel to be found in the reaction of the fourteenth century to the debates of the schoolmen: as then, speculation was exhausted. No further progress seemed possible along this road..." (Paul, p. 266). It is also perhaps not incidental to this decline in influence that the three leading figures in later British idealism, Bosanquet, F.H. Bradley and J.M.E. McTaggart, died within three years of one another.

²⁴ For example, P. MacEwan (ed.) Ethics, Metaphysics and Religion in the Thought of F.H. Bradley, Queenston, ON: Edwin Mellen Press, (forthcoming), Peter P. Nicholson, "Bradley as a Political Philosopher", The Philosophy of F.H. Bradley, (ed. Anthony Manser and Guy Stock), Oxford, Clarendon Press, 1984, pp. 117-130 and his recent study, The Political Philosophy of the British Idealists, Cambridge, Cambridge University Press, 1990, James Bradley (ed.), Philosophy after F.H. Bradley, Waterloo, ON: Wilfrid Laurier University Press, (forthcoming).

basis from which to discuss some of the problems to be found in recent work.

4. Prior Studies of Bosanquet's Political Thought

Despite the renewed interest in idealism, relatively little has been written on Bosanquet's social and political thought, and virtually nothing on his theory of rights. Many of the major criticisms of Bosanquet's views date from the early twentieth century--in fact, almost all of them appeared during his own lifetime. Aside from Hobhouse's attack on Bosanquet's political philosophy, most of the debate is to be found in essays or book chapters from the 1910s and 1920s.

Of the four published volumes that focus on Bosanquet, only two deal with his ethics and social philosophy. François Houang's two doctoral theses (published as Le néo-hégélianisme en Angleterre: la philosophie de Bernard Bosanquet (1848-1923)²⁵ and De l'humanisme à l'absolutisme: l'évolution de la pensée religieuse du néo-hégélien anglais Bernard Bosanquet²⁶ have little to say on these topics. Bertil Pfannenstill's 1936 doctoral thesis for the University of Lund, Bernard Bosanquet's Philosophy of the State, is quite general--devoting over a third of its length to a history of the theory of the state leading up to Bosanquet. While Pfannenstill addresses both the background of Bosanquet's political thought

²⁵ Paris, Vrin, 1954.

²⁶ Paris, Vrin, 1954.

as well as his political theory, he devotes only four pages to the topic of rights. Charles Le Chevalier's published doctoral thesis, La pensée morale de Bernard Bosanquet (1848-1923): Etude sur l'univers moral de l'idéalisme anglais au 19e siècle²⁷ assigns only 75 pages to Bosanquet's moral, social and political theory. While a sympathetic account, Le Chevalier's defense of idealism is more hortative than argumentative.

In the last 50 years there have been a number of unpublished doctoral theses, primarily in political science, on Bosanquet's political thought.²⁸ These studies have tended to address either his social or political philosophy as a whole or an element of his social thought in comparison with that in other authors. Generally, these theses acknowledge the

²⁷ "Thèse complémentaire" for the degree of "doctorat ès lettres" (Paris: Vrin, 1963). Republished under the title Ethique et idéalisme: le courant néo-hégélien en Angleterre, Bernard Bosanquet et ses amis, (Paris: Vrin, 1963).

²⁸ For example, Edward Robert Cain, The Rationalist Conception of Freedom in the Political Theory of Bernard Bosanquet (Ph.D. thesis in political science, Columbia University, New York, 1952); David Patrick Calleo, The Nationalist State and Co-Existence: Herder, Coleridge, and Bosanquet, (Ph.D. thesis in political science, Yale University, New Haven, 1959); Walter Feinberg, A Comparative Study of the Social Philosophies of John Dewey and Bernard Bosanquet, (Ph.D. thesis in philosophy, Boston University, 1966); John Luther Hemingway, The Emergence of an Ethical Liberalism: A Study in Idealist Liberalism from Thomas Hill Green to the Present, (Ph.D. thesis in political science, University of Iowa, 1979); Darrell Dexter Lacock, The Political Philosophy of Bernard Bosanquet, (Ph.D. thesis in philosophy, Yale University, 1967); Marvin M. Schnaidman, The Individual and Society in Bernard Bosanquet's Social Philosophy, (Ph.D. thesis in philosophy, Cornell University, 1975).

importance of the role played by Bosanquet in the history of political thought--for example, in the tradition of liberalism that led to the modern welfare state--and emphasize his critique of individualism. While their authors recognize that many of the criticisms of Bosanquet's social and political philosophy reflect a misunderstanding of some key features of his views, they are far from unanimous in their sympathies for Bosanquet's conclusions. None, moreover, have dealt at any length with the issue of rights in Bosanquet's thought.

In addition to the preceding texts, one might note three lengthy historical studies on Bosanquet: Ellen Jacobs, Bernard Bosanquet: Social and Political Thought,²⁹ A.M. McBriar, An Edwardian Mixed Doubles: The Bosanquets versus the Webbs; A Study in British Social Policy,³⁰ and Raymond Plant and Andrew Vincent Philosophy, Politics and Citizenship: the Life and Thought of the British Idealists.³¹ These volumes are useful in providing the historical context for Bosanquet's political thought. Jacobs is interested in Bosanquet's political thought "as it relates to his experience as a social reformer" and McBriar focuses on the debate on social policy which led to, and which resulted from, the Poor Law reform commission. Plant and Vincent provide a general presentation of idealist

²⁹ Ph.D. thesis in History, City University of New York, 1986.

³⁰ Oxford: Clarendon Press, 1987.

³¹ Oxford: Basil Blackwell, 1984.

political thought but, to the extent that they discuss Bosanquet's work, they focus on his involvement with the Charity Organisation Society and incorporate their assessment of his political thought into a discussion of idealism as a whole. None of these authors, however, provides an extensive examination of the arguments Bosanquet provided (or could provide) for those principles underlying his theory of rights.

Some useful, though still quite general, discussions of Bosanquet's political thought are to be found in J.H. Randall's, "Idealistic Social Philosophy and Bernard Bosanquet,"³² in two lengthy articles by Stefan Collini³³, in the critical essay by John Morrow, "Liberalism and British Idealist Political Philosophy: A Reassessment"³⁴ and in Peter Nicholson's recent study, "Bosanquet and the General Will".³⁵ Randall's article is informative, but largely descriptive, and Collini's studies provide an outline of the intellectual climate in philosophy and sociology at the time of Bosanquet and summarize some of the major criticisms of Bosanquet's

³² Philosophy and Phenomenological Research, XXVI (1966), pp. 473-502.

³³ "Hobhouse, Bosanquet and the State: Philosophical Idealism and Political Argument in England: 1880-1918," Past and Present, 72 (1976), pp. 86-111, and "Sociology and Idealism in Britain: 1880-1920," Archives européennes de sociologie, 19 (1978), pp. 3-50.

³⁴ History of Political Thought, 5 (1984), pp. 91-108.

³⁵ In his The Political Philosophy of the British Idealists: Selected Studies, (Cambridge: Cambridge University Press, 1990), pp. 198-230.

work. While important contributions to understanding the context of the philosophical debates, they do not, however, go far in presenting Bosanquet's arguments. Morrow's criticisms of Bosanquet focus on what the author considers to be the "illiberal" consequences of his social policy. Nicholson's sympathetic treatment of Bosanquet is quite valuable in raising and discussing some of the standard criticisms of his account of the state and of the general will (though there are some problems in his interpretation of the central arguments.) Nevertheless, the issue of rights is only briefly mentioned in these essays and Nicholson alone (albeit indirectly) discusses the question of the metaphysical foundations of Bosanquet's political thought.

As noted above, one consequence of the present study will be to reconsider Bosanquet's place within the Anglo-American liberal tradition. Two texts are particularly important here.³⁶ The first is Klaus Dockhorn's work, Die Staatsphilosophie des Englischen Idealismus.³⁷ Like Rudolf

³⁶ A third text of some relevance to situating Bosanquet's thought within the liberal tradition is Gerald Gaus's The Modern Liberal Theory of Man (Canberra: Croom Helm, 1983). Gaus includes Bosanquet along with J.S. Mill, T.H. Green, L.T. Hobhouse, John Dewey and John Rawls as six "liberals" who attempt to reconcile individuality and sociability. But Gaus focuses on showing similarities in these authors, and detailed reference to Bosanquet's arguments is rather slight.

³⁷ Köln/Bochum-Langendreer: Heinrich Pöppinghaus o. H.-G., 1937.

Metz,³⁸ Dockhorn argues that British idealism in general, and Bosanquet in particular, "represented a complete break with the British tradition". In response, in The Neo-Idealist Political Theory: Its Continuity with the British Tradition, Frederick Philip Harris³⁹ maintains that Bosanquet has an important place within British liberal thought. This sympathetic study of British idealism focuses on rejecting the perception of Bosanquet as a conservative by arguing that there are 'individualist' elements in his thought and by attempting to clarify his concept of the state. (It contains, for example, important excerpts from previously unpublished letters from Bosanquet to R.M. MacIver on the distinction between the society and the state.) One of the serious limitations of Harris's work, however, is that it depends, in large part, on seeing Mill's thought (and, hence, the idealists' relation to it) largely through the work of the disputed⁴⁰ and posthumously published text, On Social Freedom. Perhaps one of the most frequently-cited volumes that refers to Bosanquet's political thought is A.J.M. Milne's, The Social

³⁸ Die philosophischen Strömungen der Gegenwart in Grossbritannien, (Leipzig: Felix Meiner Verlag, 1935); (A Hundred Years of British Philosophy. (tr. J.W. Harvey, T.E. Jessop and Henry Sturt; ed. J.H. Muirhead). [London: Allen and Unwin, 1938]).

³⁹ New York: King's Crown Press, 1944 (Ph.D. thesis, Columbia University, 1944).

⁴⁰ See J.C. Rees's 'appendix' to his Mill and his Early Critics, (Leicester: University of Leicester Press, 1956); reprinted in his John Stuart Mill's 'On Liberty', (ed. G.L. Williams) (Oxford: Clarendon Press, 1985), pp. 175-185.

Philosophy of English Idealism.⁴¹ Milne is attentive to the question of the relation between idealist social philosophy and its metaphysics, and his work is particularly useful in that it is broad (examining not only Bosanquet, but Bradley, Royce and Green) but also narrow (focusing only on the relation of the Absolute and the Concrete Universal to social philosophy in general). In comparison, while the present study shares many of the same concerns, it is narrower--concentrating on a particular aspect of Bosanquet's political thought--and broader--so far as it identifies and addresses a wide range of elements of Bosanquet's social ontology.

There is, in fact, only one volume that devotes significant space to Bosanquet's account of rights, and that is Nalini Pant's Theory of Rights: Green, Bosanquet, Spencer, and Laski.⁴² While this contains the lengthiest discussion of Bosanquet's theory of rights, it is primarily descriptive. Moreover, it does not address a number of the criticisms raised against Bosanquet's theory of rights and (as we shall see in Chapter 2) errs in its analysis of some of Bosanquet's central points. In short, Pant's chapter on Bosanquet is generally sympathetic, but it does not explore in any great detail a number of the aspects of the 'social ontology' that underlies Bosanquet's theory of rights.

⁴¹ London, 1962 (especially Chapters 5 and 7).

⁴² Varanasi, Vishwavidyalaya Prakashan, 1977, pp. 69-111.

5. The Object and Structure of this Study

The object of this study, then, is to reconstruct and present Bosanquet's theory of rights in order to determine whether his view is an adequate response to the theories of Bentham, Mill and Spencer.

In Chapter 1, "The Foundation of Rights in 'Theories of the First Look'," I set the stage for my reconstruction and presentation of Bosanquet's theory of rights. I begin with a brief description of the accounts of the nature of rights given by Jeremy Bentham, J.S. Mill and Herbert Spencer, and of some of the 'liberal individualist' presuppositions which they share--specifically, those concerning the nature of the individual and of law. I then outline several criticisms that Bosanquet does (or might) raise against these views. This will allow the reader to understand how Bosanquet saw these "theories of the first look" and will help to see what Bosanquet locates as the tendentious issues. What this implies, however, is that the principal concern in this chapter is not the ultimate defensibility of Bosanquet's criticisms nor the question of whether these theories might be able to be defended against such criticisms but, rather, what it was that led Bosanquet to elaborate a theory of rights in the first place.

In Chapter 2, "Bosanquet's Theory of Rights," I reconstruct Bosanquet's theory of rights and respond to a number of criticisms directed to it. I suggest that the plausibility of

Bosanquet's theory (and of many of the responses of its critics) depend upon concepts that have their roots in logic, epistemology or metaphysics (sc., those described as constituting the 'social ontology')--concepts often overlooked, or insufficiently developed, in analyses to date. Thus, a full articulation of Bosanquet's theory of rights, as well as an assessment of the standard criticisms of his work, requires a close analysis of some of these central concepts.

I turn to these issues in Chapters 3 and 4, "Bosanquet's Social Ontology of Rights I: Teleology, the Individual and the Real Will" and "Bosanquet's Social Ontology of Rights II: Society and the State". Here I provide and discuss what seem to be the key elements in the 'ontological' or 'metaphysical' background to Bosanquet's position. In the process, I argue that many of the criticisms of these concepts ultimately fail, because they rest on an incomplete and inadequate understanding either of his argument or of the concepts themselves.

In the concluding chapter, "Bosanquet's Theory of Rights: An Assessment" (Chapter 5), I show how Bosanquet's view avoids or responds to the problems he has identified in the theories of rights of Bentham, Mill and Spencer. As well, I consider a number of additional criticisms to Bosanquet's account of rights and to the social ontology that underlies it, suggest how he might answer them, and indicate some additional issues that remain to be explored. These remarks will also help one

better to situate Bosanquet in the history of political thought.

The present study, then, seeks to analyse, reconstruct, and extend some aspects of Bosanquet's work in order to provide a coherent account of his theory of rights. While its object is primarily historical, it is clear that its results bear on such questions as whether, if liberal individualist presuppositions are abandoned, the discourse of rights is possible in political discussion and whether an idealist theory of rights might provide a framework for a response to some currents in contemporary liberal political thought (particularly those represented by Rawls, Nozick, Dworkin and Melden). Such an investigation cannot, unfortunately, be pursued in these pages. It is, however, plausible that some of the issues raised in the articulation of Bosanquet's account will be of service in an assessment of contemporary rights theories.

CHAPTER 1

THE FOUNDATION OF RIGHTS IN "THEORIES OF THE FIRST LOOK"

As noted in the introduction, one of the major criticisms raised by the British idealists against the 'liberal individualists' was that they were unable to provide an adequate account of rights. Bosanquet's theory of rights is a response to these views--particularly to those of Bentham, Mill and Spencer, which he called, collectively, "theories of the first look".¹ Although the analyses of rights found in these "theories of the first look" were far from identical, Bosanquet claims that none of these theories succeeds in providing an adequate description of the nature, source and limits of rights, and that this failure is related to common problems in how they portray the individual, liberty and the law.

In this chapter, I wish to present, first, the theories of rights of Bentham, Mill and Spencer, along with the views of law, liberty and the individual reflected within them and, second, Bosanquet's criticisms of these theories. Such an

¹ The Philosophical Theory of the State, 4th. ed., (London: Macmillan, 1923), p. 75.

account will show the reader how Bosanquet understood the views of Bentham, Mill and Spencer and what it was that led him to develop his own analysis. It will also give the reader some suggestion of how Bosanquet's own theory is related to, and differs from, what one finds in them. Finally, and most importantly, it will provide some background through which we can determine whether Bosanquet's theory answers the problems he identifies in their views.

1. Liberal Individualism: Bentham, Mill and Spencer

Admittedly, the term 'liberal individualism' has had a rather broad application and requires some explanation.² 'Liberal individualists' see themselves as advocating principles that will favour, if not ensure, the personal liberty of the individual. In the authors discussed in this chapter--Jeremy Bentham, John Stuart Mill and Herbert Spencer--this liberty is usually seen to be a liberty from domination by the

² Although now in common use, this term is arguably anachronistic when applied to Bentham, at least. James Crimmins, citing Fred Rosen's Bentham, Byron and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought, ([Oxford: Clarendon Press, 1992], p. 5), notes that "the terms 'liberal' and 'liberalism'... gained ideological purchase only in the second quarter of the nineteenth century" (Crimmins, "Benthamic Theory and Practice," in CPSA Annual Meeting 1993, [Ottawa, ON: Canadian Political Science Association, 1993] (on microfiche), p. 21, n. 15). Michael Taylor suggests that the same holds true for the term 'individualism' (M.W. Taylor, Men versus the State: Herbert Spencer and Late Victorian Individualism, [Oxford: Clarendon Press, 1992], pp. 2-4).

state or by government regulation, and in favour of individual self-determination.

In nineteenth century Britain, this tradition of liberalism is generally associated with a group of intellectuals called, by Elie Halevy, "the philosophic radicals"³. Bentham was the central figure of this movement, and both J. S. Mill and Spencer can be counted among its 'spiritual descendants'⁴. While it would be clearly inappropriate to claim that their ideas represented a single coherent political theory, it is nevertheless correct to say that they agreed that many of the social problems of late 18th and early 19th century England were due to an antiquated legal system and to the control of the economy by a hereditary landed gentry opposed to modern capitalist institutions.⁵ In response to this, they advocated the revision of the legal system, a more extensive freedom of contract, broader suffrage and self (i.e., representative) government. This, they believed, would favour not only the economic development of the community, but the economic and

³ Elie Halevy, The Growth of Philosophic Radicalism [La formation du radicalisme philosophique], (tr. Mary Morris, with a preface by A.D. Lindsay), (London: Faber & Faber, 1928; Reprinted, Boston: Beacon Press, 1966).

⁴ For Mill, see, for example, Joseph Hamburger, Intellectuals in Politics: John Stuart Mill and the Philosophic Radicals, (New Haven: Yale University Press, 1965). For Spencer, see Taylor, pp. 7-16.

⁵ See George Sabine, A History of Political Theory, 4th ed., (Hinsdale IL: The Dryden Press, 1973), p. 613 and Frank Thakurdas, The English Utilitarians and the Idealists, (Delhi: Vishal Publication, 1978), pp. 2-3, 49ff.

personal development of the individual. To the extent, then, that law advances and protects this economic and personal freedom, and that what government there is, is self-government, law reflects the interests of the individual. So far as control by the state remains limited, the individual is free.

1.1 Liberty and the Law

Clearly, this notion of liberty is what is now often referred to as a 'negative' conception of liberty--freedom from external restraint or compulsion.⁶ Such an understanding of liberty, however, was not unique to the nineteenth century and is much the same as that found at the beginning of the liberal tradition, in Hobbes. There, liberty is described as "the absence of... external impediments of motion," and one is free when "in those things, which by his strength and wit he is able to do, [he] is not hindered to do what he has a will

⁶ See Isaiah Berlin, Two Concepts of Liberty, (Oxford, 1958), pp. 6 ff. Berlin contrasts this with the notion of 'positive liberty' that he attributes to T.H. Green. For Green's use of this or allied notions, see his "Liberal Legislation and Freedom of Contract (1881)," The Works of Thomas Hill Green, (ed. R.L. Nettleship), London, 3 vols., 1885-1888, Vol. III, pp. 365-386 (reprinted in The Political Theory of T.H. Green, (ed. John R. Rodman), (New York: Appleton, Century Crofts, 1964), p. 51 and in T.H. Green: Lectures on the principles of political obligation, and other writings, (ed. Paul Harris and John Morrow), (Cambridge: Cambridge University Press, 1986), pp. 194-212), "On the Different Senses of 'Freedom' (1879)," in Works, Vol. II, pp. 307-333 (reprinted in Harris and Morrow, pp. 228-249) and Prolegomena to Ethics (1883), 5th ed., (ed. by A.C. Bradley), (Oxford, 1906), secs. 97-100.

to do"⁷. Bentham carries this conception over to the legal and political sphere.⁸ To the extent, then, that one is not hindered in the pursuit of the good by others in society, one has liberty and is 'free'.

Corresponding to this account of liberty, the philosophic radicals and their descendants (as Hobbes before them) viewed law 'negatively'. Law, according to Hobbes, "determineth and bindeth" and is "inconsistent" with liberty⁹. Thus, while law is, as Bentham saw, necessary to social order¹⁰, and while good laws are clearly necessary means to good government, by its very nature law is a restriction of liberty and is painful to those whose liberty is restricted¹¹. Given that pleasure and pain are fundamental to--indeed, "provide"--the standard

⁷ Thomas Hobbes, Leviathan, (ed. Michael Oakeshott), (New York: Collier Books, 1962), Ch. 21, p. 159.

⁸ Bentham says that "[l]iberty is the absence of restraint" (Bentham mss, University College, London, Box 9, Folder 6, p. 142; cited in D.J. Manning, The Mind of Jeremy Bentham, (London: Longmans, 1968), p. 87).

⁹ Leviathan, Ch. 14, p. 103.

¹⁰ See Mill's essay, "Bentham (1838)," in Essays on Ethics, Religion and Society, in The Collected Edition of the Works of John Stuart Mill, (ed. J. M. Robson), Vol. X, pp. 75-115, (Toronto: University of Toronto Press, 1969), p. 97.

¹¹ According to Bentham, "[t]he evil of... restraint [is]... the pain which it gives a man not to be able to do the act." See his An Introduction to the Principles of Morals and Legislation, in The Works of Jeremy Bentham, (ed. John Bowring), (London, 1838-1843; Reprinted New York, 1962), Ch. 13, sec. 14, Vol. I, pp. 1-154, p. 85; Cf. An Introduction to the Principles of Morals and Legislation, (ed. J.H. Burns and H.L.A. Hart), (London, Athlone Press, 1970), p. 163; See PTS 53.

of value for Bentham¹², liberty--because 'pleasant'--was a good and its restriction--because 'painful'--was an evil.¹³

As members of the generation after Bentham, Herbert Spencer and J.S. Mill saw first-hand the effects of the reforms inspired by the work of the philosophic radicals in general and by Bentham in particular. Like Bentham, Spencer and Mill saw liberty as a freedom from restraint. For Spencer, in fact, liberty was something 'natural', in the sense that it existed independently of government and external coercive

¹² Recall Bentham's famous remark, at the beginning of IPML, that "[n]ature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it" (IPML (ed. Burns and Hart), Ch. 1, sec. 1, p. 11).

¹³ Bentham has in mind here what one might call political (as distinct from 'individual' or 'personal') liberty (see A General View of a Complete Code of Laws, in his Works, Vol. III, pp. 155-210, p. 185). Political liberty is, itself, of two kinds--that which the law explicitly allows us to do (as correlatives to existing obligations), and that which the law does not expressly forbid (i.e., 'permissive rights') (Bentham, A Complete Code, p. 181).

According to Bentham's Principles of the Civil Code, Pt. I, Ch., 2 (in his Works, Vol. I, p. 302), liberty is a good, though subordinate to security (which is one of the four main ends of the civil law--the others being subsistence, abundance and equality). Bentham denies that political liberty is natural, for then it could not be limited (see his Anarchical Fallacies, in his Works, Vol. II, pp. 497-498). See also John MacCunn, Six Radical Thinkers, second impression, (London, 1910), p. 25 and Thakurdas, pp. 59 and 81. There is some considerable debate on the fundamental character of Bentham's thought. For a general account of the 'authoritarian' versus the 'liberal facilitative' interpretations of Bentham, see Crimmins, op. cit.

force. A paradigm of such 'liberty' was the natural growth of an organism. To the extent that an organism can develop independently of any external impediment, it was, to Spencer's mind, free.¹⁴

When it came to preserving liberty, Spencer agreed that it was not merely a question of turning over political and economic control from a hereditary gentry to a form of representative government. For Spencer, the problem was not so much what form of government best protects liberty as whether the very existence of government as a coercive institution allows it. Spencer believed that the experience of his generation had demonstrated that representative government in Parliament was no less oppressive than that which had preceded it. Through its laws, government, he argued, tends to impose a conception of the good which may not be shared by its citizens. And when it does--even be it against a single recalcitrant individual--this is surely as evil as the worst tyranny.¹⁵

For individual liberty and personal development to be maximized, Spencer maintained, government should not attempt to impose any unitary conception of the good but should be

¹⁴ See Herbert Spencer, The Man versus the State (1884), (Caldwell, ID., 1960), pp. 195-196.

¹⁵ See "The Great Political Superstition," in MS 174-209. For Spencer's definition of "liberty", see MS pp. 18-19: "the liberty which a citizen enjoys is to be measured, not by the nature of the governmental machinery he lives under, whether representative or other, but by the relative paucity of the restraints it imposes on him...".

limited to carrying out only those objectives explicitly agreed upon by those governed. The model of government Spencer proposed was "the joint stock company," where each person contracts into society in view of specific private goals to be achieved (MS 181)¹⁶.

Again, then, the sense of liberty employed by Spencer may be described as a 'negative' liberty. But while liberty was natural, it was not in itself good. In fact, in The Man versus the State, Spencer argues that the "ethical character" of liberty rests on a prior recognition and a respect of the liberty of others (MS 196)¹⁷. Only once one agrees to this, does freedom have a moral weight.

J.S. Mill's liberalism and his defence of negative liberty are, admittedly, distinct from those which one finds in Bentham¹⁸ and Spencer. Still, following Bentham, Mill

¹⁶ See also PTS 71 and Ernest Barker, Political Thought in England: 1848-1914, (London, 1915), p. 102.

¹⁷ See also Spencer's Social Statics or the Conditions Essential to Human Happiness Specified and the First of them Developed ([London, 1851], p. 78), where he writes that "every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty by every other man."

¹⁸ Richard Bellamy argues that Mill's notion of freedom is substantively different from that of Bentham, in that it is related to the notion of autonomy (which has a rational dimension) and not just absence of constraints. One might argue, however, that this way of understanding Mill's view not only glosses over the difference between physical and political liberty (or autonomy), but fails to distinguish between what freedom is and to whom freedom is properly ascribed (see my discussion of Mill's individualism in section 1.2 below). See Richard Bellamy, "T.H. Green, J.S. Mill, and Isaiah Berlin on the Nature of Liberty and Liberalism," in Jurisprudence:

explicitly takes up the greatest happiness principle as a standard of right action and as the foundation of morality, and in On Liberty¹⁹ he defines the notion of liberty in much the same way as Bentham and Spencer--as "doing what one desires" (L 95) or as "pursuing our own good in our own way" (L 12), understanding that the individuals themselves (best) determine their own good (L 74). Moreover, Mill shares Bentham's opinion that law, even though necessary to social order, is still a "restriction on the natural liberty of mankind,"²⁰ and holds that "all restraint, qua restraint, is an evil" (L 95).²¹ Despite these similarities to Bentham, however, one should note that Mill attempted to defend, in a way in which Bentham did not, the value of individual liberty²²--though it might be argued that here Mill is attempting

Cambridge Essays (ed. H. Gross and R. Harrison), Oxford: Clarendon Press, 1992, pp. 257-285. I am grateful to Professor Bellamy for this reference.

¹⁹ On Liberty (1859), (ed. Elizabeth Rapaport), (Indianapolis, IN: Hackett Publ. Co., 1978).

²⁰ Utilitarianism (1861), (ed. George Sher), (Indianapolis, IN: Hackett Publ. Co., 1979), p. 43.

²¹ According to Mill, "[l]aissez-faire, in short, should be the general practice: every departure from it, unless required by some greater good, is a certain evil" (Principles of Political Economy, Book V, Ch. xi, sec. 7, in his Collected Works, Vols. II and III, Vol. II, p. 945). For Mill's "objections to government intervention", see Principles of Political Economy, Book V, Ch. xi, secs. 2-7, pp. 937-947.

²² For Bentham, recall, the value of liberty "came well after security, equality... and property" (Thakurdas, p. 201).

to make Bentham's views complete (and, perhaps, more consistent²³).

Thus, in On Liberty, one of Mill's main objectives was to isolate and defend a "region of human liberty" (L 11) wherein one would be able to act free from moral censure and from the penalties of the law. This, he argues, is not only consistent with, but based on, the greatest happiness principle as articulated by Bentham. Indeed, Bentham himself draws a parallel distinction between our public and private lives.²⁴

On Mill's view, then, liberty is 'natural': it is freedom from restraint. Still, he argues that political liberty is neither an intrinsic nor a basic good, nor do we have an abstract right to it (L 10). It is, rather, a good derived from the principle of utility. By its existence, "[m]ankind are greater gainers" (L 12).²⁵

²³ See Rudolf Metz, A Hundred Years of British Philosophy [Die philosophischen Strömungen der Gegenwart in Grossbritannien], (Leipzig: Felix Meiner Verlag, 1935)] (tr. J.W. Harvey, T.E. Jessop and Henry Sturt; ed. J.H. Muirhead). (London: Allen and Unwin, 1938), p. 73.

²⁴ Bentham refers, for example, to "the difference between private ethics... and that branch of jurisprudence which contains the art or science of legislation, on the other. Private ethics teaches how each man may dispose himself to pursue the course most conducive to his own happiness...: the art of legislation... teaches how a multitude of men, composing a community, may be disposed to pursue that course which upon the whole is the most conducive to the happiness of the whole community, by means of motives to be applied by the legislator" (IPML, Ch. 17, sec. 20 (ed. Burns and Hart) p. 293. For a discussion of this point, see Hamburger, 22.

²⁵ See also Mill's 1871 letter to Emile Aollas, where he says "Je reconnais cette autonomie [de l'individu] comme une règle rigoureuse dans les choses qui ne regardent que

Mill's appeal here to the principle of utility is not, he thought, to slight the value of liberty. Liberty is tied to self development and self-realization (L xvii, 10, 60) and, hence, is part of the goal of utility--namely, human happiness. Nevertheless, the liberty defended by Mill--like that of Bentham and Spencer--was fundamentally 'negative' liberty and, even in his later writings (such as the Chapters on Socialism²⁶), Mill did not see human freedom as being significantly enhanced through widespread use of the positive law.²⁷

l'individu lui-même ou, si elles intéressent les autres, ne les intéressent que par l'influence de l'exemple ou par l'intérêt indirect que d'autres peuvent avoir au bonheur et à la prospérité de chacun. Par cette doctrine j'affranchis de tout contrôle hors celui de la critique le cercle de la vie individuelle proprement dite." (in his Collected Works, Vol. XVII, pp. 1831-1832. (See J. C. Rees, John Stuart Mill's 'On Liberty', (ed. G.L. Williams) Oxford: Clarendon Press, 1985, p. 179).

There is, of course, much debate on the relation between Mill's utilitarianism and the positions taken in On Liberty. According to Plamenatz, "[i]t is in the third chapter of Liberty... that Mill, without knowing it, abandons utility" by promoting the value of individual spontaneity (John Plamenatz, The English Utilitarians, Oxford, 1949, p. 129). Alan Ryan writes that, after acknowledging the principle of utility, "Mill's concern with self development and moral progress is a strand in his philosophy to which almost everything else is subordinate" (John Stuart Mill, New York: Random House, 1970, p. 255). John Skorupski, however, argues for a compatibility in Mill's views (John Stuart Mill, London: Routledge, 1989, pp. 343-347).

²⁶ In Essays on Economics and Society in Collected Works, Vol. V, pp. 703-753.

²⁷ But see his 'interventionist' attitude towards law in the Principles of Political Economy (1st edition, 1848; 7th edition 1871) in Vols. II-III, Collected Works, esp. Book V, Ch. i and Ch. xi, sec. 16, pp. 970-971, and see his favourable attitude towards some forms of socialism in Bk. II, Ch. 1, sec. 4. For a discussion of this aspect of Mill's liberalism, see Peter P. Nicholson, The Political Philosophy of the

1.2 Individualism and the Individual

The accounts of the nature and value of the individual that one finds in Bentham, Mill and Spencer also show a number of similarities. On Spencer's and Bentham's view, individuals exhibit a natural rational self-interest--a psychological egoism²⁸--and human action is described as being motivated by attempts to maximize one's own good.²⁹ Thus, fundamental to the nature and activity of individuals is their own preservation, and reason--as a natural capability of the person--is seen to be subservient to this end. While Mill did not obviously embrace Bentham's entire view (e.g., his egoism) he

British Idealists, Study V, Section 2, "J. S. Mill and Social Expedience," Cambridge: Cambridge University Press, 1990, pp. 140-157.

²⁸ See Sabine, Political Theory, p. 640.

²⁹ See Halevy's list of the three principal characteristics of utilitarianism which constitute the basis of Bentham's philosophy: the greatest happiness principle, universal egoism and the artificial identification of interests (Halevy, pp. 12-17; see also Thakurdas, p. 87). (For a discussion of the coherence among the various aspects of Bentham's views, see also Plamenatz, Utilitarians, esp. pp. 70-72.)

According to Mill, "[h]abitually, and throughout his works, the moment he [Bentham] has shown that a man's selfish interest would prompt him to a particular course of action, he lays it down without further parley that the man's interest lies that way..." ("Remarks on Bentham's Philosophy," (1833) in Essays on Ethics, Religion and Society, in Collected Works, Vol. X, pp. 3-18, p. 14). Mill also cites Bentham's The Book of Fallacies (London, Hunt, 1824, pp. 392-3) that "[i]n every human breast... self-regarding interest is predominant over social interest; each person's own individual interest over the interests of all other persons taken together" ("Bentham (1833)", p. 14). Of course, Mill sees this as a failure in Bentham's view, and he complains that Bentham ignores that one might desire "for its own sake, the conformity of his own character to his standard of excellence" ("Bentham (1838)" in Collected Works, Vol. X, pp. 75-115, p. 95).

does, however, seem to adopt the latter's hedonism. For Bentham, one's own good is defined in terms of pleasure and pain³⁰, and Mill's discussion of the internal sanction of morality and of the "social feelings of mankind" (U 30, 58) appeals to qualities which are, at base, those of pleasure and of pain.³¹ Spencer's position, as well, is susceptible of such an interpretation.³²

³⁰ See IPML (ed. Burns and Hart), Ch. 1, sec. 1, p. 11, cited above in note 12.

³¹ Mill does, admittedly, suggest that these moral sentiments (such as the 'social feelings of mankind') are something more than pleasure and pain and Thakurdas and others insist not only that Mill abandons 'psychological hedonism' (Thakurdas, p. 198; Plamenatz, Utilitarians, p. 144; John Robson, On The Improvement of Mankind, [Toronto: University of Toronto Press, 1968], pp. 119-159, esp. pp. 127-136), but that he no longer believes in 'universal selfishness' (see Mill, Considerations on Representative Government, in his Collected Works, Vol. XIX, Ch. 3, p. 405). Plamenatz says, for example, that "[j]ustice is the product of two sentiments... the instinct of self preservation and the feeling of sympathy (Utilitarians, p. 143). Skorupski argues that Mill had abandoned hedonism by the time he wrote System of Logic (Skorupski, p. 296).

Still, there does seem to be at least an element of self interest at work in Mill's account of 'sympathy' (in U, Ch. 3, p. 27 and p. 30), and the development of sympathy seems to be, at best, a matter of the perfecting of human nature. See Mill's comments on the motives of, and the relations among, persons where there is no representative government, in Considerations on Representative Government, in his Collected Works, Vol. XIX, p. 412. Again, according to Alan Ryan, "the point of sanctions... is precisely to make it the individual's interest to do what is in the general interest" (Ryan, p. 201; Cf. pp. 197-204). See also Thakurdas, p. 133 and Halevy, p. 502.

³² Spencer holds that life is fundamentally valuable and "if we say that life on the whole yields more pleasure than pain... then [the] actions by which life is maintained are justified, and there results a warrant for freedom to perform them" (MS 195).

A further feature of the liberal individualist account was that the nature of the human person can apparently be adequately described without mention of social relationships.³³ Indeed, for Bentham, even the idea of "relation" is but a "fictitious entity"³⁴, though necessary for 'convenience of discourse'.³⁵ As Bentham remarks, "the community is a fictitious body"³⁶ and it is but "the sum of the interests of the several members who compose it"³⁷. The extension of the

³³ Ellen Wood, for examples, argues that this can be seen in Mill's 'associationist,' rather than dialectical, epistemology. See her Mind and Politics: An Approach to the Meaning of Liberal and Socialist Individualism, (Berkeley: University of California Press, 1972), p. 13 (quoting R. Amschutz, The Philosophy of J.S. Mill, [Oxford: Clarendon Press, 1953], pp. 179-180), p. 42, note 41, pp. 51 and 109-110. Wood also claims that Mill's "determinism" is incompatible with his individualist emphasis in On Liberty. Martin Hollis also draws attention to the relation between Mill's epistemology and his atomistic individualism, in "J.S. Mill's Political Philosophy of Mind," in Philosophy, 47 (1972): 334-347, esp. pp. 336, 340. See also Mary Peter Mack's remarks on the similarity between Bentham and Hobbes's nominalism in Jeremy Bentham: An Odyssey of Ideas 1748-1792, (London: Heinemann, 1962) (cited in Thakurdas, p. 101).

³⁴ See Bentham, IPML, Ch. 16, (ed. Burns and Hart) p. 235, ftn. 73.

³⁵ See "Bentham's Prolegomena (1814)," in Bentham's Theory of Fictions, (ed. C.K. Ogden), London: Kegan Paul, Trench, Trubner, 1932, pp. xl-xli. See also IPML, Ch. 11, sec. 1, (ed. Burns and Hart), p. 125 and Sabine, Political Theory, p. 616.

³⁶ IPML, Ch. 1, sec. 4, (ed. Burns and Hart) p. 12.

³⁷ IPML, Ch. 1, sec. 4, (ed. Burns and Hart) p. 12. One finds the same view in Mill's System of Logic, Bk. VI, Ch. 7, sec. 1: "Human beings in society have no properties but those which are derived from, and which may be resolved into, the laws of the nature of individual men" (in Collected Works, Vol. VIII, p. 879). See Frank Thilly, "The Individualism of John Stuart Mill," in The Philosophical Review, XXXII (1923), pp. 1-17, p. 5 and Graeme Duncan and John Gray, "The Left

term 'individual' is, in the main, no greater and no less than the biological entity. Spencer holds, in fact, that "individuals [are]... units or simples, and society [is]... a mass or aggregation or compound of individuals."³⁸ The implications one can draw from this are, first, that there is no 'self' or 'individual' greater than the human individual and, second, that the individual is an "atom"³⁹--the basic unit in the social sphere. Thus, a person's relations with others--even if important (U 30)--are not essential and describe nothing that is, strictly speaking, necessary to its being what it is.

There are two important consequences of this 'psychological', if not ontological, individualism. First, to see 'the other' as 'another one' is to see others as different from, and independent of, oneself and as constituting a potential limit on one's actions. But, second, 'the other' is

Against Mill," in New Essays on John Stuart Mill and Utilitarianism, edited by Wesley E. Cooper, Kai Nielsen and Steven C. Patten, Guelph: Canadian Association for Publishing in Philosophy, 1979 (Canadian Journal of Philosophy, Supplementary Volume V), pp. 203-230, p. 216.

³⁸ Nicholson, British Idealists, p. 138, paraphrasing Spencer's Social Statics, p. 16. Spencer admittedly speaks of society as an organism and of individuals as cells or 'physiological units'. But this is not to abandon his fundamental individualism. Society is simply the sum of its parts, and exists for the sake of its parts. For the debate on the putative incompatibility of Spencer's individualism and organicism, see T. S. Gray, "Herbert Spencer: Individualist or Organicist?," Political Studies 33 (1985), pp. 236-253, Taylor, Ch. 4 and Nicholson, British Idealists, p. 139.

³⁹ Halevy says that "[t]he individual became in some sort the atom of the Utilitarian economist and moralist" (Halevy, p. 502). For the presence of this view in Mill, see Duncan and Gray, p. 209 and Thakurdas, p. 325.

also 'another one' and, thus, suggests that human beings are essentially equal and deserving of equal respect and treatment. Mill insisted, for example, "[a]s between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator" (U 16), and finds in "the Golden Rule of Jesus of Nazareth... the complete spirit of the ethics of utility" (U 16-17). It is, indeed, the emphasis on equality that made--and still makes--the views of Bentham and Mill so attractive to so many.

Consistent with this view of the individual, and (to quote George Sabine) "[a]t the core of this mode of political thought was a fundamental postulate about the nature of value, viz., that all value inheres ultimately in the satisfactions and realizations of human personality"⁴⁰. At the most elementary level, then (as noted above) it is on the basis of pleasures and pains, which can exist only in individuals, that both Bentham and Mill were able to construct a calculus of value.⁴¹ Recall that Mill maintained that the individual him or herself is "the final judge" of his or her "own concerns" (L 74) and that he speaks favourably of the "Greek ideal of self-development" (L 59) as an important goal to be pursued. Remember, too, Spencer's view that the justification for the freedom to act for an end is that it contributes to the

⁴⁰ Sabine, Political Theory, p. 608.

⁴¹ Sabine, Political Theory, p. 640.

preservation of the individual's life.⁴² The individual, then, is the basis of value.

But if the individual is, in some sense, the basis of value, do all individuals have, or get, a 'liberty' that carries moral weight? Mill's response is "no". As he writes in On Liberty, only rational beings--i.e., "those capable of being improved by free and equal discussion" (L 10)--have a claim to liberty. Nevertheless, once such a capacity is established, "[o]ver himself, over his own body and mind, the individual is sovereign" (L 9).

There is, however, a certain tension underlying this individualism. Allowing for individuals to pursue their interests is, clearly, important. But if liberty is taken as an absolute, it may threaten political stability which, in turn, would threaten liberty. How might one avoid this result? Spencer's account of the individual leads him to talk about 'natural rights', attributable to individuals even before their association in society. These rights reflect the value of the individual and place a limitation both on the sorts of contracts individuals can enter into and on what can be done to them. To use Ronald Dworkin's expression, individual rights serve as "trumps" or as conditions on what the state can do.⁴³

⁴² See MS 195.

⁴³ According to Ronald Dworkin, "[i]ndividual rights are political trumps held by individuals" (See Taking Rights Seriously, (Cambridge, MA: Harvard University Press, 1977), p. xi).

For Spencer, then, the state is required to reflect the will of individuals and to further their development; any intervention by the state into the private sphere of the individual is an evil. In short, for Spencer it is the protection of rights that is the raison d'être of the state, and it is only to secure an individual's basic rights that the state can limit liberty.

According to Mill and Bentham, ultimate political sovereignty inheres in the people.⁴⁴ Government, then, ought to reflect the common interest. And again, it is because of the risk posed by any non-democratic regime to the interests of all, that Mill favours self-government. But the common interest is, on this account, nothing more than the sum of individual interests and, therefore, individualism is preserved.⁴⁵

But if it is true, as Bentham said, that "one man is worth just the same as another man" or that, in calculating the greatest happiness "each person is to count for one and no one for more than one"⁴⁶, then social institutions ought not

⁴⁴ According to Mill, "the ideally best form of government is that in which the sovereignty... is vested in the entire aggregate of the community." (See Considerations on Representative Government, in Collected Works, Vol. XIX, Ch. 3, p. 403.)

⁴⁵ Remember that, on Mill's view, "[t]he worth of a state, in the long run, is the worth of the individuals composing it" (L 111). See also U 34, where Mill says that "the general happiness... is a good to the aggregate of all persons".

⁴⁶ Sabine, Political Theory, p. 621. See U 60-61.

to be arranged so that the interests of any one individual may dominate arbitrarily over any other. Since society must take the interests of all equally into account, this led, in the tradition of Bentham and Mill, to the view that society should ensure that, if the interests of all cannot be satisfied, it should act so as to maximize the interests of the greatest number.⁴⁷

Bentham saw no problem in this consequence, but Mill was aware that such a policy might permit a serious limitation of individual liberty. On Liberty, of course, attempts to respond to this eventuality--although it appears that Mill maintained that even this liberty and the rights which one enjoys within its sphere are justified in the end by some version of the principle of utility and, hence, are ultimately subject to it.⁴⁸ According to Mill, law is justified by the principle of

⁴⁷ Of course, here we are addressing the moral basis of law; this is not the same as saying what the basis of law actually is. For Bentham, political obligation depended on external "sanctions" (such as the threat of punishment) and the "habit of paying obedience" (A Comment on the Commentaries and A Fragment on Government (ed. J.H. Burns and H.L.A. Hart) London: The Athlone Press, 1977. Ch. 5, ftn. 3, p. 496; Ch. 1, sec. 10, p. 428); for Mill, it was based on internal sanctions. On this issue of social instinct as reinforcing the feeling of moral obligation, Plamenatz writes that "[t]he external sanctions of duty, to which both the elder utilitarians devote so much attention, are described in a few words, and it is on the internal sanction that the younger Mill lavishes his descriptive powers" (see Plamenatz, Utilitarians, p. 139).

⁴⁸ But see D.P. Dwyer, "Justice, Liberty and the Principle of Utility in Mill," in New Essays on John Stuart Mill and Utilitarianism, edited by Wesley E. Cooper, Kai Nielsen and Steven C. Patten, Guelph: Canadian Association for Publishing in Philosophy, 1979 (Canadian Journal of Philosophy, Supple-

utility--specifically, because it is necessary for security and for the maintenance of conditions for good life, such as one's liberty.

But while the law is required for the existence of one's liberty, it also implies a sacrifice of some part of it (L 73-77). Even though law may be necessary and to be preferred over anarchy, one must not forget that it is an 'evil' and is inherently undesirable. Harkening back to the definition of liberty cited above, then, Mill would agree with Spencer that political liberty is "to be measured... by the relative paucity of restraints that the governmental machinery imposes upon an individual" (MS 19). Thus, for Mill, the moral justification of the law appears to reflect a de facto contract⁴⁹ grounded in utility--sc., the recognition and agreement among persons about what liberties would have to be given up to save the rest.

In short, then, one sees here not only a psychological and ontological, but a moral, individualism where "the individual human being is conceived as the source of values and as himself the supreme value".⁵⁰ And even though Mill saw

mentary Volume V), pp. 63-74.

⁴⁹ This seems suggested by Mill's remark in On Liberty that "every one who receives the protection of society owes a return for the benefit..." (L 73).

⁵⁰ See Duncan and Gray, p. 215. One notes that in Mill's later essays, his work appears to have a less individualist tone. Much of this interpretation, however, refers to the Chapters on Socialism and the (almost certainly incorrectly attributed) On Social Freedom (ed. Dorothy Fosdick, [New York,

social life as contributing to the development of the moral sentiments (U 30), to one's happiness and to the realization of the individual, he did not go so far as to claim that individuals themselves could not be conceived of independently of others, and he certainly did not believe that the value of one's liberty was, in some way, subordinate to the institutions of social life (L 5).

Thus, given the self-focused character and the natural independence of the human person and given the presumption of the individual as the basis of value, individuals seem to be free and autonomous. On the liberal individualist account, then, in order to maintain these values (which constitute the raison d'être of the law) the positive law must be restricted.

1.3 Rights

There are clearly, then, some basic points of agreement to be found in Bentham, Mill and Spencer concerning the nature of the individual and the nature and function of law, although there are also important differences--as Mill and Spencer themselves point out. These differences become especially noticeable when it comes to articulating the principles

1941]). (For discussion on the authorship of this latter work, see J.C. Rees in his appendix to his Mill and his Early Critics, [Leicester: University of Leicester Press, 1956], pp. 38-54, reprinted in his John Stuart Mill's 'On Liberty', (ed. G.L. Williams) [Oxford: Clarendon Press, 1985], pp. ix, 175-185.)

underlying government. 'Individualism' is the foundation for, on the one hand, Spencer's natural rights theory and, on the other, a utilitarianism that, in Bentham, borders on collectivism.⁵¹ While all were concerned with the issue of rights, they had significantly distinct views on their nature and importance. Nevertheless, despite these differences, the theories of rights that one finds in the work of Bentham, Mill, and Spencer obviously reflect the liberal and individualist tendencies elaborated above.

1.31 Bentham

Bentham's views on rights are, perhaps, best known through the attacks on natural rights that appear throughout his work⁵². These criticisms are, however, especially developed in his Anarchical Fallacies, a polemical attack on the declarations of rights issued in France during the French Revolution. Bentham's criticisms here are rooted in his understanding of the nature of law, though other issues come into play as well. Rights are created by the law⁵³, and law is

⁵¹ See W.H. Greenleaf, The British Political Tradition, 3 vols., (London: Methuen, 1983-1987), Vol. I, p. 252.

⁵² See Bentham's Works (ed. John Bowring), Vol. I (A Fragment on Government; or a Comment on the Commentaries; Principles of the Civil Code); Vol. III (A General View of a Complete Code of Laws; Pannomial Fragments); Vol. IV (Papers Relative to Codification and Public Instruction - On Codification to the President of the United States); Vol. IX (The Constitutional Code). Anarchical Fallacies appears in Volume II, pp. 491-534.

⁵³ IPML, Ch. 16 (ed. Burns and Hart), p. 205, ftn. 30.

simply a command of the sovereign.⁵⁴ The existence of law and rights, therefore, requires government (see AF 500-501). Moreover, rights are usually (though not necessarily) correlative with duties determined by the law⁵⁵ and, as in Hobbes, are either those which the law explicitly gives us, or those where, within a legal system, the law is silent. The view that there could be rights, not based on sovereign command, and which pre-exist the establishment of government, must be rejected.

According to Bentham, then, the use of a term such as 'natural right' is a 'perversion of language' (AF 505). It is ambiguous (AF 497), sentimental⁵⁶ and figurative (AF 497) and it has anarchical consequences. At best, such a 'right' may tell us what we ought to be able to do; it cannot be a legal restriction on what we can or cannot do.

⁵⁴ See IPML, Ch. 16 (ed. Burns and Hart), p. 205, ftn. 30 and Bentham's The Limits of Jurisprudence Defined, (ed. C. W. Everett), New York: Columbia University Press, p. 88 (cited in Mary Peter Mack, p. 170).

⁵⁵ IPML, Ch. 16 (ed. Burns and Hart), p. 207: "For every right which the law confers on one party, whether that party be an individual, a subordinate class of individuals, or the public, it thereby imposes on some other party a duty or obligation. But there may be laws which command or prohibit acts, that is, impose duties, without any other view than the benefit of the agent: these generate no rights: duties, therefore, may be either extra-regarding or self-regarding: extra-regarding have rights to correspond to them: self-regarding, none."

⁵⁶ As Bentham writes, the term is "sentimental... preferred to apt and precise expression" (AF 497).

The term 'natural right' is ambiguous, Bentham says, because it suggests that there are general rights--that is, rights assigned in relation to no specific subject--so that one may have whatever one chooses (AF 503).⁵⁷ The effect of exercising such a right would be to extinguish the right altogether, since "what is every man's right is no man's right" (AF 502). No legal system could function with such a broad conception of rights, and thus Bentham held that there can be no general rights in the sense suggested by the French declarations.

The notion of 'natural rights' is, moreover, "figurative". Properly speaking, there are no rights anterior to government. The assumption of the existence of such rights, Bentham says, seems to be derived from the theory of the social contract. Here, individuals form a society and choose a government through the alienation of certain of their 'rights'. But such a doctrine is not only unhistorical, according to Bentham, it does not even serve as a useful fiction to explain the origin of political authority (AF 501). Governments arise by habit or by force and, for contracts to

⁵⁷ Bentham's opposition to the existence of 'general rights' is also explained by his suspicion of 'generalities' but, given his 'individualism', should be no surprise. The truth of a general proposition is simply the product of 'all the particular propositions that are under it' (AF 493); the claim that it is anything more, Bentham would say, is a fiction. While Bentham does not exclude the use of general propositions in toto, he does warn his reader that "[t]he more abstract--that is, the more extensive the proposition is, the more liable is it to involve a fallacy" (AF 496).

bind, there must already be a government in place to enforce them (AF 501-502).

Finally, the idea of a natural right is "anarchical" (AF 502). Such a right, Bentham claims, entails a freedom from all restraint and, in particular, from all legal restraint. Any such claim could not be limited by law (AF 493; 502) and, since human beings are motivated by self interest, if everyone had such freedom, the result would be pure anarchy. The 'liberty' of others to interfere with one's rights must be restricted, and this implies that, to be meaningful, rights must be capable of enforcement. Such restriction, as noted earlier, is the province of the law.

Bentham concludes, therefore, that the term "natural rights-is simple nonsense: natural and imprescriptible rights, rhetorical nonsense,--nonsense upon stilts" (AF 501). All rights must be legal and specific (that is, having both a specific object and subject). They ought to be made because of their conduciveness to "the general mass of felicity" (AF 493) and, correlatively, when their abolition would be to the advantage of society, such rights ought to be abolished (AF 501). Since they entail obligations, they limit liberty (AF 503). Rights--what Bentham calls "real" rights--then, are fundamentally legal rights. So far as rights exist in law, they are protected; outside of law, they are at best "reasons for wishing there were such things as rights" (AF 501).

1.32 Mill

Mill's discussion of the nature, source and limits of rights occurs both in On Liberty and in Chapter V of Utilitarianism⁵⁸, but it is in this latter work that he provides his most thorough treatment. Here, Mill refers to three kinds of rights, each of which is not only tied to, but essential to, justice: moral rights, legal rights, and personal rights.

Generally speaking, a right is "a valid claim on society [by an individual] to protect him in the possession of it [that right], either by force of law or by that of education and opinion" (U 52; see U 19). It is, then, something that is specific and "assignable" to particular persons (U 49). Mill specifically rejects the possibility of collective rights to security, equality and to free moral and intellectual development--which he refers to as the "social rights"⁵⁹ of the

⁵⁸ John Skorupski notes that "[t]here is an interesting, though brief, discussion of the concept of a moral right in 'Use and Abuse of Political Terms' (1832)" [see Mill's Collected Works, Vol. XVIII, pp. 3-13] (Skorupski, p. 411, n. 13).

⁵⁹ Mill's objection to "social rights" is not just that they are 'general', but that they involve legal intervention in the private sphere. He understands such 'rights' to entail that "every other individual shall act in every respect exactly as he ought" and that they can be enforced at law. Thus, Mill maintains that "there is no violation of liberty which it [i.e., an appeal to social rights] could not justify" (L 87).

While Green and Bosanquet do use the term 'social right' neither employs it in the above sense. In Green, 'social right' means a right of a person that belongs to him or her in virtue of "belonging to a society of persons recognizing a common good" (LPPO, sec. 180; see LPPO, secs. 38-39). In Bosanquet, it appears to be used in the sense of 'political right' or the 'system of rights' (See PTS, pp. 98-99).

reformer (L 87-88). But this should be no surprise, given his 'individualist' ontology.

This definition of 'right' brings to mind Mill's account of political liberty. As shown earlier, Mill spoke of a 'liberty' that consisted in pursuing one's good in one's own way and, while it is in principle distinct from the notion of 'right', the "region of human liberty" seems to be coextensive with one's rights. Although liberty is, fundamentally, just the 'absence of restraint', in On Liberty Mill often refers to one's liberties and rights in the context of one's relations with others. One has a right to do as he or she chooses in his or her 'region of liberty', and this right implies corresponding obligations on others to respect it. This 'region of liberty', one will recall, is "all that portion of a person's life and conduct which affects only himself or, if it also affects others, only with their free, voluntary, and undeceived consent and participation" (L 11). And Mill claims that, "[i]n the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign" (L 9). The existence of such a 'region of liberty' and of such rights is made possible, one might argue, only because of Mill's individualism--specifically, because of the possibility of a principle of demarcation between 'self' and 'other'.

What is the relation of the three kinds of rights enumerated above to this general account of the nature of

rights? First, consider the kind of right that Mill has in mind when he refers to "moral rights" (U 43, 49; see L 113). Mill is referring here to a consequence of a principle of justice. When one has been treated unjustly, but not in violation of any law, we may say that an offender has taken or withheld from that person "that to which he has a moral right" (U 43). It is, then, a claim that society ought to secure for the individual who holds it (U 52).

The second kind of right to which Mill refers are "legal rights," and this seems best to approximate the notion of 'right' accepted by Bentham. Legal rights are claims recognized in law and enforced by the authority of the state, but should in no way be confused with "moral rights". Legal rights are not necessarily just, for they may be conferred by a bad state or in virtue of a bad law, and neither are they inalienable, for they can be forfeited.

Finally, Mill also speaks of one's "personal rights". This, Mill says, is simply "a claim... like that which law gives when it confers a... legal right" (U 48-49). It may seem that Mill may have in mind the 'right' to act in those cases where 'the laws are silent'. As in Hobbes, such rights would be effective only where there is a system of law and so would be nothing more than a specific legal right held by a specific individual. But this is not Mill's meaning here. Instead, one may regard it as a synonym for the notion of 'moral right'.

What is the origin of one's moral right? It is based neither upon an abstract right (L 10), nor on natural law or "nature" (U 41), nor on a social "contract" (L 73). Mill appears to follow Bentham's criticisms of natural (or 'abstract') rights, and his argument against the social contract echoes Bentham's rejection of such a theory as not only unhistorical and fictitious, but as of no use in explaining the legitimacy of authority. The source of one's moral rights, Mill says, is the "general utility" (U 52) and hence they can be limited "when some recognised social expediency requires the reverse" (U 61-62).

From this account, then, it follows that rights can exist only in society. They are correlative with "duties" (U 48) and, to exist, they must be enforceable. A right carries a corresponding obligation on others and on society as a whole to defend a person in his or her possession of it. And Mill insists that coercion is justified to prevent violations of distinct and assignable obligations to others (L 79)--obligations which he elsewhere refers to as their "rights" (U 48-49; see L 60, 76). Furthermore, rights are fundamentally assigned to individuals and, because one's rights define a 'region of liberty' around the individual that is free from legal control, this is seen to be illustrative of the individualistic character of his thought. Nevertheless, despite the account that Mill gives of liberty and of moral rights, his position seems to be one with Bentham in that no rights but

legal rights can have the force of law. Mill allows that 'moral rights' may be appealed to in order to influence or change the law but, in themselves, they constitute no limit on the law; moral rights have no legal status.⁶⁰

1.33 Spencer

The work of Herbert Spencer provided yet another influential 'liberal individualist' account of rights. Spencer attempted to revive a version of natural rights theory in response to Bentham's critique. In The Man versus the State, Spencer challenges Bentham by arguing that Bentham's account of the nature of government and of the origin of rights is inconsistent. According to Bentham, Spencer writes, "government fulfils its office 'by creating rights which it confers on individuals'" (MS 186). Sovereignty, however, exists in the whole people. Thus, Spencer continues, "the government, in Bentham's view, is but an agent; the rights it confers are rights given to it in trust by the sovereign people. If so, such rights must be possessed en bloc by the sovereign people before the government... confers them on individuals" (MS 188).

⁶⁰ According to Skorupski, "moral rights" (what he calls "justice-rights") are "side constraints" or "trumps" that protect certain "primary utilities" (Skorupski, pp. 328, 335, 359) and "take priority over the direct pursuit of general utility as well as over the private pursuit of personal ends" (Skorupski, pp. 18-19). Still, these 'side constraints' are only moral ones.

But how is it, Spencer asks, that the rights of individuals arise only from government when government is nothing more than the individual's agent? Where could these rights come from, if not from the agents themselves? Thus, Spencer claims, Bentham's view is inconsistent, for his very theory of government supports the claim to the existence of rights, antecedent to government.

His criticism of Bentham aside, Spencer advances two distinct arguments for the existence of natural rights. One, which he suggests that Bentham should have recognized from his own study of the history of law, is what one might call a 'sociological' proof. The argument is, briefly, that it is evident in cultures and legal codes throughout the world, and equally so in English common law, that government follows upon, and is subject to, social custom (MS 189). In these different codes of law, there is a basis of agreement--they "recognize the same kinds of claims" (MS 191), and this is simply to say that these codes recognize certain rights--such as the right to property⁶¹--as prior to law (MS 190). But the fact that one finds such a recognition of rights throughout the world cannot merely be a coincidence. These codes of law "agree because the alleged creating of rights was nothing else than giving formal sanction and better definition to those

⁶¹ There is some considerable debate on whether the right to property is desert based or entitlement based. See T.S. Gray, "Herbert Spencer's Theory of Social Justice--Desert or Entitlement?," in History of Political Thought, 2 (1981), pp. 161-186 and Taylor, pp. 232-261, esp. pp. 244-252.

assertions of claims and those recognitions of claims which naturally originate from the individual desires of men who have to live in the presence of one another" (MS 191). In short, anthropological and sociological investigation demonstrates that certain natural rights are recognized as prior to law and government.⁶²

Spencer provides, as well, an a priori 'biological' proof for the existence of natural rights. He argues that, since life is valuable⁶³, it follows that human beings ought not to be prevented from trying to protect it. That is, "if it is said to be 'right' that [individuals should carry on life-sustaining activities]... we get the assertion that they 'have a right' to carry them on" (MS 196). But mutual limitation of the exercise of these rights is required to avoid interference with one another. However, once individuals agree to limit their activities so as to allow an equal freedom for others, the rights they have acquire an ethical character. Thus, the value inherent in life itself establishes the existence of

⁶² For an extensive criticism of Spencer's arguments here, see David G. Ritchie, Principles of State Interference: Four Essays on the Political Philosophy of Mr. Herbert Spencer, J. S. Mill, and T.H. Green, (London, 1891), pp. 33-39 and his Natural Rights: A Criticism of some Political and Ethical Conceptions, (London, 1895), pp. 46-47. Ritchie argues that Spencer's arguments represent a move from "facts" to "what ought to be done" (Principles, p. 46) and that his view of natural rights is also inconsistent with his "conception of society as essentially organic" (Natural Rights, p. 15).

⁶³ Spencer takes this as an axiom, though Bosanquet will note that this is by no means obvious (See Chapters 1, section 2.2 and 5, section 1.23, below).

certain fundamental natural rights--although it is interesting to note that, unlike the Lockean theories of natural right with which it is often associated, the ethical status of these rights is not intrinsic but arises through convention.⁶⁴

On the basis of these two arguments, then, Spencer believes that he has proven that rights are "inherent in man" and are "antecedent to society", "possessed in virtue of his faculties... true of him as a solitary individual."⁶⁵

What are the consequences of Spencer's view for the role of government? Since natural rights are prior to law, the function of government must be to secure and protect them. Government may act, therefore, only so far as to prevent infringement of rights and to preserve individual freedom - freedom being just the absence of external restraint on an individual. It cannot go beyond this, even if it is a "popularly-chosen body" (MS 18), to achieve some "general benefit" (MS 16)--except where it is a question of "maintaining the conditions requisite to individual... life" (MS 204). In fact, Spencer notes, not only is it true that there is a "fuller recognition of natural rights" as society progresses (MS 192), but it is only so far as individuals retain their natural

⁶⁴ Spencer summarizes this by saying that "while the positive element in the right to carry on life-sustaining activities, originates from the laws of life, that negative element which gives ethical character to it, originates from the conditions produced by social aggregation" (MS 198).

⁶⁵ Spencer, Social Statics, pp. 313-314, cited in Nicholson, British Idealists, p. 138.

rights that there can be social progress (MS 203; 207). Ironically, then, utilitarianism itself must support "this maintenance of individual rights" and oppose any action "which traverses them" (MS 207).

2. The Idealist Response: Bosanquet

As noted earlier, it is in relation to the theories of Bentham, Mill and Spencer that Bosanquet's theory of rights must be understood. Indeed, his work was, in large part, in reaction to theirs. As noted in the introduction, however, Bosanquet's political thought was greatly influenced by that of T.H. Green (and, though to a lesser extent, F.H. Bradley) and it lies in a tradition which he traced from the modern era to its-roots in Greek classical thought. In fact, for quite some time Bosanquet believed that the work of Green and Bradley constituted a more than adequate response to liberal individualism.⁶⁶ Nevertheless, Bosanquet gradually became convinced that Green's account of the role of the state and law was too cautious and Bradley's political philosophy was

⁶⁶ There is some evidence that, prior to the publication of Ethical Studies, Bosanquet himself contemplated preparing a study on moral and social philosophy. See Bosanquet's letter to F.H. Peters, August 13, 1876, cited in J. K. Muirhead, (ed.), Bernard Bosanquet and his Friends, (London, 1935), p. 37: "the book I was to write must wait; perhaps forever". See Helen Bosanquet, Bernard Bosanquet: A Short Account of his Life ([London, 1924], p. 34): "He seems to have contemplated writing a book on Ethics, which was forestalled by Bradley's Ethical Studies". See also Nicholson, British Idealists, p. 52 and n. 18, p. 243.

too fragmentary and incomplete.⁶⁷ Thus, by the 1890s--and particularly with The Philosophical Theory of the State--Bosanquet turned explicitly and at length to the question of the nature and limits of the state--a question which was to occupy him until his death.

Bosanquet saw himself as an inheritor of the liberal tradition--though specifically in the way developed by Green--and his criticism of the views represented by Bentham, Mill and Spencer reflected ideals to be found in their work. Bosanquet argued, like Green, that 'liberal individualist' accounts of the nature, origin and limits of human rights, particularly because of their views of the nature of the individual and of law, were unacceptable (PTS 167). Nevertheless, his estimate of Bentham, Mill and Spencer, so far as they reflected certain liberal ideals, was not entirely negative.

⁶⁷ In fact, the main source for Bradley's political philosophy is his volume on ethical theory, Ethical Studies, published in 1876. It seems that Bradley thought that his views here were fairly conclusive, for he wrote almost nothing more on these topics. The sole exceptions are "Some Remarks on Punishment," in International Journal of Ethics, Vol. IV (1893-1894), pp. 269-284 and "The Limits of Individual and National Self Sacrifice," in International Journal of Ethics, Vol. V (1894-1895), pp. 17-28) (both reprinted in Collected Essays (Oxford, 1935)). Despite the publication dates, both were written possibly as early as 1878. For a discussion of the relation between Bradley and Bosanquet's political philosophy, see Nicholson, British Idealists, preface and studies I and VI, and my review of Nicholson in Laval théologique et philosophique, Vol. 48, (1992), pp. 477-480.

2.1 Positive Aspects of Liberal Individualism

Bosanquet believed that a basic principle of political life was the promotion of liberty and the development of the individual, and he praised Mill for recognizing the importance of the development of a sense of social solidarity and of its role in social life. Moreover, like Bentham, Mill and Spencer, he believed that the basis of true self-government was the recognition of "the claim to obey only yourself" (PTS 134) and, thus, in the western world 'self-government' implies a representative, democratic government. The origin and justification of the coercive force of government must lie, ultimately, in the individual. Finally, Bosanquet was concerned with the question of "how far and in what way the use of force and like by the state" is justified (PTS 171). One positive feature of Spencer's work, he thought, was its exhibition of "the fatal possibilities of a collective governmental stupidity" (PTS 65) and, like Mill, Bosanquet saw that there are certain limits on what society or the state can do. For example, it cannot--or, at least, should not--"attempt to prevent by punishment either immorality or irreligion as such" (PTS 61)⁶⁸. But, like Bentham he insisted that "some degree of

⁶⁸ Despite the agreement between them on this point, Bosanquet is not advocating a separation of law and morals. He is, rather, drawing to the attention of his reader what means are suited to achieving a moral good. Like Green, Bosanquet would say that punishment (as in all matters of legal compulsion) focuses on controlling behaviour; it cannot directly affect motive. Bosanquet is one with Green on this point (See PTS 180 and LPPQ, sec. 15). Moreover, Bosanquet finds that Mill's argument here--that it wrong to punish in such cases,

restraint on what we can now easily imagine ourselves free to do, is involved in political society" (PTS 54). In short, all seemed to agree that the state and law are necessary to life in society, but that their activities must be limited and clearly specified.

On the more specific issue of the nature and origin of rights, Bosanquet acknowledged that both the utilitarian and natural rights theorists had seized upon some features that were obviously correct. For a right to be said genuinely to exist, Bentham insisted on the necessity of its recognition by the state in a legal system. This, Bosanquet believed, was clearly true (PTS 188), and he seems to echo Bentham and Mill when he maintains that rights are correlative to specific obligations and that "no right can be founded on my mere desire to do what I like" (PTS 198). Indeed, there seems to be no great distance between Bosanquet and Mill when Bosanquet insists that rights cannot exist "independently of [one's] relation to the end" (PTS 189; see 191)--although for Mill, of course, this end was the utilitarian view of happiness. Bosanquet says that, it is in virtue of their relation to an end that rights "derive their imperative authority" (PTS 195).

Yet Bosanquet also thought that Spencer was correct to deny that rights could be an arbitrary creation of the state. Rights are necessary for the development of human personality-

because it would infringe on one's liberty--is based on a principle which is "doubtful" (PTS 61).

-an end to which the state, itself, is a means--and Bosanquet refers to certain "'revisionary rights' of humanity" (PTS 206) that require that the state take a person seriously as a moral agent. The existence of rights also constitutes a means by which one can evaluate the moral value of any social order (PTS 189). Furthermore, as in natural rights theory, rights are something which "can only be real in an individual" (PTS 66), and they must correspond to something in the nature of such a being. Thus, Bosanquet speaks of rights as ascribed to individuals in virtue of their functions, and that they are "adjusted" to fit individuals "like suits of clothes" (PTS 190).

Spencer affirmed, in fact, that the moral weight of rights depends on recognizing the rights of others; Bosanquet expresses a somewhat similar view. By claiming a right, Bosanquet says, "I recognise... the general system of law according to which I am reciprocally under obligation to respect the rights... of others" (PTS 194). And Bosanquet found in the doctrine of natural rights "the important idea of a positive law which is what it ought to be" (PTS 188) for, on his view, a "typical 'right'... both is, and ought to be, capable of being enforced at law" (PTS 188).

Despite these (at least apparent) similarities, Bosanquet argued that the work of Bentham, Spencer and Mill was fundamentally flawed in two ways: first, it reflected a defective view of the individual (which it also identified as a prin-

ciple of value) and, second, it contained an inadequate account of law and of the state--particularly in their relation to the freedom and development of the person. Consequently, Bosanquet not only questioned the liberal individualist views of self-government and political obligation, but attacked the very principles on which the respective theories of human rights were based. He believed that it is only by rejecting the liberal individualist view of the individual and the corresponding analysis of the law that one can clear the ground for a more coherent account of social life and, in particular, of the nature, source and limits of human rights.

2.2 Negative Aspects: Individualism and the Individual

As noted earlier, Bosanquet refers to the views of Bentham, Mill and Spencer as, collectively, "theories of the first look" (PTS 75). By this he means simply that they are based upon the assumption that the nature of "the individual or society... is what it prima facie appears to be" (PTS 77). But Bosanquet states that such an approach is not only inadequate and incomplete, it is also inconsistent, and it is precisely these aspects of individualism that Bosanquet targets in his criticism.

One of Bosanquet's objections to these "theories of the first look" is that they exhibit too narrow a concept of the human person, and he focuses on their ontological and moral

individualism. To begin with, Bosanquet points out that the notion of the individual found here is simply inadequate. Such an "atomic" view of the self (PTS xxxiv), as a being which "has so little in him that you cannot imagine it possible to break him into lesser parts" (PTS 74), is simply inconsistent with human experience, nor is it admitted by "modern logic" or "modern art criticism" (PTS 57)⁶⁹. Moreover, it would seem to devalue what one has in common with others and would identify individuality with eccentricity--whereas eccentricity is clearly not "a type of fully developed self" (PTS 57).

What led, or could have led, the liberal individualists to this account of the nature of the individual in the first place? Bosanquet acknowledges that Spencer might have derived this from the observation of the competition and conflict that exists among animals (see PTS 24). But this is simply to say that what things are is known by how they might appear "at first look"⁷⁰ and, in any event, there is no suggestion that,

⁶⁹ Bosanquet obviously has in mind here that human individuals are like aesthetic wholes--works of art--each more than the sum of its parts, and that its parts, so far as they can be distinguished from one another, are interdependent and interrelated, such that a change to any one of them would affect the work of art as a whole.

⁷⁰ It may be useful here to provide a brief note on what is meant by this notion of "theories of the first look". Bosanquet admits that the view of reality that may be suggested when one observes "the compact self-containedness and self-direction" of the people milling about in a railway station is one where reality consists of a number of discrete and independent individuals (PTS 75). But this is not to say that this is how reality always appears at "first look" or that Bosanquet's own theory is 'inferential'--though, to see things differently may require that the "mind... open its eyes

in the case of Bentham and Mill, their individualism is based on such phenomena. Bosanquet suggests that this idea of individuality is, in fact, largely the effect of, rather than the basis for, "the Benthamite tradition that law is an evil" (PTS 56). Regardless, Bosanquet believes that there is a good deal of additional evidence that can be marshalled against such an account of the human person.

What Bosanquet calls Mill's "principle of demarcation" between 'self' and 'other' comes in for special criticism. According to Bosanquet, Mill's objective of defending the individual from external control requires that there be a means by which we can separate individuals from one another in society. As noted earlier, Mill claimed to have found such a principle--that acts which affect only the individual or need not affect others unless they like may not be punished by law or by public opinion (L 11).

First, the result of this is, he believes, a view of the individuality of a person as "a sort of inner self" (PTS 57) that can be conceived of, independent of "the varied play of relations and obligations in society" (PTS 57). But this ignores, Bosanquet says, that "[a]ll individuals are contin-

afresh" (PTS 77). Bosanquet's point, then, is that individualism is not the sole ontological theory that reflects the way things do look at first glance. Consider, for example, what conclusion one might come to in watching a military parade instead of the crowds at a railway station. Here, presumably, "the social logic and spiritual history which lie behind the scene" would not "fail to impress themselves on [one's] perceptive imagination" (PTS 75).

ually reinforced and carried on beyond their average immediate consciousness by the knowledge, resources, and energy which surrounds them in the social order" (PTS 142).

Bosanquet replies, moreover, that such a criterion of demarcation is "perfectly arbitrary in its practical working... For every act of mine affects both myself and others; it is a matter of mood and momentary urgency which aspect may be pronounced characteristic and essential" (PTS 60).⁷¹ The possibility of a rigid separation of 'self' from 'other' is untenable and, even were it not, it is unclear whether it would be able to protect the value ascribed to the individual (see section 2.3 below). Indeed, Bosanquet suggests that sometimes Mill himself violates this principle, by forbidding contract into slavery (PTS 64; see L 101-102) and by forbidding certain 'self-destructive' activities. He reminds us that Mill himself allows one to restrain a man from walking over a bridge which is sure to fall down and cause his death (PTS 64-65; see L 95). Thus, such an attempted distinction between 'self' and 'other' is, Bosanquet believes, "hopelessly confused" (PTS 64) and any boundary that this would establish "cannot be traced and therefore cannot be respected" (PTS 75).

A further objection that Bosanquet raises to the 'individualism' of Bentham, Mill and Spencer concerns its

⁷¹ For a defense of Mill's 'principle of demarcation' and an argument that Mill can distinguish between 'acts that affect others' and 'acts that affect others' interests', see Rees, pp. 143-155.

implications for the 'principle of value' or the nature of 'the good'--specifically, how the individual human person appears to have a fundamental value in these theories or its 'moral individualism'.

Bosanquet would argue that the individualist (and, arguably, hedonistic and subjectivist) conception of the good implied in the views of his opponents is, again, not only inadequate, but leads to inconsistency. Recall, for example, the individualist description of 'law' as 'intrinsically painful'. Like Hobbes's definition of the 'good' as simply "whatsoever is the object of any man's appetite or desire" and of 'evil' as simply "the object of his hate and aversion",⁷² we have Bentham's and Mill's view that "pleasure is in itself... the only good",⁷³ that the "ultimate end" is "an existence exempt as far as possible from pain" (U 11) and that, when it comes to conceptions of 'the good', people should decide "according to their personal preferences" (L 8). One finds a similar position in Spencer. Spencer claims that the "objects" of a person's life (MS 192) are his "person and property" (MS 183)--in general, acquiring and preserving the means "for satisfying his desires" (MS 204-205).⁷⁴

⁷² Leviathan, Ch. 6, pp. 48-49.

⁷³ IPML, Ch. 10 (ed. Burns and Hart), sec. 10, p. 100.

⁷⁴ Despite Spencer's description of his ethics as 'organicism' and 'evolutionary', his position is fundamentally egoistic and individualistic. As noted earlier, Spencer's concept of an organism is essentially that where the whole is the sum of its parts; hence, there is no good over and above

The account of the 'good' described here is, Bosanquet would hold, too narrow. Not only does it focus simply on what is pleasurable or desirable but (as one sees in Spencer and, arguably, Mill) it identifies the individual--specifically, what distinguishes a person from every other person--as the source of value. For natural rights theorists, it is life--individual life--that is the source of value (MS 195-196). And while, for the utilitarian, the charge is perhaps not as evident, since the whole is simply the sum of the parts, and since the parts are 'individual pleasures', the good is simply a sum of individual pleasures. Thus, the subject of this 'pleasure' is clearly the foundation for the utilitarian conception of the good.

But what exactly is wrong with such a Hobbesian theory of the good, one might ask? What is Bosanquet's warrant for claiming that it is too narrow? To begin with, Bosanquet would point out that there is clearly a difference between what is one's good and what one perceives to be one's good. One's good is not simply that which an individual desires, and ought not to be restricted to or limited by his or her hedonism, egoism or inability to see what is in his or her own interest. For example, to reduce one's good to what one desires at some

a sum of individual goods. To the extent that Spencer does speak of the 'good' of the whole, it is simply that of each individual as being in a state of equilibrium with every other--a state that, in any event, on Spencer's view--is never achieved. (For a brief summary of Spencer's views here, see C.E.M. Joad, Guide to the Philosophy of Morals and Politics, [London: Victor Gollanz, 1947], pp. 367-373.)

particular moment, does not take account of what one would desire at other moments and, hence, would be an incomplete statement of what really is in one's interests. Recall, too, that Bosanquet reminds us of Mill's example, where it seems that we can--and ought to--hinder people from engaging in actions which are clearly self-destructive. And Bosanquet would insist that it would simply be short-sighted if one were to argue that we may intervene only because we believe that, in such cases, the individual's envisaged action would contravene his or her wishes or desires. Moreover, it is not obvious that the individual is (as Bentham, Mill and Spencer claim) best suited to determine his or her own good. Instances of self-deception or self-doubt remind us that, even in cases of the existence of purely private goods, an individual may not be ideally placed to make such a decision.

Bosanquet has also argued that, in focusing on the individual--specifically, on that which is distinctive about a particular human being--as the basis of value, liberal individualism ends up prizing eccentricity at the expense of the values we share (PTS 57), and ignores the worth of what one has in common with others. It also leaves unanswered the question of why the individual should have a fundamental value or should be a basis for value. Indeed, he argues, it does not give an adequate explanation of why the individual has any value at all.

This leads to yet another objection to this 'moral individualism', and that is that Bosanquet sees it as collapsing into a "commonplace... Collectivism" (PTS 169). According to Bosanquet if, as Bentham says, "all individuals are understood as differing only in number from one", then 'the one' counts for nothing more than 'society' (i.e., 'the many'). Thus, rather than--as a moral individualism would have it--the individual being "the end to which Society is a means", "the 'means' and the 'ends' are liable to change places" (PTS 76). And once "all the individuals" become "the end, then there is no theoretical limit to the sacrifice which may be demanded from every individual on behalf of all the individuals. And thus Society becomes the imperative end." (PTS 76, n. 1).

Mill's 'principle of demarcation' leads, Bosanquet believes, to the same result. He suggests that this principle may be turned against itself for, if little or nothing affects only the individual concerned, then there is little or nothing which is exempt from "social interference" (PTS 59).⁷⁵ It leaves, he says, "an easy opening for a transition from administrative nihilism to administrative absolutism" (PTS 59).

Bosanquet intimates that a similar charge could be made against Spencer. He says that, on Spencer's view, individuals

⁷⁵ Ritchie provides a similar criticism of Mill in Principles, pp. 96-98.

have ethical value (i.e., their right to life has moral weight) only so far as each individual agrees to limit the exercise of his or her rights in order to avoid social conflict. If this is accepted, however, their "individuality [as such] has no ethical aspect at all" (PTS 68). Bosanquet concludes, then, that it is difficult to see how such a view of the individual can provide any foundation for the moral individualism associated with it.

If Bosanquet's reading of Bentham, Mill and Spencer holds true, then not only has what Bosanquet sees as the foundational value of the individual been abandoned, but there is nothing to prevent the individual from ceasing to be 'the end' of society and becoming, instead, 'a means' to the species. Bosanquet does not, of course, claim that Bentham, Mill and Spencer are, therefore, collectivists, but simply that "[a]n uncriticised individualism is always in danger of transformation into an uncritical collectivism... [for] [t]he basis of the two is in fact the same" (PTS 66).

In short, Bosanquet argues that the liberal individualist account of the nature of the individual is inadequate, incomplete and prone to inconsistency. Moreover, the attempt to draw some line of demarcation between 'self' and 'other' not only reflects a fundamental misunderstanding of the nature of the human person, but it implies an inadequate conception of 'the good' and could, paradoxically perhaps, even threaten the value of the individual.

2.3 Negative Aspects: Liberty and the Law

Bosanquet's second major objection to Bentham, Mill and Spencer is directed to their account of the nature of law and the authority of the state. Bosanquet argues that this account is both inadequate and inconsistent.

Recall that, on the liberal individualist view, 'freedom' or 'liberty' means 'the absence of restraint'. Thus, Bosanquet notes, every infraction of this liberty is "followed by a natural sentiment of pain" (PTS 53). But since pain is evil, so far as law is a restriction of (and an infraction of) liberty, law is an evil.

Still, law is necessary for security, and government is required for the formulation and the enforcement of law. Moreover, as Mill and Spencer certainly recognized, political liberty and rights can exist only if individuals give up their natural liberty--that is, their natural power--to do as they wish. Thus, even though law is necessary to political liberty and rights, it is an evil--a 'necessary' evil--and government is "a choice of evils" (PTS 53) to be preferred over anarchy. 'Liberty', on the other hand, is basically 'negative liberty'--freedom from limits imposed by law.

Bosanquet's response focuses on two claims: that law involves a limitation of the liberty of the individual and that it is an evil.

To begin with, Bosanquet argues that the liberal individualist position here is inconsistent. The view that "the

citizen can acquire rights only by sacrificing a part of his liberty" (PTS 54) implies that one has "a certain area of liberty, of which a portion is abandoned to save the rest" (PTS 54). But, Bosanquet notes, "the idea of such an antecedent liberty is just such a fiction, as Bentham himself delighted to expose" (PTS 54). There is no 'original liberty' and hence there is no basic liberty to 'sacrifice' in order for the law to exist and to secure one's rights.

How, then, can law be an evil? This seems to depend on a view of the nature of liberty which, Bosanquet charges, is unfounded, if not false. Bentham suggests, Bosanquet notes, that "the claims of 'others' in society is a... curtailment of the liberty of the 'one'" (PTS 55). But how do these claims genuinely diminish one's room for action? Indeed, the existence of others and of the entire array of social institutions may allow one to engage in activity otherwise impossible. "We profit at every turn by institutions, rules [and] traditions" (PTS 142) and such institutions represent "the ground won and settled by our civilisation" (PTS 200) and "we are apt to... forget how great is the effect, for the possibilities of life throughout, of the mere fact that a social order exists" (PTS 189). In fact, Bosanquet insists that one acquires one's "capacity for life" only through his fellowship with others (PTS 55). Law, therefore, is not a limitation of human liberty, for it provides far more opportunities than it forecloses, and it certainly does not appear to be an evil.

Bosanquet argues further that Bentham and Mill are also inconsistent in their view of law. Consider Mill's position on the nature of law in On Liberty. As noted above, Mill argues that individuals have a 'region of liberty' and that, in this 'region', the individual is sovereign. Any interference from 'outside' is, therefore, unacceptable. In fact, Mill often suggests that society and law are not only alien, but hostile, to an individual's interests.⁷⁶

But it is curious, Bosanquet states, that "if law and government [are] in their nature antagonistic to the self of man... [that Bentham and Mill] nevertheless admit... that a certain minimum of this antagonistic element is necessary to the development of the sentient or rational self" (PTS 52-53). Surely then, such a recognition should oblige them, on their own terms, to deny both the claim that every limit on liberty is an evil and the conclusion that law itself is an evil. Otherwise, Bosanquet concludes, "[w]e have here a dualism which challenges examination" (PTS 53).

In short, then, since one's pursuit of the good and the development of one's capacities (and perhaps more) are not threatened, but made possible, through the law and the institutions which reflect it, Bosanquet holds that there is no a priori antithesis between liberty and the law.

⁷⁶ See On Liberty, Chapter 4, "Of the Limits to the Authority of Society over the Individual."

One might respond to Bosanquet, however, that the 'problem' with the individualist's position here is more apparent than real. Bosanquet seems to take it that to say a thing is evil and then to say that it is necessary to a good and has good consequences is inconsistent. But on Bentham's and Mill's views, surely one can distinguish between a natural evil and a moral evil. Law (i.e., the restriction of liberty) is evil in the same way in which famine and disease are evil--not because of any intentionality involved, but just because they cause pain. But this is to say only that it is a natural evil. A moral evil occurs when, for example, an agent violates the greatest happiness principle in his or her actions. Consequently, law may be a natural evil but, where justified by utility, not a moral evil. Thus, Bentham or Mill could see the law as being a natural evil that must be tolerated to allow for a moral good. There is, arguably, no inconsistency on this point.

Nevertheless, Bosanquet might reply that, even if liberal individualism can consistently claim that law is good, because it is needed to protect--if not to promote--liberty, it is still a defective account of how and why law can contribute to a genuine human liberty, sc., the development of humanity and of the human individual. In fact, in the end, the purpose of the law seems to amount to little more than enforcing respect of the boundary between 'self' and 'other'.

Recall that, for the liberal individualist, 'liberty' is essentially 'negative liberty'--that is, freedom from the interference of others. This requires, then, the ability to distinguish which actions properly concern only the individual agent and which of his or her actions properly concern others. Hence, we have the 'principle of demarcation' which, while formally articulated by Mill, is equally necessary for the arguments of Bentham and Spencer.

As we have seen already, Bosanquet objects that Mill's principle, with its implied boundary between 'self' and 'other' is obscure and arbitrary, and that "it is a matter of mood and momentary urgency" (PTS 60) whether an act is considered to be primarily of interest to the individual alone or to others. But even if this principle were adequate, Bosanquet claims that it does not even do what it was intended to do--sc., ensure a 'region of liberty' in which individuals are free and can develop their autonomy--or even allow them to 'pursue their own good in their own way' (L 12).

By using the 'principle of demarcation' as the essential criterion for the legitimacy of legal or governmental interference, Bosanquet would say that Mill forbids us from helping where we can and allows us to intervene where we should not. For example, sometimes maintaining "conditions favourable to the best life" (PTS 188) lies within the power of the law, but because this could violate the putative boundary between self and other, Mill would forbid it. On the other hand, Bosanquet

believes that it would certainly be wrong to suggest that, simply because our moral obligations touch on the legitimate interests of others, they can or ought to be enforced by law (or, at least, by public opinion) (PTS 63; xxxv). But Mill seems to allow just this.

It is because of this latter point that Bosanquet finds Mill's account of the role of law particularly unacceptable. Not only does enforcement of moral obligation through the law destroy "the springs on which moral action depends" (PTS 64) but it risks eliminating or thwarting moral development--one of the very values that Mill professes to recognize.⁷⁷ Clearly, what ought to be important when the force of law is appealed to is the nature of the interference--not (as Bosanquet believes Mill is suggesting) its source.

If there are indeed so many problems in the account of liberty and the law given by Bentham, Mill and Spencer--and, particularly, in ensuring that law respect the "principle of demarcation"--how does Bosanquet account for the persuasiveness of their views? Why is it that liberalism so often

⁷⁷ According to Bosanquet, neither law nor the state can directly bring about the existence of an appropriate moral motive. Morality is tied to the will of the agent, and this is something which the state cannot control. (I discuss Bosanquet's account of the nature and limit of state action in Chapter 5, section 2.3 below.) 'Enforcing morality', then, is "per se a contradiction in terms" (PTS 64). Bosanquet says that, so far as Mill allows for attempts to promote morality through direct state action (such as the threat of force), he either reduces the number of occasions in which the individual may be said to act freely (and hence form a genuine moral personality), or simply replaces a moral motive to do the good with the prudential motive to obey the law.

insists that "coercive authority" (PTS 62) must not only respect the boundary line between self and others, but must ensure that others respect it too?

Bosanquet suggests that this understanding of the nature and role of law and, in particular, the insistence on a principle of demarcation, are consequences of the fact that, throughout much of history, the sovereign power represented in the law appeared to have an interest that was opposed to that of the individuals subject to it. It was the imposition of an interest alien to one's own that limited the individual in pursuing his or her own conception of the good. Consequently, one's 'liberty' to pursue the good required identifying one's particular interests and restricting the intervention of the 'other' to those situations where that 'other' had a legitimate concern. This led, first, to a demand to limit sovereign power and, next, to making the interests of the sovereign power identical to those of its subjects, through the establishment of self-government. It is this historical circumstance, then, that Bosanquet believes to be responsible for the view that law is an evil. It also explains why so many others have taken the views of Bentham, Mill and Spencer so seriously. Pace the hedonistic tone of the individualism of Bentham, Mill and Spencer, underlying this view of law is not the claim that law causes pain but, rather, that law 'comes from others'.

Bosanquet's response is that this account nevertheless fails as an explanation of when and why law and the use of force are justified and why force or tradition may sometimes be wrong. A law should be condemned as antithetical to one's liberty, not because it 'comes from others' where others's interests are not in fact involved, but because it "is contradictory to the nature of the highest self-assertion of mind" (PTS 170)⁷⁸. A law would be equally illegitimate if it had been based on one of the "conflicting elements in our private experience" (PTS 170). Law or force is justified only in terms of what it "is and is not able to do towards the promotion of good life" (PTS 62). Force is necessary, for example, "to the support and maintenance of the human consciousness, owing to its animal limitations" (PTS 171). But any attempt to restrict its use to some 'public sphere', leaving untouched issues that allegedly concern the individual alone is, Bosanquet believes, false if not altogether incoherent.

If, as Bosanquet argues, the liberal individualist account can provide neither a cogent account of the nature of the individual nor a clear explanation of the nature and role of law, it would seem that it could not explain either the

⁷⁸ As we shall see in Chapter 3, section 1, Bosanquet argues that there is a 'nisus to coherence' in nature--one which he frequently describes, in The Philosophical Theory of the State, as "self-assertion" (e.g., PTS 55, 68, 116). Both here and in these latter texts, Bosanquet is referring to an "assertion" by a 'self' that is more than the 'atomic' self.

legitimacy of the law nor why individuals are obliged to obey it. For an answer, Bentham, Mill and Spencer look to representative government--to self-government--as the authority that is entitled to employ coercive force on individuals. Spencer thinks of society as a "joint stock company", and Bentham and Mill see representative government as a means of ensuring that the state respects the end of producing the greatest happiness for the greatest number--with Mill weighting representation in favour of those of intellectual ability, although still reflecting the will of all citizens.⁷⁹

Nevertheless, as Spencer himself noted, even in representative government, the 'right of the majority' is still the coercion of 'others' over 'the one'. Moreover, given his criticisms of the individualist distinction between 'self' and 'other' noted above, Bosanquet argues that there is no way that Bentham, Mill and Spencer can generate a genuine theory of self-government--i.e., a conception of government that does "not treat the self as ipso facto annihilated by government" nor "treat the government as a pale reflection, pliable to all the vagaries of the actual self" (PTS 72-73). Bosanquet concludes, then, that even though "popular instinct" admits and "common sense" insists that there must be such a thing as self-government (PTS 72), none of these theories can provide

⁷⁹ See Mill's Considerations on Representative Government, Ch. 7, in Collected Works, Vol. XIX, p. 457.

a "rational ground" on which "an entire community can apply coercion to a single recalcitrant member" (PTS 71).

Bosanquet's criticism is, in short, that these "theories of the first look" break down. In the liberal individualist view, the relation between the individual and society is one of superior to inferior or means to end (PTS 167; see xxxiii). But this, Bosanquet argues, is "a contradiction in terms" (PTS 167). It ignores, for example, the fact that the individual and society constitute "a single web of content" so that, strictly speaking, neither is the means to the other (PTS 168). By considering them as even potentially "alien and opposed" (PTS 60) or "hostile" (PTS 67) or as opposites--and not as "manifestations of the same principle in different media"- (PTS 61)--one cannot explain the part played by either in social life (PTS 61).

2.4 Negative Aspects: The Nature of Rights

As noted earlier, Bosanquet's response to the characterisations of rights given by Bentham, Mill and Spencer is directed not only to the accounts themselves, but to the 'liberal individualist' principles they reflect. It should be no surprise, then, that several of his criticisms of their theories of rights reflect and extend some of the criticisms of the nature of the individual and of law discussed in the two previous sections.

2.41 Bentham

Bosanquet agrees with Bentham that rights are not natural and inalienable in the sense referred to by many natural rights theorists; they are determined by, and cannot exist independently of, the state. To this extent, Bosanquet could well support Bentham's critique of the notion of 'natural right'. Still, he differs from Bentham, both in how rights are ascribed to specific persons and in the reasons that one may give for saying that a claim should be recognized as a right.

Bentham insists that rights are ascribed to persons through law. Moreover, he would say that the only basis for making the moral claim that the state create a right would be that it contributed to the general happiness. Any other basis (e.g., - by appeal to something required by the 'natural liberty' of humanity) would, Bentham says, have anarchical consequences.

Consider, to begin with, the arguments for a moral claim to a right. Bosanquet, like Bentham, insists that one can make such a claim only so far as it has some reference to a moral end. Nevertheless, he rejects both Bentham's view of the nature of this end and what he sees as the lynch-pin of Bentham's theory--namely, Bentham's account of the nature and value of the individual.

First, Bentham's 'greatest happiness principle', it has been argued, reflects an individualist notion of the person. It assumes that the whole is nothing more than the sum of the

series of isolable and independent parts and that the general happiness is nothing other than the sum total of individual happinesses. 'The greatest happiness of the greatest number' is calculated, then, by determining the putatively quantifiable amounts of happiness of each individual.

Now Bosanquet argues that Bentham's view here exhibits too limited a conception of what makes an individual what it is. It takes individuals and their interests--what contributes to their happiness--simply as what they are at a specific point in time, rather than in light of their 'nature'--what they can be. 'The greatest happiness' of an individual, Bosanquet alleges, does not consider the potential of the person nor what sort of 'end' might be suitable to the full development of that potential; it focuses, instead, simply on what is 'desired' by, or 'desirable' to, the individual concerned. Moreover, as noted earlier (in section 2.3), the notion of the individual implied in Bentham's moral theory ignores one's relations both to others and to the ethical value of human self-development. It eliminates, therefore, what Bosanquet would see as providing the context in which rights have their meaning.

Bosanquet also holds that--ironically, perhaps--Bentham's view of the individual may lead to 'collectivism'--ignoring one's claim to self-realization in favour of the happiness of other individuals, if not also devaluing the importance of his contribution to the moral end. The appeal to the greatest

happiness principle, so far as it could result in the 'annihilation of the individual', seems inconsistent with Bentham's 'moral individualism'. At any rate, such a view would make a specific appeal for rights simply superfluous.

Finally, Bentham's account of the greatest happiness principle ignores the possibility that the development of one's characteristics and talents may serve some other end than the general happiness, and, hence does not consider that an individual might have a moral claim to a right to develop these talents, based on other grounds. In short, if Bentham's moral theory fails, he can no longer generate any moral justification for human rights.

Consider, now, Bentham's account of the source of rights. While Bosanquet recognizes that rights are a product of the activity of the state, since he does not share Bentham's conception of the nature of law and of the sphere of state action, there is a significant difference between how each sees the nature of rights. For Bentham, law is simply the command of the sovereign--which, in a representative democratic system, would be the expression of authority by a sum of the private wills of the members of the sovereign body.

On such a view, however, there is no essentially ethical element in law, and a right could conceivably be morally arbitrary or immoral, and yet no less authoritative and no less a 'right'. Moreover, Bentham suggests that rights exist only where there has been a prior restriction of liberty--most

obviously, in virtue of the establishment of law itself. Thus, while law is the source of rights, Bentham believes that it necessarily involves a limitation of--and is in fact antithetical to--one's 'liberty'.

But first, as noted earlier, there is no a priori antithesis between liberty and the law. Bosanquet holds that not only one's rights, but one's liberty is enhanced by the existence of law, because it guarantees the recognition and the enforcement of the conditions necessary for their exercise. He would insist, moreover, that Bentham's view of rights is problematic. Since there is no necessary connexion between morality and law, not only could rights be ascribed independently of any concern for how they are related to 'the good', but one could even have a 'right' to act immorally.

Moreover, on Bentham's view, rights can be ascribed to individuals arbitrarily--that is, independently of what their talents, abilities and natural characteristics require. Bosanquet would reply, however, that the notion of an arbitrary or immoral law or right is inconsistent with the very idea of law and right. It is clear, he would argue, that when a state acts, it takes pains to avoid appearing arbitrary and immoral, and it is virtually unimaginable that a legal authority could exist entirely independently of the (moral) will of society. Thus, neither the law nor the rights it creates can ever be entirely morally arbitrary.

Consequently, while Bosanquet does acknowledge that rights require recognition by the state in law, he would argue that this does not entail that the ground of rights lies in the state. Instead, he would maintain that it is because of the relation of a right to a moral end--an end which is prior to and distinct from the state--that the state 'recognizes' a right. Since Bentham's account of rights fails to admit this, it must, Bosanquet would hold, be rejected.

2.42 Mill

As shown earlier, Mill refers to, and distinguishes between, 'moral' and 'legal' rights. This is not to say that legal rights are never moral rights (or vice versa), but simply that where the former are not moral, they are no less legally binding. Given that Mill's analysis of 'legal rights' is much the same as Bentham's, Bosanquet's critique of it is essentially that which he has raised against Bentham. What is distinctive in Bosanquet's discussion of Mill primarily concerns issues that affect the basis of the latter's account of 'moral rights' and liberty.

Like Bentham, Mill appealed to the greatest happiness principle as the standard of moral action and, as shown earlier, he argues in Utilitarianism that the existence of moral rights are determined by this principle. But, unlike Bentham, Mill insists at length in On Liberty that at least some of one's moral rights pertain to the individual in a

"region of human liberty", and that in this 'region' the individual is sovereign and can appeal to these rights to protect him or her from interference from those 'outside' of it. Any interference by the state in the individual's 'region of liberty' is, therefore, unacceptable.

First, Bosanquet sees a tension here--i.e., between the principle of utility (which, in Utilitarianism, is the basis of rights) and the insistence on the importance of the moral rights of the individual (which he says one finds in On Liberty). Presumably, what makes a claim a 'moral right' is determined by its utility, just as utility is also the basis for the moral authority of the state and law. But when the state is forbidden from interfering in the individual's 'region of liberty'--i.e., restricting some of one's moral rights--the reason given, Bosanquet maintains, is no longer that it is contrary to utility, but simply that it violates Mill's 'principle of demarcation'--that is, that it is a force 'outside' the individual that can make no claim on what is of legitimate interest to him or her alone⁸⁰.

A second point that Bosanquet raises is that, for certain individual "moral rights" to be possible, Mill has to be able

⁸⁰ One might argue that this tension dissolves if the value of individual liberty is taken to have the weight of a utilitarian-justified moral rule. Aside from the question of whether one can maintain a distinction between act and rule utilitarianism, there is no evidence that Bosanquet would ever have made such a distinction. (Arguably, however, the notion of such a utilitarian-justified moral rule is implied by Bosanquet's reference to this tension in Mill's work.)

to isolate a sphere of liberty where such rights would exist, separate from and independent of the legitimate interests of others⁸¹. But isolating such a sphere, as Bosanquet has argued (see section 2.2 above), is impossible. Besides, given that, on Mill's view, the individual is fundamentally independent of the community, and given Mill's tendency in On Liberty to see society and law as not only alien, but hostile, to one's interests, the distinction, if not the opposition, between the interests of an individual and the interests of others would discourage social solidarity or, at least, suggest that such solidarity is something at the option of--and not the duty of--the individual.

Yet even if one could define such a private sphere of liberty, there would still be, Bosanquet thinks, a number of problems in Mill's account of moral rights. To begin with, Mill's view suggests that there could be, and that one would therefore have a right to engage in 'private vices'--even if one ought not to. But Bosanquet would argue that a 'right to do wrong' simply violates the conceptual relation between 'right' and 'duty' and cannot be sustained. He rejects, then, the possibility of any such 'right' and of any such 'vices'.

⁸¹ A natural question here is how one determines what one's "legitimate" interests may be. It has been argued that Mill has in mind the notion of "harm" or the violation of obligation, but Bosanquet would argue that what is in someone's interest goes far beyond this. There is, one should also note, a potential ambiguity in this idea of a "legitimate interest". It could mean what one is interested in or what is in one's interest. Nevertheless, it seems clear that Mill is using the latter sense here.

Moreover, if individuals may do as they please in such a 'region of liberty', it would allow that one could have rights independent of his or her position in society. But, as seen in his discussion of Bentham's view of rights, Bosanquet would suggest that it does not make sense to ascribe rights to individuals independently of their activities in social life. In any case, even if there were 'rights' independent of society and of one's social relations, Bosanquet could not see why they would entail obligations on others and why society ought to see they are respected. Finally, supposing that there could be a 'region' in which individuals might exercise certain moral rights, Bosanquet argues that Mill could not give these rights adequate protection. Given that Mill's 'principle of demarcation' between 'self' and 'other' prevents the state from acting where it might be warranted by what Bosanquet considers to be the moral end, and that it could justify the state in acting where, in fact, it would interfere with the development of an individual's moral personality, it is by no means clear that one's "moral rights" would be able to defend either the fundamental moral claims or the interests of the individual.

Bosanquet's final criticism of Mill's account of rights is that it rests on a mistaken view of the nature of law and the state. For example, in On Liberty, Mill appears to hold that rights can serve as moral limits on legal authority or on the state. Thus, Mill's defence of moral rights suggests to

Bosanquet that law is to be--or, at least, should be--subordinated to the development of the individual as 'means' to 'end'. Bosanquet says repeatedly, however, that he sees little to be gained by an a priori limitation on any particular type of state action (PTS 172)⁸², and that any view which claims that society is the means to the individual--or vice versa--is essentially wrongheaded (PTS 167). Moreover, Mill's putative distinction between the authority of "moral right" and the limits of "law" overlooks what law or the state does or can do for the individual. Indeed, it is because state action supports what he would consider to be genuine individual liberty that Bosanquet would argue that Mill's objection to collective or social rights must fail. Mill is mistaken, then, in his understanding of the nature and role of rights.

2.43 Spencer

Spencer maintains that rights are natural (i.e., antecedent to government and inherent in individuals), are inalienable (unless individuals consent to their transfer) and, as they have both moral and legal force, serve as limits on the action of the state. Like the view expressed in Mill's On Liberty, Spencer argues that individuals have the right to pursue whatever ends they choose, so far as their actions do not infringe upon the rights of others. Spencer holds that

⁸² This is not to say that there are no limits on what a state can do. I discuss this point in Chapter 4, section 2.3.

state action is allowable, however, only so far as is necessary to protect individual rights. In fact, to an even greater degree than that suggested by Mill's On Liberty, Spencer argues that law and the state are subordinate to individuals--specifically, to these "natural rights". In this way, any conflict between the individual and the state is resolved in favour of the individual. Moreover, the activity of the state is essentially negative (i.e., restricted to removing obstacles encountered by persons in the exercise of their rights). It can never, therefore, legitimately go beyond the explicit wishes of its citizens in order to attempt to further the public good.⁸³

While Bosanquet will agree with Spencer that rights have both a legal and moral character he would argue that, on the whole, the modern 'natural rights' view is mistaken. As Bentham pointed out, it is unthinkable that rights could exist prior to the state and independent of it. Outside of the state, there is no universally recognized authority competent to make a definitive statement of what rights there are. Moreover, Bosanquet says that, were there to be such "natural rights", they would exist in a condition in which there would be no safeguards to protect or enforce them and, consequently,

⁸³ Bertil Pfannenstill says that Spencer calls this "a political superstition" (Bernard Bosanquet's Philosophy of the State, [Lund, 1936], p. 100). In fact, the "great political superstition" is, according to Spencer, "the divine right of parliaments", i.e., that the majority in an assembly has powers that have no bounds (MS 174).

it would not be clear how they would be different from the mere claim of an individual to do what he or she wishes.⁸⁴ Rights must be recognized, and "[i]t is a plain fact," Bosanquet writes, "that a 'right' can only be recognized by a society" (PTS 66)--specifically, by the state. If a right is to function as a claim on others, there must be some public and authoritative recognition either of it or of the principles which demand it. Bosanquet's emphasis on 'recognition', then, serves to remind the natural rights theorist that rights do not exist in a vacuum--they reflect relations that exist among persons and are not just entitlements held independently of a moral end.

These criticisms address most versions of natural rights theory, but there are further problems peculiar to Spencer's account of rights. Spencer's view of natural rights as constituting a limit on the state assumes, for example, that the moral weight of rights is independent of society or the state. But, as noted earlier, Spencer himself acknowledges that rights acquire their moral character only in a social environment--i.e., upon an agreement to respect the rights of others. The moral weight of rights seems, therefore, social and not purely 'natural' (as suggested by Locke and, more

⁸⁴ In fact, Bosanquet suggests that Spencer's view of natural rights confuses 'liberty' with 'licence', and he denies that one can ever make a moral claim to the freedom to do as one likes.

recently, Robert Nozick⁸⁵). Unless Spencer wishes to maintain that such an agreement took place in a 'state of nature' or in 'society' prior to the state, it is difficult to see how he can hold that rights could act as "trumps" over the state.

Bosanquet also argues that Spencer's theory exhibits many of the defects found in Bentham's and in Mill's account of rights and, hence, is liable to the criticisms that he has brought against them. Like Mill, Spencer suggests that individuals have a private sphere or 'region of liberty' where they have the right to do as they choose, and that others--in particular, the state--constitute an a priori potential menace to the exercise of such rights and must, therefore, be restricted. But, as already noted, Bosanquet replies that this depends on the view that one can provide a clear separation of 'self' from 'others' and that the interests of these 'others' are independent of, if not opposed to, one's own. It also implies that each individual can not only determine, but is the best judge of, his or her interests.

Bosanquet, however, denies these claims. For example, as we have seen, he argues that the distinction between 'self' and 'other' breaks down. Besides, when a person acts on his or her interests in ways that are harmful to another, the problem is not that such harm comes from 'outside' and, thus, infringes on the latter individual's rights. It is, rather,

⁸⁵ See Anarchy, State and Utopia, (New York: Basic Books, 1974).

that these actions are simply not conducive to that individual's 'good'. Or again, the issue of the limit of state action is not whether state can serve as the 'means' to the individual or vice versa; instead, the issue is one of how far the state and the individual can contribute to a moral 'end'. Individuals do not have rights, nor do rights have their weight, because of any distinctive characteristic of (or their relation to) the nature of the individual self but, Bosanquet would say, in relation to a broader principle of value. He would reject, therefore, any view of rights or of isolated individual interests as "trumps" over state action.

2.5 Recapitulation

What we have seen in the preceding sections (2.2-2.4) are a number of the criticisms made by Bosanquet that affect the theories of rights of Bentham, Mill and Spencer. These criticisms concern not only the nature and source of such rights and their ascription to individuals, but reflect a disagreement on other issues--issues that underlie these theories--sc., those of 'law', 'liberty', the 'individual' and (as we have seen in the discussion of this latter point) the definition of 'the good'.

A review of Bosanquet's remarks, then, suggests several problems in the accounts of rights of the "theories of the first look". First, these theories fail to provide an adequate account of the origin of rights. They require a distinction

between 'self' and 'other' or, at least, the possibility of being able to isolate a private sphere in which some such rights exist. Second, there is no satisfactory explanation of how rights are ascribed to individuals. If it is in virtue of 'human nature', it is unclear how rights follow from it. If rights are simply assigned by the state, then they may be arbitrary. If rights are ascribed in light of a moral end, like 'life' or 'the general happiness', Bosanquet would argue that there are problems in these 'ends' as principles of value.

The theories of rights also fail because they do not adequately explain the purpose of a system of rights in a society and they provide no complete account of why rights have a moral character and are binding on others. The understanding of rights in these views, then, is frequently too negative (because a right is considered to be primarily a means of limiting the law or state action) and permits the possibility of a right to do wrong. At the root of each of these criticisms are the claims that liberal individualist rights theories exaggerate the value of the human person as a standard of value and ignore the importance of the social context and one's relations to others.

One must not, however, overlook two central aspects of Bosanquet's assessment of these "theories of the first look": first, that liberal individualist theories of rights are not simply inadequate to the task, but incomplete and inconsistent

and, second, that his response to them was not to reject all of their underlying principles, but to adopt and redefine some and to develop and make more consistent others. Such a result is not without significance. Bosanquet writes that "a better understanding of fundamental principles would greatly contribute to the more rational handling of practical problems" (PTS vii). To the extent that Bosanquet can succeed in doing this, idealist rights theory may be able "to alter the range of acceptable descriptions of actions available in that society" and, thereby, in the world of practical affairs, "alter the range of actions themselves"⁸⁶

3. Summary

In the first half of this chapter I have presented some of the views of two of the dominant traditions in nineteenth-century political thought. Their ideas provide the intellectual context in which Bosanquet was to develop and refine the insights of his idealist predecessors on the nature, source and limits of human rights. In the second half, I have focused on some of the criticisms raised by Bosanquet concerning the accounts of rights found in Bentham, Mill and Spencer. This critique allows one to identify what Bosanquet would take to be the crucial issues in articulating a theory of rights.

⁸⁶ Stefan Collini, "Hobhouse, Bosanquet and the State: Philosophical Idealism and Political Argument in England 1880-1918," in Past and Present, 72 (1976), pp. 86-111, p. 111.

Whether Bosanquet's criticisms can ultimately be sustained is not, then, relevant to the present purpose.

What was missing in these "theories of the first look", Bosanquet believed, was not only an accurate description of the nature of rights, but a theoretical justification which could explain their origin and limits and to whom they might be ascribed. For Bosanquet, the notions of 'liberty', 'individual', 'law', 'right' and 'the good' that the liberal individualists employed reflected or rested upon presuppositions--that is, upon a 'social ontology'--that he finds deficient, inconsistent or simply unelaborated in their work. Bosanquet's concern, therefore, was to provide a theory of rights that will not only avoid problems of inconsistency and inadequacy, but which will reflect--to use the title of one of his series of Gifford lectures--"the principle of individuality and value".

Such a theory would, it seems, be an alternative to the 'commonplace individualism' paradigmatically represented by the natural rights theorist, Herbert Spencer, and the tendency towards a 'commonplace collectivism' reflected in Jeremy Bentham. But the extent to which Bosanquet's view in general, and his account of rights in particular, can count as a viable alternative depends not only on the acceptability of his description of what rights are, but on the extent to which the presuppositions of this account are able to be defended and

sustained. It is to this, then, that we turn in the next three chapters.

CHAPTER 2

BOSANQUET'S THEORY OF RIGHTS

In the preceding chapter, I outlined the theories of rights of Bentham, Mill and Spencer, provided some of the conceptual background to them, and indicated in which respects Bosanquet would argue that these theories fail. The focus of this chapter is to provide the core of Bosanquet's response to the liberal individualist views of rights--that is, to reconstruct Bosanquet's analysis of human rights and to identify several concepts central to this analysis.

I shall concentrate on four aspects of Bosanquet's theory of rights: the nature of a right, how it is that an individual has rights, what role the state has in the existence of rights and, finally, the conditions under which rights may be limited. In the process, and in order to clarify Bosanquet's view here, some objections will be raised, along with answers which he does, or could plausibly, provide. As suggested in the previous chapter, however, Bosanquet would insist that a complete response to such objections depends, in turn, on the plausibility of certain key concepts--concepts whose origins lie outside of political philosophy proper. This chapter will simply signal what these concepts are; Chapters 3 and 4 will

provide a more complete discussion of them through an outline of Bosanquet's "social ontology".

1. The Nature of Rights

Bosanquet's account of rights is not unlike those which one finds in the writings of his mentors and colleagues in the British idealist tradition, though it is one of the latest and, in several respects, the most rigorous.¹ His most systematic treatment of rights occurs in Chapter VIII of the Philosophical Theory of the State². One may, moreover, consider this presentation as definitive: it is certainly his lengthiest examination of the question and he made little modification to it during the 25 years separating the book's first and fourth editions--the fourth edition appearing in the year of Bosanquet's death. Bosanquet takes his account of the nature and source of right--like his account of the political life in general--to be largely descriptive. The object of

¹ For other idealist accounts of rights, see T.H. Green, LPPO, William Wallace, "Our Natural Rights," in Lectures and Essays on Natural Theology and Ethics, (ed. E. Caird), (Oxford, 1898), John Watson, The State in Peace and War, (Glasgow, Maclehose & Sons, 1919), pp. 222-246, and David G. Ritchie, Natural Rights: A Criticism of Some Political and Ethical Conceptions, (London, 1895), Chapter 5.

² This question is discussed as well, though only briefly, in Bosanquet's essays "The Kingdom of God on Earth" (1889) in Essays and Addresses, (London, 1889), pp. 108-130 (Reprinted in Science and Philosophy, [London, 1927], pp. 333-351) and "The Function of the State in Promoting the Unity of Mankind" (1916) in Proceedings of the Aristotelian Society, n.s. XVII (1916-17), pp. 28-57 (Reprinted in Social and International Ideals, [London: Macmillan, 1917], pp. 270-301).

political philosophy, he claims, is not to depict an ideal state, but to understand what a state is (PTS 232) and how it operates (PTS x),³ and Bosanquet takes special care to show that the analysis of rights that he provides reflects either current practice or a considered understanding of what they involve.

What, then, does Bosanquet have in mind when he uses the term "right"? He introduces the concept of "right" during a discussion of the end and limit of state action. Here, he is concerned with the general problem of establishing the nature of the relationship between the state and the human individual, and it is by reference to "rights" that he hopes to illustrate what this relationship is. He begins with an account of what he calls a right "in the fullest sense" (PTS 188, n.1). Such a right is a morally-imperative claim which both is, and ought to be, recognized as enforced by law (PTS 188). In a typical right, then, the legal and the moral aspects are united.

³ While Bosanquet allows that social (or, what is the same for him, political) philosophy is, in a way, 'normative'--this being one of the respects in which it differs from sociology (see PTS, Ch. 2)--it nevertheless begins with 'facts'. Some commentators fail to take note of this feature of Bosanquet's approach to philosophy and argue that Bosanquet is concerned simply with an 'ideal state'. According to Stefan Collini, Bosanquet never indicates, for example, whether existing states actually manifest the characteristics that he attributes to them, and other critics have argued that, in fact, they do not (see Collini, "Hobhouse, Bosanquet and the State: Philosophical Idealism and Political Argument in England: 1880-1918," Past and Present, 72 (1976), pp. 86-111, at pp. 105-106). This issue will be discussed in detail in the fourth chapter.

How is a right morally imperative? Bosanquet says that the rights that exist in a society constitute a system. This system may be regarded as a set of conditions necessary for members of that society to attain a goal--a goal which he refers to as "the rational life" (PTS 189), "the moral end" (PTS 68), "the existence and perfection of human personality" (PTS 189) or, simply, "the best life" (PTS 173). For Bosanquet, then, rights are 'teleological' and it is by reference to this end that rights "derive their imperative authority" (PTS 195) and have their moral weight. Since a reference to a 'moral end' is implied in rights themselves, a right is necessarily a moral right. Thus, rights are morally imperative.

Although Bosanquet describes the 'moral end' as "the existence and perfection of human personality", he is not primarily concerned with the development of the individual as an individual--i.e., in his or her "aspect of isolation" (PTS 189). He is, rather, concerned with human personality in general or as a whole, although he would certainly claim that, in the pursuit of this, the individual will also benefit. For Bosanquet, this goal of a "better life" (PTS 1) and the rights connected with it will, then, involve the interests of others. A right "in the fullest sense", therefore, involves an end that is not only moral but social.

How is legal authority, represented by the state, relevant to the existence of rights? Bosanquet observes that,

in fulfilling the positions and functions they have in society, individuals may encounter obstacles. The distinctive action and purpose of the state is the removal of these obstacles, and one's claim to this, recognized in law, constitutes one's rights. In other words, the state is the agency which secures one's rights.⁴

Yet the role of the state goes far beyond this. In addition to securing rights, the state defines and distributes them. It defines them in that, through the medium of the law, it declares explicitly what each right involves and what the responsibilities (i.e., the duties or obligations)⁵ of others

⁴ Similarly, T.H. Green defines a right as "the power of the individual to make a common good his own" (LPPO, sec. 25). He adds that rights have "no being except in a society of men recognising each other" (LPPO, sec. 139) and refers to the state as the "sustainer of... rights" (LPPO, sec. 142). To this point, at least, Bosanquet's view is consistent with that given by Green in LPPO. What distinguishes their respective views of rights, according to both Bosanquet and his critics, is the precise role of the state. (This reflects a more fundamental distinction between Bosanquet and Green on the relation between society and the state.) This putative difference in their analyses of rights will be discussed in sections 3 and 4 below.

⁵ In PTS, Bosanquet is careful to distinguish "duty" from "obligation"--though he does not always make this distinction (see his use of the term "duty" in FS). Duty, according to Bosanquet, "is the purpose with a view to which a right is secured, and not merely a corresponding obligation equally derived from a common ground" (PTS 195). Obligations are generally the external conditions of a position (or a right) from the viewpoint of others. Consequently, a right is "a permission secured by law" and an obligation is "a demand on others enforceable by law" (PTS 194). In other words, one's right to do X involves the obligation on others not to hinder him.

A.J.M. Milne argues that "[w]hat lies behind" Bosanquet's distinction between duties and obligations is a difference in level of rational activity--that "at the level of moral rules

are in relation to them. It also distributes rights to individuals, according to the activities they are engaged in. The state does this by acknowledging through statute or public practice that certain powers are necessary to performing activities that are part of the particular positions or functions of its members, and by being the authority that officially recognizes individuals as having these positions. Finally, the state protects rights by providing the legal and administrative machinery that permits their legitimate exercise, and by employing sanctions against those who interfere with them. Thus, Bosanquet describes a 'right' as an external incident or condition of a position or function in an order determined by law (PTS 192; cf. FS 271) and as "a power secured in order to fill a position" (PTS 196). Consequently,

and customs, the rational agent's duty is to observe the established rules and customs of his society"--these are one's obligations--while "at the higher levels of rationality", the agent "must think out his responsibilities for himself and on occasion this may involve claiming new rights"--these are one's duties (See A.J.M. Milne, The Social Philosophy of English Idealism, [London, 1962], p. 272).

But Milne provides no textual evidence for this reading, and it more closely resembles, in fact, the shift from the morality of 'my station and its duties' to that of 'ideal morality' that one finds in "Essay VI" of F.H. Bradley's Ethical Studies. There are good reasons to believe that Bosanquet does not follow Bradley in this respect--principally because Bosanquet does not seem to have abandoned a view of ethics based on 'my station' (see Bosanquet's Some Suggestions in Ethics, [London, 1918] especially Chapter 2, and my "F.H. Bradley and Bernard Bosanquet," in Philosophy after F.H. Bradley, (ed. James Bradley), [Waterloo, ON: Wilfrid Laurier University Press, (forthcoming)]). In any event, as the texts from Bosanquet show, one can distinguish 'duty' from 'obligation' without recourse to Milne's analysis.

rights "in the fullest sense" have legal force because they simply cannot exist without the state.

This description of the legal dimension of rights reflects the teleological character noted above in the account of the moral dimension, and this explains why Bosanquet holds that there is an essential connexion between the legal and moral in the nature of a 'right'. Specifically, the moral and legal sides of a right are brought together because rights are assigned by the state to positions and, Bosanquet says, positions can exist only in a social order that is determined by the moral end. Thus, a right must have both legal weight and be morally binding. Rights, then, are "claims, recognized by the State, i.e., by Society acting as ultimate authority, to the maintenance of conditions favourable to the best life" (PTS 188).

Given the integral connexion of the moral and the legal, one is reminded of classical natural rights theory. But, for Bosanquet, rights cannot exist independently of the state. On the other hand, rights must have moral weight, and so Bosanquet's concept of 'right' differs in at least this one respect from that of Bentham.

The coincidence of the legal and moral dimensions of rights is, Bosanquet would say, 'a matter of logic', but one can imagine other reasons why Bosanquet would be unwilling to accept a separation of rights into 'moral' and 'legal' rights. Bosanquet no doubt believes that, if the legal were separated

from the moral, it would lead either to statism or to anarchy. For a purely legal right, independent of a moral end, provides no bar to pernicious but properly legislated statutes, and a purely moral right, independent of legal recognition, could become so subjective that each person's conscience might come to take the place of law. And here, Bosanquet and Bentham would undoubtedly agree.

But, one might ask, if rights are claims, must a person explicitly claim his or her rights for them to exist? Even though Bosanquet says that a right is a claim, it is a claim "thoroughly transformed by social recognition and adjustment" (PTS 99), and one has a right even if he or she is "indifferent to the end" (PTS 192) or to the position in terms of which it is ascribed. (In such cases, Bosanquet says, rights may become obligations (PTS 192).⁶) Thus, rights need not be claimed in order to have effect.

In brief, then, Bosanquet's definition of a right "in the fullest sense" is that it is a claim to a moral and legal power, that is recognized by the state as necessary to an end, and ascribed to a position held by a person. But such an account is by no means uncontroversial, and more must be said to understand how and why Bosanquet came to this view. For

⁶ Bosanquet mentions here the right to vote which, if one were not dutiful in the exercise of one's citizenship, could also be an obligation. Another example might be the right to educate one's children. What is being suggested here is, presumably, that not to claim or to exercise certain rights would be to refuse to participate in the realization of the moral end to which those rights are a means.

example, one might argue that not only is Bosanquet mistaken in insisting that rights are both 'moral' and 'legal', but he is himself inconsistent on this point⁷. Moreover, it is not clear what role or what value the individual has, given this account of the moral and social character of rights. Neither has it been explained precisely how, and in virtue of what qualities, rights are assigned or ascribed to individuals, nor exactly how and why rights must be recognized by the state. Consequently, I turn now to Bosanquet's treatment of these fundamental issues.

2. The Ascription of Rights

In Bosanquet's account of rights, morality and law have the same end or goal which, as noted above, is described variously as "the best life" and as "the perfection of human personality". It is this goal that is the basis for rights, and Bosanquet denies that rights are natural to persons or that they exist independent of society. Specifically, he holds that a person has functions or positions in society that are determined by the nature of the end or the common good of that society and by one's capacity to make a contribution to that end (PTS 191). Rights are the powers or means required by a

⁷ See section 4 below. This is also suggested by Milne (p. 259) and E.F. Carritt, Morals and Politics: Theories of their Relation from Hobbes and Spinoza to Marx and Bosanquet, (Oxford, 1935), pp. 156-157.

person in a position.⁸ "They are the claims recognised by the will of a community as the sine qua non of the highest obtainable fulfilment of the capacities for the best life possessed by its members" (FS 271). The state secures these positions and enforces these rights by recognizing them in law and by protecting them. Thus, it is on the basis of one's position, and not because of something inherent in the individual, that a person has these powers or rights.

It follows, then, that one's rights are not inalienable. Individuals acquire and lose rights depending on how their positions or responsibilities change (cf. PTS 216). Nevertheless, Bosanquet believes, individuals will have all the rights they need in order to do what they have to and he speaks of rights as being fitted to a person as a suit is tailored to a person's physique (PTS 190).

There are two principal criticisms of this account of the ascription of rights. First, one might say that, by holding

⁸ The view that rights are tied to positions recognized by society is an important part of Bosanquet's account. Nevertheless, it is a view that Green traces back to Plato and Aristotle (see LPPO, sec. 39), and which had already received its elaboration in F.H. Bradley's notion of one's "station" (see ES, "Essay V"). Indeed, in several of his essays on political topics, Bosanquet employs Bradley's expression, "my station and its duties". Green also refers to the importance of fulfilling the "duties of one's station" (Prolegomena to Ethics, 5th. ed., Oxford, 1906, sec. 183; see also secs. 313 and 338). It is unclear, however, whether this locution was first employed by Green or Bradley. See Ellen Jacob, Bernard Bosanquet: Social and Political Thought, (Ph.D. thesis in History, City University of New York, 1986), pp. 84-85. See also Peter P. Nicholson, The Political Philosophy of the British Idealists: Selected Studies, (Cambridge, 1990), p. 243, n. 14.

that rights are ascribed in view of an end and that this end is an end common to all the members of a social group, Bosanquet proposes a notion of rights that ignores the importance of individuals and their interests, and which subjects these rights entirely to social expediency.⁹ Furthermore, if rights are essentially features of positions, it would seem that one has rights only so far as one has a function or position. This, some would argue, would annihilate the value of the human person altogether.¹⁰ After all, if one had no specific position or function in society, could society not employ the 'principle of social surgery' suggested by Plato and simply remove the 'useless' entity?¹¹

To begin with, Bosanquet would reply that, although rights exist and are ascribed to the positions individuals have insofar as the fulfilment of these positions are required by the common good, this good is also each individual's good

⁹ Hence, Herbert Marcuse writes that, on the view of the British idealists, "[t]here are no individual rights separate from the universal right represented by the state" (Reason and Revelation: Hegel and the rise of Social Theory, 2nd ed., (Boston: Beacon Press, 1960), p. 391). The misleading character of this remark will be obvious in what follows.

¹⁰ This is essentially John Morrow's criticism ("Liberalism and British Idealist Political Philosophy: A Reassessment," History of Political Thought, 5 (1984), pp. 91-108, at p. 103).

¹¹ See Republic 406a-410 a. "Treatment, he thought, would be wasted on a man who could not live in his ordinary round of duties and was consequently useless to himself and to society" 407e. See p. 97, The Republic of Plato, (tr. F.M. Cornford), Oxford, 1941. This view also seems to be suggested by F.H. Bradley in "Some Remarks on Punishment," in his Collected Essays, Oxford, 1935, p. 164.

and these rights are "instrumental to my purposes" and "secured to me with a view to an end which I accept as mine" (PTS 192). But how is it, Bosanquet's reader might ask, that my interests and my ends are related to this general end? Bosanquet argues that this end is willed by each individual as a rational being--that is, as fully informed and completely rational--and that one can distinguish the 'best life' from the ends of the wishes and wants that arise in one's daily routine, by noting that the former is the object of one's "real will".¹²

One's interests are related to the moral end, then, as follows: The "best life" is the object willed by one's "real" will. But, as the "real" will is the will of each individual,

¹² One sees here one of the main influences of Rousseau's Contrat Social on Bosanquet's political thought. A complete account of this notion of the "real" or "general will" will be provided in the third chapter. Nevertheless, a brief explanation of Bosanquet's reasoning on this point is in order.

According to Bosanquet, an individual's will consists initially in what that person wants at a particular moment--he often refers to this as the "particular will" (PTS 89; 100). But "in order to obtain a full statement of what we will, what we want at any moment must be at least corrected and amended by what we want at all other moments, and this cannot be done without correcting and amending it so far as to harmonize it with what others want, which involves an application of the same process to them" (PTS 111). This full statement of one's will seems to be something like the set of all the wants of each person, determined by reason in light of maximum information. By the time one's will has undergone such an adjustment and correction, it is called the "general will" or "real will". It is "general" because it is greater than anyone's private will, and it is the same for all who share a common good. It is "real" because it is what an individual does (or would) will as a fully rational person--it is the will that aims at the realization of one's objective interests. Yet it is still each person's own will insofar as it is a part of, and exists in, the individual.

the object of the "real" will is also the goal of each member of society.¹³ This also serves to explain why, as stated above, Bosanquet takes this 'end' to have moral authority and why it is each person's duty to obey it. Bosanquet (like the liberal individualists) believes that the only legitimate authority over a person is that person's own will (PTS 134-136). Since each person's will is, ultimately, this "real" will, and since the "real" will has as its object the "best life", this 'life' or 'end' is the object of his will and, hence, morally authoritative over him.

Thus, Bosanquet sees no conflict between individual interests and the moral end, and he would hold that, even though rights are determined in relation to an end, this does not mean that this end can be pursued without regard to rights. Rights are ascribed to persons in order that they will be able to carry out the responsibilities of their positions for, by doing so, they participate in the realization of the

¹³ The relation between the "real" or "general will" and "the end" or "the common good" is described by Bosanquet in the following way: "The General Will seems to be, in the last resort, the ineradicable impulse of an intelligent being to a good extending beyond itself, in as far as that good takes the form of a common good" (PTS 102). According to George Sabine, Bosanquet's account of the general will is an "elaboration of the psychological basis of Green's theory of the common good" (See his "Bosanquet's Theory of the Real Will," Philosophical Review, XXXII (1923), pp. 633-651, at pp. 639-640). On this issue, see also the comment by Roger Masters on the first sentence of Rousseau's Contrat Social, Book II, Chapter 1: "the concept of the 'general will' was from the first a voluntaristic equivalent of the traditional concept of the 'common good'" (Jean-Jacques Rousseau, On the Social Contract, (ed. Roger D. Masters; tr. Judith R. Masters), New York: St Martin's Press, 1978, p. 139, n. 42).

moral end. But should the state attempt to act 'directly' in the place of an individual, or whenever an action is done under constraint, this action is, Bosanquet claims, "removed" from the moral life (PTS xxxii). Strictly speaking, the state cannot act morally, and when it coerces an individual, it eliminates the possibility that that action be done from a moral motive.

Now, according to Bosanquet, it is precisely through the moral activity and, hence, moral development, of individuals that the moral end is realised. So, when the state acts or intervenes, it may neither restrict freedom unnecessarily nor limit it simply because some objective could be achieved in some other way (PTS 179-180). And to do so out of expediency, Bosanquet says, would not only diminish the moral element in life, it would bring about "moral and intellectual death" (PTS 200). The teleological approach that Bosanquet proposes, then, cannot and must not be reduced to a simple principle of expediency.

Yet even if one were to grant Bosanquet's argument that the 'common good' is the same as what is in one's 'real interests', and that his teleological view of rights does not make them yield to a principle of expediency, one might well ask how seriously one is to take Bosanquet's respect for the value of the individual. Bosanquet has denied that rights are natural to persons and has claimed that they depend on the state. And if rights are assigned to positions, it would seem

that the individual is at best just a concatenation of positions¹⁴ and that, without a position, one has no rights. Bosanquet's theory, in short, appears to lead to too narrow a view of the nature of individuals and to an unacceptable account of their value. Moreover, if one's position and not the person becomes central, does this not suggest that the notion of 'will'--on which Bosanquet's own account of the moral and the legal character of right depends--is irrelevant?

Does Bosanquet's claim that rights are, strictly speaking, properties of positions and not of persons distort or annihilate the value of the individual? Admittedly, he states that one cannot separate individuals from their roles in society: "man really does not exist as man without some station and duties" (KG 116). And it would seem that there is little to persons apart from the functions they have and the positions they fill.¹⁵ May one say that the enumeration of one's positions, then, describes the individual in his or her entirety?

Bosanquet recognizes that each person has distinctive roles to play and responsibilities to fulfil that are part and parcel of what he or she is within the broader life of a

¹⁴ "What comes first, we may say, is the position, the place or places, function or functions, determined by the nature of the best life as displayed in a certain community, and the capacity of the individual self for a unique contribution to that best life" (PTS 191).

¹⁵ See Bosanquet's reference to an individual who loses all her "purposes" and functions (KG 118).

culture or a society. Consequently, so far as people have different specific functions, they will have certain duties and will need correspondingly specific rights. One's rights and duties will change, then, as one acquires new roles and responsibilities or as they change. It is also important to recognize what Bosanquet means by 'position' or 'station'. He says that "[a] man's station is not merely his trade. His family and his neighbours and the commonwealth are part of it" (KG 121-122).

To see what this means concretely, consider the case of an adult citizen in a democratic state. This person has, for example, the right to vote in the election of representatives and this right is related to the particular "position" of being a citizen. But this position is obviously not the only one this person may have. She might be a parent, a spouse, a teacher, a neighbour, and so on, and would therefore have the rights and responsibilities that accrue to these "positions". Were she to run for public office and be elected, she would have a new "position". Thus, she would have not only the additional responsibility of representing her constituents, but the additional right of participating actively in the making of law. This understanding of the social character of the individual suggests to Bosanquet that "[t]he Position, then, is the real fact--the vocation, place, or function, which is simply one reading of the person's actual self and relations in the world in which he lives" (PTS 191).

Consequently, not only will one's rights and responsibilities change according to the positions one fills within in the social order, but who or what a person is, will be determined by the functions or positions that that person has.

Bosanquet believes that this analysis of rights and of their ascription constitutes no threat to what a person is. It is when one sees individuals as part of a larger whole and not in their particularity, he says, that one sees these persons at their best. And while the individual is, in this respect, a "reflection of society", it is still "from a point of view that is distinctive and unique" (PTS 163). And recall that the common good which Bosanquet identifies as underlying society is one that reflects each person's own best interests and each person's 'real will'.

Nor does this focus on 'position' entail any 'annihilation of the individual' or of one's value. Does a description of the citizen described above in terms of her positions and functions make her any less a person? Bosanquet thinks not. Besides, "[f]unctions--even all a man's functions taken one by one--do not exhaust a man's nature without remainder" (PTS lvii, see PTS 292).¹⁶ Moreover, while rights are ascribed to positions, they "can only be real in an individual" (PTS 66) and it is only as a human being that one can fulfil the requirements of a position. Nevertheless, Bosanquet is

¹⁶ According to Bosanquet, "...the individual's mind is not reduced to his special service, or he would be a machine" (PTS 292).

insistent that a person's value is not simply a product of his or her distinctiveness from others. One's individuality and, hence, one's value draws on the fact that that person has a position in an order that extends beyond his or her particular self and that that person is capable of participating in a common good.

Bosanquet's view, then, is not that individuals are 'only' a set of positions but, rather, that in fulfilling the responsibilities of our positions, we are more human than we could otherwise be. "Such places and functions... are the fuller self in the particular person, and make up the particular person as he passes into the fuller self" (PTS 191). In doing our duty, or on acting on our rights, we make ourselves more human--"we take hold of our humanity and bring it home to our particular selves" (KG 121).¹⁷ In fact, being a person seems to be, itself, a function: "our station is, above all things, to be men" (KG 120). Thus, persons and their value are not compromised, but only made intelligible, Bosanquet believes, by the ascription of rights to positions.

Finally, the attribution of rights to the positions individuals have is neither inconsistent with, nor detracts

¹⁷ One might suggest that this emphasis on the position of the individual in the social order (as the basis on which rights are ascribed) will find a sympathetic audience in legal positivists, such as Bentham, Austin, or Kelsen. Nevertheless, the authority which determines the position and assigns rights is also a moral authority. Moreover, it holds its authority, as noted earlier, only because it is "representative" of one's will and one's "good".

from, the important role that the will of the individual plays in Bosanquet's account of the source of the authority of the moral end. One's positions, Bosanquet would point out, are recognized and defined because they are required for the perfection of human personality--that is, for the realization of the good aimed at by one's 'real will'. Since the 'real will' is understood as being a part of each individual's will, there is no incompatibility between viewing the individual as a being who can be described in terms of the variety of positions he or she has within a social order and as a being whose will is the ground of that order.

Still, one might well wonder how far this account of the ascription of rights is tenable. Bosanquet's argument depends, at minimum, on the coherence and plausibility of such concepts as the 'real will' and the 'common good' and on more clearly defining what a "position" is. While a brief statement has already been made explaining how Bosanquet believes that this 'real' or 'general' will has its origin in one's particular will, and why the common good is good for the individual, no complete argumentation has yet been given for Bosanquet's conclusion that the real will is in fact the individual's will and that what is good for the individual is the good of the individual. Moreover, given this emphasis on position, one might both challenge Bosanquet's description of the individual and be concerned whether he has provided an adequate account of its value. The pursuit of these latter questions, however,

leads beyond the purpose of this chapter, and further discussion here must be deferred.¹⁸

3. The Recognition of Rights

Bosanquet insists not only that rights must be recognized, but that they be recognized by the state.¹⁹ Still, he would hold that such a view should not be difficult to accept. To understand the mechanism of recognition requires understanding what it is that 'recognizes'. For Bosanquet, society is fundamentally a "structure of intelligences" (PTS 195), and social positions are "the attitudes of minds towards one another" (PTS 196). The "recognition" that Bosanquet refers to is simply this attitude of other minds. It would be impossible for there to be a right which was not recognized, then, for it would mean that there was a position--that is, an 'attitude of minds'--of which the minds that constitute that society were not conscious.

¹⁸ These questions will be addressed in Chapter 3.

¹⁹ This is one respect in which Green's account of rights differs from Bosanquet's. (For Hobhouse's praise, albeit mitigated--of Green on this point, see Leonard T. Hobhouse, The Metaphysical Theory of the State, [London: Allen and Unwin, 1918], pp. 118-120.) While Green says that "rights are made by recognition" (LPPO, sec. 136), he acknowledges that there is a distinction between legal rights and rights which 'ought to be recognized' in law (see LPPO, secs. 138-141). See also A.D. Lindsay, "T.H. Green and the Idealists," in The Social and Political Ideas of Some Representative Thinkers of the Victorian Age, (ed. F.J.C Hearnshaw), London: Dawsons of Pall Mall, 1933, pp. 150-164, at p. 161. (Lindsay's essay was reprinted as an Introduction to the 4th, 5th and 6th editions of Green's Lectures on the Principles of Political Obligation.)

There is, however, more than this to Bosanquet's view of 'recognition'. As H.A. Prichard notes in his critique of Green's theory of political obligation, "we can only rightly speak of a man's community as securing to him certain powers, if we think of it as doing so through an agent. To substitute something called custom or the law of opinion is useless".²⁰ Thus, Bosanquet says that this 'attitude of other minds' must be found in the law instituted by the state. The recognition of rights and positions by the state simply follows from the nature of society; the whole process of recognition is just, Bosanquet says, "a matter of logic" (PTS 197).

This notion of 'recognition' is implied in the definition of "right" itself. In the first place, unless rights were recognized by others, it would make no sense at all to appeal to them. Certainly, it is difficult to see how society or the state could ever be called on to secure a 'claim' of which it was entirely unaware. Moreover, rights can exist only as part of a system of rights (PTS 194), i.e., a person's claim to a right entails the existence of a corresponding position. But, as a 'position' can exist only within a system or order larger than it, this suggests a relation to other positions with their respective rights. Thus, a claim to a right entails a recognition by that person of the existence and the legitimacy of the rights of others, and vice versa. The requirement that

²⁰ H. A. Prichard, Moral Obligation and Duty and Interest, (London, 1968), p. 75.

rights must be recognized by the state in law, then, is a means of providing an explicit indication that there is a system of rights and that it makes sense to call on others to respect it.

It is, therefore, only by insisting on the recognition of rights that, Bosanquet would hold, rights can be effective, and so the system of recognized rights is "that which is really necessary to the maintenance of material conditions essential to the existence and perfection of human personality" (PTS 189). It "represents the ground won and settled by our civilisation, and leaves us free" to pursue the moral and intellectual life (PTS 200).

But not only does the system of rights secure people in their daily activities--giving them freedom and enabling them to work towards the common good--it also serves as an indicator of the extent to which the state fulfils its own function. Since the aim of state action is, Bosanquet says, "coincident with the maintenance of rights" (PTS 189), one can weigh the value of a social order in terms of the extent to which such rights exist, and "so far [as that social order] enables life to be lived, and a determinate, if limited, common good to be realised" (PTS 189). Although the state is the agency that recognizes rights, when one looks at the system of rights in this way, it is clear why Bosanquet holds that the state will also respect rights.

Not surprisingly, several objections have been raised against this account of the recognition of rights. For example, it has been claimed that Bosanquet ignores that rights can exist independently of any recognition by society or the state. L.T. Hobhouse, the British sociologist and author of the "classic" critique of Bosanquet's political thought, argues that "[i]f anyone can prove that some specific condition is in fact requisite to the realization of a good life, then that condition is scientifically demonstrated to be a right, though it may never have been recognized from the beginning of time to the present day, and though society may refuse to recognize it now".²¹ Thus, rights do not need to be recognized in order to exist.

A related criticism is that, even if rights must be recognized, they do not need to be recognized in law.²² Bosanquet's view suggests that, if one lives in a state where

²¹ See Hobhouse, p. 120. For a similar criticism, see A.C. Ewing, The Individual, the State and World Government, (New York, 1947), pp. 23-24. Ewing writes that "[e]ven if the rights of an individual depend entirely on the social good likely to be secured by his having the rights and it is concluded that he has rights only as a member of society, this does not mean that the rights which he has depend on any recognition, explicit or implicit, by society or the state."

A defense of the possibility that there can be legal principles or rights of which the state, at a particular time, may be unaware is suggested in recent studies by Ronald Dworkin. See his discussion of the basis of the First Amendment (of the Bill of Rights of the United States) right to freedom of speech in his "The Coming Battles over Free Speech," (The New York Review of Books, 11 June 1992, pp. 55-64).

²² This is the position that many ascribe to Green. See Hobhouse, p. 119.

certain basic rights are not explicitly present in law (e.g., in those states in which slavery or apartheid is practised and legal), then that person can apparently make no legitimate claim to liberty or demand that the state respect such rights. Moreover, if rights must be recognized by the state, there could never be a right to rebel or even engage in civil disobedience against a tyrant. And again, might there not be times when the state does not do that which society requires of it, and specifically refuses to recognize that which individuals and institutions claim to be rights?²³ Thus, the critic will say, if the notion of "rights" is to have any value at all, it is precisely because we need to be able to appeal to it in just these situations. Is not Bosanquet's insistence on the recognition of rights by the state refuted by the fact that the state is not always what it ought to be?²⁴

Finally, it has been charged that Bosanquet's account of the nature of rights has relativistic implications. Since Bosanquet says that rights are determined by the state, there could in principle be as many systems of rights as there are states.²⁵ Such a view, however, is inconsistent with the idea

²³ According to A.J.M. Milne, "the fact that the government of the day... fails to acknowledge the claim does not mean that it is not a right" (Milne, p. 274).

²⁴ See Bertil Pfannenstill, Bernard Bosanquet's Philosophy of the State, (Lund, 1936), p. 270.

²⁵ See C.E.M. Joad, Guide to the Philosophy of Morals and Politics, (London: Victor Gollancz, 1947), p. 568.

of international law and permits "total machiavellianism in foreign policy".²⁶ Thus, Bosanquet's apparent inability to conceive of a moral community--such as "humanity"--greater than any nation state and which could guarantee the 'universal' character of basic rights, gives one sufficient grounds for suggesting that his analysis of rights is inadequate.

To these criticisms, Bosanquet would respond, first, by reminding us that "every social group or institution is the aspect in space and time of a set of corresponding mental systems in individual minds" (PTS 161). Since, as we have seen, the existence of a position involves a mutual recognition, Bosanquet finds it difficult to understand how someone could be said to be a member of a society and have a certain position and yet not be recognized as such by the community. "'[P]ositions' and the recognition of them are one and the same thing" (PTS 196).

Now, for one to claim a right, Bosanquet has argued, it must attach to a position, for it is simply "the authoritative vesture" (PTS 190) of a position. A right could not go unrecognized, because this would entail that society was unaware of a power that is part and parcel of a position which, by definition, society recognizes. The recognition of a position means the recognition of what that position

²⁶ See Collini, "Hobhouse, Bosanquet and the State," pp. 103 and 101 and Milne, p. 258.

involves. The point is, as noted above, purely a logical one. A 'recognition' of rights does not require some supplementary act, over and above what already is the case within this 'attitude of minds'.

But even should society be 'inconsistent'--that is, recognize certain positions without the corresponding powers--this does not mean that claims which it does not recognize are unrecognized rights. Moreover, Bosanquet notes that recognition need not be "reflective", that is, something of which members of society are explicitly conscious (PTS 197). Recognition may be implicit in the structure, rules, laws and institutions of society. Indeed, Bosanquet says that it is in our daily activities that "the social system of rights... has our habitual recognition" (PTS 201). All recognition requires is that we be "aware of and respect the imperative on which [the social order] rests" (PTS 201). Thus, paradoxically perhaps, Bosanquet seems to allow that a right could exist and could be claimed without individuals being conscious of it.

Why is it, then, that Bosanquet insists that rights must be recognized by the state? A first response would be that, without this, such a claim would be indistinct from--and would amount to nothing more than--a wish that there be such a right. Moreover, without a definitive recognition, it would be difficult to identify the nature, the role, and the limits of such claims in organized social life, and there would be no clear means by which one could enforce and ensure the respect

of these non-legal 'rights'.²⁷ (In this respect, then, Bosanquet's theory clearly addresses Prichard's criticisms of Green, noted earlier.) Besides, as noted earlier, the idea of a purely moral right would be problematic, if not altogether dangerous. Each "right itself must be specifically described, not jumbled with an undistinguishable heap of others" (AF 501). If there is no agency that can provide a definitive recognition then, as Bentham said, the situation "leads to mischief--to the extremity of mischief" (AF 500). And on this point, Bosanquet would agree. Consequently, Bosanquet insists that, "all my showing gives no right, till it has modified the law" (PTS 199).

Bosanquet's rejection of the possibility of unrecognized rights does not entail that there can be no new rights or that claims to liberty might not be made. Neither does it exclude the possibility that one might have a duty to rebel or resist, even if one has no right.²⁸ For "[n]o person and no society is consistent with itself, and the proof and the amendment of

²⁷ Alasdair MacIntyre makes a similar criticism of Alan Gewirth's view of rights as existing independently of "particular types of social institutions or practice" (see MacIntyre, *After Virtue*, 2nd ed., [Notre Dame: University of Notre Dame Press, 1984], p. 67).

²⁸ Bosanquet refers to the possibility of a public duty to rebel (FS 281; see PTS 139), in the sense of it being imperative on us. However, this duty "does not rest on a non-social right, but on a recognition that the state is divided against itself" (FS 284, n. 1). It cannot be founded on a right, obviously, because the existence of rights is based on the very order being challenged. (See Chapter 4, section 3.2 below.)

their inconsistency is always possible" (PTS 198). Thus, if society or a sufficient number of people came to acknowledge that certain activities by certain individuals constituted a function performed or a social position held, and if the law failed to reflect this awareness, the state would be "inconsistent with itself" in not recognizing it. In a democratic state this inconsistency, ideally, would quickly be rectified, and Bosanquet considers such a development to be an element in the natural progress of society (PTS 198). Consequently, as a society becomes more aware of what is necessary to the moral life, laws change, and new rights come into existence.

But is Bosanquet not still committed to a relativism in rights? If rights and obligations are determined only by the state, does this not make international relations, law and justice impossible?

Several points should be noted here. First, Bosanquet could allow that there can be a 'relativism'--by which he would mean a legitimate variation from state to state--in rights. But this is simply to describe the way things are in the world. For even where there is some agreement among nations concerning the existence of a right (such as a freedom of association), its nature and limits may be understood in different ways. Nevertheless, Bosanquet claims that there is a tendency among states towards the recognition of certain basic rights, and he believes that in democracies certain rights necessary to self-government must exist. There is,

however, no point in insisting on a specific right in those states or regimes where there is neither the social order in general, nor the social positions in particular, in which such a right would have a place. To insist, for example, upon a right to general liberty (and hence against slavery) in the ancient world would be to demand something that would be scarcely intelligible, let alone possible.

Second, the reason why Bosanquet says that rights are determined by the state is not because of some intrinsic character of the nation state, but because there is no other existing authority outside of or beyond it (such as a world state) which could define or protect them.²⁹ And third, even if rights depend on the state, this does not mean that states may do whatever they wish, internationally or domestically. As noted above, according to Bosanquet, state action is "coincident with the maintenance of rights" (PTS 189), and is founded on and reflects a common good. By reference to this, one can determine what the state ought to do, and the common good is the gauge by which the success or failure of the state is ultimately assessed. To this extent, at least, the activity of

²⁹ Despite Bosanquet's apparent scepticism in FS concerning the possibility of a "world-state" (see FS 294), he allows that some organizations might be possible at the level of "humanity" (see the introduction to the third edition [1920] of PTS and PTS, 4th ed., pp. 305-309). I discuss Bosanquet's arguments on this point in Chapter 5, section 1.22. This question is also discussed by Peter P. Nicholson, in "Philosophical Idealism and International Politics: A Reply to Dr. Savigear," British Journal of International Studies, 2 (1976), pp. 76-83.

the state, in national and in foreign affairs, is subject to 'internal criticism'.

It appears, then, that Bosanquet can answer his critics concerning why rights must be recognized by the state--though a number of related questions might now arise. Who or what is to determine rights when civil war breaks out in a society? What determines right in secessionist territory? Moreover, what may one do when a state is profoundly 'inconsistent' with itself?³⁰ Who is to decide whether and when an individual has the duty to rebel? If no one may be a judge in his own cause, it would seem inappropriate to leave the decision of when the state is no longer warranted in exercising its power either to the state or to the individuals involved.

Critics have charged, moreover, that Bosanquet's view fails to distinguish between social recognition and state or legal recognition--that is, between non-legal and legal rights. Nalini Pant, for example, accuses Bosanquet of an "inconsistency in uniting social, legal and moral aspects of rights".³¹ Hobhouse holds that rights are the products of

³⁰ One is reminded of Dostoevsky's Brothers Karamazov, where Ivan asks Alyosha whether he would consent to the torture of a small infant if it could be guaranteed that, as a result, universal peace and contentment would come to exist. Alyosha's response is that he would not--presumably because, in his view, there could be no value of a social order founded on such a basis.

³¹ Nalini Pant, Theory of Rights: Green, Bosanquet, Spencer, and Laski, (Varanasi, Vishwavidyalaya Prakashan, 1977), p. 92. In fact, her point appears to be simply that, in her view, Bosanquet shows only that rights need social recognition, not legal recognition, and that he therefore

social relations among individuals and that the state puts them into effect. He accuses Bosanquet of having misconstrued the relation between society and the state³² and, therefore, the origin and function of rights. Rights do not depend on the state; rather, "the moral authority of the state rests on the validity of the rights which it asserts".³³ Indeed, as Laski and Cole argue, unless there are rights which are not based in the law, the state cannot be subject to serious scrutiny.³⁴

Several studies add that not only does Bosanquet not clearly distinguish society and the state, but that his conception of the state is itself ambiguous or defective. When one examines Bosanquet's references to the nature and function of the state, for example, there appear to be at least two different conceptions of it. On the one hand, the state is customarily seen to be on a par with civil society. This is understandable, since it is the agency that makes and enforces

confuses legal and social recognition. She attributes this "inconsistency" to Bosanquet's "following the idealist tradition in not making an absolute demarcation between the notions of state and society" so that "the two terms are likely to be interchanged at times" (Pant, p. 94). See also Hobhouse, p. 37 and pp. 75-80 and Stefan Collini, "Hobhouse, Bosanquet and State," pp. 105-106.

³² Hobhouse, p. 77. See also Marcuse, pp. 395-396.

³³ Hobhouse, p. 104.

³⁴ Harold Laski cited in George Sabine, "Review of [Laski's] Authority and the Modern State," in Philosophical Review, XXIX (1920), pp. 276-282, at pp. 277-278; also G.D.H. Cole, "Loyalties," Proceedings of the Aristotelian Society, XXVI (1925-6), pp. 151-170, at p. 160.

the law.³⁵ But at times the state takes on what has been claimed to be a more "Hegelian" character. For example, Bosanquet notes that, when corrupt state officials pursue private interests, it is not that the state has erred but, rather, "that the State, the organ of the public good had not been given a chance to speak" (PTS 305).

In fact, Bosanquet explicitly addresses a number of these questions, but they raise issues that require an elaboration of his view of the nature of, and the relations between, society and the state. His response to them, then, must wait until his account of society and the state has been more fully explained.³⁶

4. The Possibility of Other Sources of Rights

While Bosanquet appears to be quite firm in maintaining that rights are ascribed to positions and that they must be recognized by the state in order to exist, some authors have argued that the idealist view is ambiguous, if not altogether inconsistent, on the point. T.H. Green and D.G. Ritchie have been the objects of such a critique, and the same charge might be made of Bosanquet as well.

³⁵ While Bosanquet insists on the necessity of the existence of the state, he appears to allow that in certain areas, organizations, such as the Mafia, sometimes provide a substitute for it (PTS 210).

³⁶ Bosanquet's answer to the criticism that he fails to distinguish adequately between society and the state and, hence, between social and legal recognition is presented at length in Chapter 4.

Green, recall, describes 'rights' as "the negative realisation of" "the power of the individual to make a common good his own" (LPP0, sec. 25), and says that they have "no being except in a society of men recognising each other" (LPP0, sec. 139) and that they are tied to life in society "in which each has a function to fulfil" (LPP0, sec. 154). Yet Green also notes that Plato and Aristotle, in laying "the foundation for all true theory of 'rights'", assert "the doctrine of 'natural rights'" (LPP0, sec. 39), and Green himself refers to "a system of rights which should be maintained by law... and which may properly be called 'natural'" (LPP0, sec. 9). Indeed, he speaks of a right as "a claim... arising out of [a person's] rational nature" (LPP0, sec. 139, see sec. 150), and refers to "implicit" rights (LPP0, sec. 144) "which remain rights though any particular state or all states refuse to recognise them" (LPP0, sec. 141). Thus, H.A. Prichard argues that Green "is forced to single out certain rights, viz. to liberty, life, and property (viz. those which we think of as natural rights), as forming a special class which do not come into being with the state and can be treated without reference to the form of society which concedes them" and that Green "attributes rights to individuals who plainly are not members of a society in his sense".³⁷ Moreover, referring to Green's distinction between Recht and

³⁷ Prichard, p. 79.

Naturrecht³⁸, John Plamenatz maintains that on Green's view, "there may exist natural rights... even if they were recognized neither by the government, nor by the majority of the members of a society, so long as their exercise would tend to promote the existence of what is good".³⁹ There is, these authors allege, a clear inconsistency, then, in Green's view on the nature and origin of rights.⁴⁰

There seems to be evidence of a similar 'inconsistency' in Bosanquet.⁴¹ Despite his insistence on the recognition of rights, early in the first chapter of The Philosophical Theory of the State, Bosanquet favourably alludes to a Greco-Roman concept of natural law, based on "a law of life" in humanity that must be respected (PTS 10), and there are passages in his discussion that suggest that he follows at least T.H. Green in referring to a kind of 'natural rights'. For example, Bosanquet refers to the possibility of "a general recognition

³⁸ See LPPQ, sec. 16.

³⁹ John Plamenatz, Consent, Freedom and Political Obligation, 2nd ed., (Oxford: Oxford University Press, 1968), p. 95. Hobhouse also argues that Green is inconsistent in insisting that rights be recognized (see Hobhouse, p. 119). Plamenatz notes the existence of a similar view in Ritchie (Plamenatz, op. cit.).

⁴⁰ Prichard, p. 76.

⁴¹ Peter Nicholson suggests that the views of Green, Bosanquet, Ritchie, among other idealists, all reflect more or less the same understanding of rights (Nicholson, British Idealists, pp. 256-257, n. 9). As will become evident, I argue that, while similar, there are nevertheless significant differences in Bosanquet's account--differences that would enable Bosanquet to avoid some of the potential problems in the theories of rights of his fellow idealists.

of the rights arising from capacities of the good life which belong to man as man" (PTS 307). He mentions, moreover, what he calls a "general right" (PTS 215; see SS 211)--such as a right to property and a right to live (PTS 215) as well as a right of conscience (FS 274; see PTS 246). There are even passages where Bosanquet seems sympathetic to the existence of a right to freedom (PTS 181-182).⁴² Bosanquet also appears to hold that there are rights based simply on the moral respect due individuals as such. He speaks of the right of a criminal to punishment (PTS 211), of the right of a stranger to be respected as a person (PTS 307), and of rights to freedom and to equal treatment that are part of one's "birthright" (PTS 10).⁴³

In each of these cases, however, these rights do not appear to be tied to the performance of a specific position or function, and Bosanquet's mention of them has suggested to

⁴² Nalini Pant claims that Bosanquet "with Kant, believed that the 'innate right is one only--Freedom'; but the shape he gave to it was entirely different from that given by individualistic writers" (Pant, p. 97). While Bosanquet does acknowledge the value of freedom in the individual, one would misunderstand his intention in the passage alluded to by Pant (PTS 225) if one concluded that Bosanquet believes there are 'innate rights'. In fact, all that Bosanquet is doing in this text is to contrast Kant's view of natural and social freedom with that of Rousseau.

⁴³ Marvin Schnaidman argues that there are certain rights "inherent to the individual when they affect his basic moral capacity" such as "the right to rebel" and the right of the poor "to aid in order to achieve independence", and that the state's only role here is one of "protection of these inherent rights" (See his The Individual and Society in Bernard Bosanquet's Social Philosophy, [Ph.D. thesis in philosophy, Cornell University, 1975]).

some critics that he in fact presents a variant view within the modern natural rights tradition.⁴⁴ Similarly, J.D. Mabbott says that Bosanquet "accepts the existence of duties of man to man as underived from any society or common good"⁴⁵, and the existence of such 'natural duties' might well suggest the existence of correlative 'natural rights'. But the existence of such 'natural' or 'unrecognized' rights is clearly incompatible with the interpretation of Bosanquet's views provided in the section (3), above. Thus, as A.J.M. Milne has pointed out, if Bosanquet says that rights are ascribed only to individuals who have a social position or function, and if, on the other hand, we are to respect "the rights of alien individuals and communities",⁴⁶ is Bosanquet not being inconsistent?

In order to address this question, consider, first, whether Bosanquet in fact maintains that there are rights that are not based on position or function. What might be meant by the notion of a "general right", such as a 'right to live'? A "general right" is, presumably, opposed to a "particular right". A person may be said to have a particular right when he or she has a right, corresponding to a specific position or

⁴⁴ Nalini Pant claims that, to a point, "Bosanquet's conclusion seems not to be very different from the theory of the natural right-philosophers" (Pant, p. 86).

⁴⁵ See J. D. Mabbott, The State and the Citizen, 2nd ed., (London: Arrow Books, 1952), p. 79, n. 5.

⁴⁶ Milne, p. 259.

function, to a particular object. Thus, when I become a parent, I have a right to care for and discipline my child, but not those of my neighbour. Or again, as a homeowner I have the right to this piece of property, but not to anyone else's. In short, particular rights express a relationship between a particular person and a particular object. A general right, therefore, would be--as Bentham, would say--a 'right' where no particular person is the subject, and no particular object is the object. A "right of conscience", for example, would be the right of every person to believe and express his or her belief in whatever he or she chooses. The problem with the putative existence of such general rights, then, is not just that the exercise of these rights by some might come into conflict with the rights of others, but that they would be ascribed independently of the requirements of any specific function one may have.

Is this what Bosanquet means when he refers to "general rights"? Although Bosanquet refers to the "right to live", this "right" should not be understood to entail that everyone has a right to do whatever is necessary to preserve his or her life. No individual has such a right; at best--for example, in time of food shortage--it is the state which has the duty to intervene to deal with the problem. Nor can a "right to live" be understood as a right accruing to some position, since the fact that one is alive, by itself, does not entail or imply any function or duty. Besides, any such general right would

not add anything to the rights one has, since these latter rights presuppose a living agent to exercise them.

But if the so-called "right to live" is not, or does not assign, a genuine right, what is it? It may plausibly be understood as the equivalent of a legal plea of necessity in cases where one's life is threatened. Thus, a court may consider the circumstances of a theft occasioned by one's need for food to keep alive, and hence "take it out of the class of offences to which it prima facie belongs" (PTS 215). In this case, however, such a plea is not specifically recognized as a right in law and so, strictly speaking, it is not a right.

Similarly, when Bosanquet refers to the general right to property (PTS 215), he does not mean that everyone has a right to whatever he or she wants. The expression "the general right of property" seems, rather, to be a term taken from common usage, but used analogically, to describe either the fact that individuals are able to acquire property, or the "institution" (or recognized collection) of existing particular property rights. On this latter view, the 'right to property' is not strictly speaking a 'right' because it refers simply to the existence of the institution of property rights in society, and not to a right to a specific piece of property. Understood in the former sense, on the other hand, it does not assign a right, but is just a way of expressing the fact that members of the community can acquire particular rights or title to property.

A right of conscience may be understood to be a right to think what one likes and to say and act on what one thinks. This right is, Bosanquet allows, recognized by the state "even in times of stress" (FS 274). Nevertheless, while Bosanquet does acknowledge that "the individual must ultimately follow his conscience to the end" (PTS xlx), he suggests that "freedom of conscience", understood as the expression of one's purely private will, is not an absolute (PTS 244-246). Clearly, for Bosanquet there can be no right which would allow everyone to say or act on whatever they believed, nor does every human person enjoy such a power--children, for example, would not (PTS 207). As Bentham would point out, such rights would be "anarchical" (AF 502), and the laws against slander or, in war, against sedition or treason, establish that--as understood in the above way--no right of conscience is absolute. Besides, when private conscience is introduced into public affairs--and here Bosanquet presciently refers to the practice of the evangelization of aboriginal groups--the consequences may be disastrous (PTS 302). Thus, one might best understand the reference to a 'right of conscience' as being an expression of Bosanquet's concern that society recognize the importance of certain fundamental freedoms for the moral development of its adult citizens and for the development of human personality as a whole. This, however, would be perfectly consistent with the claim that there are no rights which are general in their objects.

In short, the general rights to which Bosanquet appears to refer are not necessarily 'rights' at all. The expression "the general right of property" employs the term 'right' analogically; there are only particular rights to properties. There is no general right to live, though a particular right to care for and preserve one's life may be entailed by the specific functions that an individual has. "Rights of conscience" are features of a civilized society, but have clear limitations. They are assigned, at best, to adult citizens as a necessary means to the development of moral personality, subject to certain restrictions on their expression determined by the state. Consequently, rights are ascribed to individuals in view of what they are or can become, and are ultimately based on their positions or functions.⁴⁷ Despite appearances, then, Bosanquet seems to agree with Bentham that rights can be only particular rights.

Consider, now, the claim that Bosanquet allows that some rights do not depend on recognition--that they are founded simply on one's 'human nature' or on the individual's will alone. For example, Bosanquet says that one who violates the law "has a right to the recognition of his hostile will" (PTS 207), and it seems to be because of this that the criminal has

⁴⁷ John Watson appears to hold a view very much like that of Bosanquet when he writes that "the right to life is bound up with [one's] position in the State", yet (obviously echoing Green's comments in LPPQ, sec. 154) Watson then goes on to speak of "the right to free life as a human being" (The State in Peace and War, p. 230). In the end, Watson's account of rights seems closer to Green's than to that of Bosanquet.

a right to punishment "of which he must not be defrauded" (PTS 211).⁴⁸ Thus, Bosanquet argues that the reformation theory of punishment is unjust to offenders, because it treats them not as agents with a bad will, but as objects--as patients to be cured. His approach here, then, suggests that individuals have rights to be treated in certain ways, simply because they possess a will.

Again, recall that Bosanquet notes that "there is in man, as such, something which must be respected, a law of life which is his 'nature' being indeed another name for his reason, and in some sense or other a 'freedom' and an 'equality' which are his birthright" (PTS 10). This demand for freedom, which Bosanquet sees having been part of the insight of classical natural law theory, does not seem to be based either on recognition by the state or on having a social position or function. It appears to be based, rather, simply on the fact that a person is a person.

⁴⁸ On this point, Bosanquet appears to draw on both Kant's notion of the value of the autonomous will and on Hegel. There is also a clear influence of Green here. For Hegel's view, see Hegel's Philosophy of Right, (tr. T.M. Knox), Oxford: Clarendon Press, 1945, sec. 100 (add): "punishment is regarded as containing the criminal's right and hence by being punished he is honoured as a rational being". Apart from his statements on the value of the good will in the Groundwork of the Metaphysic of Morals and The Critique of Practical Reason, in The Metaphysics of Morals Kant speaks of punishment as respecting the principle "that everyone will duly receive what his actions are worth" (see The Metaphysical Elements of Justice, (ed. John Ladd), Indianapolis, IN: Bobbs-Merrill, 1965, Part II, sec. 1, § 49 E. i, p. 102). For Green's view, see LPPQ, secs. 185-186.

Finally, Bosanquet also seems to speak of basic human rights ascribable to all, including those who are not members of one's community or state. He notes that we treat a stranger or a person from another country differently than we do non-human animals, even before we discover whether we share a common good. But if such beings are not yet members of our society and have no clear position in it, how could they have any rights? Only, presumably, in view of the fact that that person is a human being (cf. PTS 306-307).

Is Bosanquet being consistent? A number of ways of dealing with this situation are possible here. For example, responding to a similar tension in Green's theory of rights, Nicholson argues that, for Green, "men's status as rights-holders [rests] upon their moral personality, not upon their social functions".⁴⁹ Or again, one may suggest that, while rights are based on membership in a community, this community is the moral community of humanity, and, therefore, rights do not require recognition by any specific civil society. In both cases, however, rights seem to be based on human personality

⁴⁹ Nicholson, British Idealists, p. 87. Still, Nicholson notes that one's moral personality is "made by social recognition" (op. cit., p. 89). In any event, it is clear that, if one were to describe such rights as natural, they are so only in the sense that they are "necessary to the end which it is the vocation of human society to realise" (LPPO, sec. 9)--not "in the sense they actually exist when a man is born and that they have actually existed as long as the human race" or that they are "antecedent to society" (LPPO, sec. 30). Consequently, the concept of 'natural right' used here is obviously radically different from that of Herbert Spencer or that of modern natural rights theory.

and not social function and, if the preceding account is to be maintained, Bosanquet cannot make either of these moves. But it is not clear that he would need to.

It is certainly true that, for Bosanquet, a person must have a will in order for rights to be ascribed to him or her; only persons--beings with wills--can fill positions or can 'recognize' others. Still, it is not the possession of this will alone that is the basis for rights--it is a necessary, but not a sufficient, condition. One must be capable of participating in a common good, and this capacity must be recognized by others. In short, it is not simply because one has a will or certain other natural attributes, but because one has a recognized capacity for a common good, that one can have a position and, hence, have a claim to certain rights.

How, then, could Bosanquet explain a criminal's "right to be punished"? As noted earlier, in order to have rights, one must accede to a system of rights (PTS 212). When an individual subsequently engages in a criminal act, he becomes, Bosanquet says, "an offender against a system of rights which he shares" (PTS 207). Punishment is legitimate, therefore, because it is the criminal's will, implicit in the system of rights, that violations of the law should be punished.⁵⁰ But--

⁵⁰ There is here, again, a clear debt to Rousseau. Although Bosanquet rejects Rousseau's two attempted justifications of capital punishment (as outlined in the Contrat Social, Bk. IV, Ch. 5), he does so because he sees Rousseau's 'solutions' as being based on the transfer of such a right to the sovereign (PTS 84-85).

one might object--even allowing that it is that person's will, how can one maintain that it is his right? How is a criminal's "right to the recognition of his hostile will" tied to a position? The state may have a duty to punish, but it seems odd to think that individuals have a right to be punished.

How can Bosanquet explain this 'right'?⁵¹ One of the characteristics of punishment is that it "brings us to our senses" (PTS 209). It makes us realize what we have done in breaking a law; that is, that we are not fulfilling our duties and obligations as citizens. (Recall that, for Bosanquet, the positions that one has are more than those related to one's occupation, but extend to the multiplicity of social relations in which he or she is involved). Because one is a member of a society (i.e., has positions, such as those of citizenship [see PTS 208]) and because one has rights that are part of a system of rights, individuals expect to have their actions taken seriously and to be treated in accord with the law. Therefore, when a person violates the law or the 'system of rights', he has the right to be reminded of the nature of his actions. (In fact, as a rational being, the criminal should be grateful for the 'reminder' that punishment brings.)

Thus, the right to be punished, and the limits on punishment--the "'reversionary rights' of humanity"--are not

⁵¹ Of course, there is more to Bosanquet's argument for the justification of punishment than this; my aim here is simply to account for what it means to have a 'right to punishment'.

ascribed to individuals simply because they are biological humans or because they possess a will⁵². They are based, then, on the recognition of that person by the state as a subject of the law--that is as a participating member in a system of rights (PTS 211), at least so far as he or she is "presumably capable of a common good" (PTS 206). In fact, having these rights implies that the offender is recognized by the law as still capable of a common good and of continuing as a member of the system of rights. Consequently, this example of a criminal's 'right to punishment' does not, Bosanquet could argue, count against his view that rights must be recognized in law and ascribed in light of the positions one has.

Consider, now, Bosanquet's remark that there is a "law of life" in humanity that must be respected. Although one might take this as a suggestion of a type of natural law theory, Bosanquet would argue that it does not follow that the possession of life--even human life--is sufficient for acquiring rights. For example, Bosanquet allows that we may "mould" children "to our aims", just as we do with non-human animals (PTS 207). The mere fact that a thing exists or is alive, as even Herbert Spencer realized, is not sufficient for us to say that it has rights.⁵³ Furthermore, to refer to

⁵² This is not, of course, to imply that one's will is unimportant (see PTS 207).

⁵³ Bosanquet recognizes, of course, that even if a being does not have a right, it does not follow that we can do with it as we wish.

'freedom' and 'equality' as "birthrights" is not to imply that there are 'natural rights' to freedom and equality, but to note that it is our nature that we develop into 'free' and 'equal' beings. In each of these cases, Bosanquet would argue, such 'rights' would require that we consider the human person independently of his or her relations both to others and to the 'end' that would serve as the basis for such a right. This, however, suggests a distinction that Bosanquet does not think we can make and allows one to pose the question of the origin of rights in a way that Bosanquet would reject.

All the same, it does appear that Bosanquet refers to certain basic rights attributable to humans as humans (PTS 306-307). As noted earlier, he admits that, when we encounter "alien individuals and communities" (PTS 308), even if there is no "identical experience [to provide a basis for]...a common society", it "does not follow from this that there can be no general recognition of the rights arising from the capacities for the good life which belong to man as man" (PTS 307). In fact, Bosanquet seems to allow that the state can be called on to "enforce or respect these rights" that he calls "the primary rights of humanity" (PTS 307).

But, one might ask, what does Bosanquet mean by such 'primary rights' and on what would they be based? To begin with, Bosanquet would note that it is only because a stranger or visitor has a capacity for a common good that he or she has these "primary rights of humanity". If a being does not have

such a capacity, it cannot have these rights. But to make the judgement that such a capacity is present and, hence, that there can be such rights, requires an authoritative recognition. This is why Bosanquet says the British "State" "can recognize the primary rights of humanity in the life of its Indian subjects" (PTS 307)⁵⁴. Having such a capacity, then, may be a condition for having rights, but it is not the basis of these rights.

What this notion of the 'primary rights of humanity' reflects, then, is the fact that when we encounter people who have, as yet, no clear position or function in our society, we nevertheless act or interact with them differently than we do with animals.⁵⁵ It indicates that there is already some kind of relation with them because they are presumably capable of participating in a common good. These 'rights', then, become the condition under which basic relations with them are possible--they reflect the state's "duty to maintain a type of life" (PTS 308) and are the rights that 'get things going'.

⁵⁴ This does not mean, however, that only the British state can do this or that there could be no rights in India outside of those recognized by the British state. Bosanquet is not advocating 'imperialism' here; indeed, like Edward Caird, Bosanquet was opposed to imperialism and defended the Boers in their conflict with Britain (see Chapter 4, section 3.2 below).

⁵⁵ As Bosanquet says, "[i]t is idle for me, for instance, to communicate with you by language or to buy and sell with you, perhaps even idle to go to war with you, and still to say that I recognise no capacity in you for a common good. My behaviour is then inconsistent with itself, and the question takes the form what rights are involved in the recognition of you which experience demonstrates" (PTS 197-198).

But should it turn out that there is no common good or shared experience to be drawn on (which Bosanquet would think extremely unlikely,⁵⁶ but not impossible), then there is no inconsistency in a state refusing to recognize such 'rights'. In other words, there is no inconsistency in referring to these 'primary rights' and, at the same time, maintaining that rights are based on recognition.

The preceding discussion of possible objections has provided a more complete statement of Bosanquet's account of the ascription and recognition of rights. Despite the suggestion that Bosanquet, like other idealists, is inconsistent in his view that rights are assigned to positions and that they must be recognized by the state, one can see how he can avoid this charge. While there may appear to be traces in his work of basic human or 'inherent' or 'natural' rights, it is clear that he differs from this tradition by insisting that it is not 'the will' or 'human nature' or one's "basic moral capacity" or even the 'natural law' that explains why individuals have rights, but the fact that they have a place in a social order that has, as its goal, the "best life". In this we see a reflection of Hegel's (and ultimately the Greek classical) view that it is the community, rather than the 'atomistic individual', which is of primary importance in

⁵⁶ Bosanquet notes that when one encounters strangers, "it is pretty certain that some day [they] will become your neighbours, and that you will have to take up some mental attitude towards them" (PTS 283).

ethical and political life.⁵⁷ Nevertheless, in spite of Bosanquet's refusal to adopt individualist presuppositions and, in particular, the supposition that rights are natural and inalienable, it does not follow that he considers the individual to be of no, or of little, importance.

5. The Limits and the Limitation of Rights

Bosanquet's views on the extent or limits of rights and concerning the situations in which rights may be legitimately overridden follow directly from his account of their nature and source. Clearly, no rights are absolute--that is, have their moral weight regardless of the circumstances and of the consequences--and so all rights are, by definition, subject to certain limits.

It seems that--though Bosanquet does not explicitly make this distinction--rights can be understood as having limits in two ways: in virtue of what they are a right to (i.e., their inherent or 'natural' limits), and de facto. Rights exist in order to enable individuals to carry out the responsibilities attached to the positions they have, and entail obligations on others not to interfere with them. The 'natural' limits of a right are, then, simply that the right can extend no farther

⁵⁷ Hence Bosanquet's comment that "[t]he ideas which I express... to the best of my judgement, represent the Greek tradition as renewed by Hegel and by English thought" (FS 270). Recall that Green says that it is in just this context--in "the 'natural' institution" called the polis--that we have the real foundation for a 'natural right' (see LPPO, sec 39).

than what is needed to fulfil the corresponding position. The de facto limit of a right, however, is that its authority is dependent upon exactly how far its 'natural limits' are recognized in law. Thus, there is a right to equal treatment in employment, for example, only as far as the state, through the law, specifies the conditions under which such a right exists (e.g., that it could be violated by discrimination based on race, sex, religion, etc.). Where the state and its allied institutions are silent--where it makes no explicit or implicit statement on the question--there is no right. Thus, regardless of what a position might, in principle, require, it is only to the extent that these requirements are recognized by the state that one's claim to a power is a right. And while any claim to a right necessarily implies that such a right has its limits, it is only once one is presented with a specific situation that one would be able to indicate the actual 'limits' that a right has.

Given the picture of rights as related to positions or functions in view of a common good, it may seem unlikely that there could be conflicts of rights--or, at least, irresolvable ones. Since no society is perfectly "consistent" with itself (PTS 198), however, there is in fact a very real possibility that rights may conflict. One can imagine, for example, that 'social rights',⁵⁸ such as language rights, could be seen to

⁵⁸ As noted in Chapter 1, while the term 'social right' is used twice in PTS, it is in the sense of 'the system of political right' or of 'the general system of rights that

be incompatible with the right of individuals to free expression, or one could imagine conflicts between a person's right, as a citizen, to see justice done in the courts and the right of the courts to exclude individuals from its proceedings in the name of a common good.⁵⁹

Considering Bosanquet's view of the importance of society and the state in relation to the individual, there is no a priori answer to how to resolve such conflicts.⁶⁰ In general, however, his response would likely be that one should prefer that claim which is both more likely to contribute to the realization of the common good and which, ideally, would entail the least amount of coercion of individual actions. In this situation, then, not only is there a possibility of resolving conflicts of rights, but we can see more clearly how such a decision can be arrived at.

There are, however, occasions when Bosanquet would seem to allow that--even when there is no conflict of rights--the

exist in a society'--but not in the sense of the rights based on one's membership in a certain group. Still, Bosanquet could adopt such a notion of 'social right', understood as a right belonging to all persons who are recognized members of a certain 'class' (i.e., who are recognized as holding a certain position). But all rights are 'social rights' in this sense.

⁵⁹ Green also foresees the possibility of the conflict, and "the reconciliation of rights" which have their origins in different "social" institutions (LPP0, sec. 141).

⁶⁰ Bosanquet says, for example, that the state "will override no right by force where an adjustment is possible compatibly with the good life of the whole... What it permits it permits by reason of its end" (FS 224). But "of this possibility [the state] is the sole judge" (*ibid.*)

state, or those authorized by the state, could legitimately override or remove rights. The latter may occur where a position has, in fact, ceased to exist or is no longer necessary to the realization of the common good, or where this good could be achieved by another, equally effective but less coercive, means. In such instances, the disappearance of these functions would entail the elimination of the corresponding rights. It is also possible, however, that there will be times when it is simply more imperative that a certain action be carried out than to continue to respect some individual rights. Here, a right may not be altogether removed, but it may be overridden. Clearly, then, Bosanquet's view does not entail any institutionalization of privilege or of the status quo.

But since rights depend on the state, Bosanquet's critic might ask how one would distinguish between the state imposing a limit on a right and its violation of a right. If there can be no complaint if a right has been limited, and if all putative violations of rights could be recast as merely limitations of rights, then what assurance have individuals that their rights mean anything at all?

How would Bosanquet reply to such a concern? Consider the following example. A state might, for example, require that an individual not stand for election for, or hold, two elected offices at the same time. This would limit, though not violate, that person's right to be a candidate for any

available post. On the other hand, a violation of a right would occur when a right is recognized, but where the state does not respect or enforce that right or infringes on its exercise without justification. Thus, one's right to be a candidate in an election would be violated if the state either did not hinder those who sought to prevent her from speaking or itself attempted to prevent her from so doing. The state would be "inconsistent" with its goal of "the maintenance of rights" (PTS 189) and, hence, with itself.

But suppose that the state is 'inconsistent' in this way--suppose that it simply refused to recognize in law, or if it maliciously revoked the recognition of, a claim to a certain position or right. Here, the critic would note, the distinction between the violation of rights and the 'legitimate' limitation or removal of them appears casuistical. For it is obvious that rights have been violated, and yet Bosanquet seems to have excluded the possibility that individuals could ever establish this. And even if they could, it is not clear what could follow from this, especially since the social order, as such, demands their respect and obedience and since the positions corresponding to their former rights may themselves no longer be recognized.

Now, as noted earlier, in the discussion of the recognition of rights, Bosanquet does claim that rights carry a certain weight which the state ought not to ignore, and he refers to the "internal function" of a state as "the mainten-

ance of rights" (FS 277; see PTS 189). The state, it seems, must respect rights. Bosanquet, therefore, would undoubtedly acknowledge the importance of addressing these criticisms. One notes, however, that these charges concern not only Bosanquet's theory of rights but that of the nature and limits of the state itself. To see what, if any, response Bosanquet could make here, then, one must first have a more complete account of the state and its relation to individuals and their rights.

6. Summary

The objective of this chapter has been to present Bosanquet's alternative to the theories of rights of Bentham, Mill and Spencer--that is, his account of the nature and the origins of the rights of the person, how they are ascribed to individuals and in what ways they can be limited. Like natural rights theorists, Bosanquet acknowledges that rights have both a legal and a moral character. He does not, however, hold that rights exist prior to or independent of the state. In fact, he would appear to agree with Bentham that they are the product of the activity of the state. The state defines, distributes, and protects rights through recognizing them in law.

This does not mean, however, that rights are based simply on force or that this allows the state to sacrifice an individual for an interest other than his or her own. Rights have their moral weight because they are necessary to the

realization of a common good at which each individual aims, namely, "the perfection of human personality" or "the best life". They have legal authority because they are recognized by the state as being the external conditions required for individuals to perform functions that contribute to this same 'common good'. Thus, according to Bosanquet, morality and law have the same purpose and the legal and moral sides of right are inextricably united. A right "in the fullest sense" is, in law, what it ought to be.

How does one acquire these rights? According to Bosanquet, there is no question of a social contract among individuals or between the individual and the state. One acquires rights on the basis of the positions one has within the social order. When one's positions in the social order change, one's rights change. But, on Bosanquet's view, this position and its corresponding rights are of consequence only so far as they are conducive to a moral end. What underlies his theory of rights, then, is a teleological view--here, a theory of the good. But the 'good' he describes is not only the same for all individuals, but for the state as well. This, he would maintain, will enable him to avoid some of the problems of the individualist account of rights.

By definition, positions require recognition--a recognition which is definitive only when it is reflected in law. One may say, then, that individuals acquire their rights from the state because these rights are necessary to filling positions

or functions that the state recognizes. It is, therefore, the state that defines the de facto limits of rights and the conditions under which rights may be legitimately overridden or may cease to exist. But rights are not to be assigned by the state arbitrarily--that is, independently of the capacities of individuals or independently of the moral end. Thus, though he insists that rights must be recognized by the state, it is clear that the analysis Bosanquet proposes is quite different from that of Bentham's theory. And while he has a view that is that of "a positive law which is what it ought to be" (PTS 188) and which has been called "natural", it is also clear that this theory is not part of the natural rights tradition. Bosanquet's analysis is not reducible either to that of natural rights theory or to legal positivism. In short, then, rights are claims to legal and moral powers, recognized by the state, that are necessary to overcome obstacles to "the best life".

This chapter has indicated not only some of the differences between the theories of rights proposed by Bentham, Spencer and Mill and that of Bosanquet, but also the relation between the views of Bosanquet and those of some of his fellow idealists. To this point, however, my principal concerns have been to show that Bosanquet's theory can address certain standard criticisms and that, for his theory to be plausible, there are a number of issues beyond his theory of rights proper that must be resolved.

Thus, as Bosanquet notes and as suggested in Chapter 1, the root of the differences between the idealist and liberal individualist theories of rights can be traced to their respective accounts of the nature of the individual and its relation to law. This appears to be confirmed, albeit indirectly, in the present chapter. A complete presentation of Bosanquet's theory of right requires, therefore, more than a response to certain criticisms; it requires an elaboration of a number of concepts that bear on it--such as, obviously, 'the individual' and 'law', but also 'state', 'society', the 'real' or 'general will', 'position', and 'the best life' or 'common good'. It is to these fundamental elements of social reality that we are referring when we speak of Bosanquet's 'social ontology'.

To be more precise, before one can accept or reject Bosanquet's insistence that rights require recognition by the state, one must understand what the state is and how this process of recognition takes place. This, in turn, requires that one understand how the state is connected with society and how both are related to individual consciousnesses. Finally, in order to justify the moral character of rights (and to show how the individual has a moral and a legal obligation towards the state), one must provide an explanation of the teleological element of rights, of Bosanquet's notion of the 'general' or 'real will', and of the nature of the individual. All of this, and perhaps more, is necessary prior

to a complete and fair assessment of Bosanquet's account of rights. It is to these questions, therefore, that the discussion turns in the next two chapters.

CHAPTER 3

BOSANQUET'S SOCIAL ONTOLOGY OF RIGHTS I: TELEOLOGY, THE INDIVIDUAL AND THE GENERAL WILL

Bosanquet's political thought reflects his general metaphysical and logical interests. In the preceding chapter, I have identified some concepts, fundamental to his theory of rights, that are clearly influenced by, if not the product of, these interests--concepts such as "the best life", the individual, the general will, society and the state. An assessment of Bosanquet's analysis of the nature, source and limits of rights, then, requires an examination of these features of his "social ontology"¹. Indeed, it is in part because these concerns are apparently left underdeveloped,²

¹ Recall that, as indicated in the introduction, "social ontology" is "a metaphysical theory of the nature of social reality", which claims to give "a systematic exposition of entities and of fundamental structures (for example, persons and institutions) and of the fundamental nature of social interaction and of social change." (Carol Gould, Marx's Social Ontology: Individuality and Community in Marx's Theory of Social Reality, (Cambridge, MA, 1978), p. ix.)

² In fact, according to Collini, the formulation of a philosophical anthropology--which is a part of social ontology--was seen by the idealists as essential to rescue man from being the victim of scientific reductionism (see Collini, "Sociology and Idealism in Britain: 1880-1920," Archives européennes de sociologie, 19 (1978), pp. 3-50, at p. 22).

if not largely ignored, in Bentham, Mill and Spencer, that Bosanquet finds their respective accounts of the nature, source and limits of rights to be inadequate.

In the present chapter, I shall consider the first three concepts listed above--the 'end' (which Bosanquet calls "the best life"), the individual and the general will--that is, explain what they mean, show the connexions among them and indicate their respective roles in Bosanquet's theory of rights. The latter two--society and the state--will be discussed in Chapter 4. If these aspects of Bosanquet's "social ontology" prove to be plausible, and if at least some of the major criticisms of them are seen to be misdirected or fail, one will have gone some way in arguing for his theory of rights:

1. Teleology

The concept of rights employed by Bosanquet is 'teleological'--that is, rights exist in view of an 'end'.³ Although Bosanquet does not provide a systematic description of this 'end', he refers or alludes to it in a number of

³ There has been considerable debate about whether it makes any sense to speak of an 'end' and, specifically, a 'moral end'. (See, for example, J. L. Stocks, W. G. DeBurgh and W. D. Ross, "Is there a Moral End?," Proceedings of the Aristotelian Society, n.s. supp. vol. VIII (1928), pp. 62-98, and the response by J.H. Muirhead, "Is there a Moral End?," Mind, n.s. XXVII (1928), pp. 485-488.) Nevertheless, it is a locution that Bentham, Spencer and Mill accept and employ and, given the focus of this study, such questions need not be pursued here.

passages. For example, he describes it as the "moral end" (PTS 68), "the best life",⁴ "the rational life" (PTS 189), the life that "satisfies the fundamental logic of man's capacities," (PTS 169), the "whole moral world" (FS 278), and "the existence and perfection of human personality" (PTS 189).⁵ Rights, as we have seen, have their moral weight because they reflect this end (PTS 193), and even the moral significance or value of persons seems to some extent determined by it.

The justification for the ascription of rights to individuals can also be described as 'teleological'. As noted in Chapter 2, a person has rights (and corresponding moral and political obligations) because they are the means necessary to

⁴ See, for example, "The Function of the State in Promoting the Unity of Mankind", in Social and International Ideals. London, 1917, pp. 270-301, at pp. 271 and 285 and Some Suggestions in Ethics. London, 1918, p. 158.

⁵ It is precisely this "realisation of our self which we instinctively demand and desire" that Bosanquet calls, in his Gifford Lectures, "the eternal reality of the Absolute" (The Value and Destiny of the Individual. London, 1913, p. 288).

Curiously, perhaps, Bosanquet does not make any significant reference to "the Absolute" in his social philosophy--and only mentions the word in the introduction to the second edition of The Philosophical Theory of the State (1910), p. xliv, n. 2. Still, there is clearly a relation between "the Absolute" and the 'end' described in his political works. He refers to the Absolute, for example, as "the spiritual organism in which the finite being finds to some extent completeness and satisfaction" (VDI 208). By this, Bosanquet does not "mean simply the social whole or the general will" (VDI 208) or "the social spirit" (The Principle of Individuality and Value. London, 1912, p. 285), though the Absolute is in some sense an extension or implication of the principles that lead to society and the general will. Rather, he means "the whole world of achievements, habits, institutions in which the apparent individual finds some clue to the reality which is the truth of himself" (VDI 208).

fulfilling his or her 'positions' or 'functions' in society. Moreover, both this social order and these 'positions' are themselves determined by this 'end'. This 'end' is, therefore, common to society, the state and to each individual human person (PTS 173; see VDI 91). Consequently, in fulfilling the requirements of one's 'station' or 'position', individuals contribute to the realisation of that which Bosanquet also calls the "common good" (PTS 178).

In short, the authority of rights is not founded on their ascription to individuals, nor simply on their role as means of enabling one to carry out one's function but, ultimately, on the moral character of this 'end'. Yet, this is not to diminish the importance of rights. Because of this connexion between rights, the social and political order, and the 'end', Bosanquet would say that we can understand why the function of society and the state is, as stated earlier, "the maintenance of the system of rights" (FS 277; PTS 189).

To describe Bosanquet's theory of rights, or his moral and political thought in general, as 'teleological', is, however, to say little. Indeed, teleological theories are nothing new; the political theories of Aristotle, Aquinas, Spinoza, Kant and Mill, to name but a few, all have obvious teleological elements, although there are clearly important differences in their respective analyses. What, then, does it mean to say that Bosanquet's theory of rights is 'teleological'? What exactly is this 'end' to which he refers?

1.1 Teleology and the Principle of Value

Bosanquet writes that social philosophy "is teleological; that is to say, it recognizes a difference of level or of degree in the completeness and the reality of life, and endeavours to point out when and how, and how far by social aid, the human soul attains the most and the best that it has in it to become" (PTS 49). But this should not be surprising, since he holds that 'teleology' is a general characteristic of reality. In fact, on Bosanquet's view, whenever we speak about the 'nature' of a thing--of a person or of an activity--teleology is involved.

The understanding of 'nature' that Bosanquet employs is one derived from classical Greek philosophy--specifically, from Aristotle. It is a notion that is linked to physis--to the 'growth' of a thing. Thus, in referring to the 'nature' of a thing, Bosanquet says, he does not mean to refer simply to what that thing happens to be at one particular moment, but what it has in itself to become (PTS 122). But this cannot be separated from "what a thing is when its growth is completed" (PTS 122; see PIV 129).⁶ Bosanquet, then, would be in full

⁶ Compare Aristotle's remark that "what a thing is when fully developed, we call its nature" (Politics, [Book I, Chapter 2, 1252b 30-33], tr. Benjamin Jowett, in The Basic Works of Aristotle, ed. Richard McKeon, [New York: Random House, 1941]). Bosanquet refers his reader to Aristotle's discussion in Book X of the Nicomachean Ethics, but his comments clearly echo Aristotle's discussion in the Politics.

agreement with Aristotle's comment that "the nature of a thing is its end".⁷

This account may seem at odds with Bosanquet's discussion of teleology in The Principle of Individuality and Value. In Lecture IV, he appears to deny the importance of a teleological understanding of the universe. He says "[t]he value of the universe... lies much deeper than in what is commonly called teleology" (PIV xxv) and he argues that, when "dealing with a total system", we simply cannot "discriminate between ends and means" (PIV 125).

There is, however, no contradiction here. The notion of 'teleology', Bosanquet notes, can be used in two related, but distinct, senses (PIV 128-129)⁸: first, to refer to a certain orderly character of means to an end (and, more strictly, to such an order instituted by some conscious being) which he calls "purposive"⁹ or "ethical" and, second, where it means a

⁷ See Politics, Book I, Chapter 2, 1252b 30. Bosanquet says that, on Aristotle's view, the 'end' is both "the completion of a positive whole which is developing through a process, and the cessation of the process itself" (PIV 124), though it is the former sense which is fundamental (PIV 129; see PIV 135).

⁸ See also Bosanquet's "The Meaning of Teleology," in Proceedings of the British Academy, II (1905-1906), pp. 235-245 and PIV 135-138. According to G. Watts Cunningham, this understanding of teleology present in PIV represents a conscious shift in Bosanquet's thought from the analysis provided in his Logic. (See Cunningham's "Bosanquet on Teleology as a Metaphysical Category," Philosophical Review, XXXII (1923), pp. 612-624, at p. 618, and also Bertil Pfannenstill, Bernard Bosanquet's Philosophy of the State. [Lund, 1936], p. 176.)

⁹ Bosanquet, "Teleology," p. 242.

systematic coherence--"a nexus of relations within a perfect whole; here it means completion, perfection".¹⁰

In The Principle of Individuality and Value and in his earlier essay, "The Meaning of Teleology," Bosanquet is concerned with the claim that the value of a thing can be said to be determined by its being a product of the plans and purposes of consciousness--of either finite human consciousness or a "supreme mind" (PIV xxv). But, as Hira-lal Halidar writes in a discussion of this passage, if we speak of teleology as "the adoption of means by a finite being to realize the particular ends chosen by him, it is easy to see that it is a very inadequate basis for a theory of reality".¹¹ Bosanquet asks, for example, "[w]hen... we are dealing with a total system, whether of life or of nature, how are we to discriminate between ends and means?" (PIV 125) In fact, Bosanquet's point goes further yet--that is, that this sense of 'teleology' is even more inadequate as a basis for a theory of value. He says that "to be desired by a human mind is almost no proof of value, for their desires are constantly wrong" (PIV xxiii)--that is, "self-defeating" (PIV xxiv).

¹⁰ Cunningham, "Teleology," p. 615. See also Bosanquet's discussion of coherence in "The Relation of Coherence to Immediacy and Specific Purpose," Philosophical Review, XXVI (1917), pp. 259-273, at p. 271, and William L. Rabenstein, The Problem of Teleology in Relation to the Views of Bosanquet, Royce, B. Russell, and S. Alexander, (Ph.D. thesis in philosophy, Cornell University, 1934), p. 7.

¹¹ Hira-lal Halidar, Neo-hegelianism, (London, 1927), p. 261.

There is, however, the second sense of 'teleology'. Here, 'teleology' is the movement in nature towards completion (see PIV 136).¹² But in rejecting as the primary or only sense of 'teleology' a 'purposive' teleology that understands reality in terms of 'ends' and 'means', Bosanquet does not deny that there is an order or unity in the universe; in fact, he argues that it is this order or unity that is the standard of value. Consequently, while Bosanquet uses the term 'teleology' with reservation, he is in no way hesitant in arguing that there is an 'end'. He simply denies that it is the product of the plans of finite or of a supreme consciousness. It is, therefore, only the first--but not the second--sense of 'teleology' that Bosanquet means to reject--and even his rejection of this first sense is based primarily on his view that it is insufficient as a ground for all value.

From this account of the nature of teleology, it follows, then, that neither the good in general, nor even the good of an individual, is merely the product of a desire or of a decision of what one would like. (This is clearly one reason why Bosanquet rejects the individualist canon which insists that individuals determine their own 'good'.) Thus, it is not simply because individuals may be mistaken or subject to self-deception that Bosanquet denies that people can consciously,

¹² Thus, Bosanquet reads Aristotle as saying that "the universe is striving in [every soul of every creature] to bring it to completion through its life" (PIV 396). But Bosanquet will also maintain that teleology is present even in inorganic matter (PIV 147).

and on the basis of their particular private desires, determine their own good. He argues that whatever importance is attributed to 'conscious purpose', is actually derived from its being simply one manifestation of the 'unconscious' movement toward the end that is the real condition of value. Thus, Bosanquet speaks of a "teleological significance" in natural selection (PIV 154) and would say that there is, in humanity, an "impulse towards the Good" (PTS 103). What one consciously desires, then, is an indication of the good only because it reflects this 'teleology'.

It is important to note some of Bosanquet's comments on the nature of this 'end'. First, he draws on Aristotle in arguing that the 'end' is no stasis--it is no "terminus ad quem" where something ceases to be. It is, rather, a "protracted terminus" (PIV 131) where activity continues. Each "moment of it, as Aristotle urges, is self-complete and as good as the next. It borrows nothing from a future completeness" (PIV 131). For this reason, Bosanquet would argue, this 'end' is the condition or standard of value.

Second, in the sense described above, teleology is not only a character of nature as a whole, but is also present in each of its 'parts'. Bosanquet would argue that every thing and each activity has an 'end'--not because of its being intended by some mind, but simply by being the kind of thing or activity that it is. Consequently, Bosanquet has no difficulty in seeing the presence of teleology in the pol-

itical sphere. To say that law or government or rights are teleological is simply to say that they are orderly and express ends implicit in their natures.

Yet, a critic might point out, if Bosanquet is right to understand 'teleology' as 'completion', he must hold that the 'end' of social life is, in some way, now present--in an early essay, Bosanquet speaks of "the Kingdom of God on earth" (KG 121). This, however, is not only implausible (since there clearly remains much to be accomplished in civil society), but would amount to a defense of the status quo. Moreover, a critic might argue that Bosanquet's general teleological view rests on a fallacy of composition. It is one thing to say that individuals or actions have 'ends', but it is quite another matter to say that there is some 'end' to human activity or to nature as a whole. It may be, for example, plausible to say that one's rights are ascribed (or determined) in view of certain 'stations' that one has which are themselves necessary to the realisation of certain ends. Thus (to use an example from the previous chapter), my right to discipline my children is tied to my station as a parent--a station which has as its 'end' the providing of a proper environment for the moral, intellectual, physical and spiritual development of my children.

But, as Aristotle asked,¹³ if each activity or station of an individual has an 'end', is it reasonable to speak of an

¹³ Nicomachean Ethics, Book I, Chapter 7.

'end' of that person as such? Further, does it make sense to speak of an 'end' common to all humanity? If 'ends' are tied to 'activities', what activity does one have 'as a person' over and above one's particular activities and purposes with their particular ends? (Indeed, if there is some 'end' that one may have, just in virtue of being a human being, one might think that this could be a potential basis for certain universal and inalienable rights.) And even if we could determine what the 'end' of a person might be, does it nevertheless make sense to speak of an activity or end of humanity as a whole?

Bosanquet would deny that there is any activity of humanity, in general, that is like the activity of an individual human person, and he would argue that these criticisms misunderstand the kind of teleology he is defending. Still, he believes that there is some general 'end' and that it is more important than the 'end' or 'good' of any particular activity or of any particular person. What must be done, then, is to show more clearly what Bosanquet's teleological view means, how the 'end' has moral weight and how it is both an individual's good and a common good. But before turning to his arguments here, one must first spell out in more detail what Bosanquet thinks this 'end' might be.

1.2 "The Best Life"

What is the nature of this 'end'? As we have seen, Bosanquet refers to it in a number of different ways but, most frequently, he calls it "the best life" (e.g., PTS 188; FS 271, SS 158). It "gives effect to the self as a whole, or removes its contradictions and so makes it most fully what it is able to be, or what, by the implied nature of each and all of its wants, it may be said really to want to be" (PTS 131). It is "the excellence of souls" (cf. PTS xxxvii and PTS xxxix), the complete realisation of the individual (cf. PTS xv-xvi) and "the existence and the perfection of human personality" (PTS 189).

Those who wish a more precise and complete description of such a life will not find it in Bosanquet. According to Bosanquet, "we think ourselves no more called upon to specify in advance what will be the details of the life which satisfies an intelligent being as such, than we are called upon to specify in advance what will be the details of the knowledge which satisfies an intelligent being as such" (PTS 169). But it is just this, Hobhouse notes, that "the despised 'theorists of the first look' have made it their business to do", and Bosanquet's decision "to skip all that", he claims, suggests that this best life is, in fact, "realized in the

existing order" and, hence, reveals Bosanquet's "fundamental conservatism".¹⁴

Nevertheless, throughout The Philosophical Theory of the State and, to a lesser extent, in his other work, Bosanquet does give his reader a number of indications of what this life would involve. He identifies it, as we have seen, with "the rational life" (PTS 189) and says that such a life can only be realized at the level of consciousness. Human beings are intelligent, and "the best life" must reflect this. But they are not just intellectual beings--they have passions, emotions, and creativity--and so this life must be a life which "satisfies the fundamental logic of man's capacities" (PTS 169). Moreover, as rational, human beings have an "intolerance of contradictions" in their lives (PTS 169) and, therefore, they aim at the dissolution or the resolution of these conflicts. Such a life without contradiction (PTS 111) requires a surpassing of one's egoisms, of one's bad will, and of one's limitations in general. Thus, "the rational life" is that life wherein there is a complete realisation of the nature of the individual qua human person.

The "best life" is also described as being the environment in which individuals are 'free'. Like Rousseau¹⁵,

¹⁴ L.T. Hobhouse, The Metaphysical Theory of the State. (London, 1918), p. 86.

¹⁵ See Jean-Jacques Rousseau, Discours sur l'origine et les fondements de l'inégalité parmi les hommes, (Paris: Gallimard, 1965), p. 114: "la liberté étant un don qu'ils tiennent de la Nature en qualité d'hommes"; Contrat social,

Bosanquet says that "liberty is the true nature of man" (PTS 133).¹⁶ To be free, however, is to be "determined only by ourself" (PTS 133)--and, here, Bosanquet means by one's "rational self" (PTS 119). Thus, although liberty involves 'limitations', these limits do not constitute an order alien to the person. Rather, as shown above, they permit a human person to become "fully what it is able to be" and what it really wants to be (PTS 131). Again, then, Bosanquet speaks of this life as "the maximisation of our being" (PTS 174) and "the realisation of all human capacity, without waste or failure" (PTS 141; see VDI 288).

The "best life" also implies a social life--although Bosanquet is careful to add that the "social aspect is an inevitable condition... but is not by itself... the end" (PTS 310; see VDI 208). It is only in society that the realisation of liberty can occur and that the fullest development of the individual is possible. According to Bosanquet, "the human mind can only attain its full and proper life in a community of minds" (PTS 6), and where there is "a certain determinate security for the positive exercise of activities which affect

Bk. I, Ch. 4: "Renoncer à sa liberté c'est renoncer à sa qualité d'homme"; see PTS 222.

¹⁶ Thus, according to François Houang, "Bosanquet est d'accord avec eux [Bentham, Mill and Spencer] pour dire que la liberté appartient à la nature de l'homme, mais il se sépare d'eux quand il en vient à définir le sens du mot 'nature'." (François Houang, Le néo-hégélianisme en Angleterre: la philosophie de Bernard Bosanquet (1848-1923), [Paris: Vrin, 1954], p. 159.)

the welfare of the social whole" (PTS 127). (This "security" is provided specifically by the state.) Moreover, just as there is an "impulse towards the Good" (PTS 103), Bosanquet notes that there is also a natural impulse towards life in community. Indeed, these 'impulses' are not ultimately distinct from one another. Bosanquet writes, for example, that "just like thought and language, the good which makes me able to enter deeper into communion with myself or with the world must always have an aspect of extending that communion to others" (PTS 103). Consequently, both the possibility of freedom and the tendency of each individual towards "the Good" imply an interaction with other persons.

Yet social life itself "presupposes a guide and criterion beyond its current activities" (PTS lxii). As an illustration of this, Bosanquet turns to Aristotle and finds in the Nicomachean Ethics that the goal of social life is identified with religion (PTS lxii). Religion--and thus this "best life"--is not a sect or a particular faith. In The Principle of Individuality and Value, it is identified with Aristotle's theoretical wisdom¹⁷ and in The Philosophical Theory of the State, it is taken as constitutive of a system of "supreme positive values" (PTS lxii). It is, like art and philosophy, "a continuation" of the work of social life in realising human nature (PTS 310). This 'end'--religion--is an "ultra-social

¹⁷ See PIV 400: "Theoretical wisdom or religion ultimately standard, viz. as the value or quintessence of life."

and also ultra-individual level of life" (PTS xxxiv). It goes beyond the participation of others (PTS 310) or compulsory collective organizations. Nevertheless, it is not to be seen as an 'end' "pertaining to the individual, in any sense in which the individual is held to have all essence separable from that of society" (PTS 168; see PTS xxxiv). Moreover, even in religion, individuals desire and will "a certain type of life as a common good in which they find their own" (PTS 265), and it is always "consolidated and sustained by society" (PTS 310; see SS 40).

1.3 The Good of the Individual and the Common Good

What reasons does Bosanquet have for believing that "the best life" is the ultimate 'end'--not only of each human person, but of society as a whole? What is Bosanquet's argument for his claim that it is both an individual's good and a good common to all?

To begin with, Bosanquet claims that there is a natural tendency in the individual to its fullest development, to be the most that it can become--"the realisation of all capacities in and for all" (PTS xv-xvi). In moving toward this 'end', we become 'more human' (PTS 169). And, again, as we have seen, teleology is involved in the very idea of the 'nature' of a thing--one's nature is not simply 'that which one is', but "something for which one is born" (PTS 122). This

'end', in fact, is "a demand implied in every volition and from which we can never escape" (PTS 174).

But how can one show that this 'end' is "the existence and the perfection of human personality" and that it is the ultimate end of society as a whole? Such a claim seems dubious. A critic may object that Bosanquet's argument here looks like the following: each person desires (and has, as his ultimate end) his own 'realisation'. Now, if each person desires and has as his end his own realisation, the collectivity of people must desire and have, as its 'end', the realisation of all people taken in their entirety--that is, the realisation of human personality in general.

This argument reminds one of that used by Mill, in which he attempts to show that everyone desires as the ultimate good, the greatest collective happiness (U 34). But the argument Mill uses to establish this conclusion, as the idealists, among others, have claimed, is fallacious.¹⁸ According to the standard critique, from the claim that each person wishes his or her own good, the only conclusion that one can licitly draw is that the sum total of persons will desire, not the good of the whole but, rather, a state of affairs where each person maximizes his or her own individual

¹⁸ See A.D. Lindsay, "T.H. Green and the Idealists," in The Social and Political Ideas of Some Representative Thinkers of the Victorian Age. (ed. F.J.C Hearnshaw), (London: Dawsons of Pall Mall, 1933), pp. 150-164, p. 153.

good.¹⁹ A critic might claim that there is a similar error in Bosanquet's reasoning.

There are two arguments that Bosanquet might make here. The first draws on his analysis of the relation between the individual and the general will (see PTS 114).²⁰ Bosanquet would argue that a person's good is not simply the object of that person's desire at a particular moment. To find out one's good, what that person desires at any one moment must be compared and harmonized with what he or she desires at all other moments. But an attempt to formulate this requires, then, not only an elimination of the conflicts among one's particular desires and in one's own life, but an elimination of all conflict and all contradiction with matters of fact, as well.

Now, as social beings our interests are necessarily tied to the concerns of others.²¹ All these factors, in some way,

¹⁹ Edward Westermarck also makes this criticism in his Ethical Relativity, (London, Routledge & Kegan Paul, 1932), (cited in Introductory Philosophy, [ed. Robert Paul Wolff], [Englewood Cliffs, NJ: Prentice-Hall, 1979], p. 392).

²⁰ For a more complete discussion of this, see section 3 below.

²¹ Not simply instrumentally, but in virtue of the nature of consciousness itself. For more on this point, see section 2.2 below. As an illustration, consider Bosanquet's comment that "[i]t is not merely that if you recognise the utility of education to individuals you must support a sound educative system as the means to individual welfare. It is that if your will is directed towards the sort of value which a good educational system offers to any individual, you find included in it indivisibly the good of a better way of thinking and feeling in the whole social group and concerning the affairs of the entire community" (SS 37).

affect the formulation of a statement of our good. As a result, our good is not so much what each one of us wants at a particular moment but, rather, what each of us needs, in accord with his or her nature as a human being. Thus, in taking account of all the factors listed above, our 'good' is not simply some private good, but is "the existence and the perfection of human personality" as a whole. In other words, it is a general good that is necessary to the realisation of each individual. And, if such a good is the end of every individual--that is, of all members of society--it is, Bosanquet would argue, also the end of society as a whole.²²

A second argument that Bosanquet might give here is grounded in what he takes as being the proper sense of 'teleology'. Bosanquet's distinction between two senses of 'teleology' reflects two different concepts of the 'end': the end that is the object of, and which is to be attained by, an

²² This 'teleological goal' may be thought to be what Bosanquet refers to elsewhere as a "common good"--and he makes such a reference himself (PTS 178). Nevertheless, it is important to distinguish two concepts. The "best life" seems to be the goal of every society, since it is rooted in, and is the realisation of, the nature of every human person. The term 'common good', however, is also used to refer to a good common to all the members of any social group or society.

There is, of course, a connexion between the two. One may say that the common good is a reflection of the best life, within the confines of a particular historical context. It is, then, in terms of this good that social positions and corresponding rights and duties are justified. But no 'common good' of any particular group is the ultimate end. Unfortunately, Bosanquet himself sometimes fails to make this distinction clear (see PTS 310), and one notes a tendency in his work to move from referring to the common good of a society to the common good (qua teleological goal) in general.

action--the end that is "before" a person, on the one hand and, on the other, the habit or practice of which a human act, for example, is a particular instance--the end that is "in" a person.²³ It is the latter that Bosanquet considers as appropriate to 'teleology' in the most precise sense and it is this that he sees at work in nature. An individual's good, therefore, has as its 'end' the 'common good' precisely because it is the context in which the individual good appears and is possible. Thus, as Bosanquet says, "we are born into our ideal" (KG 122). What makes an individual good, 'good', then, is the fact that it reflects a 'common good' already implicit in that person. An individual's good is in unity with and ordered to the 'common good' as a part is to a whole--not as a means to an end. And since, on Bosanquet's view, the character of the 'end' is a "protracted terminus" (PIV 131), marked by "the interpenetration of elements" where "each is touched by all and all by each"²⁴, he can say that the individual is not a means to society, or vice versa.

Despite the differences in these two arguments, there is no conflict between them. There are, of course, 'purposive' teleologies--what Bosanquet calls "ethical" teleologies (PIV 127)--and the first argument above may appear to reflect some elements of this. But such an argument is possible only

²³ For this means of expressing this distinction, see Muirhead, "Moral End?," p. 487.

²⁴ Cunningham, "Teleology," p. 618.

because human nature is part of nature as a whole, which is teleological in the second, broader, sense. As Bosanquet says, reality is not teleological because purposive, but purposive activity is possible because reality is teleological (PIV 137). And what is fundamental to both arguments is the recognition that the only difference between what an individual may say that he or she wants and the common good is, at most, one of a difference in level of 'completeness'--and, ultimately, it is not even that.

As noted in the previous chapter, for Bosanquet "[n]o person and no society is consistent with itself" (PTS 198) and there is, in the universe, a "conation towards unity and self-completeness" (SS 57; see PIV 129-131). As individuals and social facts change, 'inconsistencies' are worked out and, thus, a 'common good' becomes more comprehensive and complete and approximates the "universal good" or end.²⁵

1.4 Teleology, Morality and Law

At this stage, one can see some reasons why this 'end' is morally and legally binding.²⁶ Bosanquet argues that "the best life" is authoritative because it is a more complete statement of one's 'good'. It is in this sense that Bosanquet has referred to the 'end' as a principle or standard of value: it

²⁵ For a similar view of the 'evolution' of the common or "social good", see Green, LPP0, sec. 142.

²⁶ Additional reasons will be presented later in this chapter, in section 3.

is a moral standard because it expresses the 'nature' of a thing (or, to say the same thing, because it expresses a thing in its 'completeness') and, second, because it is the full articulation of our 'good'. Indeed, this is why Bosanquet sometimes calls this 'end', "the Good".

The authority of law follows from this. While neither society nor the law is itself the 'end' (see PTS 310) (for, as we have seen, social activity is not possible without reference to something beyond it), still, Bosanquet writes, "individuals are continually reinforced and carried on, beyond their average immediate consciousness, by the knowledge, resources, and energy which surround them in the social order" (PTS 142). Consequently, the realisation of "the best life" requires the existence of the legal machinery of society. Because of the nature of this 'end' and the role of law in relation to it, then, law is binding on us. Law, like morality, has a teleological character.

One might argue, however, that there is another way of understanding the authoritative character of this end, and that the preceding discussion of teleology takes Bosanquet's notion of "the best life" too literally. Thus, some critics might say that either "the best life" is something that can never be attained, like Bosanquet's 'Absolute', or is only a

'regulative idea' or a moral imperative or a heuristic norm, like Kant's 'kingdom of ends' or Marx's 'classless society.'²⁷

Now there is, as we have seen, a relation of "the best life" to the Absolute--though Bosanquet does not develop this in the context of his political thought. But there is no conflict between saying this and saying that such a life can exist. Although he refers to Kant's kingdom of ends as an ideal which Kant himself thought "may still be infinitely remote from us" (KG 129), Bosanquet sees the "kingdom of God on earth" as something that is already, even if only partly, with us (KG 121). It is in the 'here and now' and not just in the 'hereafter' (KG 114-115)--it is "the society of human beings who have a common life and are working for a common social good" (KG 121).²⁸ But it is, as well, something that is 'not yet', for the 'end' is something 'complete' or 'perfect' and there is no perfection in historical time (SS 175). Thus, it can and does serve as an imperative to 'progress'.²⁹

²⁷ For a discussion of Marx's 'classless society as a regulative idea rather than a future state, see Colin O'Connell, "Marxism and the Logic of Futural Discourse: A Brief Reflection," in Indian Philosophical Quarterly, Vol. XIX, No. 3 (1992), pp. 199-206.

²⁸ See Bradley's similar account of the 'kingdom of God' in ES 331.

²⁹ While this description may seem to suggest a temporal dimension to teleology, Bosanquet would say that this is just a way of expressing the relation of 'incomplete' to 'complete' (or, in his metaphysics, the relation between 'the finite' and 'the Absolute'). Besides, a temporal series is "an adumbration... of a deeper totality of a perfection which knows no change" (Cunningham, "Teleology," p. 613). Indeed, it is because Bosanquet's understanding of 'teleology' is not simply

The main problem with the interpretations of "the best life" suggested by these critics, Bosanquet would say, is that they persist in focusing on teleology as temporal and purposive. But this reflects too narrow an understanding of what it is. Teleology requires our understanding things in their completeness, not as being 'means' to an 'end', or as being an 'end' to which other things are merely 'means'. Yet neither is this to say that there are no purposes or purposive teleology. It is just to say that such teleologies are not primary or ultimate.

1.5 Recapitulation

This short sketch of Bosanquet's notion of teleology and of its role in his political thought will allow the reader to understand better what Bosanquet means when he says that law, or morality or rights are 'teleological'.

There is, Bosanquet argues, an 'end' of the individual, but it is an 'end' which reflects the nature and capacities of all individuals and which is binding on them all because, in some sense, they desire it,³⁰ but also because it expresses what they are at their best. And it is in the pursuit of such an end--specifically, through the exercise of 'positions'

one of 'means' to 'end', but one of 'incomplete' to 'completeness' that his notion of the 'end' serves as a normative principle.

³⁰ This point will be developed in the next two sections of this chapter.

determined by it--that individuals participate in the realisation of this "best life".

This 'end' is, furthermore, a 'common good' and is, Bosanquet would believe, a more adequate conception of the good than that in Bentham, Spencer and Mill because, in placing value outside of the individual finite self, it provides an objective, less problematic and non-arbitrary standard of value.

Rights are teleological because, according to Bosanquet, all of our rights "have their warrant in the aim of the whole" (PTS 216) and they "derive their imperative authority from their relation to an end which enters into the better life" (PTS 195). Moreover, although he rejects the individualist idea that it is up to each person to choose his or her own conception of this life, Bosanquet insists that the rights and obligations of an individual are determined in view of an end which is his or her own. This 'end', however, is not a matter of a personal or subjective preference, but of an objective "vocation" (PTS 191).

Bosanquet's teleology also explains, in part, how rights have both a moral and a legal character. Rights have moral weight because they are necessary to a moral end. In fact, as we have seen already, Bosanquet identifies this 'end' with the "maintenance of the system of rights". And because the authority of the state (which recognizes rights) is based on

its relation to this 'end', this 'end' also contributes to the legal recognition of rights.

It is obvious from the preceding discussion, then, that this aspect of Bosanquet's social ontology is essential to a complete statement of his theory of rights. This, Bosanquet believes, allows him to formulate an account that avoids some of the problems that one finds in the theories of Bentham, Mill and Spencer, such as how rights have a moral character, why rights are important, and on what basis rights are ascribed to individuals. Nevertheless, for this account to be complete, there are other fundamental concepts that must be clarified or explained.

2. The Individual

A second element of Bosanquet's "social ontology", suggested in the previous chapter as playing a significant role in his theory of rights, is that of the concept of the individual. On Bosanquet's view "[t]he aim of politics is to find and realise the individual" (PTS lvi), and, as shown in Chapter 1, he would argue that one of the central reasons why the theories of Bentham, Mill and Spencer fail, is that they misunderstand what individuals are.

Bosanquet uses the concept of 'individual', however, in a number of different ways and, as a result, his analysis has been subject to some criticism. Moreover, at times it appears that he places little value on the human individual. For

example, as we saw in Chapter 2, even though a right can be real only in a human person, Bosanquet argues that it is ascribed or attached to one's 'functions' rather than to one's 'self'. One might argue, then, that there can be no guarantee of the value of the individual if rights are not, strictly speaking, 'natural' to them. It is important to understand, therefore, what the nature of 'individuality' is in Bosanquet's thought, what its relation is to the human person, and what it implies concerning the purpose of rights and their ascription to individuals.

2.1 Concepts of the Individual

There are several different senses of the word 'individual' that Bosanquet employs in his political texts. There is, first, the sense that he finds in the "theories of the first look", where the individual is seen as an 'atom' or as a "monad without windows"³¹--as a being distinct from every other being--which "has so little in him that you cannot imagine it possible to break him up into lesser parts" (PTS 74).

Admittedly, while Bosanquet does use the term in this way, it is only when referring to a view he rejects. He considers this description of 'individuality' to be inadequate--particularly when used to refer to the human person.

³¹ See Bosanquet's Psychology of the Moral Self, (London: Macmillan, 1904), p. 9.

Remember that, for Bosanquet, the nature of a being is not simply that which it is at some isolated instant, but refers to that which it has been and, especially, that which it can become. He rejects a "false particularisation" of the individual which emphasizes him in his aspect of isolation and "independently of his relation to the end" (PTS 189). Moreover, Bosanquet would say that "the personal developments of members of society are interdependent and... the differing lives and personalities of members of society complete each other".³² Furthermore, human individuals are not separable from their concrete, historical context. Bosanquet would no doubt share Marx's comment that "man is not an abstract being, squatting outside the world."³³ Thus, for an adequate account of the nature of a human person, Bosanquet insists that one must abandon this 'atomistic' notion of the individual altogether.

Yet there are other ways in which Bosanquet uses the terms 'individuality' and 'individual'. One notes, for example, that there is a connexion between 'individuality' and the concept of a 'function' or a 'position'. Bosanquet writes that "the true particularisation of the human universal does

³² Gerald F. Gaus, The Modern Liberal Theory of Man, (Canberra: Croom Helm, 1983), p. 73.

³³ "Aber der Mensch, das ist kein abstraktes, außer der Welt hockendes Wesen." in "Zur Kritik der Hegelschen Rechtsphilosophie" ["Towards a Critique of the Hegelian Philosophy of Right"] in Karl Marx-Friedrich Engels: Ausgewählte Werke, 6 vols., (Berlin: Dietz Verlag, 1987), Vol. 1, p. 9.

not necessarily coincide with the distinction between different persons" (PTS 166), but with the functions that one has in society. If these, however, are the basic 'parts' of the social organism, 'individuality' seems to refer to something that is much less than a human person.

On the other hand, the notion of 'individual' is, at times, identified with a being much greater than a human being. Bosanquet suggests, for example, that "their [human beings's] true individuality does not lie in their isolation, but in that distinctive act or service by which they pass into unique contributions to the universal. True individuality, as we have said, is not in the minimisation which forbids further subdivision, but in the maximisation which includes the greatest possible being in an inviolable unity" (PTS 170). (This reflects the teleological dimension of Bosanquet's philosophy, noted in the preceding section.) It is this 'coherentist' analysis that leads Bosanquet to refer to the 'individual' as a more general 'self', which is our "real self" (PTS 117).

Admittedly, there is an ambiguity in this identification of the 'individual' with the "real self". For instance, on the one hand, this "real self" is described as the real individual because it is that which it is in each human being to become and which one would be if one were completely informed and fully rational. Thus, 'individuality' is not to be identified with what is peculiar to an individual human person, but with

the "content of the self" (VDI 287)--with the presence of certain general characteristics. Here Bosanquet has in mind those "interests and affections which carry us beyond our formal and exclusive self" (VDI 288), and which are present in "the great achievements of knowledge, of social and super-social morality, of the sense of beauty, and of religion" (PIV 378; see PIV 270). The ordinary human being is, then, a 'self' only to the extent that it associates itself with this 'real self'.³⁴ This 'real self' is implied in the person, but is "outside" of the "given self" (PTS 133-134). It is something which we are not yet, but which we recognize as "imperative" (PTS 118). It is the goal of our personality and is our true individuality.

Yet, on the other hand, the 'real self' is also occasionally described as something beyond this. Sometimes Bosanquet speaks of the 'real self' as a "common self"--identified with those things that constitute an "embodied purpose" that we have³⁵, with society (PTS 145) and with the state (PTS 89). This 'individual' is a "moral person" (PTS 145) that is even "more real than the apparent individual" (PTS 145).

³⁴ Bosanquet says that "the self as we know him in Space and Time... is a figure deformed and diminished" (PIV 383) and "essentially... imperfect and inconsistent with itself" (PIV 249).

³⁵ Bosanquet, Psychology, p. 68; see PIV 58.

Finally, one finds texts where Bosanquet says that the 'concrete universal' or 'the Absolute' is the individual in the strict sense³⁶--this being synonymous with the 'end' described in section 1 above. Here one sees the individual as reflecting "the principle of non-contradiction, completeness"³⁷ or "coherence" or as being a "world"³⁸, with the consequence that the human being is an individual only in a secondary way.³⁹ The real individual is, it seems, supra-human.

Bosanquet's idea of 'individuality', then, has several meanings. Sometimes, he has a minimalist notion of it in mind, but the sense which he prefers is what one might call the 'maximalist' view--that of the individual as "a great individuality"--"it is so thoroughly one, so vital and so true to

³⁶ As noted above (in note 5), Bosanquet does not make any significant reference to these terms in his explicitly political thought. Arguably, the reason for this is that, within the sphere of political philosophy, there is simply no need to employ these terms. Some authors--notably A.J.M. Milne--have argued, however, that Bosanquet's political theory is best considered independently of these notions (see Milne, pp. 196-197, 261). I discuss some of the implications of this in Chapter 5, section 2.

³⁷ Andrew Vincent, "The Individual in Hegelian Thought," in Idealistic Studies, 12 (1982), pp. 156-168, p. 158.

³⁸ Pfannenstill, p. 149.

³⁹ See Bosanquet, "Do Finite Individuals Possess a Substantive or Adjectival Mode of Being?", Proceedings of the Aristotelian Society, n.s. XVIII (1917-1918), pp. 479-506; reprinted, with a response to his critics, A. Seth Pringle-Pattison, G.F. Stout and R.B. Haldane, in Life and Finite Individuality, (ed. H. Wildon Carr), Proceedings of the Aristotelian Society, supp. vol. 1 (1918), pp. 75-102; pp. 179-194.

itself, that, like a work of art, the whole of [its] being cannot be separated into parts without ceasing to be what it essentially is" (PTS 74). In such cases, however, the human person appears to be an 'individual' only so far as it approximates this.

Despite the multiple meanings of the notion of 'individual,' it is not difficult to determine what Bosanquet means when talking about the human individual. It is a being who is more than the 'atomic' individual and who has within itself something of this general "content of the self" which represents what it has in its nature to be. The project of the next two sub-sections (2.2-2.3) is to articulate more clearly what this is.

2.2 The Social and Spiritual Nature of the Individual

What does Bosanquet think the human individual is? Of course, human beings are corporeal beings--but he says that this characteristic--one's corporeal nature and one's material needs and desires--is not of ultimate importance, and the extent to which the 'material' is significant is in relation to 'mind' (PTS 27)⁴⁰. Thus, in his discussion of the human individual, Bosanquet focuses on 'mind' or 'spirit'. This should be of no surprise, however, since (as we have seen in

⁴⁰ For example, Bosanquet says that "[l]ike the "flesh" or the "body" of St. Paul's religious language, the "bodily" or "material" needs and appetites of man are an element of mind..." (PTS 27).

Chapter 2) Bosanquet refers to society as a "structure of intelligences" (PTS 195) which reflects "corresponding mental systems in individual minds" (PTS 161).

Human beings belong in community. Each person, as it were, implies others--"he is... determined by his relations and evoked in his creative activities" (PTS lvi). But the nature of this relationship to the community is complex. Not only is there a physical dependence of the individual on goods which can be found only in a society where there is a division of labour, but there are also intellectual and spiritual supports. We have already seen (in Chapter 1, section 2.2) Bosanquet's view that "[a]ll individuals are continually reinforced and carried on, beyond their average immediate consciousness, by... the social order" (PTS 142). It is through this order that we learn a language, acquire knowledge of moral principles,⁴¹ come to think and to judge--not to mention that we learn more of the nature and content of reality. This order also contains those structures which help human individuals to attain that which they wish to and can become (cf. PTS 55; 127). Indeed, as we have already seen, the realisation of one's end is only possible through the com-

⁴¹ See Bosanquet, Psychology, pp. 87-88, 94. The capacity of an individual to acquire and to use a moral language as depending on the social community was also noted by Bradley. (See David Crossley, "Bradley on the Absolute Rights of the State over the Individual", in Ethique et droits fondamentaux / Ethics and Basic Rights, [ed. Guy Lafrance], "Collection Philosophica", [Ottawa: Presses de l'Université d'Ottawa, 1989], pp. 138-144, p. 140.)

munity--"the human mind can only attain its full and proper life in a community" (PTS 6). In short, such an order is essential for one's development as an intelligent being. Thus, unlike Bentham, Mill and Spencer, Bosanquet insists that "we are not to think of the sensuous individual as totally prior in time to the social consciousness" (PTS 137). Of course, some may doubt this but, Bosanquet says, it is only our inclination to think of ourselves as "self-complete" and our independence as physical beings that blinds us, "to the moral and spiritual structure that lies behind the visible scene" (LFI 90).⁴²

As noted above in Chapter 2, on Bosanquet's view, individuals can benefit from this support only so far as they are 'recognised' by others. He would hold, however, that this is entirely unproblematic. Given Bosanquet's view that the human individual is a mind in a community of minds, and that these minds are "so related as to co-operate and to imply one another" (PTS 195), 'recognition' is a matter of simple logic.⁴³ Indeed, the relation among human individuals is so

⁴² Not surprisingly, perhaps, one finds the same view in Bradley. In Ethical Studies, he argues that the individual self is little (if anything) apart from its biological, intellectual and moral membership in the social community and the community of values. Indeed, Bradley holds that "the 'individual' apart from the community is an abstraction. It is not anything real, and hence not anything that we can realize" (ES 173).

⁴³ As an illustration of how recognition works, Bosanquet provides the example of the relation between the pupils and teachers in a school (PTS 159-161). For the elaboration of his argument here, see Chapter 4, section 1.3 below.

strong that "every mind is a mirror... of the whole community from its own peculiar point of view" (PTS 7; cf. 292). Consequently, there is a "general recognition" (PTS 206) of individuals--though not necessarily a conscious one--where each person is seen as a being able to participate in the realisation of a social and a common good.

On the 'psychical' plane, therefore, the individual is inseparable from the community, and he considers that "minds and society are really the same fabric regarded from different points of view" (PTS 158).⁴⁴ But, Bosanquet reminds us, it is in this very fact that one has his or her 'individuality'. First, the extent to which one is related to others and thereby is more 'complete', makes one more of an 'individual' (PIV 69). Second, it is because persons are related to others that they have the basis from which to 'abstract' their individuality (PTS 201)⁴⁵. Finally, one becomes more of an individual only so far as one aims at a common good or 'end'--that is, at "the existence and perfection of human personality" as a whole, referred to earlier. Bosanquet would argue that there is no contradiction among these. Indeed, the second

⁴⁴ This point will be explained and discussed in Chapter 4, section 1.3, below.

⁴⁵ See Bosanquet, Psychology, p. 51: "Self-consciousness... is for the most part social."

requires the first, and the first requires the third. Individuality, then, is possible only in a society.⁴⁶

2.3 Individuality, Position and Class

In his discussions of the ascription of rights, Bosanquet frequently refers to the 'stations' or 'positions' a person has in society and to the functions that one must fulfil as part of these stations. Recall that, by these terms, Bosanquet means the 'work' or the 'purpose' of a being⁴⁷, and also one's relations to others (PTS 191), determined by their recognition. To speak of the idea of 'position' implies the existence of a social order in which an individual has a recognized place, and the existence of particular services that this person can provide. In fact, it seems that it is primarily in light of one's service in this order that a person has the basis for speaking of his or her particular identity.

Because of this, it may appear that positions or services, rather than individuals, are the true 'parts' of the

⁴⁶ See also Bradley, ES 168. The individual "into whose essence his community with others does not enter, who does not include relations to others in his very being is, we say, a fiction..." Collini outlines the background and some of the difficulties of this position in "Sociology and Idealism," pp. 11-12.

⁴⁷ While Bosanquet's use of such expressions as 'function', 'station' or 'position' is clearly a reflection of their employment by Green and Bradley, he traces their origin to the notion of ergon in Plato's Republic. See Bosanquet, A Companion to Plato's Republic for English Readers: Being a Commentary adapted to Davies and Vaughan's Translation, (New York: Macmillan, 1895), pp. 63, 82.

social whole. After all, as noted above in Chapter 2, Bosanquet says that "[t]he Position... is the real fact" (PTS 191). One might well ask that, if one has no function in a society, on what basis can we refer to that being's individuality? And even if people cannot be 'reduced' to their special service or roles (PTS 292; KG 122), they clearly cannot be separated from them. One's relations with one's family, neighbourhood and society constitute part of one's social position, and there seems to be little, if anything, about persons which is not implied in the functions or roles they may have.⁴⁸ It is, perhaps, no surprise then that Pringle-Pattison said that Bosanquet "treated the finite individual 'almost as a negligible feature of the world'"⁴⁹ and that "Bosanquet's theory does not contain the idea of a [finite] self at all".⁵⁰

Nevertheless, as already argued at length in Chapter 2 (section 2), Bosanquet would insist that the centrality of one's station in describing the human individual does not imply that the human person who fills it is not, properly

⁴⁸ Recall Bosanquet's comment that "man really does not exist as man without some station and duties" (KG 116).

⁴⁹ Andrew Seth Pringle-Pattison, The Idea of God in the Light of Recent Philosophy, (Oxford, 1920), cited in Vincent, "Individual," p. 163,

⁵⁰ See his contribution to the symposium on "Do Finite Individuals possess a substantive or an adjectival mode of being?", in Life and Finite Individuality, (ed. H. Wildon Carr), Proceedings of the Aristotelian Society, supp. vol. I, (1918), pp. 103-126, p. 109.

speaking, a 'part' of society. Rather, it explains what it is to be a human person.⁵¹ For example, one's stations or positions are not arbitrarily determined. And, given the teleological character of society, one's positions in society are determined in view of a social and common good and according to the talents or the capacities of the individual concerned. The individual is not merely a function or set of functions, but has a 'vocation' (PTS 292) and, Bosanquet adds, this "is simply one reading of the person's actual self and relations in the world in which he lives" (PTS 191, emphasis mine). Again, Bosanquet acknowledges that "it is our nature to be a single self" (LFI 92) and that selfhood is not "a trivial or unreal thing" (PIV 289). 'Positions' cannot exist without the persons who fill them, nor without the persons who recognize them, nor without the existence of individual consciousnesses in which the 'moral end' and the 'common good' essential to the existence of these 'positions', are to be found.

Still, one might wonder whether Bosanquet's emphasis on 'position' might not lead in another way to the denial of the human individual as a significant part of the social whole. 'Positions' suggest 'classes', and 'classes', then, might well become more 'real'--and, by extension, more important--than

⁵¹ In fact, Bosanquet's view seems to be that being a person by itself entails a position. Thus he speaks of "the finite intelligent human being" as having "the duty and position... of coming to himself and awakening to his own nature and his unity... a greater mind and will" (Bosanquet, "Teleology," p. 245). See also PTS 191 and KG 118-119.

any human individual. It is true that Bosanquet says that the notion of 'class' is an "ethical idea",⁵² but he distances himself from defending classes as such. He argues that, when the idea of class "has lost or has not gained the power of accommodating itself to function, and function to social logic," it is an "evil". The evil of "an absolute and inflexible rule of precedence and privilege" is that a function of mind is divorced from its characteristic of free logical adaptation within the social system. The institution has become ossified; and instead of moulding itself, like a theory or a living organism, to the facts and needs which it is there to meet, it nails itself to an alien principle, and becomes a fallacy in social logic, or a dead organ in the social body" (PTS 197-198). Thus, rather than having an emphasis on 'position' lead to the existence of classes which diminish the 'reality' of human individuals, Bosanquet sees that a proper notion of 'position' should work against a class structure based on hereditary title or the mere possession of wealth. While social function or station is important in describing the nature of social reality, the existence of any particular social class is, at best, a contingent phenomenon.

⁵² This notion of 'ethical idea' will be discussed in Chapter 4, section 1.1.

2.4 The Value of the Individual

It is not surprising that, having been accused of denying the reality of the human individual, Bosanquet should also have been charged with ignoring its value. Support for this latter charge, in fact, seems to be based on a number of different elements in Bosanquet's work. For example, given Bosanquet's view of the nature of the finite self, Hugh Tallon has claimed that "the place of the person in the universal scheme of things is all but worthless".⁵³ Or again, given his view of the moral end, John Morrow claims that because "the choices individuals made did not pertain to the development of their own moral characters", Bosanquet "abandoned Green's stress on the moral development of individuals" as a fundamental value.⁵⁴ Or, yet again, H.A. Prichard claims that Green's defense of "the existence of a common good... implies the idea that the persons to whom it is common are identical"⁵⁵ and thus, as Gerald Gaus says, "blurs the boundaries between personalities".⁵⁶ Given that Bosanquet's arguments for a

⁵³ Hugh Joseph Tallon, The Concept of Self in British and American Idealism, (Washington: Catholic University of America Press, 1939), p. 134.

⁵⁴ "Liberalism and British Idealist Political Philosophy: A Reassessment," History of Political Thought, 5 (1984), pp. 91-108, pp. 102 and 97.

⁵⁵ Moral Obligation and Duty and Interest, (London, 1968), p. 72.

⁵⁶ The Modern Liberal Theory of Man, (Canberra: Croom Helm, 1963), p. 71.

common good are similar to Green's, one could imagine an analogous criticism of Bosanquet's view.

There is certainly some evidence for these charges. Bosanquet denies that finite selves could be "necessarily eternal or everlasting units" (LFI 87) or "differentiations of the absolute" (LFI 86), and he says that the "particulars" of this universal self are not necessarily "different persons" (PTS 166). Again, if the function of an individual is central to that person's identity, does this not make that person's value instrumental to whatever 'end' that function serves, like that of a cog in a machine? Moreover, if the value of an individual is tied to his or her ability to carry out the functions that he or she has in society, then infants and the severely mentally handicapped would seem not to be individuals and, thus, would not be able to make a moral claim to life, to be protected from harm, or even to the respect due individuals in general. (Indeed, recall that Bosanquet says that one may "mould [them] to our aims", as one does with wild animals (PTS 207).) Finally, one might argue that, since the vocations or social positions of persons have "their being in the medium of recognition" (PTS 196), and since one is considered to be a person only so far as he or she is a mind 'recognised' as such by a society, one's identity and value depends on the will of others. Indeed, it would seem that, if one had no station or function, there would be no obligation for a community to act as if that being had any value whatsoever.

In light of these attacks, it is, perhaps, ironic to note that one of Bosanquet's most severe critics, L.T. Hobhouse, accused him of being too individualistic.⁵⁷ In any event, to begin with, by claiming that the individual's 'real' good is a common good, or by claiming that individuals cannot be properly understood outside of their relations to others, Bosanquet does not eliminate the distinctions among individuals--though it is quite consistent with this to say that he did not think that such distinctions were of fundamental importance.

To understand the value of a human individual, however, requires understanding what it is to be such a being. Bosanquet says, for example, that the individual is unique--though "not as an atom, but as a case of a law" (PTS 292), and that individuals reflect the system of law from a particular point of view (see PTS 292).⁵⁸ To the extent that individuals are elements in a whole, then, they have value--but, of

⁵⁷ See Hobhouse, pp. 78-79 and Collini, "Hobhouse, Bosanquet and the State: Philosophical Idealism and Political Argument in England: 1880-1918," Past and Present, 72 (1976), pp. 86-111, at p. 109. For more on the individualistic character of Bosanquet's philosophy, see Ellen Jacobs, Bernard Bosanquet: Social and Political Thought, (Ph.D. thesis, City University of New York, 1986), pp. 2-6.

⁵⁸ Thus, Bosanquet writes that the individual is a social being, but the social consciousness "is present in him, but present...in a modified" and particular form (PTS 292). Similarly, in PIV, he writes that "[t]he man is a representative, a trustee for the world, of certain powers and circumstances" (PIV 21). See also Bosanquet's description of the relation between the 'concrete universal' and 'individuals' as that of "macrocosm" to "microcosms" (PIV 38).

course, this is not all there is to the individual. Individuals also have 'functions', and the existence of these functions demonstrates that a person provides a special service in the realisation of the good, and implies a recognition of his or her particular aptitudes. But again, this is not all. We have already seen that Bosanquet denies that individuals can be reduced to their functions or that they become "one with the community" (PTS 51). And, while they share in a common good, as we saw in section 1 of this chapter, Bosanquet would not separate this common good from the moral and spiritual development of individuals. This is consistent with the approach reflected in his work on behalf of the Charity Organization Society, where Bosanquet shows a particular concern in ensuring the conditions essential to the development of individual character. Thus, in one of his essays on social work, he emphasizes that one must "individualise the case; don't classify".⁵⁹ Contrary to Morrow, then, Bosanquet's view here seems quite consistent with Green's concern for the individual.⁶⁰ Moreover, given Bosanquet's emphasis on the importance of the specific

⁵⁹ See "The Affinity of Philosophy and Casework," in Social and International Ideals, (London: Macmillan, 1917), pp. 161-182, at p. 164. Arguably, this reflects a 'Kantian' view, inherited from Green, but abandoned by Bradley.

⁶⁰ Note also the similarity of Bosanquet's view, cited earlier, that too much state action would lead to "moral and intellectual death" (PTS 200) with Green's claim that the "complete regulation of life [is] incompatible with the highest object of human attainment, a free morality" (Green, LPPO, sec. 223).

contributions of individuals to the common good,⁶¹ and in light of the previous comments on the nature of that good, it is clear that he wishes to avoid falling victim to the kinds of consequences suggested by Prichard's critique.

Finally, as noted above, even if one's positions must be recognised, this requirement does not mean that the value of the finite self is undermined. 'Recognition', the reader will recall, is simply the attitude of persons towards one another--though it may be an attitude of which some persons are not fully aware (PTS 164)⁶²--and if society is an association of minds, it is difficult to imagine how one may be a human person--that is, have a mind, have capacities, and be able to contribute to a common good--without such a recognition,⁶³ and the correlative positions and rights, coming to exist. Indeed, as Bosanquet has argued in connection with the existence of rights, it is precisely because individuals are recognized

⁶¹ Note also Bosanquet's views, as outlined in his essay "Unvisited Tombs" (Some Suggestions in Ethics, Chapter 4). Here, Bosanquet's point seems to be to remind the reader of the value of the contribution of the 'anonymous' individual to the social good, and he repeats this view--that individuals characterise the world "as permanent qualifications" (LFI 101)--throughout his work.

⁶² Nor is this implicit recognition unique to the recognition of others. Consider, for example, our awareness of the moral end. Bosanquet says that "[t]he consciousness which guides our lives is a consciousness of something, but not as a rule a consciousness of the place of that something in the whole of life" (PTS 164).

⁶³ For example, Bosanquet says that going to war with another--as distinct from hunting that being--implies a recognition of something in the enemy that would distinguish him or her from an animal (PTS 198).

that their value can be defined and protected. Bosanquet's view would seem to be, pace Tallon, that "the place of the person in the world" is far from "worthless".

If the individual is as important as the preceding remarks suggest, can one say that it has an absolute and intrinsic value? As noted in Chapter 2, some of Bosanquet's comments on the individual's will are suggestive of this. Bosanquet says that "[t]he will or character which is the atmosphere of values and shares their quality is itself a value... [and has] a value of its own" (SS 132) and that "we have an undeniable human value of a distinct and universal type, in which there cannot be a human creature who is not a partaker in some mode or degree" (SS 77). Again, morality is based on the 'real will' and "the best life" and these, in turn, are rooted in the mind and the will of the individual. It seems plausible, then, that the individual has a fundamental value.

Admittedly, these 'Kantian' elements might suggest a tension in Bosanquet's view.⁶⁴ Still, even though the will of the individual is important and even if the value of the individual is not just instrumental, like that of a cog in a machine, it is not clear that Bosanquet could hold that the individual has a value outside of the community without abandoning his general teleological approach. From what he says in The Philosophical Theory of the State, for example, it

⁶⁴ This will be discussed in Chapter 5, section 2.1.

seems that the value of the human person is determined by the common good--for example, by the extent to which a person participates in social life by fulfilling the requirements of his position or function. Even the value of an individual's contribution to 'non-social' ends like art, philosophy and religion is determined by what already exists in society and, in any event, such a contribution has its value to the extent that it reflects the 'ultimate end'. Thus, even if the possession of a will was to be acknowledged as fundamental to value and to rights and, hence, a fundamental value itself, all of this still presupposes that the individual has been recognized as having a will.

But even if the finite individual is not sufficient to be the principle of value, this is not to imply that its value is either in conflict with the whole or merely instrumental to it.

First, recall Bosanquet's comment that man's "nature... is in the process of being communicated to him" (PIV 259). The finite self, then, has a "nisus towards absolute unity and self-completion" (VDI 4), and it is so far as it falls short of this, Bosanquet suggests, that the individual self is insufficient as an absolute principle (PIV 310). But the difficulty with the 'value' of finite consciousness is, on Bosanquet's view, not so much that it is contradictory, but

that it is unrealized. There is, then, no conflict between individual value and the 'end'.⁶⁵

Moreover, it would seem that the main reason for the concern with the value of the individual is to avoid the individual becoming a means to someone or something else. But it is just this kind of teleological view that Bosanquet is at pains to reject. The self is not a means to anything else. Bosanquet says that "in a spiritual whole the distinction of ends and instruments has little place, and every instrument is an end, as every end is an instrument" (SS 132). Hence, he denies that the individual is subordinate to the state. Recall, too, Bosanquet's comment, cited at the beginning of this section, that "[t]he aim of politics is to find and realise the individual" (PTS lvi). Thus he says that "[t]o make the totality the means to the differentiation or vice versa is like making a drama the means to the characters, or the characters the means to the drama" (PTS 168). Consequently, neither the individual nor the state is fundamental; the individual is neither the means, nor of instrumental value, to any other.

2.5 Recapitulation

While Bosanquet has several different senses of 'individuality', in this section we have focused on his

⁶⁵ Thus, Bosanquet says, "[i]f I possessed myself entirely, I should be the Absolute (LFI 85).

account of the human individual. Bosanquet argues, then, that a person's 'individuality' is not just that which distinguishes that person from everyone else, but all that one is--the characteristics which persons have in common, the end at which they aim, as well as what it is that makes each distinct from every other. What we have here is a more comprehensive and more complete notion of the individual than Bosanquet says he finds in the "theories of the first look". Persons are social and spiritual beings, and need social recognition of what they are and what they do. This 'recognition', however, is a necessary aspect of the "social logic" (PTS 197) which identifies persons as minds in a community of minds.

Given the kinds of functions one may have, and given the way in which the recognition of functions takes place, Bosanquet sees no problem in safeguarding the value of the individual. Still, its value can only be understood in relation to the principle of value--the 'end' which he calls "the best life" but also 'the perfection of human personality'.

This understanding of the nature and value of the individual should allow the reader to understand better some additional aspects of Bosanquet's theory of rights. Even though Bosanquet refuses to admit the existence of natural rights, he does not reject the value of the individual--but neither does this entail that rights could be an arbitrary creation of the state. Rights and duties are ascribed to the

functions one has in society--not to being an isolated or independent entity. Indeed, in this way, Bosanquet would say that he is able not only to explain the basis of rights, but to avoid the ossification of rights and power.

Again, even though rights are attributes of positions, individuals possess rights. And while it is true that, outside of a social context, there are no rights, without society, it is not only impossible to speak of one's 'function' or 'stations', but there would be no context where one could help another in the acquisition and the preservation of his or her rights. Nor should this concern Bosanquet's reader since, he would argue, outside of society it would be impossible even to speak of 'individuals'.

3. The General Will

As noted earlier in this chapter, Bosanquet holds that not only rights, but the social order and the state that are necessary to their existence, derive their authority from their relation to that 'end' which he calls "the best life". Specifically, this 'end' is binding because, on Bosanquet's teleological view, it is a more complete expression of what individuals are, and these institutions are essential to it. But there is more to Bosanquet's account of why such an 'end'--and, hence, institutions and rights--are authoritative than that. Bosanquet also says that this end is authoritative

because it is 'willed'--to be more precise, because it is the object of the general will.⁶⁶

This notion of the 'general will' has, however, been the object of much controversy.⁶⁷ Bosanquet speaks of this 'will' as being the 'will' of society and of the state, and yet of it also being the individual's 'real' (as distinct from one's 'actual' or 'private') will. But, as Bosanquet himself notes in The Philosophical Theory of the State, "How can there be a Will which is no one's Will? and how can anything be my Will which I am not fully aware of, or which I am even adverse to?" (PTS 110).

⁶⁶ Bosanquet's discussion of the general will appears primarily in the following books and articles: "The Reality of the General Will," (henceforth abbreviated as RGW) International Journal of Ethics, IV (1893-1894), pp. 308-321; The Philosophical Theory of the State, chapters VII and IX; "Les idées politiques de Rousseau," (IPR) Revue de métaphysique et de morale, XX (1912), pp. 321-340; and "The Notion of the General Will," (NGW) Mind, n.s. XXIX (1920), pp. 77-81.

⁶⁷ See, for example, the contributions of A.D. Lindsay and H. Laski to the symposium on "Bosanquet's Theory of the General Will," Proceedings of the Aristotelian Society, n.s., supp. vol. VIII (1928), pp. 31-44; 45-61; Morris Ginsberg, "Is there a general will?," Proceedings of the Aristotelian Society, XX (1919-20), pp. 89-112; A.D. Lindsay, "Sovereignty," Proceedings of the Aristotelian Society, XXIV (1923-24), pp. 235-254; E.F. Carritt, Morals and Politics: Theories of their Relation from Hobbes and Spinoza to Marx and Bosanquet, (Oxford, 1935), pp. 144-157; 202-209; J.H. Muirhead, "Professor MacIver's Criticism of the Idealistic Theory of the General Will," Mind, n.s. XXXVII (1928), pp. 82-87, and "Recent Criticisms of the Idealist Theory of the General Will," Mind, n.s. XXXIII (1924), pp. 166-175; 233-241; 361-368; George Sabine, "Bosanquet's Theory of the Real Will," Philosophical Review, XXXII (1923), pp. 633-651; C.D. Broad, "The Notion of a General Will," Mind, n.s. XVIII, (1919), pp. 502-504; and Hobhouse's The Metaphysical Theory of the State, pp. 44-70.

Indeed, it is just these kinds of questions that Bosanquet's critics have pressed. Morris Ginsberg, for example, doubts that, in a social institution or a state, there can be any such thing as a real or general will, as distinct from a number of individual wills.⁶⁸ Moreover, many have doubted whether the notion of a 'real will' makes any sense at all.⁶⁹ (Ginsberg says, for example, that it depends on the confusion of the content of a mental state with the existence of something that could have such a mental state.⁷⁰) Besides, does such a notion not confuse what one wills with what one ought to will and, hence, ought to be called an "ideal will"?⁷¹

Furthermore, even if there were such a thing as a will 'greater than' one's 'actual' will, in what sense could it be 'general'--that is, the same as the will of others? Can my 'real will' tell me anything about others at all?⁷² And again, if there is a general will, does this not suppose that there must be a "corporate"⁷³ or "public"⁷⁴ self that has this will?

⁶⁸ Ginsberg, "General Will?," p. 92; see also Laski, "Theory of the General Will," pp. 52-54.

⁶⁹ Ginsberg, "General Will?," p. 99; Hobhouse, pp. 45-48; Broad, pp. 502-503; Carritt, p. 209.

⁷⁰ Ginsberg, "General Will?," p. 108.

⁷¹ Hobhouse, p. 49; Ginsberg, "General Will?," p. 101.

⁷² Broad, p. 503.

⁷³ Nicholson, British Idealists, p. 207, quoting Hobhouse.

⁷⁴ Carritt, p. 155.

And even if this be allowed, does it follow that it is the will of the state or of society⁷⁵, or that it is to be found in law or social institutions?⁷⁶ Finally, if, as Bosanquet says, the 'general will' is 'the will of the state', would this not entail that the state would have an authority which it neither requires nor deserves?⁷⁷

Given the breadth and number of these criticisms, since Bosanquet's theory of rights depends on his theory of the general will, it is clear that he must address them in some way. But, Bosanquet would hold, many of these criticisms rest on a misunderstanding of what he means by 'general will' and, once an account of this is given, it may well be plausible that he can answer or avoid the preceding charges.

3.1 Historical Basis

Bosanquet says that what he calls the 'general' or 'real' will finds its initial articulation in Hobbes and Locke,⁷⁸ but

⁷⁵ Ginsberg, "General Will?," p. 101.

⁷⁶ Carritt, p. 148.

⁷⁷ Laski, "Theory of the General Will," pp. 54-56.

⁷⁸ Bosanquet writes that "[b]oth Hobbes and Locke use expressions, in treating of the government and unity of a commonwealth, which closely resemble Rousseau's phrases respecting the General Will, the moral person, and the real unity. ... We may say... that Hobbes places the unity of political society in a will, and that, in his sense, a real or actual will, but emphatically not in a general will." For Locke, "the ultimate supreme power is in the community at large [and so the will is general], which may withdraw the trust if its conditions are violated. Of course, no determinate means of doing this in a lawful manner is, or can be,

claims that it was only with its transformation by Rousseau that it was able to have a genuine explanatory character (cf. IPR 323).⁷⁹ According to Bosanquet, the idea of the general will enabled Rousseau to provide a new understanding of the notion of sovereignty and of the basis of political liberty and, hence, allowed him to explain the moral legitimacy of institutions, the individual's relation to the state, and our social obligations. Indeed, Bosanquet claims that it is the Rousseauist principle that "Will, and not force, is the basis of the State"⁸⁰, which is the foundation of modern political philosophy (IPR 323; 329).

Bosanquet rarely discusses the general will without some mention of Rousseau, and influences of Kant, Fichte and especially Hegel also mark his description of it. At times, then, it is difficult to say precisely where exposition and interpretation end and where Bosanquet's own theory begins.

suggested, and therefore the will of the people is not expressed by Locke as a real or actual will. And so the right, which was to be displayed as social, remains a latent right in individuals to assent or to dissent, and society is not represented as a genuine unity" (PTS 97-98).

⁷⁹ It would be misleading, however, to suggest that the notion of the general will began with Rousseau. See Patrick Riley's The General Will before Rousseau: The Transformation of the Divine into the Civic (Princeton: Princeton University Press, 1986).

⁸⁰ Bosanquet writes that "[l]a volonté, non la force, telle est la base de l'Etat." (IPR 323). (This phrase undoubtedly comes from R.L. Nettleship's outline and table of contents of his edition of Green's Lectures on the Principles of Political Obligation.) Green's comments on Rousseau in these lectures (especially sections 64 to 79) clearly influenced Bosanquet.

Still, Bosanquet does criticize Rousseau--mainly for not having abandoned entirely some of the 'individualist' notions of his predecessors (PTS 85)⁸¹--and one can identify at least some of the principal features of Bosanquet's view which go beyond what the reader will find explicitly defended in the Contrat social: in particular, a 'metaphysical' account of the general will and a discussion of the role of the state in the elaboration and discernment of this will.⁸²

3.2 Definition

What is the 'general will'? But before answering this question, since the notion of the 'will' has been understood

⁸¹ For a discussion of some of these criticisms, see my "Bernard Bosanquet and the Development of Rousseau's Idea of the General Will" in Man and Nature - L'Homme et la Nature, X (1991), pp. 179-197, pp. 184-187.

⁸² As we shall see below, Bosanquet turns to Hegel for his explanation of how this will is manifest in law and in social institutions. Bosanquet accepts Hegel's criticisms of Rousseau--specifically that (i) while Rousseau formally distinguishes the general will from the will of all, in the end they are conflated and that, (ii) Rousseau fails to see that the universal Will is identical to the will of the State in law and in actually existing institutions--though he adds his own. Despite these criticisms, however, Bosanquet saw no irreconcilable conflict between Hegel and Rousseau.

Bosanquet claims that, although Hegel criticizes Rousseau's account of the general will (der gemeinschaftliche Wille), sec. 258 (see Hegel's Philosophy of Right, [tr. Knox], p. 157), he uses an analogous notion that he calls, alternately, "the absolute Will" (sec. 301), "the substantial Will" (der substantielle Wille) (sec. 258), "the universal Will" (der allgemeine Wille) and "Reason--the Will in itself and for itself" (der an und für sich seiende Wille, die Vernunft) (secs. 258 and 301). (For a discussion of the relation between Bosanquet, Rousseau and Hegel on this point, see Nicholson, British Idealists, pp. 199-205.)

in a number of different ways, it may be useful to consider what Bosanquet means by it.

In ordinary discourse, an 'act of the will' is taken to be what precedes and, ultimately, causes an individual to do a voluntary action. In a more technical philosophical sense (associated with 'scholasticism'), the 'will' is understood as a 'rational faculty of the human soul' that brings it about that one does something. These notions have been the object of much criticism, however. In a celebrated discussion of "The Will," Gilbert Ryle charges that acts of the will or 'volitions' are difficult to talk about, can never be witnessed, involve links between minds and bodies "where no links can be", and collapse into conceptual incoherence.⁸³

Bosanquet is also critical of these preceding ways in which the will has been described. He denies that it is an immaterial faculty of the individual, for this "breaks up the mental system into disconnected parts",⁸⁴ and he rejects the view that it is "the last appetite before a decision" (i.e., that it is the final 'desire' that 'tips the balance').

⁸³ See Gilbert Ryle, The Concept of Mind, (Harmondsworth: Penguin Books, 1963), Chapter 3. Ryle argues, for example, that, since an act of the will is by definition free (i.e., voluntary), one must have decided (i.e., made an act of will) to make that act of will. But then this volition, to be free, must have itself been the product of a prior volition. In short, "if my volition to [do X]... is voluntary,... then it must issue from a prior volition and that from another ad infinitum (op. cit., pp. 55-56).

⁸⁴ See his Psychology, p. 75.

Instead, Bosanquet's notion of the will reflects his view of the nature of the 'self'--which, as we have seen, is one of a "mental system" or "set of ideas" which is more than the physical individual and reflects one's relations with others.⁸⁵ A 'volition', then, is a persistent idea, that is reinforced and 'brought into effect' because of the participation of the self or personality (including, for example, one's purposes, associations and feelings). It is not the product of any faculty, nor (in any important way) of any desire; it is, rather, to be understood in terms of those ideas or groups of ideas in a human mind that guide one's attention and tend to pass into action (see RGW 311). Thus Bosanquet says, "[t]his mental system, with its dominant ideas in relation to external action, is the individual will" (RGW 311).

Given this understanding of how Bosanquet understands the notion of the 'will', we can return to the question under discussion--namely, 'What is the general will?' Bosanquet would argue that the general will is neither a "legal fiction" nor an "abbreviation" used to describe a series of empirical entities,⁸⁶ nor is it merely a way of looking at, or describ-

⁸⁵ Bosanquet cites the view of William James that "the loss of a man's friend, or house, or profession, the loss of anything with which he is identified, is undoubtedly a diminution of the self, since it makes him other than he was, and less than he was" (see Psychology, pp. 89-90).

⁸⁶ See James I. MacAdam, "What Rousseau Meant by the General Will", in Howard R. Cell and James I. MacAdam, (ed.) Rousseau's Response to Hobbes, (New York: Peter Lang, 1988), p. 145. (This chapter originally appeared as an article in Dialogue, V, (1966-1967), pp. 498-515.)

ing metaphorically, certain phenomena. In fact, he believes that the general will must have more than a formal and conventional or artificial character if, for example, it is to be used to justify the use of force. Still, he recognizes that there have been problems in establishing its existence. He acknowledges, for example, that "[w]hat Rousseau means to indicate by his expression, 'the General Will,' may seem to many persons... to have no actual existence" (PTS 99)⁸⁷ and that Rousseau is far from complete in his description of it. Still, Bosanquet gives an account of how one arrives at this will that, he says, reflects "a process of interpretation that Rousseau ascribes to the legislator" (PTS 112)--though he says that it is only implied in what Rousseau provides.

Bosanquet begins by considering the nature of the individual. The individual will, recall, is "a mental system" whose parts--"ideas or groups of ideas"--are "connected in various degrees, and more or less subordinated to some dominant ideas which, as a rule, dictate the place and importance of the others" (i.e., the other ideas that one has) (RGW 311). Now, suppose one were to ask what his or her will is. As we saw in Chapter 2, "[i]n order to obtain a full statement of what we will, what we want at any moment must at least be corrected and amended by what we want at all other

⁸⁷ Some recent commentators suggest just this. They claim that any other reading of the concept of the general will or of the allied notion of the "moral personality of the state" simply goes beyond Rousseau's intention. (See MacAdam, pp. 145-146.)

moments." But the process does not stop there. Bosanquet continues: "this cannot be done without also correcting and amending it so as to harmonise it with what others want, which involves an application of the same process to them" (PTS 111). In other words, if we wish to arrive at an accurate statement of what our will is, Bosanquet believes that we must be concerned not only with what we wish at some particular moment, but also with all of the other wants, purposes, associations and feelings that we have (or might have) given all of the knowledge available. The result is what Bosanquet calls our 'real will'.

This will, however, is now so developed that one may not be aware of it in "momentary consciousness" (PTS 112) or as being his or her own will (PTS 110). Indeed, he says, it would be impossible for a person to arrive at a complete formulation of his or her will "as such". Still, there is no contradiction in saying that people may not know what their 'real will' is, or that one's will may change, based on one's knowledge of the facts and of the effects of one's will on other persons. Thus, Bosanquet would not be embarrassed by the possibility that an individual not be aware of what he or she wills--of what his or her 'real will' may be.

Here we have, then, the distinction between what Bosanquet calls our 'actual' or private will and our 'real will'. What Bosanquet is arguing is that the 'actual will' cannot be a complete statement of what that person's will is,

since--to be more than one's wants and desires--it must take into account more than what one thinks at a particular moment, and, thus, involves a process of "criticism" and adjustment. As one's desires and wants are weighed and adjusted in terms of one's other wants and wishes--as they come into coherence or rational order--we would say that we have a better idea of what one really wills.⁸⁸

Now recall the charge that, if we take this process seriously, what we arrive at is not a 'real will' but an "ideal" or "hypothetical" will--that is, what one would will if (ex hypothesi) one were rational and completely informed. Moreover, these critics insist, this "ideal will", simply is not one's will. At best, it is a formulation of what one's will should be. Therefore, they conclude, it is inappropriate to claim that Bosanquet's 'real will' says anything at all about what one's will is. The only 'real will' here, the critic will maintain, is what Bosanquet has called one's 'actual will'.

It might seem that the dispute is largely terminological--what Bosanquet calls 'real', Hobhouse, Ginsberg, Broad and others call "ideal". But there is more at stake here than this. Recall Bosanquet's teleological understanding of the nature of a thing--that one's nature is what it has in itself

⁸⁸ A similar sketch of Bosanquet's account of the real and general will is to be found in Nicholson (British Idealists, pp. 206-207), though the teleological dimension is, arguably, not as strongly emphasized.

to become, not merely what it is at some particular moment. Thus, to say what the nature or the 'reality' of the will is, entails knowing what it would be as complete or fully developed.⁸⁹ Bosanquet's critics, of course, maintain that the 'real' is the 'actual'--simply what is. But, Bosanquet would object, first, that it is precisely because of the difficulties in identifying what an individual thing is, independently of its relation to others and of what it has been or can become, that he rejected the individualism of Bentham, Spencer and Mill. Second, if one's will is a 'system of ideas working themselves out into a consistent whole,' it makes no sense to talk about an 'ideal' one (so far as that suggests a will that does not exist). For these reasons, Bosanquet would insist that one should use the term 'real' to describe one's will 'writ large'. The difference here is not so much terminological as logical and ontological.

But how, then, is the individual's 'real will' a 'general will'? Bosanquet would note that it is simply a corollary of his argument thus far. If my 'real will' is my will completely informed and as rational as possible, then this involves referring to what it is that is willed by all other wills. The general will is the result--i.e., the "criticism" (PTS 111) or the interpretation of all the particular wills of all the

⁸⁹ Bosanquet says that this difference between one's "real will" and one's actual will was even tacitly acknowledged in Mill, where Mill wrote of it not being one's will to sell oneself into slavery or to go over a bridge that had collapsed (PTS 90).

particular individuals in a social group.⁹⁰ Thus, one's 'real will' is, Bosanquet would say, the 'general will'.⁹¹

As an illustration of how one moves from a 'particular will' to the 'general will', Bosanquet refers to the development of a scientific theory (PTS 136-137). The individual will is like a particular observation. Outside of a context, a single observation has little, if any, significance. To understand what it means, it must be clarified and developed and its implications examined. One must, then, add conditions and make certain qualifications in order to see its relation to our knowledge in general. This process of "adjustment" or "criticism", applied to all the particular observations, produces the theory or the system, and it is in this way that one can say that a theory 'contains' all of the particular observations. Similarly, one can see the general will as

⁹⁰ Sabine would object that this ignores that, while two "incompatible" purposes of the same person still fall within the "span of a single consciousness", "another person's purpose does not fall within that consciousness at all" (Sabine, "Real Will," p. 643). Presumably, Bosanquet's reply (which he gave in RGW in 1893 and, again, in NGW in 1920) would be that this is not attentive enough to actual experience--that each mind "bears quite a definite reference to the others outside itself" (RGW 313). Thus, Bosanquet asks, rhetorically, "How can Smith will to go to town by train without willing the existence of the railway, the truth, that is, of thousands of propositions, the objects of wills other than his own, which must be true if it is to be possible for him to go to town by train?" (NGW 78)

⁹¹ Nicholson suggests that this is because the general will is society's "will", that we are social beings and, thus, we see society's will to be our "real will" (Nicholson, British Idealists, p. 208). But this inverts the logic of Bosanquet's approach.

containing all the wills of particular persons, and yet as also expressing, in a more complete way, each of them.

What does it mean, then, to say that the general will is 'general'? Since this has its source in the wills of all the members of a social group, it is general in origin.⁹² It is also general in form because, first, as the interpretation and the maximization of a particular will, it "transcends" the individual (PTS 100). Moreover, since the same result will be arrived at by starting from any person within that group and by using the same procedure, the general will in fact "transcends" every member of that group. And, given these features, this will is also 'general' in the sense that it is the same for each member. Furthermore, this will is general in content since it summarizes and expresses the wills of all the individuals in society, corrected and modified by reason and by all the information available.

Most importantly, however, the general will is general because it has an object which surpasses any private or particular end or goal (PTS 104).⁹³ Bosanquet calls this "the common good"--which, as we have seen, is what he also calls "the best life"--and he says that the general will aims at

⁹² Bosanquet is not saying just that this gives us the same "raw data" from which we can construct the general will, but that there is a logical continuum from the individual will to the development of the general will.

⁹³ Thus, as in Rousseau, a private matter is, as such, incapable of being the object of an act of the general will.

this end "directly".⁹⁴ It is this goal or this common end which unites the wills of the various individuals and "ipso facto" generalizes the will (PTS 259). Without this common good, then, there can be no general will. Indeed, were the object here not a 'common good', but simply a sum of private interests of individuals, we would not have a 'general will' but what Bosanquet, after Rousseau, calls "the Will of All".

But just as this "best life" is not yet entirely realized, neither is the general will; it is always in the process of development (see RGW 314), for it reflects the world as it is. As facts change, and as people change, this will 'progresses'. Still, because the general will has, as its 'end', the "best life", Bosanquet says that it 'directs us to our end'--that is, it is morally binding on, and applies equally to, all those from whom it has its source.

One might say that, this far, there is no obvious conflict with the account of the general will given by Rousseau--but Bosanquet clearly does go beyond it. As noted earlier, according to Bosanquet, to be a person is not only to be a material being, but to be a mind in a community of minds. In fact, as we saw in the previous discussion on the concept of 'position', when Bosanquet speaks of "society", he understands this to involve a "mutual recognition" and interaction of minds or wills which may be said to form a system (NGW 77).

⁹⁴ It is, in this sense, "toujours droite". (On the meaning of this term, see PTS 4th ed., p. 101, n. 2).

But the possibility of even such "mutual recognition" requires the existence of certain dominant ideas--such as that of a common good--in terms of which individuals are able to recognize and establish relations with one another. This is what Bosanquet says the 'general will' is. Thus, he describes it as "the whole working system of dominant ideas" in a society (RGW 314).

The general will is, then, something "real" and "rational" (PTS 139) that exists at the level of mind or spirit. This "system of dominant ideas" is not the product of a social pact, yet neither is it temporally prior to social life. It can be said to exist through the extension into the external world of the same logical principles which Bosanquet argues are essential to a coherent inner life or individual will.⁹⁵ According to Bosanquet, this general will exists wherever there is some common experience and cooperation (PTS xxix; IPR 334)⁹⁶ among persons--that is, where we see the same

⁹⁵ The "dominant ideas of persons" constitute a "machine whose parts play into one another," and "the more important workings of the machine, and especially the direction of its readjustment, are the most familiar expression of the general will" (RGW 313-314).

⁹⁶ Thus, Bosanquet writes that "[w]here two or three are gathered together with any degree of common experience and co-operation, there is pro tanto a general will" (PTS xxix). This is almost identical to his allusion to Matthew 18:20, made more than 20 years earlier, where he remarked that "[w]hen two or three are gathered together, co-operating for a social good, there is the Divine Spirit in the midst of them" (KG 121).

"dominant or organizing ideas" (RGW 312-313) or, as noted earlier, the same common good.

It may appear that there are two accounts of the general will at work here: one that refers to the set of all individual wants and wills, harmonized and generalized (which has led a number of critics to note that one cannot have a general will any more than one can have a general perception); the other refers to the set of dominant ideas that provide a backdrop for moral activity and action in common with others. But Bosanquet would argue that these two ways of understanding the general will are consistent and, moreover, avoid the criticism suggested.

Consider Bosanquet's explanation of how "dominant ideas" exist. They can be present only in 'mind' and exist only where there is some minimal common or shared experience--hence Bosanquet's allusion to Matthew's gospel, noted above. But there is no question of a temporal priority between these dominant ideas and this shared experience. These ideas come to exist as individuals act together and, to the extent that they are shared, they are general and reflect some general content in mind. Moreover, because these ideas are not only shared, but dominant, they make continued activity together possible. Thus, they constitute a principle of unity and "permeate" social life. But these ideas can change, because our experience changes and because, Bosanquet believes, the ideas we have gradually become more coherent with one another. Now, it

is precisely the same process of "adjustment" or "criticism" that Bosanquet is describing in his account of the movement from the 'actual' to the 'general' will.⁹⁷ By saying that the general will is the 'product' of the will, we should not think that someone, first, has all of her ideas become consistent and, later, attempts to bring them into coherence with those of others. A necessary condition of the former is contact with others--that is, with the articulation and development of a set of shared ideas. What is at work here is a process of coherence throughout the individual units of a system. It is obvious, then, that for Bosanquet, there is no 'general willing' taking place here, any more than there could be 'general perceiving'.

It is clear from the preceding discussion that the notion of 'will' that Bosanquet is using when talking about the general will is not like that of the will (qua 'voluntas') of the individual. Why, then, does he call the general will a 'will' at all?

One likely reason is that Bosanquet saw this as performing the same function as Rousseau's 'general will'--sc., as accounting for the legitimacy of social institutions, moral and political obligation, and the functions, duties and rights

⁹⁷ One may also think of the general opinion predicated of those present at a meeting. This opinion exists--although not necessarily in an explicit or concrete way--, summarizes all that has been expressed, and can continue to evolve. The general will is general in the sense that it describes the stage attained in the development of the wills and of the consciousness of individuals.

of the individual within the state--on the basis of something in individual consciousness. Moreover, like Rousseau, Bosanquet holds that what is authoritative over a person is his or her will.⁹⁸ Thus, anything that has an authoritative character might plausibly also be called a 'will'.⁹⁹ Finally, what Bosanquet designates by the term 'general will' serves as a principle of action, like the command of a voluntas. To call what Bosanquet describes as "dominant ideas", the 'general will', is not, then, without some justification.

This description of the nature of the general will allows us to understand what Bosanquet means when he says that it "aims at the public welfare" (PTS 101, n. 2) or at a "common interest" (PTS 104), or when he talks about the general will 'acting' (PTS 104).¹⁰⁰ Strictly speaking, the general will does not 'aim' and does not 'act'. One might, admittedly, say

⁹⁸ Recall Rousseau's comment that "nul ne peut... l'assujétir sans son aveu" (Contrat social, Book IV, chapter 2), and compare this with Bosanquet's comment that the only legitimate authority over an individual is that individual him or herself (PTS 134).

⁹⁹ Indeed, Bosanquet has been criticized for this emphasis on 'will'. According to Sabine, Bosanquet's view that, in obeying the law I obey only myself, is a hold over from the individualist approach to the nature of law, and he concludes that Bosanquet "never wholly escaped from problems and conceptions forced on him by that older social philosophy which he set himself to refute" (Sabine, "Real Will," p. 650).

¹⁰⁰ For a much more guarded defense of the possibility of a general will, basing the notion of the 'general will' of a state on its relation to its 'acts', see Bernard Mayo's "Is there a Case for the General Will?", in Philosophy, Politics and Society, first series, (ed. Peter Laslett), (New York: Macmillan, 1956), pp. 92-97.

that it 'acts' when, as a set of dominant ideas, it is in a person and that person acts on it or, again, it may be said to aim at a common good when these dominant ideas are centred on such a good--or possibly (given Bosanquet's teleology) when such a good is understood as a 'final cause'. But the general will does not 'will' as human individuals will, and questions of how it, or what it, wills--which have led critics to suggest that there must be a hypostatized common self which has this general will--are simply based on a misunderstanding of what it is.¹⁰¹

3.3 The General Will, the Individual and Society

Given this description of the general will; one might well ask in what sense--and where--it exists. Bosanquet finds it difficult to answer these questions without attaching qualifiers. For example, he refers to the general will as "the will of the whole society 'as such'" (PTS 99); he also says

¹⁰¹ As an illustration, consider the instance of a "dominant idea" that Bosanquet would claim to exist in most modern states--the idea of "freedom". One might say that, in these societies, "freedom" is the object of the general will. Given the preceding account, it is clear that the general will does not "will" or aim at "freedom" as an individual might "will" that he or she do a good deed. Rather, what is meant is that, in these societies, the idea of "freedom" has a guiding role and is "imperative" on their members. "Dominant ideas", then, serve as "ideal forces" (PTS 274), and one may speak of the imperative character of such ideas without claiming that they issue from some "corporate self".

that it is implicit in the wills of individuals "in so far as they aim at the common good" (PTS 99).¹⁰²

Perhaps the major reason for this difficulty is that Bosanquet says that the general will--"the whole working system of dominant ideas"--exists in the same place in which ideas, in general, are said to exist, namely, on the level of mind. But, as we have seen from the discussion of 'individuality', this will involve not only human individuals, but groups that exhibit a unity of function or of purpose.

To show how and where the general will exists, Bosanquet provides a comparison, in The Philosophical Theory of the State, between an army and a crowd. An army may be described, for example, as a multitude of human beings living and functioning under the influence of certain principles or ideas. These ideas are reflected not only in the military hierarchy, but also in the ongoing activity, the experiences, the training and the habit of obedience of each soldier (PTS 150). Moreover, the relationships that exist among the soldiers are not casual or accidental, but are determined by "the general nature of a systematic group to which they belong" (PTS 151)--that is, by common experience and the ideas dominant in that group. Thus, even though each soldier may have a distinctive function, may perform different tasks, and may not be aware in what way others contribute, there are

¹⁰² For a discussion of some of the problems associated with this way of thinking, see Carritt, pp. 154-155.

"dominant ideas" at work here that express and determine the relations of individuals to one another and, consequently, provide the foundation for a coordination and a division of labour as well as concerted action.

In a crowd--of people going to a county fair, for example--these principles do not exist. Individuals may have the same 'goal', but their association in that particular group is virtually accidental: there is nothing significant in the nature of their association or in their experiences which serves to unite them. There is here "no oneness of life or principle" (PTS 106), and the "level of intelligence and responsibility [in the crowd] will, as a rule, be extraordinarily low" (PTS 150). Reasoning, criticism and coordinated, collective action are, practically speaking, out of the question (PTS 150). Bosanquet does not, of course, mean to deny the existence of some common sentiment or idea underlying their activity, but would suggest that what there is does not say anything important about the parts.¹⁰³ If the crowd disperses, for example, the individuals involved "will not be seriously affected by the separation" (PTS 148).

The difference between these two examples shows, Bosanquet believes, that for there to be activity and life in

¹⁰³ Bosanquet would describe such a crowd as, at best "an irrational form of the general will" (RGW 313), although he acknowledges that "it is definitely general insofar as it is owing to the operation of the same sentiment in all the minds at once" (RGW 313). See also PTS 148 on the necessity of a general will for the existence of any unity whatever in a group.

common and for common goals to be attained, that community must be "pervaded by a single mind, uttering itself consistently though differently in the life and action of every member of the community" (PTS 6). Bosanquet says that the general will is this mind--that it is "the whole assemblage of individual minds, considered as a working system, with parts corresponding to one another, and producing as a result a certain life for all these parts themselves" (RGW 314)--or, alternately put, that it is the will in this group to realize together its good, and which both expresses and makes possible a unified and common life. For this reason, Bosanquet describes this mind--the system of dominant ideas at work in a social group or the general will--as "the will of the whole society 'as such'".

This tells us something of 'where' the general will exists. But it should be obvious, however, that even though Bosanquet calls this will 'the will of society', and even though he speaks of society as a "moral person" (PTS 89, 96, 145), he does not mean that there is some independent entity designated by the term 'society' that has this will. The general will exists where the dominant ideas of any society exist--namely, "only in the minds of the human individuals who make up the community" (RGW 309). It is not, nor was it ever claimed by Bosanquet to be, a 'faculty' or property of a 'collective self'.

Yet Bosanquet also notes that the general will is implicit in the individual's will. He says, for example, that this general will is "rooted in" one's particular will (PTS 139), and that one's narrow, arbitrary and contradictory will implies this true, real, and rational will (PTS 100). In fact, given Bosanquet's description of this will, there is an unbroken continuum from the individual will considered as a "mental system", through its involving others, to the formulation of the general will. And it is just this 'will' that enables the individual human mind to "attain its full and proper life" (PTS 6). Still, Bosanquet acknowledges that that individual may not--indeed, could not--be aware of everything that this will might imply (PTS 112; RGW 316), and this is consistent with his view of our lack of precise knowledge of the details of the best life.

In short, then, the general will exists as the imperative or dominant ideas in individuals and in social groups. It is this that Bosanquet means when he says that the general will exists on the level of mind. To this extent, it is clear that Bosanquet's account of the nature of the general will goes beyond, and is more explicitly metaphysical than, that of Rousseau. But, in elaborating the theory of the general will in this way, Bosanquet would maintain that he has been able to avoid the problems associated with the Rousseauist account concerning the existence of the general will.

3.4 The Discernment of the General Will

The next challenge that Bosanquet must meet, in elaborating his account of the general will, is to explain how one can know what, specifically, it is that the general will 'wills' or, what is the same, what the "dominant ideas" of a social group are. According to Rousseau, one method that will enable us to ascertain what the general will is, is one where all citizens "vote as independent units, not organizing themselves in groups or adjusting their views by private communication" (RGW 309).¹⁰⁴ The greater the majority of votes favouring one option, "the more the general will is dominant".¹⁰⁵ Bosanquet's response is that this is precisely "the wrong method for eliminating private interests and getting at the general will" (RGW 317). He argues that this method does not allow one to distinguish between the product of a variety of private motives of a number of people for a certain good--the Will of All--and a statement of the general will. Even if what is left over after employing Rousseau's method were an accurate expression of a common will at one point in time, the "general character" of this will is still, Bosanquet says, just "a coincidence or matter of chance" (RGW 309). The reason

¹⁰⁴ Some scholars argue that, in the end, Rousseau abandons this method, leaving it to the "legislator" to discern the general will. Recall, however, that it is by appealing to just this alternative model, that Bosanquet provides his account of the process by which the general will is arrived at.

¹⁰⁵ Contrat social, Book IV, chapter 2.

why Rousseau fails here, Bosanquet believes, is that he has not entirely broken free of the assumptions about the nature of the individual and of the state that characterized the individualism he has struggled to avoid (see PTS 86).

But if one cannot discern the general will by Rousseau's method, then how is one to do so? Here Bosanquet would point to social institutions. He recognized that Rousseau feared allowing groups or associations in the state to participate in determining the general will because he thought that each group would have its own interest separate from the common interest. But this concern to avoid sectarian conflict in the body politic, Bosanquet suggests, led Rousseau to overlook that these institutions are not only important in one's coming to awareness of the general will, but are, in fact, manifestations of this will (IPR 335; PTS 114-115). And for an account of the contribution of social institutions in providing means by which to ascertain the general will, Bosanquet drew on Hegel's discussion of Sittlichkeit (Ethical Life) in The Philosophy of Right.¹⁰⁶

Following Hegel, Bosanquet argues that the state and its related institutions (e.g., family, neighbourhood, social class, etc.) are the external manifestations of the system of dominant ideas in society. Recall Bosanquet's remark, cited earlier in this Chapter (section 2.2), that "minds and society

¹⁰⁶ See Hegel's Philosophy of Right, (tr. T.M. Knox), (Oxford: Clarendon Press, 1945), pp. 105-223.

are really the same fabric regarded from different points of view... Every social group is the external aspect of a set of corresponding mental systems in individual minds" (PTS 158-159). As expressions of the general will, these institutions reflect the content of this will and "aim" at the realisation of the common good. As a result, they provide a concrete indication of the requirements of morality, and serve as mechanisms by which the activity of individuals (and of society as a whole) is protected and directed towards the common good.

It is not necessary--indeed, Bosanquet would say it is not possible, given both the dynamic character of, and the level of inconsistency in, experience--that laws and social institutions perfectly mirror the general will. Nevertheless, the dominant ideas expressed in these institutions is still "more complete than the explicit ideas which, at any given instant, move any individual mind in volition" (PTS 115). Social institutions function, so to speak, as "the standing interpretation of all the private wills" that compose them (PTS 115), and individuals may (Rousseau's suspicions of associations in the state notwithstanding) refer to them in order to have some indication of what the general will demands. Of course, no one ought to mistake the 'will' of any one of these institutions for the general will. Bosanquet recognizes, as well, the threat to true sovereignty, foreseen by Rousseau, that would occur if a particular will (of an

individual or of a group), rather than the general will, should become dominant (IPR 335, note 2). In wishing to avoid these consequences, however, it does not follow that one need deny altogether the role of such institutions as reflections or expressions of the general will.

One must not forget, moreover, that discussion and social interchange are natural to social life and that it is through this give-and-take that ideas dominant in society gradually become recognized as such. Yet not only does this process allow people to become more conscious of what the general will is but, as these ideas are recognized as 'imperatives', it leads to the establishment of social institutions and practices which, consequently, better reflect the general will. Activity in formal and informal associations, and in social institutions and social practices, besides being a necessary part of life in society, allows for the discernment of the general will.

Bosanquet concludes, then, that the best indication of the general will in a society--though it is by no means infallible--is provided by the characteristics of, and the forces at work in, social institutions. In the end, the question for Bosanquet is not so much whether social institutions and society as a whole serve as indicators of the general will but, rather, how far they do.

3.5 The General Will as Authoritative

Since some of the problems associated with the notion of the general will have now been addressed, one is better placed to understand why Bosanquet employed it in the first place--that is, why he believed that it could help to explain the authoritative character of the "best life", moral and political obligation, the nature of human freedom and, ultimately, the existence of rights.

Admittedly, in light of what has been said above (in section 1 of this chapter) concerning Bosanquet's explanation of the moral authority of the "best life", further argument may seem unnecessary. Still, Bosanquet's discussion here does not duplicate his earlier remarks. In providing an account of the general will, Bosanquet clarifies the relation between this will and the 'common good'. Specifically, it is that "[t]he General Will seems to be... the ineradicable impulse of an intelligent being to a good extending beyond itself, in as far as that good takes the form of a common good" (PTS 102). Thus, what we have in his elaboration of the theory of the general will are additional arguments on how this 'end' is binding on us, without it being seen as an end 'external' or foreign to our natures.

How, then, is the general will itself authoritative? Recall that, like Rousseau, Bosanquet maintains that only the will of the individual has a moral authority over his or her actions (PTS 134). Since the general will is, putatively, the

'real will' of the individual--not to mention that it reflects knowledge and rationality greater than that possessed by any particular individual--Bosanquet argues, as we have seen, that it can make a legitimate and "imperative" (PTS lvi) claim on that person. Given that the same argument can also be made for every other individual, the general will--by definition, the same will--is imperative on everyone. For this reason, it constitutes the norm and the criterion of morality and, as such, functions as a source of moral guidance for the individual (PTS 208). Nevertheless, because it is still each individual's will, it does not, Bosanquet thinks, detract from one's autonomy.¹⁰⁷ It is only because there is a general will, then, that one can possibly engage in moral action and, hence, have a claim to the moral consideration due a person.

From here it is but a simple step to understanding Bosanquet's view of the role of the general will in establishing the legitimacy of the state and in political obligation. Since the general will has moral authority over an individual's actions, to the extent that the state represents the general will, it also has this authority. As Bosanquet

¹⁰⁷ Richard Bellamy notes that the same approach is evident in T.H. Green. He writes that, here, the general will is "not the imposition of a 'real' self upon an 'empirical' self, but forms part of the process of critical evaluation which we all employ when seeking to choose between possible courses of action... It is not imposed upon the individual, but emerges out of common human practices" (See his "T.H. Green, J.S. Mill, and Isaiah Berlin on the Nature of Liberty and Liberalism," in Jurisprudence: Cambridge Essays, (ed. H. Gross and R. Harrison), [Oxford: Clarendon Press, 1992], pp. 257-285, at p. 275.)

says, "[a]ny system of institutions which represents to us, on the whole, the conditions essential to affirming such a will... has an imperative claim upon our loyalty" (PTS 139). The general will serves, then, as the basis of the authority of the state and, because the state reflects this will, it can legitimately demand or require the individual's obedience. Indeed, given its relation to the general will, Bosanquet believes that the state may, legitimately, permit "with the moral approval of all what the explicit theory of scarcely one will morally justify".¹⁰⁸ The individual must obey, even if these demands are incompatible with that person's particular will or with the will of all (i.e., public opinion), for it is the general will, reflected in social institutions such as the state, that alone is authoritative.

One might note here that there seems to be little difference between Bosanquet and Rousseau's accounts of the basis of moral and political obligation, and it is no surprise, then, that Bosanquet comes to essentially the same conclusion as Rousseau on the nature of freedom. Like Rousseau, Bosanquet denies that the general will or the state

¹⁰⁸ See FS 274, quoting the first edition of Bradley's Ethical Studies, p. 166 (see ES, 2nd ed., p. 184) (though see ES 177, where Bradley writes that individuals "must in some way be aware of themselves as willing this content").

Bosanquet says that "if we all understood our own active ideas completely and rightly in relation to those of others, then we should have the whole general will in our explicit consciousness" (RGW 316). Of course, "no individual can ever have this" (ibid; see PTS 112), and so he may never fully understand why what he is being forced to do is really the accomplishment of his freedom.

limits one's freedom; it is, rather, "the embodiment of our liberty" (PTS 139). Because of the relation between the individual will and the general will and between the general will and the state, Rousseau sees "moral freedom" as acquired only in the civil state,¹⁰⁹ and Bosanquet insists that the state is "the main organ and condition of... liberty" (PTS 127). Indeed, both Bosanquet and Rousseau agree that the very concept of 'liberty' hinges on the existence of the general will. It is, for example, only by reference to this will that one can distinguish 'liberty' (where an individual is subject to the general will) from 'licence' (where one is subject only to one's own particular will).¹¹⁰ And, with this understanding of the nature of liberty and of the moral authority of the state, Bosanquet concludes with Rousseau that, when one's private will conflicts with the general will, that person can be forced by this general will to obey it--that is be "forced to be free" (PTS 90).¹¹¹

3.6 Recapitulation

Bosanquet's account of the general will is, as he acknowledged himself, closely related to that of Rousseau, and

¹⁰⁹ Contrat social, Book I, chapter 8.

¹¹⁰ See Contrat social, Book I, chapter 8: "il faut bien distinguer la liberté naturelle qui n'a pour bornes que les forces de l'individu, de la liberté civile qui est limitée par la volonté générale".

¹¹¹ See here Contrat social, Book I, chapter 7.

there is no doubt of the intellectual debt that Bosanquet owed to him. Still, Bosanquet's account goes beyond that suggested by Rousseau in at least two important ways: first, he provided a metaphysical analysis of this will, expressing it in terms of what he called "dominant ideas" existing in a social group and its members and, second, via Hegel, he showed the importance of social institutions in the elaboration and discernment of this will.

When Bosanquet speaks of the general will, then, he is not referring to some entity that exists separately from and beyond human individuals. Moreover, although this 'will' is the 'rational product' of the development of individual wills, it exists not as a realized whole but, rather, as 'incomplete' both in individuals and in institutions and social life. It is 'in' each person and functions as a moral norm which is recognized as imperative, and yet it is also in the state as the 'spirit' that permeates the entire social order.

In this notion of the general will, Bosanquet found a principle of unity which pervades community life and which directs it toward its end. The general will also establishes and directs the state, grounds moral and civil liberty, expresses and determines relations between individuals and explains the moral and legal weight of rights. Moreover, given the concerns of this study, it is important to recognize that the arguments for the nature and function of the general will demonstrate the binding character of the moral 'end', in terms

of which rights are ascribed to individuals, but also provide an account of the legitimacy of the state and of political obligation which--since the state provides the recognition and the ascription of rights--is essential not only to the legal character of rights, but to their very existence. (Still, while the importance of positions and claims to powers may be implied in the dominant ideas in a society, the general will does not itself 'act' to recognize or reconcile rights--though an understanding of what the general will 'wills' may suggest how this is possible. It is here that we are led to the necessary role of the state in Bosanquet's theory of rights.)

4. Summary

In the preceding chapter, we have examined three elements fundamental to Bosanquet's theory of rights: his teleology, his account of the nature and value of the individual, and his notion of the general will. Although Bosanquet adopts a teleological perspective, it is one that emphasizes 'completeness' and 'coherence', not one that focuses on 'ends' as distinct from 'means'. It is, then, neither the utilitarian teleology of Bentham and Mill, nor the evolutionary teleology of Spencer. Bosanquet's basic claim is that nature reflects this teleological view and, to understand what a thing is, we must understand it in terms of its 'end'.

In the political sphere, Bosanquet describes this end--the end in terms of which rights are determined--as "the best

life". While this is a common good, it is not just the 'good' of all or of the many, but a good that reflects the realization of the nature of all. Moreover, Bosanquet emphasizes the existence of this good as being more than any particular good, but which is still each individual's good. It is not merely what is good for the individual, but it is the good of the individual. And it is ultimately from this 'end' that rights have their moral weight and in terms of which rights are ascribed. Bosanquet's theory of rights is, as I have said, rooted in a teleological theory of the good.

Bosanquet's view of individuality reflects his teleology. He denies that 'individuality' is what differentiates one from others (as in Spencer), nor does he accept the view of individuals as 'atoms', the mere aggregation of which constitutes the basis of a social unit. According to Bosanquet, individuals have both a 'spiritual' and social character and, since the nature of a thing is defined in terms of its ends, the rights one has are determined in terms of what, specifically, one contributes to this end (i.e., in terms of one's 'positions'). But this does not entail that Bosanquet denies the reality, or the value of, the individual.

Bosanquet rejects the 'liberal individualist' view of the 'atomic' individual as a principle of value; neither individual life nor quantitative increase in that life is the 'good'. And even though Mill, for example, acknowledges the existence of a 'common good' and recognizes the value of social life,

Bosanquet would maintain that Mill's account remains 'individualistic'--for this 'common good' is, he believes, simply an aggregate of individual goods and 'society' is still something that is 'external' to the individual and merely a 'means' to this aggregate of individual goods.

Finally, Bosanquet's discussion of the general will helps the reader better to see the nature of, and the relationships between, the individual and the 'end'. The process by which one arrives at the 'general will' explains how the 'end' is an extension of the nature of the individual and, hence, that the 'individual' is not fundamentally separate from, or in opposition to, 'others'. Moreover, the notion of a 'general will' enables Bosanquet to explain further how this 'end' is authoritative--not simply because it is one's nature, but because it is one's will.

Most importantly for the purposes of this study, the general will is necessary for explaining political obligation and, ultimately, the ascription of rights. As a moral norm and as reflecting the common good, the general will is a mechanism of legitimation, and all social institutions--including the state--are thus dependent upon it. Because the state has this authority, it can recognize positions and their correlative rights. But the general will is also the individual's 'real will' and, hence, state action is not a priori opposed to individual autonomy. Bosanquet would argue that because liberal individualism leads to misunderstanding the actual

character of autonomy and ignores the possibility of a general will, it can, in the end, turn only to force as the basis of the state.

This is not to say that there may not remain some difficulties in Bosanquet's analysis of these concepts of 'end', 'individual' and 'general will'. Particularly, critics have challenged the relation that Bosanquet establishes between the general will and the state and how this relation affects the possibility of moral criticism of the state. These points clearly require further discussion and will be addressed in the next chapter. Upon examination, however, Bosanquet's teleology and his accounts of the individual and the common good seem to be less problematic than might first appear, and his account of the real or general will is plausible. While this in no way entails that all of Bosanquet's arguments are sound, this study has arguably, gone some way in clarifying some of the more controversial aspects of Bosanquet's theory of rights.

But more needs to be said before we have a complete account of this theory--specifically, concerning 'society' and 'the state'. Indeed, as we have seen, the discussion of the general will leads naturally to a consideration of them. It is to these two central elements of Bosanquet's social ontology that this study will now turn.

CHAPTER 4

BOSANQUET'S SOCIAL ONTOLOGY OF RIGHTS II: SOCIETY AND THE STATE

Bosanquet's account of society, social institutions and the state is central to his analysis of rights. As outlined in Chapter 2, rights must be recognized, and this recognition must be carried out by the state. Again, Bosanquet has spoken of the state as having as its "aim" the "system of rights", and that the "maintenance of rights" provides, in a sense, a limit on the state (PTS 119; PTS 213). Finally, he has argued that the accounts of rights found in the "theories of the first look," fail, because they rest on a mistaken view of the nature of law and the state and their relation to the individual.

Nevertheless, Bosanquet's remarks on the nature of the state and the various social institutions and the relationships among them are not always clear and, as noted in previous chapters, a number of questions and criticisms of his account have been raised. In his own time, commentators such

as L.T. Hobhouse¹, R.M. MacIver², G.D.H. Cole³, C.E.M. Joad⁴ and Harold Laski⁵, argued that the analysis provided by Bosanquet was vague, ambiguous, inconsistent and dangerous. If the issues they raised are left unanswered or if the challenges they pose remain unmet, it is obvious that Bosanquet's theory of rights will be difficult to sustain.

In light of the discussion in Chapters 1 and 2, three sets of criticisms can be made of Bosanquet's account of society and the state. A first set of objections concerns Bosanquet's characterization of the nature and role of the state. To begin with, recall that Bosanquet says that the state is limited in what it can do in contributing to the

¹ Leonard T. Hobhouse, The Metaphysical Theory of the State, (London: Allen and Unwin, 1917).

² R.M. MacIver, "Society and State," Philosophical Review, XX (1911), pp. 30-45; The Modern State, (Oxford, 1926), especially pp. 3-45; 423-486; and Community: A Sociological Study (New York: Macmillan, 1917), especially Appendix A, "The Individual, the Association, and the Community", pp. 421-425 and Appendix B, "A Criticism of the Neo-Hegelian Identification of 'Society' and 'State'," pp. 425-433.

³ G.D.H. Cole, "Loyalties," in Proceedings of the Aristotelian Society, XXVI (1925-6), pp. 151-170, especially p. 152.

⁴ C.E.M. Joad, Guide to the Philosophy of Morals and Politics, (London: Victor Gollancz, 1947) and Introduction to Modern Political Theory, (Oxford: Clarendon Press, 1924).

⁵ For example, Studies in the Problem of Sovereignty, (New Haven: Yale University Press, 1917), Authority in the Modern State, (New Haven: Yale University Press, 1919), Liberty in the Modern State, (London: Faber and Faber, 1930), "Bosanquet's Theory of the General Will," Proceedings of the Aristotelian Society, n.s. supp. vol. VIII (1928), pp. 45-61, and "The Pluralistic State," in Philosophical Review, XXVIII (1919), pp. 562-575.

'end'--for example, that it can intervene in social life only when it allows for the possibility of an important good that otherwise could not occur. But one might object that this is simply false: the state often does intervene where it ought not, and it does not always recognize the rights it should. The only reason why Bosanquet might think otherwise, the critic will say, is because there is an ambiguity underlying the concept of the state: it confuses what a state ought to be with what it is. Thus, G.D.H. Cole and Stefan Collini⁶ argue that Bosanquet shifts--consciously or unconsciously--between two different pictures of the state: that of the state as a set of existing institutions and that of the state as the paradigm or ideal of what civil authority should be like.

Some have found here a trace of the Hegelian view of the state as 'ideal' as distinct from the state as 'actual'.⁷ And even at the purely descriptive level, some maintain that Bosanquet does not provide a consistent account of the state.⁸ Frederick Harris, for example, claims to find four distinct

⁶ Stefan Collini, "Hobhouse, Bosanquet and the State: Philosophical Idealism and Political Argument in England 1880-1918," Past and Present, 72 (1976), pp. 86-111, p. 105. See also Cole, "Loyalties," pp. 153 and 164.

⁷ See Hobhouse, pp. 20-23. Hobhouse, recall, makes a similar criticism concerning Bosanquet's account of the "real", as distinct from the "actual", self. (See also Darrell Dexter Lacock, The Political Philosophy of Bernard Bosanquet. [Ph.D. thesis in philosophy, Yale University, 1967], p. 80.)

⁸ Collini, "Hobhouse, Bosanquet and State," p. 104. See also Hobhouse, pp. 22-23 and "Lecture V," pp. 96-133, and MacIver, Community, pp. 427 and 430-431.

but major conceptions of the state in Bosanquet's work.⁹ At the very least, however, these commentators seem to agree that the analysis of the state that Bosanquet provides is both normative and descriptive.¹⁰

But even if one were to ignore the alleged ambiguity in Bosanquet's description of the 'state', there are other problems as well. There is, critics add, no working example of the state as Bosanquet describes it.¹¹ Furthermore, the picture of the state that he provides is too abstract. Thus, Hobhouse objects to Bosanquet's account as being non-empirical¹² and Laski and Cole reject it as too "metaphysical."¹³

⁹ The Neo-Idealist Political Theory: Its Continuity with the British Tradition, (New York: King's Crown Press, 1944), Ph.D. dissertation, Columbia University, 1944, pp. 65ff. These 'definitions' are, he says, "society", "[ethical] idea", "real will" and "operative criticism". As we shall see (and as Harris himself recognizes), these descriptions of the state are compatible and, ultimately, reducible to a single concept.

¹⁰ See, in addition to the references above, Collini, "Hobhouse, Bosanquet and State," p. 110, and Walter Feinberg, A Comparative Study of the Social Philosophies of John Dewey and Bernard Bosanquet, (Ph.D. thesis in philosophy, Boston University, 1966), p. ii.

¹¹ Cole, "Loyalties," pp. 156, 159; Collini, "Hobhouse, Bosanquet and State," pp. 105-6; Hobhouse, p. 12.

¹² Hobhouse, p. 20.

¹³ Laski says that the idealist theory of the state "seems... to take too little thought for the categories of space and time" (Laski, "The Pluralistic State," p. 562). See also Cole, "Loyalties," p. 153.

The state is neither a 'mind',¹⁴ nor rooted in minds, nor a personality.¹⁵ Moreover, states are products of "law in action,"¹⁶ force¹⁷ and of historical accident, whereas the analysis given by Bosanquet is ahistorical.¹⁸ Others argue that Bosanquet's view is "too narrow"--that it ignores the role of economic life and the actual realities of practical politics.¹⁹ And many, such as Joad, Laski and MacIver, say that Bosanquet's (apparent) view that the state can properly

¹⁴ See Hobhouse, pp. 83-84; MacIver, Community, pp. 76-88; C.D. Broad, "The Notion of a General Will" in Mind XXVIII (1919), pp. 501-504.

¹⁵ Joad, Guide, especially pp. 737-739 and 757-758, and MacIver, Community, p. 423.

¹⁶ See Chapter 1, "Authority in the Modern State," in Laski, Authority, pp. 19-122, especially p. 42. See also MacIver, The Modern State, pp. 17-22.

¹⁷ Hobhouse, p. 103.

¹⁸ Laski says that the idealist theory of the state does not fit "the facts of history" (Laski, Liberty, p. 30.) See also Collini, "Hobhouse, Bosanquet and State," p. 106.

¹⁹ Peter Robbins, in The British Hegelians 1875-1925, (London, 1982) argues that Bosanquet ignores the moral and rational significance of economic life (p. 76). Andrew Vincent and Raymond Plant, in Philosophy, Politics and Citizenship: The Life and Thought of the British Idealists, (Oxford: Blackwell's, 1984) say that Bosanquet's view is "too narrow" because it ignores how the power of large-scale economic enterprise virtually excludes the possibility of individuals pursuing a policy of self-help (p. 121). They also argue that Bosanquet's account of the role of the state is inconsistent--that while its role is to be simply a 'hindrance to hindrances', Bosanquet "stepped over the line of intervention" by allowing for housing, wage and educational reform (op. cit., p. 107).

be compared to an organism²⁰ ignores important differences and is 'too metaphorical'. In short, even if it were not ambiguous, Bosanquet's account of the state would be inaccurate and defective.

A second set of objections concerns the issue of the legitimacy of the state and the extent of its authority. To begin with, Bosanquet's attempt to base the authority of the state on the general will is alleged not only to miscarry, but to have unacceptable consequences. For example, Laski and Hobhouse would argue that legitimacy does not in fact come from a 'general will', but from individuals or collectivities.²¹ To the extent that Bosanquet denies that this could or should be the case, then, he is placing himself altogether outside of the liberal tradition. But even were his account of the legitimacy of the state acceptable, because Bosanquet recognizes no concrete formulation of the general

²⁰ See Joad, Guide, pp. 759-765, Laski, Sovereignty, chapter 1, and Laski, Authority, p. 35, where Laski refers to the criticisms made by Bosanquet's fellow idealist, J.M.E. McTaggart (in "The Conception of Society as an Organism," in Studies in Hegelian Cosmology, 2nd ed. [Cambridge: Cambridge University Press, 1918]). See also MacIver, Community, pp. 72-76 and Hobhouse, pp. 68-69. For a critique of what is, perhaps, a more modern version of society as a "superindividual social organism"--that found in Michael Sandel's "communitarianism"--see Jeffrey Paul and Fred D. Miller, jr., "Communitarian and Liberal Theories of the Good," in Review of Metaphysics, 43 (1990) pp. 803-830. This critique concerns the attribution of agency to such an organism.

²¹ For Laski's argument for a policy of 'limited sovereignty' see his Sovereignty.

will outside of the state, the state cannot be subject to moral criticism or evaluation.²²

Moreover, as noted in Chapter 2, if Bosanquet is to be taken seriously in insisting that the state alone can recognize rights, then the state has absolute power over the individual and there is little (if any) point to the existence of rights. On such a view, no serious distinction can be maintained between the legitimate limitation of rights in times of urgency and violations of rights--and, thus, a state could easily violate, or refuse to recognize, rights without its citizens having any right to oppose it.

Furthermore, if there is "no standard by which the present may be criticized" except the present, then it seems that the state can do no wrong.²³ At minimum, then, Bosanquet's account is accused of encouraging a complacent attitude towards the activities of existing nation-states. Thus, as G.D.H. Cole puts it, given the idealist's tendency to find the ideal in the real, Bosanquet's theory seems to be

²² See Ernest Barker, Political Thought in England: 1848-1914, (London, 1915), pp. 77, 79. See also Joad, Guide, Chapter 18 ("Criticism of the Idealist Theory of the State").

²³ Collini, "Hobhouse, Bosanquet and State," p. 109; Acton, "Bosanquet," p. 349; Hobhouse, pp. 24-25 and 113. Recall Collini's comment, cited in Chapter 2, that such a view leads, in the international sphere, to a relativism concerning rights (op. cit., p. 101). It also "encourages us to believe that our own state expresses the general will adequately" (Nicholson, British Idealists, p. 212).

just a glorification of the status quo²⁴. And, since each state determines its own standard of order, international law would seem to be impossible. Indeed, some insist that this view implies, not only that war is "necessary",²⁵ but that whoever "wins is right".²⁶ To avoid these unacceptable consequences, Laski says, the state must be subject to independent moral scrutiny, and this means that "both individuals and groups must have the right and opportunity to judge the policies of the state".²⁷

Finally, although Bosanquet talks about the basis of the moral authority of the state in general, he provides no statement of how a particular state can be determined to be legitimate. This issue not only affects the question of

²⁴ Cole says it is "an exaltation of the actual 'State'." See Cole, "Loyalties," p. 164 and Laski, Sovereignty, p. 23.

²⁵ Joad says "it assumes the normal relations of States to one another is a relation of hostility" (Joad, Guide, p. 729). See also Hobhouse, p. 25.

²⁶ See L.T. Hobhouse, Democracy and Reaction, (London, 1904), p. 274, cited in A.M. McBriar, An Edwardian Mixed Doubles: The Bosanquets versus the Webbs; A Study in British Social Policy, (Oxford: Clarendon Press, 1987), p. 81. See also Collini, "Hobhouse, Bosanquet and State," p. 90 and E.F. Carritt, Morals and Politics: Theories of their Relation from Hobbes and Spinoza to Marx and Bosanquet, (Oxford, 1935), p. 150.

²⁷ Laski, as cited by George Sabine, "Review of [Laski's] Authority and the Modern State" in Philosophical Review, XXIX (1920), pp. 276-282, at p. 277. For the view that the state must be subject to individual scrutiny, see Laski, "The Pluralistic State," p. 572, Laski, Authority, pp. 45-46 and Laski, Liberty, pp. 74-76. Cf. Herbert A. Deane, The Political Ideas of Harold Laski, (New York: Columbia University Press), 1955, especially pp. 36-40. For a similar criticism of Bosanquet, see Cole, "Loyalties," p. 160 and Hobhouse, p. 92.

whether the state in which one lives is legitimate, but also the more difficult issue of how one determines which of the competing interests, during a civil war or when one country has been invaded by another, is the state.

A third set of objections to Bosanquet's theory of the state that is relevant to the discussion in the preceding chapters, concerns the relationships between society, social institutions and the state. Bosanquet has maintained that the only 'organism' that can recognize rights is the state. But this, some critics point out, fails to distinguish between the social and the legal recognition of rights. They attribute this to Bosanquet's refusal or (if his account is, indeed, ambiguous) inability to distinguish society and its institutions from the state.²⁸ These critics argue that one can have rights independently of the state, that--if rights need to be recognized at all--they could be recognized by society, and

²⁸ See, for example, Hobhouse, MacIver, Nalini Pant and H.B. Acton. According to Hobhouse "[t]o confuse the state with society and political with moral obligation is the central fallacy of the metaphysical theory of the state" (Hobhouse, p. 77). R.M. MacIver raises the same objection in Community, Appendix B, "A Criticism of the Neo-Hegelian Identification of Society and the State," pp. 425-33. See also H.B. Acton, "Bernard Bosanquet," The Encyclopedia of Philosophy, (ed. Paul Edwards), (New York: Macmillan and the Free Press, 1967). Vol. 1, pp. 347-350, p. 349.

As noted above, in Chapter 2, Nalini Pant accuses Bosanquet of "an inconsistency in uniting the social, legal, and moral aspects of rights" (Theory of Rights: Green, Bosanquet, Spencer, and Laski, [Varanasi: Vishwavidyalaya Prakashan, 1977], p. 92) which she attributes to Bosanquet's "following the idealist tradition in not making an absolute demarcation between the notions of state and society" so that "the two terms are likely to be interchanged at times" (op. cit., p. 94).

that the state must, in fact, respect these rights. It is precisely because Bosanquet neglects to make such a distinction that, some suggest, Bosanquet's views on the nature and the authority of the state are incompatible with those of T.H. Green and, thus, reflect a departure from the liberal roots of the British idealist tradition.²⁹

Further, it is claimed, even if Bosanquet is able to maintain a real distinction between society and the state, he is unclear how particular social institutions are related to the state.³⁰ Some critics also hold that Bosanquet is simply wrong about the relations involved. Here, they point out that society is something more than the state, that the state is just an 'institution' among other institutions, and that there is no necessary connexion between the two since social institutions have their own justification, independently of the state³¹. Similarly, other critics³² have charged that Bosanquet does not appear to consider that there are often no

²⁹ John Morrow, "Liberalism and British Idealist Political Philosophy: A Reassessment," History of Political Thought, 5 (1984), pp. 91-108.

³⁰ See Acton, "Bosanquet," p. 349; Joad, Guide, Chapter 18; A.D. Lindsay, "The State in Recent Political Theory," The Political Quarterly, 1 (Feb. 1914), pp. 128-145, p. 131.

³¹ Cole, "Loyalties," p. 138.

³² See Hobhouse, pp. 76-77 and p. 111; Cole, "Loyalties," pp. 154 and 156-157; Lindsay, "Recent Political Theory," p. 133; Joad, Political Theory, p. 22; Joad, Guide, pp. 741-743; Laski, Authority, p. 122; Laski, Liberty, p. 32 and MacIver, Community, Book III, chapter 4, pp. 247-299, especially pp. 249 and 257-258.

clear boundaries between states, and that he specifically overlooks the fact that there are usually overlapping boundaries or competing loyalties both within the state and without--e.g., between institutions and the state or between church and state.

Given the fundamental character of these objections, it is clear that, if they hold, the effect would be to undermine Bosanquet's theory of rights. Still, Bosanquet was aware of most of these criticisms and did not consider them decisive. To see what his response would be, and to complete the outline of Bosanquet's social ontology, it will be useful to examine Bosanquet's account of society and the state in light of questions already raised in the first and second chapters: If the liberal individualist view is rejected, what is the nature of society and of the institutions which compose it? What is the nature and role of the state? What is the basis and limit of its moral authority? And, finally, what is the connexion between society as a whole, social institutions and the state and law? Answers to these questions should enable the reader to see Bosanquet's response to the preceding criticisms and to determine whether the account of rights that Bosanquet provides is even possible.

1. Society

1.1 Society and Social Institutions

Bosanquet's description of 'society' is close to the Greek classical view in which society is seen as a unity of a number of 'natural' institutions. But, as indicated in the previous chapter, Bosanquet also draws on Hegel's list of the principal institutions which constitute "ethical life"³³: for Bosanquet, these 'institutions' are the family, the neighbourhood or district, the position (or the social class) of the individual and the nation state.³⁴ Each contributes, in its distinctive way, to the intellectual, moral, social, and spiritual development of the human person and Bosanquet, therefore, refers to them as "ethical ideas".³⁵

³³ Arguably, Hegel's classification reflects the analysis of the state found in Book I of Aristotle's Politics. For Aristotle, one has the family, the village and the state; for Hegel, these institutions are the family, civil society and the state. For a similar, though more developed, division of what Bradley calls the 'social organism', see Bradley, ES 173-174, n. 1. According to Bradley, this 'organism' consists of the family, social position, state, and a "still wider society".

³⁴ Despite this influence, as we shall see, Bosanquet's concept of the state is distinct from that of Hegel. Bosanquet's account is, moreover, even more developed than that of Bradley, with the particular addition of "neighbourhood" to the latter's list. This was probably to capture what he no doubt saw as the value of what Aristotle meant by "village" as an intermediate between 'family' and 'the state' and of community life as described by Rousseau in the Contrat social.

³⁵ See PTS, Chapter XI ("Institutions considered as Ethical Ideas").

In what way, one might ask, are these institutions "ethical ideas"? How is it that they contribute to the development or realisation of the human individual? The family, for example, is the natural environment in which human beings are not only brought into existence, but first become aware of themselves as social beings. It is there that one's basic education takes place (PTS 280) and that one begins to develop "a permanent interest in a comparatively permanent and external life" (PTS 279).

Another example is the 'institution' of 'class'. Bosanquet notes that while the notion of 'class' has little, if any, role in contemporary political right, it is still apparent in social life (PTS 289). But when Bosanquet speaks of 'class', he has in mind the set of functions ascribed to an individual based on that person's capacity to perform a "particular, unique, and distinctive" (PTS 291) service for the common good.³⁶ This reflects the view that it is often with reference to one's occupation that a person is identified with a certain class. Social class is important, therefore, because it is in performing the services of one's 'class' that a person is able to realize and develop himself. Thus, Bosanquet writes that, "[t]he family and the neighbourhood

³⁶ This relationship is important for Bosanquet. One of the problems in dealing with poverty, Bosanquet argues, is that "the poor" are generally considered to be a class, but have no distinctive service or function (see PTS 294-297). Thus, it is difficult to propose specific measures about what is to be done to improve their situation.

sustain and colour the individual life, but the vocation stamps and moulds it" (PTS 290). But it is important to remember that one's 'class' is not as such determined by one's birth or one's place in a social hierarchy (PTS 290), and we saw in the previous chapter Bosanquet's opposition to class privilege.³⁷ It is based, rather, on one's capacities and service. It is because a person's social or occupational class "moulds" his or her life, then, that Bosanquet emphasizes the concept of 'position' or function in his discussion of the individual.

Although these and the other institutions that Bosanquet mentions are distinct from one another (PTS 156), and while some seem to precede others in time,³⁸ Bosanquet still speaks of society as an "individual organism" (PTS 23, quoting Huxley),³⁹ where each part is integrally connected to all the others (PTS 156).⁴⁰ Thus, society is neither an accidental association of individuals or institutions nor normally subject to dissolution (PTS 147). Moreover, no 'institution'

³⁷ In Chapter 3, section 2.3. See also Bosanquet's remarks in FS 276.

³⁸ At least, some may appear to be less 'complex'. Thus, in light of Aristotle's discussion in Book I of the Politics, one might say that the idea of the family is not only epistemologically or ontologically, but temporally, prior to the state. Still, it is not obvious that this is Bosanquet's considered view. See his remarks on the relation of the state to social institutions in sections 2.1 and 3.1 below.

³⁹ See also Bradley, ES 162, 173-174, n. 1

⁴⁰ See Harris, p. 40.

is reducible to any other; each has a distinctive role within the social order, and each is necessary for the development of the human person. But, one might ask, what is Bosanquet's argument for this view of society? This will be the subject of the next two subsections.

1.2 Society as a Unity

Much like Rousseau, Bosanquet sees society as "a moral and collective body" (PTS 86)⁴¹ and, as noted in the previous chapter, he maintains that it exists and functions as such because it is permeated by a set of 'dominant ideas'--the general will. Recall Bosanquet's view that the 'general will' reflects a common social good, and it is in virtue of this common good (and, consequently, this will), that unity and the coordination of activities in society are possible. In fact, Bosanquet writes that "[t]he General Will is as much implied in the life of a society as some sort of will for good in the life of an individual" (PTS 102). It is even described by Bosanquet as being "the essence of human society" (PTS 87).

As an illustration of the kind of unity Bosanquet believes to exist in society through the presence of this general will, consider the comparison noted earlier (in Chapter 3, section 3.3) between an army and a crowd. Even though an army is composed of a number of distinct individ-

⁴¹ One should note, however, that this does not mean that a society can function as a moral agent. This issue will be explored below in sections 3.1 and 3.2.

uals, it is capable of performing complex tasks. (Here, one might think of military manoeuvres in time of war.) This is possible, however, only because there exist certain 'dominant ideas' and a shared experience present in both the military hierarchy and the habits of each soldier. Even when the army is not engaged in any particular activity, Bosanquet would say that this 'will' or these 'ideas' relate individuals to one another in a 'quasi-permanent' order (see PTS 150).

Now contrast this with the 'activity' of a crowd at a public event, like a county fair. Even if one were to grant that most, if not all, are there because of the event, the particular motives for attending are likely quite varied, and the coming together of the individuals as that particular group is purely accidental. As suggested earlier, there is certainly "no oneness of life or principle" (PTS 106) expressed in the actions of the people present.

The 'dominant ideas' in a society, can be present in its laws and rules (PTS 174) and even in its traditions and customs (PTS 139).⁴² They go beyond the external and enter into the life of individuals just as the sense of the structure and hierarchy of an army can be said to enter into the life of each soldier. Moreover, just as an army has a formal structure, so Bosanquet sees society as divided into groups with different functions--and, within each of these groups,

⁴² See, on this point, Bradley's similar view (ES 174) and, below (in section 2.1) how moral principles are present in the law and social institutions.

each member has a distinctive position which represents his or her service to the whole. Thus, even though individuals have different positions or functions, the continuing presence of certain ideas serve both as a basis for organized activity (e.g., as an animating principle in social life) and as a sign and guarantee of unity. In fact, Bosanquet says that these 'dominant ideas' are present in the habitual action and in the day-to-day experience of all the members of a social group--even if they are not fully conscious of them.

Still, a critic might argue that Bosanquet's illustration breaks down. After all, one generally explicitly chooses to join an army and, sooner or later, leaves it. Might not the same be true of an individual's relation to society? How can Bosanquet show that society is not a voluntary association or "a cooperative venture for mutual advantage"⁴³--the "joint stock company" of Herbert Spencer⁴⁴--where each person participates so far as it accords with his or her private interests and where the association itself lasts only so long as it achieves a limited, agreed-upon aim? Here, Bosanquet would likely reply that Spencer's view is based on a misunderstanding of the nature of the individual and society, and the relationships between them. But he goes further than this. Bosanquet's response to this objection is that human beings

⁴³ John Rawls, A Theory of Justice, (Cambridge, MA: The Belknap Press, 1971), p. 14.

⁴⁴ See Spencer, MS 181.

are social beings, and that society exhibits an organic unity because, strictly speaking, all social institutions exist on the level of 'mind'.

1.3 Society as Mind

Bosanquet's view that society is a "structure of intelligences" (PTS 195) or a set of "mental systems" (PTS 161) has been noted earlier. Of course, Bosanquet does not deny that society consists of a number of institutions that exist in space and time. Nevertheless, he claims that when we think of a neighbourhood, for example, what we have is more than a number of people and the places where they live or work. Every social institution "implies a purpose or sentiment of more minds than one, and a more or less permanent embodiment of it" (PTS 277). Thus, it is not simply a matter of geography, but the goals or sentiments of persons who live in a district, that form the boundaries of that 'community'.

Now, the district or neighbourhood is simply "a specimen of social life as a whole" (PTS 285)⁴⁵. And, since the "partial facts and experiences within [social life] demand ultimate co-ordination in the category of mind" (PTS 45), it is no surprise that Bosanquet should conclude that "society

⁴⁵ But it is only a specimen. According to Bosanquet, without the presence of the state, one cannot find that "universal law" which avoids the familiarity that exists in neighbourhoods. Hence, Bosanquet recognizes the need to go beyond the "village" of Aristotle or the city-state of Rousseau.

is... a body which at every point and in every movement expresses the characteristics of a mind" (PTS 6-7).

To illustrate this description of society as a 'mind', Bosanquet provides the example of a school. A school, he says, is more than a pile of bricks and mortar with a certain number of pupils and teachers. Its functioning and its reality lie "in the fact that certain living minds are connected in a certain way" (PTS 159). To begin with, each person has a particular position or function--an activity that serves to contribute to and, hence, modify the institution as a whole.⁴⁶ And these activities, which define who or what individuals are within the school, also imply a relation to, and a recognition of, the positions or functions held by others. Thus, to be a pupil requires a recognition of someone as having the function of being a teacher, and vice versa. Moreover, these positions and activities are determined by certain ideas which reflect the nature and aims of the institution. These ideas are present throughout the institution as a whole, and each pupil and teacher is under their guidance in at least this one aspect of his or her life.

A school, therefore, does not exist simply where there are buildings, school yards, equipment, and so on. This is simply a collection of matter in space and time. Naturally, one could not describe what a school is without making

⁴⁶ Specifically, "[t]he pupil must be ready to learn in his particular way and the teacher to teach in his particular way" (PTS 160).

reference to the physical environment in which the teachers and pupils interact, but what is important here is not the simple existence of the environment, but its effects on the ideas operative in the minds of the persons involved.

According to Bosanquet, then, strictly speaking, the school is an intersection point where various elements, themselves understood as minds, come into contact (see PTS 277). Thus, the best description of what a school is, is one that presents it as an 'institution' that exists on the level of mind. And this 'institution' exists in the minds of the individuals one finds there.

This example of the school, Bosanquet believes, is but one instance of how "every social group or institution is the aspect in space and time of a set of corresponding mental systems in individual minds" (PTS 161). Like a school, social institutions in particular and society as a whole, require 'external apparatus' (PTS 159). Still, "social phenomena which are among the most solid and unyielding of our experiences, are nevertheless ideal in their nature, and consist of conscious recognitions, by intelligent beings" (PTS 33) and the existence of shared 'dominant ideas'--the general will. Thus, social life is impossible without, and is inseparable from, mutual recognition.

Yet neither does this view of society as 'mind' imply that there is some supra-individual 'entity' called 'society' existing independently of those who comprise it. Just as the

notion of a school implies--and could not exist without-- certain dominant ideas also being present in the individual consciousnesses of its members, so society does not and cannot exist without fundamental and common ideas being present in the minds of individuals.⁴⁷

To see society as Bosanquet presents it, then, is to see it as reflecting a mind (PTS 158) which is also a group of minds (i.e., of individuals and institutions), expressed in human minds. It is, moreover, to recognize that society functions under the influence of dominant ideas (since social life requires a coordination in mind (PTS 45)), and that it has a spiritual function or common good (that is, to 'spiritualise' human persons) (PTS 187).

Given this description of 'society', one can understand how Bosanquet is led to reject the liberal individualist view that society could be based on a voluntary association. Since society consists of a series of reciprocal recognitions by individual minds, and since it is permeated by a single set of dominant ideas that have a common good in view, then the relation of the parts to the whole in a social order cannot, he believes, be purely optional. The social nature of human beings is not based merely on need but, as we have seen, on

⁴⁷ Collini sees parallels between Bosanquet and Durkheim in viewing society as a spirit or mind. See Stefan Collini, "Sociology and Idealism," pp. 13-14.

the nature of consciousness. And society is, therefore, fundamentally, an organic unity.⁴⁸

1.4 Recapitulation

An understanding of Bosanquet's analysis of the nature of society is necessary in order to appreciate its role in his theory of rights--though a complete statement of this theory cannot be given independently of his account of the state. The preceding outline, then, should explain, what--at least in general terms--the role of social institutions is, and that these institutions are 'part' of society understood as an "individual organism". It should, moreover, remind the reader that Bosanquet insists that society is an organic unity, and not a voluntary association. It will also have explained why Bosanquet holds that society is such a unity--that it is an institution that exists on the level of 'mind' and, specifically, on the basis of a set of mutual recognitions.

Most importantly, however, this account of society will allow the reader to understand what Bosanquet sees as its relation to the state--for, as noted earlier, it is just this point that has been the focus of many of the criticisms of his political thought. It is to Bosanquet's analysis of the state, then, that I now turn.

⁴⁸ Bradley would seem to push this unity even further. Recall his comment that "[u]nless there is a real identity in men, the 'Inasmuch as ye did it to the least of these' becomes an absurdity" (ES 334-335, n. 2.)

2. The State

2.1 The Nature and Role of the State

As we saw in the first section of this chapter, it has been alleged that Bosanquet does not provide a clear statement of either the nature of the state or its purpose. It was, moreover, noted in Chapter 2 (section 3), that sometimes Bosanquet employs the term 'state' to describe that social institution which is concerned with law and force (PTS 173)⁴⁹, and that, at other times, he appears to use it to refer to an ideal of what the state should be like. Thus, some accuse Bosanquet of a fundamental ambiguity--of confusing descriptive and normative accounts--in his analysis of the nature and role of the state. Others, as we have seen, criticize his account as being ahistorical--of ignoring, for example, the role of accident in its development. Obviously, then, Bosanquet's notion of 'the state' demands some elaboration.

But is his account really that problematic? To begin with, when one looks closely at his discussion in The Philosophical Theory of the State, it is clear that he does not intend to describe the actual structure of existing European states--but neither does he mean to talk about something ideal. Throughout his work, Bosanquet repeatedly insists that "philosophy has to understand and not to dictate".⁵⁰ Since the purpose of political philosophy "is to understand what a State

⁴⁹ See also PIV 311, n. 1.

⁵⁰ See, for example, SS 161.

is," it is, he says, "not necessary for this purpose that the State which is analysed should be 'ideal,' but only that it should be a State" (PTS 232). When he refers to the 'state', then, Bosanquet has in mind neither an 'ideal' State nor some particular state but the nation state qua state (FS 274)⁵¹. In short, his object is simply to provide a description of the state in much the same way a physiologist might provide a description of the nature of a human being (PTS 232), that is, by giving a generic account--an account of the 'average' being--but not an idealized one.

Thus, Bosanquet describes the state as something that is "territorially determined" little by little (PTS xlviii; see FS 283) and that has a distinctive history and development. But, while clearly aware of its historical basis, Bosanquet would also say that the state is 'natural', in the sense that it is implied by the nature of the individual,⁵² and that this

⁵¹ Bosanquet notes, in FS, that he is "a good deal surprised that nearly all recent critics have stumbled... in this simple matter of interpretation", and that Hegel himself pointed out the difference between talking about "states" and talking about "the state" (See Hegel's Philosophy of Right, sec. 258, zusatz [tr. Knox, p. 156]). Bosanquet asks whether his critics would "find the same difficulty in the title of a book on 'the heart' or 'the steam engine'" (FS 274-275).

⁵² This account of the state as "natural" is clearly in keeping with Bosanquet's understanding of "nature" (see Chapter 3, section 1.2, above). The account of nature that Bosanquet is using here is, as noted above, indebted to Aristotle (see Politics, Book I, Chapter 2, 1252b 30-33): "[f]or what each thing is when fully developed, we call its nature..." (Politics, tr. Benjamin Jowett, in The Basic Works of Aristotle, ed. Richard McKeon, (New York: Random House, 1941).

development is not purely accidental or arbitrary.⁵³ According to Bosanquet, "[i]f you start with a human being as he is in fact, and try to devise what will furnish him with... a stable purpose capable of doing justice to his capacities... you will be driven on by the necessity of the facts at least as far as the State" (PTS 140).⁵⁴ It is the nation state, he believes, that is "the widest organization which has the common experience necessary to found a common life" (PTS 298). There is, then, no place for a social contract theory in his analysis.

The function or purpose of the state is (as it is for all social institutions) to contribute to the realization of what we have seen Bosanquet call "the best life" (PTS 188) or "the perfection of human personality" (PTS 189)--which he elsewhere describes as "self-completeness" and "self-realisation".⁵⁵ The distinctive contribution of the state to this end is that it establishes and enforces laws or rules. Moreover, given that

⁵³ Thus, Bosanquet says that "...there is logic underneath the apparent accident..." (PTS 172), and this 'logic' is related to the "unity of communal experience" (FS 283). See also FS 275.

⁵⁴ According to Bosanquet, Fichte proposes an analogous idea, that a self implies a society of selves which implies laws (PTS 227). One finds this view as well in the work of other idealists--even those professedly opposed to Bosanquet (see Rudolf Metz, A Hundred Years of British Philosophy, tr. J.W. Harvey, T.E. Jessop and Henry Sturt, ed. J.H. Muirhead, [London: Allen and Unwin, 1938], pp. 301-305). For example, according to (Sir) Henry Jones, the state is "the product, in every part, of the rational nature of man, and by far the most glorious exhibition of his powers" (The Working Faith of a Social Reformer and Other Essays, [London: Macmillan, 1910], p. 17).

⁵⁵ See Bosanquet SS 58, 148 and 159.

humans are beings with an "animal nature", society needs an institution to support and maintain "human consciousness, owing to its animal limitations" (PTS 171). In fact, it is precisely so far as it is "habitually recognised as a unit lawfully exercising force" (PTS 173) that the state is distinguished from society.⁵⁶

But while the presence of the state is particularly evident when it is carrying out certain public functions like law enforcement, Bosanquet says that it is more than a legislative power, an executive or a civil service. The state is not simply the government or the "political fabric" (PTS 140; PIV 311; PTS lxii) of society. In fact, it is not a single isolable entity at all. It is, rather, that set of "institutions" (PTS 140) that serves as "ultimate arbiter and regulator, maintainer of mechanical routine, and source of authoritative suggestion" (PTS 173).⁵⁷ Its primary functions are to eliminate the obstacles that individuals encounter in working towards the common good, to settle conflicts, and to organise and coordinate social living (PTS lviii).

In order to carry out these functions, Bosanquet does say that the state must have absolute physical power over the individual (PTS 192; FS 273; FS 283-284). As noted in Chapter

⁵⁶ See also PIV 311, n. 1. For a contemporary, though distinct, account of this aspect of the state, see George Sabine, "The Concept of State as Power", in Philosophical Review, XXIX (1920), pp. 301-318, esp. pp. 302 and 303.

⁵⁷ This, Bosanquet writes, is the "distinctive attribute" or work of the state (See PTS 174-175).

1 (section 2.42), there is no obvious good to be achieved, he thinks, in the a priori limitation of its authority (PTS 172). Moreover, if there were no single institution with supreme power, "conflicting adjustments might be imposed upon [a person]... by diverse authorities having equal power and right to enforce his obedience" (PTS 173). Thus, for individuals to know what they must do, for social unity to be ensured and for there to be an authoritative arbitration of disputes, there must be an institution with supreme authority. "[Y]ou cannot have just as much or as little of them [i.e., "sovereignty and the truly absolute state"] as you may choose" (PTS xiii; cf. FS 274), Bosanquet insists. Clearly, Bosanquet rejects any view of the state as a free association of individuals for a limited goal, determined explicitly by, and always subject to, their private wills.⁵⁸

Still, absolute power is not ascribed to the state a priori--he refers to its "ultimateness de facto" (PTS 175). The nation state has an absolute power over individuals simply because there is no other existing authority outside of or beyond it (such as a world state) to which it could be subject.⁵⁹ Nor is this state 'absolutist' in the way that

⁵⁸ See Spencer, MS 179-181 and also the criticisms of Laski, Cole and Hobhouse (noted at the beginning of this chapter) on the requirement that the state be subject to individual scrutiny.

⁵⁹ Bosanquet's scepticism about the possibility of effective international political organizations has been noted already in Chapter 2, section 3. (See also "The Wisdom of Naaman's Servants," in Social and International Ideals: Being

totalitarian states are. Bosanquet explicitly asserts that "the state is not the ultimate end of life" (FS 271), and says that, so far as self-government is possible, the arbitrary exercise of absolute power is irrational.⁶⁰ In fact, throughout his work he champions both representative government and universal suffrage.⁶¹ Thus, it is clearly misleading to say, as Marcuse does, that Bosanquet's theory makes "the individual a victim of the hypostatized state universal, so characteristic of the later Fascist ideology".⁶²

Studies in Patriotism, [London: Macmillan, 1917], pp. 302-320, esp. pp. 314-315, and FS.) It was, interestingly, a scepticism shared by Bertrand Russell (FS 282, n. 1; FS 293). But, by 1919, Bosanquet does seem to hold out some hope for a 'world-State' (FS 294) or "League of Nations" (PTS lix). This question is discussed by Peter P. Nicholson in "Philosophical Idealism and International Politics: A Reply to Dr. Savigear," British Journal of International Studies, 2 (1976), pp. 76-83, pp. 78-79.

⁶⁰ Vincent and Plant, p. 104 and footnote 50.

⁶¹ See PTS Chapter 3 and Nicholson, British Idealists, p. 214. Nicholson also notes that "[d]emocracy is the political and social system best able to allow Bosanquet's social logic to work itself out and the General Will to emerge" (Nicholson, British Idealists, pp. 217-218).

⁶² Herbert Marcuse, Reason and Revelation: Hegel and the rise of Social Theory, 2nd ed., (Boston: Beacon Press, 1960), p. 393. As evidence here, Marcuse draws on a passage from PTS that suggests Bosanquet's notion of the concrete universal. But is it important to note that Bosanquet's concrete universal is not a hypostatized or reified abstract universal. Moreover, the root of Marcuse's objection seems to be that Bosanquet is an anti-individualist and, hence, anti-liberal. But while Bosanquet would reject individualism, it does not follow that he must reject liberalism. Finally, as is obvious from the statement of his view of self-government, Bosanquet's theory of the state is quite unlike that suggested by Fascism. In Fascism, the state provides an external unity; in Bosanquet's view, while the state guarantees unity, it is a product of internal forces in the nature of community.

Understood as an institution that "hinders" activity and exercises force, the state has a 'negative' character. But its contribution to the "best life" also includes several positive features. It is, for example, "the operative criticism of institutions" (PTS 140)--where "criticism" means the task of harmonising and readjusting "a mass of data to bring them into a rational shape" (PTS 111). Through the legal system, the state recognizes and protects institutions, individuals and their positions in society, and it is because the state is the authoritative source of the recognition of positions that it is, ultimately, required for the existence of rights. Again, it is through the official recognition of marriages, of the laws governing contracts, and so forth, that it provides the basis for social activity and for an organized social life (PTS 257).⁶³ Not only is the state able, therefore, to hold "together a complex hierarchy of groups" (PTS xxviii)--to

Curiously, perhaps, Marcuse does not raise this objection against Gentile or Croce in his later discussion of "Fascist 'Hegelianism'" (op. cit., pp. 402-409).

Perhaps the best explanation of this misreading is that Marcuse draws almost entirely on Rudolf Metz and L.T. Hobhouse for his assessment of Bosanquet's views. Though for different reasons, both of these authors saw later British idealism as abandoning in some way the liberal ideas of its predecessors. (See Chapter 5, section 2 below for a more complete discussion of this issue.)

⁶³ Again: "It is no more conceivable that social life should go on without force and authoritative custom... than that individual life should go on without sub-consciousness and automatism" (PTS 143-144).

function as a principle of unity (PTS 172)--but it sustains in its own way all other social institutions.⁶⁴

Bosanquet would also claim that the state (in this large sense) is essential to a person's awareness of his or her individuality. On the one hand, it exhibits those characteristics which are common to, and which underlie, human personality in general.⁶⁵ On the other, (as noted in Chapter 3, section 2.2), because of its existence at the level of human consciousness, it enables individuals to become conscious of their particularity--it gives a person the background so that he may "abstract himself from the whole" (PTS 201)⁶⁶. It is, indeed, through the state that the places

⁶⁴ Although social institutions are distinct from one another (PTS 156), and while some seem to precede others in time each, Bosanquet says, is "a growth dependent on the spirit and protection of the State" (PTS 279). The existence of the family requires, for example, the existence of laws concerning marriage, property and inheritances. Again, since it is the state which recognizes the positions individuals have in society, recognizes the rights necessary to performing their corresponding functions, and prohibits outside interference in the exercise of these rights, it is clear that, in the final analysis, one's position in the social framework is rooted in, and sustained by the state. Nevertheless, as noted above in section 1.1, no one 'institution' is resolvable into any other; each continues in its own way to the realisation of the person.

⁶⁵ "[I]t gathers up into itself the various sides of me, is the symbol of my multiple self, is my multiple self brought to significance, to self-realisation" (PTS lviii).

⁶⁶ In short, the individual has his or her individuality only through the social consciousness (FS 281; see Bosanquet, Psychology of the Moral Self, [London: Macmillan, 1904], p. 51). Similarly, Bradley writes that "when [a man] can separate himself from that world, and know himself apart from it, then by that time his self... is penetrated, infected, characterized by the existence of others" (ES 172).

individuals have in society are definitively recognized and that they come to see what they have in themselves to be (see PTS 118).

Furthermore, as suggested in Chapter 3 (section 3.5), Bosanquet insists that the state must guarantee and foster liberty. But by 'liberty', of course, Bosanquet does not mean simply allowing individuals to do as they choose. 'Liberty' means having the opportunity to be "the best that we have it in us to be", that is, to realise ourselves (PTS 119). Thus, the state has as its goal the individual self-realisation.

But Bosanquet goes further; liberty is to be found only in the state (see PTS 230-236). Following Hegel and Kant,⁶⁷ Bosanquet notes that the "free mind" cannot exist "[e]xcept by expressing itself in relation to an ordered life" (PTS 236). Because of this, and because the freedom or self-realisation of an individual is something objective and distinct from what he or she may want, Bosanquet concludes, as we saw earlier, that one can be "forced to be free" (PTS 119; PTS 90).

Still, Bosanquet insists that this does not diminish either the value of liberty or of one's dignity. He maintains that, if the state uses force to hinder the liberty (i.e., the

⁶⁷ Bosanquet cites Kant that man "has totally abandoned his wild lawless freedom in order to find his entire freedom again undiminished in a lawful dependence, that is, in a condition of right or law; (undiminished), because this dependence springs from his own legislative will" (PTS 226). See Kant, Metaphysische Anfangsgründe der Rechtslehre (1797) in Die Metaphysik der Sitten, 2. Teil, 1. Abschnitt, ed. Benzion Kellermann, in Kant's Werke, Band 7, ed. Ernst Cassirer, (Berlin, 1916), S 47, p. 122.

full realization) of an individual, it acts in contradiction to its end and is incompatible with itself. In fact, he says that a "complex of institutions" or a state is properly criticized if it does not provide for or encourage liberty (PTS xxx; PTS 186).

Finally, although the state cannot, Bosanquet says, enforce morality (since it cannot make a person act from a moral motive) (PTS xxxv; PTS 179), it is "the guardian of moral interests" (PTS 1; PTS 302; FS 278; FS 288) and a moral guide and, hence, is essential for the development of moral personality. The state and social institutions express and reflect the content of the general will (i.e., the 'dominant ideas' in a society)⁶⁸ and, since the general will has as its object the common good, the state provides a concrete indication of the requirements of morality.⁶⁹ Moreover, as an institution that acts as a 'regulator' and a 'source of authoritative suggestion', the state protects and directs the activity of individuals (and of society as a whole) towards that common good.⁷⁰ Yet Bosanquet sees the state also as

⁶⁸ This has been noted already, in Chapter 3, section 3.4.

⁶⁹ See Bradley, ES 199-200: "What is the 'world' in this sense? It is the morality already existing ready to hand in laws, institutions, social usages, moral opinions and feelings." According to Green, moral principles are present in laws and institutions (LPPQ, sec. 215).

⁷⁰ Here one sees a rejection of the modern separation between law and morality. As one finds in contemporary communitarian thought, the state is not to assume a neutral role in acting as an arbiter in society, and it is to aid in the moral development of its citizens. (See Alasdair

participating in moral development in a more direct way. Recall that the state "is constantly reminding us of our duties" (PTS 142). It blocks the bad will (PTS lxi) and, through its use of punishment, for example, "brings us to our senses... [and] makes us conscious of our errors and the moral decision to improve our behaviour" (PTS 208). In the state and through its help, then, Bosanquet believes that "we find at once discipline and expansion, the transfiguration of partial impulses, and something to do and to care for, such as the nature of a human self demands" (PTS 140). In this way, as well, the state contributes to the development of the individual and, hence, to the realization of "the best life."

In light of the multiplicity of functions it performs, then, it is clear why Bosanquet regards the state as an 'ethical idea'. And, given his understanding of the nature of 'institutions' and the role of the state in the development of an individual's self and moral consciousness, one can see why Bosanquet will maintain that it exists on the level of 'mind'. Despite the criticism that his account is "too intellectualist" or metaphysical, he would argue that, to see the state in the way he describes is not to make it less real and efficacious, but to see it as it really functions. The state enters into the minds and personalities of individuals

MacIntyre, After Virtue, 2nd ed., [Notre Dame, IN: University of Notre Dame Press, 1984], p. 172, and William Galston, Liberal Purposes: Goods, Virtues and Diversity in the Liberal State, [New York: Cambridge University Press, 1991]).

and contributes to their development. And it is important to realize that this is not a one-way street--it also reflects the minds which compose it. And so Bosanquet writes that "States are diverse embodiments of the human spirit" (PTS xlviii) and that every state is "characterised... by individual missions or functions which furnish for every state its distinctive contribution to human life" (FS 275).

In response to the first set of criticisms noted at the beginning of this chapter--that his description of the state is ambiguous, or covertly "Hegelian", or too abstract or metaphorical--Bosanquet would give the following reply. When he refers to the state as "an organic unity", he is thinking of a cooperative and mutually dependent relationship that exists on the level of mind. It is not to be identified with Hegel's 'State' and, while there is a normative dimension to this notion, Bosanquet is not simply shifting between two different definitions of it. Moreover, Bosanquet's account does not ignore the role of history, of accident or of choice but affirms, rather, that the most important developments in the state occur at the level of human consciousness. In fact, it is at just this level that one can understand how states have the power they do.

2.11 Law

Since law is a creation of, and is enforced by, the state, one can easily infer Bosanquet's account of the nature

of law.⁷¹ As noted in Chapter 1, one of the reasons why Bosanquet rejects the theories of rights of Bentham, Spencer and Mill is that they rest on a misunderstanding of the nature of law--specifically, of its relation to the individual. All would, no doubt, agree that 'the law' is a set of "general rules" enforced by the state in order to "carry out a universal end in a plurality of units" (PTS 173). But Bosanquet sees it also as reflecting the general or 'real' will of the individual (PTS 95) and as aiming at a common good which is also the individual's good. Law cannot exist apart from the positive convictions or sentiments of individuals (PTS 36) that serve as supports for it. And while the unity of law is guaranteed by the unity of the state, ultimately this unity depends on and is provided by the underlying "social spirit of a people" (PTS 38).

It is through the law that the state not only regulates but contributes to the stability of social institutions.⁷² Law is also the means by which the allocation of rewards (and, invariably, of punishments) (PTS 205) is determined, and is an essential part of the state's power to influence the individual's will. Furthermore, the existence of a law indicates that there is a recognition of something that is

⁷¹ See Bosanquet's discussion of the different senses of law in PTS 240-243.

⁷² I have noted earlier (p. 266) Bosanquet's view on the existence of law as being necessary to the existence of the family.

"worth maintaining", such that a violation of the law would be an offense against the common good (PTS 36).

In short, the law is not--as it is in Bentham and Austin--the mere command of the sovereign (PTS 37; PTS 243); on Bosanquet's view, it represents the will of the individual. And while it is true that the law possesses a coercive element, Bosanquet insists that the 'limits' imposed by the law are not foreign to human nature and, in fact, are necessary to individuals for their self-realization and growth.⁷³ As we have seen, the putative opposition between the individual and the law reflects an 'individualism' that Bosanquet explicitly rejects. It is far from being (as the "theories of the first look" would have it) an evil (see PTS 53ff.). Thus, the 'restrictions' imposed by law and the expansion of human freedom go together, for there is no liberty where there is an absence of law (PTS 181-182).

2.2 The Moral Authority of the State

Given the preceding analysis of the nature of the state and his concept of the general will, Bosanquet believes that he can account for the state's apparent moral authority and the existence of political obligation.

⁷³ Bosanquet says that "law and order" is the "condition and guarantee" of our liberty (PTS 119), and that the power of the state and law are opposed to our 'animal nature', but not to our individuality (PTS 171).

To begin with, on Bosanquet's view, the state forms our world. It is "the fly-wheel of our life" (PTS 142). As we saw earlier, "[i]ts system is constantly reminding us of duties... All individuals are continually reinforced and carried on beyond their average immediate consciousness by the knowledge, resources, and energy which surrounds them in the social order" (PTS 142). More concretely, the state is necessary for the existence and functioning of social institutions--all of which is necessary to human life itself. In short, as we have seen Bosanquet argue above, it is by means of the state that human beings are progressively realized (PTS 138) and civilized (PTS 172). But its authority is based on more than its utility. Bosanquet rejects, as we have seen, not only that the individual could be a 'means' to the state, but that the state could be a means to the individual. Fundamentally, the state possesses its moral weight because (as we have seen at the end of Chapter 3) it is a reflection of the individual's 'real will' and--what amounts to the same thing--the 'common good'.

Bosanquet's reasons for this are clear, though they have been subject to much criticism. Here we can combine the conclusions of the present chapter with those of the previous one. To begin with, where there is a shared history or cooperation among persons in view of a common good, one finds the presence of certain 'dominant ideas'--the general will. Now, as this general will is each individual's 'real will',⁷⁴ and

⁷⁴ This has been argued above in Chapter 3, section 3.2.

given Bosanquet's acceptance of the principle that an individual is ultimately subject only to him or herself (PTS 134), each person is subject to the general will.

One's 'real will', Bosanquet has argued, is never completely given in an individual's consciousness, just as human nature is never completely given in any one human being. An individual must go beyond him or herself to the 'system of intelligences' in which he or she is an integral part. This 'system' is what Bosanquet means by 'society', and it is here that one has the best chance of being able to discern the ideas dominant in consciousness.

Thus, in answer to the question, "How can individuals know what their 'real wills' require of them?", Bosanquet's answer is (as noted earlier, in Chapter 3) that "[t]he social system under which we live... represents the general will" (PTS 186). And this, too, explains the basis of political obligation, for "any system of institutions which represents to us, on the whole, the conditions essential to affirming such a will... such as to constitute a tolerably complete life, has an imperative claim upon our loyalty and obedience..." (PTS 139).⁷⁵ And since social life is impossible without the existence of the institution which 'enforces general rules', we have an obligation to obey the state. Consequently, not only is the exercise of power by the state

⁷⁵ It appears that one finds here a trace of Kant's hypotheticals, in that 'consent', here, seems to be based on the principle that 'he who wills the end, wills the means'.

morally legitimate, since it is a reflection of the will and the nature of the human person, but--since one's will and one's good are objective, and not just based on one's private desires--the state can legitimately demand a person's obedience, even if that person has not explicitly given assent (PTS 119, n. 2).⁷⁶ But, having said this, does Bosanquet not give us reason to believe that he is putting the state above limitation and moral criticism?⁷⁷

2.3 The Nature and Limit of State Action

Since the state described by Bosanquet is not, strictly speaking, based on consent and since its power is--at least, de facto--absolute, is it true, as some critics have argued, that therefore the state has no limits? By holding such a view of the state, hasn't Bosanquet abandoned the more moderate position, set by T.H. Green? Bosanquet admits that he is much more favourable to the state than Green (PTS ix), and he seems much less concerned than Green about imposing limits on its activity (PTS 269-271). Indeed, he says that there is little with which the state should not concern itself (PTS xii), and that one may not choose as much or as little of the state as one would like (PTS xiii).

⁷⁶ See Bradley, ES 184 and section 3.2 below on "the State and Moral Criticism" where Bosanquet explicitly endorses Bradley's view.

⁷⁷ See Hobhouse, p. 25.

Yet, while Bosanquet criticizes the analysis of the minimalist state given by both Spencer and Mill, it is clear that he wishes to avoid any semblance of a mechanistic collectivism or statism which would force people to perform their duties (PTS 63) or which would replace individual initiative and activity.⁷⁸ In fact, Bosanquet insists on limiting coercive authority as far as possible (see PTS 51; PTS 63) and he frequently underscores the importance of individual action. Recall the earlier discussion of individuality, for example, in which Bosanquet says that, in social work, one must "individualise the case"⁷⁹ and that the automatic appeal to a "State agency" to solve a problem by "brute force" is a "very poor" response to a situation.⁸⁰ Indeed, Hobhouse accuses Bosanquet of not being sufficiently aware of the service that the state can provide.⁸¹

Where, then, does Bosanquet stand on the limits of state action? First, although the state holds ultimate authority in society, it is important to realise that it exists in order to carry out certain tasks, and it is the very nature of these tasks that imposes limits on the state. As noted above,

⁷⁸ On the emphasis on character and individualism, see Vincent and Plant, pp. 101-112.

⁷⁹ Bosanquet, "The Affinity of Philosophy and Casework," in Social and International Ideals: Being Studies in Patriotism, (London: Macmillan, 1917), pp. 161-182, at p. 164.

⁸⁰ See "The Affinity of Philosophy and Casework," pp. 166-167.

⁸¹ Hobhouse, p. 78, n. 1.

generally this means that, through its power and through the establishment of law, the state aims at the "hindrance of hindrances" (PTS xxiii; cf. PTS xxxii and 182-184) or punishing those who impede others in the exercise of their liberty⁸²--and this 'function' is itself justified by the state's more fundamental role of clearing the way for moral activity and individual development.

Moreover, the state is, Bosanquet says, limited in how it does this and in how far it can go. For example, since Bosanquet holds that it is the motive that gives moral value to an action, once an action is constrained, it is removed from the moral sphere (PTS 178-179)⁸³, and the corresponding opportunity to contribute to the moral development of the agent is removed. Thus, Bosanquet concludes that the state should do only what is required to enable individuals to act--not attempt to bring about some end on their behalf.

Consequently, when the state acts, and particularly when it coerces, it must be certain that three conditions are satisfied:⁸⁴ first, that there is an important potentiality in some individual that is being frustrated; second, that the "liberation" of the resources of character and intelligence

⁸² Bosanquet sees this as identical to the protection of rights taken as a whole (PTS 215).

⁸³ Collini ("Hobhouse, Bosanquet and State," p. 99) sees here a tendency towards Kantianism.

⁸⁴ One will recall that Mill finds three similar principles that provide limits on state action in L 107-109.

that will follow is greater than the restrictions imposed on the person; and, finally, that it is better that the action be done--even from the motive of fear of legal consequences--than that it not take place (PTS 179-180). Even though Bosanquet says that one may not choose to have as much or as little of the state as one wishes (PTS xiii), it does not follow that he thinks that the state can do as it pleases.

Yet despite these 'limits' on its activity, the state is by no means restricted to guaranteeing 'negative liberty'. The state may act 'positively' in providing individuals with the means for moral action (PTS 183), even if it cannot itself act morally or directly promote a moral (or spiritual) end (PTS xxxvi).⁸⁵ As examples here, Bosanquet mentions building schools in order to combat illiteracy, and controlling the sale of liquor to limit alcohol abuse (PTS 178).

Nevertheless, the state cannot (and should not) do everything; for example, Bosanquet argues against a state attempting to guarantee full employment or providing housing for everyone (PTS 178)⁸⁶. But when he insists that state intervention should be restricted, it is not because it would violate individual liberty or the 'line of demarcation' between 'self' and 'other', as in individualist theories.

⁸⁵ As noted earlier, while Bosanquet allows that society and the state can 'act' and while they can encourage the moral activity of others, neither is, strictly speaking, a moral agent. See section 3.2 below.

⁸⁶ See McBriar, p. 84, for other examples of what the state, in principle, can and cannot do.

Rather, by attempting to act in such ways, Bosanquet believes that the state works against its own purpose--sc., favouring the conditions for the development of individual character and, hence, the full realisation of human personality.⁸⁷

Still, there may seem to be a certain vagueness, if not incongruity, in Bosanquet's account of the 'limit of state action'. How far can the state act and what, specifically, can it do? First, it is not clear what exactly Bosanquet means by referring to the limit of state action. Does he mean that there are things which it is logically impossible for the state to do? or that there are things that are, practically speaking, impossible for the state to do? or that there are things which it ought not do? or that there are things which, formally, it cannot do (i.e., what the state "qua state" cannot do)? Moreover, one might say that Bosanquet's account is also incongruous since, on the one hand, the state has no precisely defined limits and yet Bosanquet emphasizes the importance of leaving as wide an arena as possible for the development of individual character. It seems, then, that the sphere of state action might be very small indeed. In fact, it is this latter point that appears to be one of the central disagreements between Bosanquet and the Webbs and that

⁸⁷ As an example of this, consider Bosanquet's position on the "Poor Law". See Bosanquet, "The Limitations of the Poor Law," Economic Journal, II (1892), pp. 369-371 and "the Principles and Chief Dangers of the Administration of Charity," in International Journal of Ethics, III (1892-93), pp. 323-336, (cited and discussed in McBriar, pp. 56-59 and, especially, pp. 68-69).

explains why Hobhouse and J.A. Hobson saw Bosanquet as an "individualist".⁸⁸

To begin with, one might say that, on Bosanquet's view, the state is limited in all of the ways noted above. First, there are some things that it is "an absolute self-contradiction" (PTS 179) for the state to do. It cannot, for example, act morally and, therefore, cannot promote "the best life" directly. While the state has "the best life" as its end, it cannot make individuals more moral, more intellectual or more spiritual.⁸⁹ Nevertheless, as we have seen, Bosanquet does say that it can act indirectly--'negatively'--through "hindering hindrances" to the morally valuable activity of individuals. The state, then, is a condition for moral, spiritual and intellectual activity, but it cannot be a cause. As an example of this, Bosanquet mentions how a state can fund the buildings and supplies to establish a university, but it cannot make a university (PTS 182-183).

In the second place, there are some things of which the state is incapable. Bosanquet notes, for example, that the state simply lacks the knowledge to allow it to proceed with

⁸⁸ Robert Pearson and Geraint Williams, Political Thought and Public Policy in the Nineteenth Century: An introduction, (London: Longman, 1984), p. 154.

⁸⁹ One might ask whether, given modern conditioning or 'brainwashing' techniques, a state might not be able to "make" someone act from a motive which is still his or her own. Rather than address this question directly, I shall deal with it indirectly in the discussion of the "formal" limits of state action.

certain policies. He says, by way of a criticism of Mill, for example, that "to interdict marriage to those unable to show the means of supporting a family" requires a "foresight" concerning "the latent powers" of others that the state simply lacks (PTS 63-64). Still, even if it did have this ability, it does not follow Bosanquet would say that the state could act here.

The reason for this is that there are some things which the state is capable of doing but, nevertheless, ought not do. There are, then, moral limits on state action. As an illustration, Bosanquet refers again to a policy suggested by Mill. Bosanquet objects to the state instituting universal examinations in education in order to ensure that parents fulfil their duty to educate their children--not because such examinations would be impossible or impractical for the state to organize, but because it would involve too much state control. The "logic of experience", Bosanquet notes, has shown that, simply by providing for the establishment of schools, this duty can be met with a lesser degree of coercion. Thus, the state ought not to do more than is necessary to ensure such an end (PTS 63).

Still, one might ask how this 'moral' limit will serve as a real limit. Indeed, it is precisely here that one might claim that Bosanquet's 'limitation' of the state is vague or ambiguous. For, if "the state cannot do X" means only that "the state ought not do X", and if there is no organism that

can ensure that the state do what it ought to, then such a 'limit' is no limit at all. At the very least, such a view would confuse what is a limit with what ought to be a limit.

In order to see what Bosanquet's response would be to this question, it is important to distinguish between what the state qua state can do--its 'formal' limits--and what a particular state (like any institution having a number of agents acting for it) can do. Thus, if the 'end' of the state includes the development of individual character, it is not merely that the state ought to do it, but that, to the extent that it fails in this, it is not acting as a state. In such a case, it is acting either as an organization, oriented to some other end, that can use force or as an individual or set of individuals that "usurp" the name of the state in carrying out its private ends. (In the latter case, for example, one speaks of 'abuse' rather than 'use' of office.)⁹⁰ In short, Bosanquet would insist that should a government or an individual in public office act in a way that is inconsistent with the 'end' of the state, this does not mean either that it is the state

⁹⁰ Consider the following analogy. In discussions of the omnipotence of God, it has been asked whether God can do evil. One might say that God as omnipotent, in abstraction from his goodness, can--i.e., has the "power" (what the mediaevals called the "potentia absoluta") to--do evil, but that God as God (i.e., as a being who is not only all powerful but also perfectly good) cannot--lacks the "potentia ordinata" to--do it. (See Peter Geach, "Omnipotence," in Philosophy, 48 (1973).) Similarly, then, one might say that, when the state interferes inappropriately in individual lives, it is not that it is limited by its 'end' but that, in such cases, it is no longer acting as a state.

that is being inconsistent, or that the state has no real 'limits'.

But what exactly is the limit on state action, then? What, specifically, can the state not do? Here, Bosanquet's view may seem, as noted above, incongruous. On the one hand, as we have seen, Bosanquet says that there are no a priori limits on the state but, on the other hand, given his emphasis that "the best life" is an end that is inseparable from the moral development of the individual, there seem to be any number of limits on what the state can or cannot do.

For example, the improvement of the condition of the poor was, Bosanquet believed, best accomplished through the activity of the poor themselves. He doubted that extensive state intervention would do much except to corrupt or destroy individual initiative and character (PTS 185-186). Still, Bosanquet did not claim that the isolated individual should be left to his or her own devices and that there was no room for social or state involvement at all. Given Bosanquet's view of the human being as a social being, the alleviation of poverty required an effort of social solidarity--and, hence, the importance of the activity of such groups as the Charity Organisation Society.

Thus, Bosanquet described himself to be a "moral socialist" (i.e., one who held that "the good of the social whole was to be identified with the moral essence of the individ-

ual"⁹¹) but an economic individualist (i.e., one opposed to the broad use of state sanctions and force to ensure a good of the whole).⁹² Bosanquet was opposed to (economic) socialism because of its tendency to abolish private property (which, Bosanquet held, was essential to the development of the person [PTS 242; 281-282]) and to legislate "the good life in disregard of the individual's responsibility to determine it first in himself".⁹³ Nevertheless, he was in favour of worker ownership⁹⁴ and thought that "Economic Socialism based on Moral Socialism would be 'heaven'".⁹⁵ The issue is, for Bosanquet, not one of determining a priori what the limits of the state are but what is necessary in particular circumstances.⁹⁶ There are few, if any, general rules that can be

⁹¹ McBriar, p. 112.

⁹² See "The Antithesis between Individualism and Socialism Philosophically Considered," in Bosanquet, The Civilization of Christendom and Other Studies, (London: Sonnenschein, 1893), pp. 304-357, and the discussions in Collini, ("Sociology and Idealism, p. 46), Harris (pp. 27-39, esp. p. 37) and McBriar (pp. 112-114). See also Adam Ulam, The Philosophical Foundations of English Socialism, (Cambridge, MA: Harvard University Press, 1951), (esp. Chapter 2, "Idealism") and the remarks in Muirhead, Friends, pp. 74-75. Vincent and Plant (pp. 100-101) discuss the influence of Bosanquet's work with the Charity Organisation Society here. It is important to recall that the 'socialism' to which Bosanquet was referring was, primarily, that of the "Fabians".

⁹³ Harris, p. 33. (Emphasis mine)

⁹⁴ Vincent and Plant, p. 121.

⁹⁵ McBriar, p. 113.

⁹⁶ Thus, Muirhead says that "Bosanquet was prepared, as he said at the time, for any amount of collectivism" (See J.H. Muirhead, (ed.), Bernard Bosanquet and his Friends, [London,

used to define the precise activity of the state; it depends on the individual case. When it comes to determining what the state or its agents or social institutions should or should not do, Bosanquet says that all we need it "bona fides" (PTS 179)--to be "equal to the situation" (PTS liii; FS 285).

3. Implications of Bosanquet's Theory of the State

3.1 The Relationship between Society and the State

Still, it is not obvious that Bosanquet has put to rest some important criticisms noted at the beginning of this Chapter. Recall, for example, the charge that Bosanquet has misdescribed the relation between society and the state--specifically, of either knowingly or unknowingly conflating the two. Such a charge is understandable. At times Bosanquet insists that the state is inherently and permanently distinct from society (PTS lxi), yet he also says that "the characteristics of Society pass gradually into those of the State" (PTS 173). He acknowledges that the state "includes the entire hierarchy of institutions by which life is determined" (PTS 140), and yet he also speaks of it as one of the ethical ideas or institutions which make up "ethical life" (PTS 298)⁹⁷ and as "only one side of Society" (PTS 183).

1935], p. 48.)

⁹⁷ See "The Wisdom of Naaman's Servants," where the state is described as the "executive organ" of "the spirit of the community, brought to consciousness and practice" (op. cit., p. 307).

Admittedly, Bosanquet would maintain that the justification of the state and society is the same, and that they have the same origin and, in the final analysis, the same end⁹⁸-- "the best life". Nevertheless, it does not follow from this that he conflates the two. What does follow, rather, is that there is an integral relation between them. As noted earlier, even though Bosanquet refers to the state as an 'institution', not only is it involved and implied in the various other institutions which compose society, but it is essential to their very existence.

Thus, Bosanquet says, each is "a growth dependent on the spirit and protection of the State" (PTS 279). The existence of the family requires, for example, the existence of laws concerning marriage, property and inheritances. Again, since it is the state which recognizes positions, gives individuals the rights necessary to performing their corresponding functions, and prohibits outside interference in the exercise of these rights, one's position in the social framework is rooted in and, in the final analysis, sustained by the state.⁹⁹

⁹⁸ But see Bosanquet's letter to MacIver, where he says that "the good for man... is not... the end of any [other?] [sic] social institution". Still, Bosanquet is not thinking of 'ethical ideas' here, but specific social groups, such as the church, and he acknowledges that even "each of them" [have] a limited aim making for good life; none has for its aim good life as such" (quoted in Harris, p. 68).

⁹⁹ One might say that, since the family is the place where our awareness begins, it is more fundamental than the state. But it is the state that provides the conditions for the very

But there is yet another reason why Bosanquet would insist that society cannot be independent of the state. If society and the state were two distinct institutions--i.e., capable of imposing potentially incompatible demands on individuals--there could be no unambiguous determination of rights and obligations. Bosanquet does not overlook the existence of competing loyalties¹⁰⁰, but would argue that social stability--the sine qua non of a person's rights and social life--requires that an individual be subject ultimately to only one authority.

What exactly, then, is the relation of society and the state? For Bosanquet, the state is present throughout society as that which recognizes, regulates, arbitrates between, coerces and contributes to social institutions and individuals. As an illustration of what he has in mind here, consider the relation between the skeleton and the body of an organism.¹⁰¹ Although the skeleton is part of the body as a whole and although it does not exist prior to the body--both are formed at the same time--the body is dependent on it. Similarly, even though the state does not exist prior to society, and

existence of the family, and thus Bosanquet would insist that it is, on the ontological level, more important.

¹⁰⁰ See, for example, FS 272-273 and FS 283-284.

¹⁰¹ Compare Hobhouse's use of a similar analogy: The bony skeleton is necessary to the human body and in a sense it holds it together, but it is hardly that which contributes to the life of the body, still less that which makes the life of the body desirable and possibly beautiful." (See Hobhouse, p. 76 and Bosanquet PTS xxxviii. But see also PTS 28.).

develops with society, society is dependent upon it. The state is not just one social institution among others, then, and it is because of this peculiar status that the state has, as its function, the resolution of the various conflicts which may arise.

Still, society and the state are distinct (PTS lxi).¹⁰² One can, for example, speak of social action, which is entirely different from both political and private activity (PTS xxxvii-xxxix) and, where political action is inappropriate or fails, Bosanquet emphasizes that an important role is still to be played by volunteer work.¹⁰³ Clearly, then, although influenced by Hegel's Philosophy of Right, Bosanquet's concept of 'society' is distinct from that which one finds there. Yet this should be no surprise since their respective analyses of the state also differ.

This account of the relation between society and the state is, obviously, antithetical to that found in the "theories of the first look". In Spencer, for example, there is a concern, if not an underlying fear, about allowing the state to have too great a role in people's lives. Thus, one finds an emphasis on defending the existence of certain natural rights and the claim that society is based on, and must respect, these rights. Given the fundamental character of

¹⁰² See also PIV 311 and the letters to MacIver cited in Harris, pp. 68-70.

¹⁰³ See Collini, "Hobhouse, Bosanquet and State," p. 95.

these rights, and since social life can be distinguished from life in the state, it is also argued that individuals can consent to and can enjoy the benefits of society without giving up their power to challenge or alter the state in which they live.

As we have seen, however, Bosanquet would hold that this reflects too narrow a view of the state as being simply the 'political fabric', and that the distinction between it and society cannot be maintained. He appears to believe, like Hobbes, that without a state, there is not merely an absence of an executive, but the absence of a social order.

3.2 The State and Moral Criticism

A critic may well note, however, that certain unacceptable consequences are implied by this view of the relationship between society and the state. If the state is seen as the supreme moral community (PTS 302), is one not left with a glorification of the status quo, and does it not suggest that the state cannot be subject to moral criticism? Or, one may ask, "If the state is the 'operative criticism of institutions', by what standard is it criticized?" Or again, if the state, as the concrete manifestation of the general will, is the standard of morality in a society, how can it be subject to moral evaluation? Bosanquet himself acknowledges that "[t]he State, as such, certainly cannot be guilty of personal immorality, and it is hard to see how it can commit

theft or murder in the sense in which these are moral offenses" (PTS 300).

One might note that, to begin with, the reason why these objections have any persuasive force is that they gloss over the 'enlarged' definition of the state that Bosanquet provides. And while it is clear from the preceding discussion that Bosanquet himself frequently uses it in a more restricted sense--i.e., in the sense of 'the government' or 'political institutions'--even here, he believes that he can provide some response to such criticisms.

First, to say that the state "cannot be guilty of personal immorality" does not mean that it is beyond moral criticism altogether. In fact, Bosanquet allows that it can be said to act "immorally" (PTS 304).¹⁰⁴ His point is, however, that because the state is not, strictly speaking, a moral agent, it cannot be subject to the same kind of moral assessment as a human person. It is "the guardian of a whole moral world, but not a factor within an organised moral world" (302; cf. FS 278; FS 288).¹⁰⁵ Nevertheless, Bosanquet remarks that

¹⁰⁴ See also FS 284-288. Again, in "The Wisdom of Naaman's Servants" (p. 307), Bosanquet notes that "[l]ike every moral force, it [i.e., the state] can make wrong its right."

¹⁰⁵ To be a moral agent, an entity must be able to act directly and from a motive. But because states do not have consciousnesses apart from those of its members, they do not act as human agents act, and they cannot have motives. Moreover, the evaluation of acts of moral agents must take place within a 'moral world'. Here, however, not only is there no 'moral world' beyond the 'state', but it is the state itself that represents this world. The state can provide the conditions for, and can encourage, moral action--it is in this

"[t]he means adopted by such a supreme power to discharge its responsibilities as a whole, are of course subject to criticism as respects the conception of good which they imply and their appropriateness to the task of realising it" (PTS 304). And, in a note to this discussion, he emphasizes that "[i]n such a case the guilty State is judged before the tribunal of humanity and of history" (PTS 304, n. 1).

Nor is it appropriate to say that Bosanquet's view of the moral authority of the state is, in the end, a mere defense of the status quo.¹⁰⁶ This criticism fails to recognize that the close relation between society and the state is also a dynamic one. There is, Bosanquet insists, a "mutual adjustment" (PTS 140) that occurs between the state and the various institutions that compose society.

Furthermore, not only are social institutions such as the state open to change, but they must change.

The state is a "living and growing creature" (PTS 123). As it tries to harmonize and organize social facts into "a rational shape" (PTS 111), it is itself adjusted and harmonized. In fact, in keeping with his general teleological view, Bosanquet would say that there is a tendency to consistency--a

way that it is a "moral force". This, however, is insufficient to predicate moral agency.

¹⁰⁶ In fact, Bosanquet explicitly rejects any attitude of 'complacency' in moral philosophy: "It is uncritical and false so far as it accepts any status quo, and especially the ease and comfort of any limited section of living beings" (SS 175). See SS 174-175 in general, on this point.

"nismus" to coherence¹⁰⁷--at work in all social institutions, including the state. Thus, the "ultimate and effective adjustment of the claims of individuals, and of the various social groups in which individuals are involved" (PTS 172-173) includes the 'rational criticism' of the state as well.¹⁰⁸ The integral relation between society and the state, then, rather than entrenching the status quo, ensures a continuous development of the state. Clearly, Bosanquet would think that it is difficult to imagine that there could be social ferment and yet that the state not respond.¹⁰⁹

But suppose such an 'unimaginable' situation occurs. What would Bosanquet say if, for example, "a despotic State refuses to sanction what a majority of its members regard as a necessary condition of the common good?"¹¹⁰ Or what if that power tries to impose ideas (such as that of a particular

¹⁰⁷ See, for example, PIV 54ff.

¹⁰⁸ We have already seen the importance of this notion of "criticism" above. Bosanquet writes that "the higher and the lower both nourish and colour one another" (Bosanquet, SS 74). "[T]he principles of the family, the district, the class, not only enter into the nation in these definite shapes, but affect the general fabric of the national State through the sense of race, of country, and of a pervading standard of life and culture" (PTS 298). These institutions give "life and meaning to the political whole" (PTS 140).

¹⁰⁹ As Nicholson notes, "Bosanquet's position, far from being one of 'bedrock conservatism' [This is Hobhouse's objection (see Hobhouse, p. 24)], is one of permanent reform" (Nicholson, British Idealists, p. 221). For an opposing view, however, see Collini, "Hobhouse, Bosanquet and State," p. 110.

¹¹⁰ Bertil Pfannenstill, Bernard Bosanquet's Philosophy of the State, (Lund, 1936), p. 270.

good) on others, or what if what the state claims to be a common good is not seen by citizens to be a good at all? Bosanquet would first, no doubt, advise caution. The fact that there might be general agreement in society does not entail that the state ought to act on it. Sometimes social consensus is nothing more than 'the will of all'--the sum of the private interests of an ad hoc association of persons--and reveals nothing about the common good. It is only when such a consensus in fact reflects the general will that a refusal by the state to act would leave it open to the above criticisms.¹¹¹

Second, Bosanquet believes that, even where the 'state' (here, the 'government') does not explicitly recognize a common good that other elements in society already admit, this tension or contradiction can usually be resolved--for example, within the limits of a constitutional process (PTS 199). Recall Bosanquet's view that social institutions are essentially a series of corresponding relations in individual minds, under a set of dominant ideas. Since the state is integrally related to society, it too must 'recognize' these ideas; to the extent that it does not, it is being 'inconsist-

¹¹¹ Recall Bosanquet's reference to F.H. Bradley, noted in Chapter 3 (section 3.5), that the state may do "with the moral approval of all what the explicit theory of scarcely one will morally justify" (see FS 274, citing Bradley, ES 1st ed., p. 166; [2nd ed., p. 184]). Nevertheless, Bosanquet does not go as far as Bradley when it comes to the value of private opinion. According to Bradley, "[w]e should consider whether the encouraging oneself in having opinions of one's own, in the sense of differing from the world on moral subjects, be not, in any person other than a heaven-sent prophet, sheer self conceit" (ES 200).

ent'. But given the "nismus" to coherence present throughout social institutions, and given the mutual adjustment occurring between society and the state, these 'inconsistencies' are eventually worked out (PTS 198). Consequently, Bosanquet would find it difficult to imagine that there could be a good, acknowledged by the community as a whole, that was not eventually recognized by the 'body' which coordinates and protects social life. Thus, in a democratic regime, the state would ultimately reflect this good; a despotic regime--where there was a refusal to recognize this good--would, undoubtedly, fail.

Still, one can imagine the situation where a particular government clearly no longer manifests the general will, but where other institutions do. Is one prevented from acting against it? Bosanquet does say that a despotic government is a "defect", and that it is at least questionable whether there is political obligation in such a system (PTS 50).¹¹² Here, where the 'will' of a government does not reflect the 'real will' of the individual (FS 272) and where "the importance of the matter in which we think Society defective" exceeds "the whole value of the existence of social order" (PTS 199),

¹¹² May one justify rebellion by an appeal to the laws of humanity or of an international organization? Bosanquet rejects this, since "the State is not subject to the law of any other State" (PTS 303, n. 2).

Bosanquet allows that one can have a public duty to rebel (FS 281; FS 284; PTS 139; PTS 199).¹¹³

Nevertheless, rebellion often affects far more than the government for it is the institution that assures the stability of the social order as a whole.¹¹⁴ A rebellion may reduce a nation to a Hobbesian state of nature, and not simply to a level of society where it may choose, as in Locke, a new 'executive'. In light of Bosanquet's view of the close relation between society and the state, this consequence should be of no surprise. In order to justify a rebellion, then, Bosanquet seems to suggest that one must show that it is more harmful to stay in the state than to do without it. And if one were ever to be in such a situation, one might well doubt that there had previously existed any state at all.

¹¹³ As noted in Chapter 2 (section 3), however, Bosanquet holds that there can be no right to rebel. This is also the view of D.G. Ritchie (see "The Rights of Minorities," in International Journal of Ethics, I [1890-1891], pp. 129-142, at p. 140).

There is, perhaps, a difference between Bosanquet and Green here. For Green, even though now rights are "derived from the state", some "existed when there was as yet no state" (LPPO, sec. 141). Hence, while the individual has no right to disobey the laws so far as they "fulfil the idea of a state," it seems one in fact has such a right "for the purpose of making the state in respect of its actual laws more completely correspond to what it is in tendency or idea" (LPPO, sec. 142). Thus, not only is there a duty to resist despots (LPPO, secs. 109ff.), but there may even be a right to do so.

¹¹⁴ Though not always; consider situation that occurred in the rebellion against the British Empire by the Boers. It is interesting, in light of the question of the possibility of moral criticism of the state, that (as noted earlier) Bosanquet supported the Boers in this conflict (see Muirhead, Friends, p. 95).

The state (in the sense of 'government'), then, can be criticized, but the criticism is not based on an appeal to some external standard but, rather, on whether it is consistent with social institutions as a whole--or, what is ultimately the same thing, the concrete manifestation of the individual's 'real will'. Further, Bosanquet acknowledges that such a state can do wrong, though differently from the way in which human persons do wrong. Still, it is not up to an individual to make this judgement in light of his or her private will or private interests, and the extent to which he or she may go in pressing such a judgement is determined in part by an assessment of the effect it will have on organized social life in general.

3.3 The Legitimacy of States

We have seen how Bosanquet accounts for political obligation (i.e., the moral authority of the state) and the preceding section addressed the issues of the possibility of a moral criticism of the state and of what one can do when the state is considered to be 'immoral' or in contravention of its 'end' as a state. Yet one might well ask how one can determine the legitimacy of particular states--specifically, as Green says, "where the legal command of the supposed authority is doubtful" (LPPO, sec. 102).

As we have seen, the state is necessary, not only as an arbiter and regulator of social institutions and individuals,

but as that agency that provides the definitive recognition of rights. Its legitimacy is, then, based on its being necessary to the 'end' and being an expression of the general will.

But, one might note, this does not address how one determines the necessity of a particular state or how one determines whether a particular state actually represents the general will. How can one know--for example, in time of civil war or invasion--whether a power is properly called the state to which one owes obedience?

Two answers suggest themselves. One might hold, as does Green, that there is a recognition by "society" (LPPO, sec. 103) or by the set of the major social institutions. Alternately, one might say that this power could attempt to legislate itself into existence as the state. But neither option appears to be satisfactory. To base the legitimacy of the state on a recognition by the community seems to be much like the social contract view, where a society establishes or assents to a state. Bosanquet would object, however, that this misunderstands the relation between society and the state. Since the state is society in its capacity as employing force, and since the state is necessary to the existence of social institutions, there seems to be no question of a society preceding, and then giving recognition to, a state. The state and society are, roughly, simultaneous in growth and development. And even if there could be such a 'contract', there is

still the question of how one could ascertain what the will of that society would be.

Could the 'power' concerned legislate itself into authority? Again, Bosanquet would reject this. Bosanquet's objection to Austin's theory of law and of sovereignty is that such a power is "not part of a living system" (PTS 243) and that, to this extent, could have no relation to the minds which constitute society. Its activity would be purely 'external', and its capacity to regulate, coordinate and arbitrate would be alien to the individuals and institutions it attempted to control. For a power to be a state, there must be some recognition of it as implied in, or required by, social groups.

How, then, is a 'power' determined to be a state? Bosanquet would maintain that this is, in part, an empirical matter. The modern nation, is he says, "a history" (PTS 299); its legitimacy is based on its historical origins and on what it does or can do. Does it have "unity of supreme control over the outward actions of men" (LPPQ, sec. 105)? If it does, then it is the state--and, even if it is in some respects inconsistent with what it ought to be, it is still owed obedience. Where there is no such authority in a given territory, there simply is no state to which we owe obedience (see LPPQ, sec. 105).

Yet this does not mean that, where there is no state, individuals may ally themselves with whatever power they

choose, for there remains Bosanquet's injunction that morality demands that we try, as far as possible, to be "equal to the situation". Moreover, this does not tie Bosanquet to a view that 'might is right'. There is, he would say, a 'logic' beneath the history. Since the state is an institution that, like all social institutions, exists on the level of 'mind', in order to have the power to adjudicate or to regulate, it must be seen to have the power to do so. There is, then, a 'recognition' at root here. And for there to be such a recognition, there must also be an awareness that, in some way, this power reflects certain dominant ideas present in individual consciousnesses. (Indeed, Bosanquet suggests that there is no state that does not reflect, in some way, the dominant ideas or general will of that society.) Thus, Bosanquet notes that there even existed a "sentiment..., that pervaded the United States through the war of secession" (PTS 299).

But by 'recognition', Bosanquet does not mean (as in a social contract view), that an individual or group of individuals consent that a certain power should be the state. There is no question of making a choice here. Rather, the 'recognition' that occurs is simply that a power is seen to be able to carry out the functions of a state. And where this underlying recognition is lacking we have, as we have seen, the possibility--if not the duty--of resistance to this 'power'.

3.4 Society, the State and the Individual

Given the preceding account of society and the state, it is clear why Bosanquet sees no opposition or a priori antagonism between them and the individual. In Chapter 3, we saw that the individual is essentially a social being; in the present chapter, we have seen what is involved in saying this. Bosanquet has argued that society is a meeting point or a network of minds under the influence of the same dominant ideas or general will and that there is a relation of mutual recognition among them. Thus, one's 'position' in society is, in part, a product of the recognitions of others.

Moreover, it is by means of society and its institutions that individuals grow and develop. Here, in "the whole world of achievements, habits, [and] institutions", the individual comes to have "some clue to the reality which is the truth of himself" (VDI 208). In fact, Bosanquet says that society communicates the essence to the individual (PTS 123) and is as necessary to him or her as "form" is to "matter". (PTS 30).

Yet we have also seen that Bosanquet insists that society cannot exist apart from the existence of the state, and that the roles or functions that a person has--which represent what he or she is--are defined by it.¹¹⁵ In fact, in fulfilling its various functions (such as arbitrating the conflicts that

¹¹⁵ See, here, a parallel to MacIntyre's "communitarian" view. MacIntyre writes that "the self has to find its moral identity in and through its membership in communities such as those of the family, the neighborhood, the city and the tribe" (After Virtue. 2nd. ed, p. 221).

arise among individuals and among the various social institutions), it enjoys absolute power and can even 'force' individuals 'to be free'.

But it does not follow that individuals are thereby used as a means to an end distinct from themselves.¹¹⁶ Bosanquet holds that, when we understand that the state is a natural extension of ourselves and of society, and that, like ourselves, it is an 'organism' that exists on the level of mind, there can be no question of individuals and the state being related to one another as ends to means, or vice versa. Indeed, Bosanquet says that individuals and the state are the same thing, seen from different points of view (PTS 168)¹¹⁷; the state is "the individual mind writ large" (PTS 143). Moreover, given that the specific function of the state is "the maintenance of rights" (PTS 213), there is no opposition with the interests of individuals. Most importantly, however, Bosanquet believes that once we understand the nature and function of society and the state, we are able at last to appreciate what they can do in contributing to the development of individual character and of human personality as a whole.

¹¹⁶ See "Hegel's Theory of the Political Organism," in Mind, n.s. VII (1898), pp. 1-14, at pp. 8-9. (This essay was a response to J.M.E. McTaggart's article, "The Conception of Society as an Organism," in International Journal of Ethics, VII (1896-1897), pp. 414-434.)

¹¹⁷ They are, recall, "but a single web of content which in its totality is society and in its differentiations the individuals" (PTS 168).

3.5 Society, the State and the Recognition of Rights

This account of society and the state also explains why Bosanquet believes that much is to be gained and nothing is threatened by his insistence on the recognition of 'positions' and rights by the state.

Recall Bosanquet's argument that rights are ascribed to 'positions' and that 'positions' are defined within a social context. Given the description of society as existing on the level of 'mind', he says that it is difficult to imagine how someone could have a certain 'position' and its corresponding rights and yet that they not be recognized.

The recognition of rights, Bosanquet would maintain, does not necessarily require some explicit act, over and above what already exists in recognizing a 'position'. If a 'position' were recognized without the recognition of the correlative powers, there would be an 'inconsistency' (see PTS 194). Bosanquet argues that, strictly speaking, it does not make sense to speak of 'unrecognized rights', for one's claim to a right can enjoy the support and the protection of others in society only so far as it is recognized by them (PTS 194). But, as we have seen, Bosanquet acknowledges that "[n]o society is consistent with itself" (PTS 198). Still, if one were to ask that a 'right' be recognized, one must "show what 'position' involves it, and how that position asserts itself in the system of recognitions which is the social mind" (PTS 198).

It is important to keep in mind that 'recognition' is not an arbitrary procedure. The recognition of 'positions' and rights is, Bosanquet says, a matter "of fact and logic, not of fancies and wishes" (PTS 198). Thus, as a society develops, claims to certain positions and powers are gradually recognized. There will, therefore, always be 'new' rights, for "the social whole grows... in adequacy to the needs which are its facts" (PTS 240).

Still, to return to the questions posed at the end of Chapter 2, one might ask how this recognition takes place and why there could not be a social, as distinct from a state, recognition of rights.

To begin with, why does Bosanquet insist that rights must be recognized by the state? Why isn't a 'social recognition'--if there need be any recognition at all--sufficient? As we saw in the second chapter, Bosanquet's first response to this question would be that, without a formal recognition, a claim to a right would be indistinct from--and would amount to nothing more than--a wish that there be such a right. Moreover, without an organism that 'recognizes' such claims, it would be extremely difficult to determine their weight in social life. Besides, for there to be 'rights', independent of the state, there would have to be an agency able to enforce and ensure their respect. But one cannot have two agencies in a society, both of which possess the authority to make a final adjudication of competing claims. There is, clearly, a need

for an authoritative recognition of rights, and whatever institution assures this is the 'state'.¹¹⁸

The arguments in the present Chapter, however, provide a further argument. As we have seen, for Bosanquet, the state is more than the government of the day. It includes the plethora of governmental agencies, the civil service, the police, the army, and more. The state is, in other words, society seen as possessing the power to use force--to make law and to coerce--and it is impossible that society exist apart from it. In view of the close relation between the society and the state, then, it is difficult to imagine that there could be a recognition of rights in a society that was not matched by a recognition by the state.

How, then, does recognition take place? Bosanquet's account of the process is, admittedly, not explicitly given, and it is plausible to hold that 'recognition' may occur in a number of different ways, depending upon the nature of the specific position and right. Nevertheless, two general possibilities come to mind. On the one hand, recognition in

¹¹⁸ Thus, in answer to the question raised in Chapter 2 concerning who determines rights when there is no obvious common authority, Bosanquet's response would be that one should first ask whether there is any civil order at all and whether social institutions continue to function. Whatever body guarantees this order and preserves this functioning will also be that which is capable of recognizing rights. Without such a body, however, there is no right--but then, if there were no agency to define and protect them, what value would there be in speaking about 'rights'?

law by the state may be simply the final phase in the process of the recognition of a position. Having a right entails, presumably, the ability to make claims on individuals and on institutions. So far as the state is involved in the operation of institutions in society, then, rights must be recognized by it.

Alternately, some texts suggest that one may be able to distinguish two distinct 'recognitions'¹¹⁹ but that, a purely social recognition can never be legally effective. Thus, rights must be explicitly recognized by the state. There is, Bosanquet would no doubt hold, no cause for concern here since, so long as the law is open to the influence of social forces, it can never lag far behind in instituting that which society acknowledges as essential to the common good. In any event, whatever description of the process of recognition one chooses, Bosanquet believes that people should not be concerned that they might be hindered by the state in obtaining those rights which they need.

In light of the principles that Bosanquet appeals to in defending the necessity of a recognition of rights by the state, it would seem that resistance to it is based, not so much on the inadequacy of Bosanquet's arguments as on a different understanding of the nature of the state and of its relation to the individual. All Bosanquet can do, however, is

¹¹⁹ Bosanquet refers to what "in some sense and in some degree amounts to a social recognition" (PTS 32-33; cf. PTS 99).

remind his reader of his criticisms of these aspects of the liberal individualist view, signalled in Chapter 1, and of the arguments noted earlier, supporting the view of the individual as an essentially social and political being. Given this portrait of the individual and of the nature of the state and its relation to society, Bosanquet would find it is difficult to imagine someone, whose identity is by definition determined by the recognitions and the positions that he or she has in a community, as having a position and rights that are not recognized by the very organism which coordinates every activity and protects him or her.

Admittedly, since there is always the possibility of an 'inconsistency' in the state, a refusal to recognize is not inconceivable. Nevertheless, without a social order defined by a state, logically there can be no 'positions', and without both, there can be no rights. To abandon these principles, Bosanquet would hold, is to abandon any hope of providing a coherent explanation for the nature, source and limits of rights.

4. Summary: Bosanquet's Social Ontology

In these last two chapters, I have given an account of, and discussed some of the issues underlying, five concepts identified as being fundamental to Bosanquet's theory of rights: "the best life", the 'individual', the 'general will', 'society' and the 'state'. The objective here was, primarily,

to clarify and explain the basis of Bosanquet's view, taking into account some major criticisms. This analysis has also served to elucidate a number of the relationships among these elements of Bosanquet's social ontology and to state in more detail his alternative to the individualist presuppositions of the theories of rights of Bentham, Mill and Spencer.

Specifically, it has been noted that Bosanquet's theory of rights reflects a teleological view--both of rights themselves and of reality as a whole. Within the context of his political thought, Bosanquet describes this end as "the best life" of both the individual and of human beings in general. The account of this in Chapter 3 focused on clarifying the role of this end in the nature and the ascription of rights. It has also shown how a teleological view of right can be a theory of the good and yet still be compatible with the interests of the individual.

While Bosanquet's analysis of individuality may be complex, it is clear that he wished to underscore two points: first, that the human person is essentially a social being--not the abstract and formal entity that one finds in the "theories of the first look"--and, second, that while there are a number of ways in which the concept can be used, and while the notion of 'individual' designates something permanent, stable and of value, such an account does not ignore the value of individual human beings.

In discussing the nature and importance of individuals, Bosanquet reminds his reader not to forget the social activity that takes place at the level of mind. It is on this social foundation that an individual is said to have an essence--that which one has in common with others as well as that which distinguishes him or her from them. Moreover, it is within society that individuals can realize their potential and, thus, have their full value. With this conception of the human person--as a social being fulfilling a number of positions, but also as a mind--Bosanquet is able to explain both how one acquires rights and how one may lose them.

With the notion of the general or 'real' will, once again we have a principle whose nature is best understood on the spiritual or mental level. We have seen how, beginning with the particular will of the individual, Bosanquet is led to this other 'will', which is the 'real will' and--ultimately--the general will of each member of society. Moreover, whatever represents the general will represents each person's own will and has authority over him. Thus, it is because this general will is also the will of the state, that we can have an explanation of political obligation. Without the mechanism of the general will, there could be no justification for political authority and, hence, there would be no legitimacy in the existence of positions and the ascription of rights. In short, without this concept, Bosanquet insists that one cannot

formulate a theory of the state, of self government or of right.

From the general will, one is led to society and the state. We have seen examples of the various institutions that make up society, their respective roles in the development of the individual, the relations among them, and the fundamental role of the state. If one sees society as a unity of natural institutions, and recognizes it as existing on the level of mind, one understands how it is that individuals are social beings and why it is that positions and rights must be recognized.

Bosanquet maintains that the state is natural and, although it is concerned primarily with the use of force, the state exists on the level of mind. Despite this 'metaphysical' character, the state of which Bosanquet speaks is, he claims, not an 'ideal' entity, but the nation state. The state derives its authority from the fact that it manifests the general will and aims at the common good. Although the state is an organ of coercion and can act directly only in a negative way, it is not opposed to the development of the individual. On the contrary, it is the means of the liberty and the development of the individual, and even contributes to one's self-understanding. Specifically, the state is seen, not as a limit on the freedom and rights of the individual, but as a necessary condition for their existence.

In the last three chapters, then, my object has been to present Bosanquet's response to the major theories of rights of his time. What remains is to see precisely how it addresses the problems identified in the first chapter, what its advantages and disadvantages are, and, finally, the extent to which it is tenable.

CHAPTER 5

BOSANQUET'S THEORY OF RIGHTS: AN ASSESSMENT

To this point, we have seen the rights theories of Bentham, Mill and Spencer, Bosanquet's criticism of, and response to, them and, finally, some of the concepts underlying this response. It is time, then, for a general assessment of Bosanquet's theory of rights.

In this concluding chapter, I return to those issues, raised in Chapter 1, which Bosanquet would see as problems for liberal individualist theories of rights, and will show how the account presented in the subsequent three chapters can be used to answer or avoid them. In the process, I will raise a number of additional questions concerning the adequacy of Bosanquet's views and indicate some issues that remain to be explored. This will serve, in the first instance, to determine whether Bosanquet has a place within the British liberal tradition and whether his response is a radical departure from, or simply an extension and development of, these "theories of the first look", but also to suggest some further guidelines for future research on an idealist theory of rights.

1. Bosanquet's Theory of Rights as a Response to the "Theories of the First Look"

How does Bosanquet's analysis of rights compare with those presented by Bentham, Mill and Spencer? Is he able to address or avoid the problems he would find in their theories of rights? Does he, moreover, provide a plausible account of the nature, source, ascription and limits of rights? To answer these questions, one must consider not only Bosanquet's discussion of rights, but the 'social ontology' that underlies it. In this section, then, I shall review Bosanquet's criticisms of liberal individualism and the response one finds in his work, as well as discuss additional objections to it.

1.1 The Nature, Authority and Ascription of Rights

Bosanquet would argue that these liberal individualist rights theories fail because the accounts they contain of the nature, source and limits of rights, and of how rights are ascribed, are inadequate. To begin with, it seems evident that a theory of rights must include a clear definition of what a right is. Yet Bentham, Spencer and Mill are relatively silent in this regard. All mention 'rights' of some kind, but do not appear to provide any extensive or systematic account of what these rights are.

The criticisms that Bosanquet would raise, however, focus not on the definition of 'rights' but on such issues as the purpose of rights and the origin of their moral and legal

authority. On this second point, there is, admittedly, a division of opinion in the liberal individualist tradition. There are those who hold that the moral character of rights hinges upon an agreement with others (Spencer), those who hold that (at least some) rights are ultimately grounded in a broader conception of the human good (Mill), and those who claim that rights exist only so far as they are enumerated in law (Bentham).¹ But, as suggested in the first chapter, Bosanquet would find each of these accounts of the moral authority of rights to be problematic.

Recall what each of these positions maintains. As we have seen, Spencer argues that rights are 'natural' and acquire moral authority consequent to an agreement to respect the rights of others. Thus, individuals have the right to pursue whatever ends they choose, so far as their actions do not infringe upon others pursuing their own ends. The state exists only to protect rights and is subject to those who hold these rights. Its activity, therefore, is essentially one of preventing violations of rights, and it can never legitimately act on its own to further the public good.

At the other extreme, Bentham denies that rights are natural and inalienable. Otherwise, he says, they would exist in a condition in which their force and their safeguards would

¹ Of course, there are other views of the source of the moral and legal authority of rights in the liberal individualist tradition. Locke, for example, held that rights have an a priori moral force.

be unintelligible. Rights are, in Bentham's view, essentially the product of law and have a moral character only so far as they happen to maximize utility. There is, then, no intrinsically ethical dimension to rights. Law and rights exist as commands of the sovereign, and a sovereign can enact laws that do not maximize utility. Admittedly, in the ideal world of the utilitarian, all of one's rights would be morally justifiable. But Bentham would insist that rights continue to have legal weight even if they have no such justification.

The nature, source and authority of rights are not, admittedly, as straight forward in Mill's work. Not only does Mill speak of different kinds of 'rights', but some claim that his account of the value and moral weight of rights in On Liberty is inconsistent with that given in Utilitarianism.² Nevertheless, it is plausible to hold that, for Mill, the moral weight of rights is grounded in justice--specifically, via the principle of utility (U 52). Since 'justice' is possible only where there are social relations, like Bentham, he accepts the view that rights do not exist prior to organized social life. Yet, for Mill, my rights cannot be just whatever the state grants me, for then it would make little sense, for example, to criticize the state for violating rights (see U 48-49). Still, to charge that the state has

² For the view that there is an opposition between Mill's accounts here, see, for example, Michael Bayles and Kenneth Henley (eds.) Right Conduct: Theories and Applications, 2nd ed. New York: Random House, 1989, n. 7, p. 27.

violated one's rights seems to be simply a disguised way of saying that the state has violated the principle of utility; thus, by itself, a right has no clear legal weight. And while, like Spencer, Mill would seem to allow that rights function as limits on the moral authority of the state³, he would clearly deny that any right is absolute and inalienable.

Despite these differences, Bentham, Spencer and Mill agree that rights have the same function--that is, that they are used to 'protect' individuals from the interference of others (e.g., from the law and, particularly, the state)--but there is no specific indication of what rights are for. And it is precisely because there is no clear sense in these theories as to what rights are for that Bosanquet would wonder whether Bentham, Mill and Spencer have an adequate understanding of what rights are.

In general, what Bosanquet would find problematic in these accounts is that they focus on individuals in their individuality (and therefore, suggest that the social context in which rights have their meaning is something irrelevant to why an individual has rights), they propose that rights can exist independently of a moral 'end' (which leaves unsettled why others ought to be bound by them) and, following from the above, allow for the possibility of a right to act in a way that interferes with the development of individual character

³ See John Skorupski, John Stuart Mill, (London: Routledge, 1989), p. 328; see also p. 327.

and human personality as a whole. Moreover, these liberal individualist theories of rights seem of limited value in determining which 'rights' are relevant and must be counted in a given situation, evaluating the respective moral or legal weights of these rights, explaining what force (what Spencer and Mill, at least, call) a right may have if society or the state is in no position to recognize it and, particularly, determining priority among potentially conflicting rights.

Bosanquet responds by providing an explicit account of the nature, source and authority of rights. As we saw in Chapter 2, he defines a right as "a power assured in order to fulfil a position" (PTS 196), and argues that this position, and the correlative power or right, exist only within the context of a social order under a system of law. Since this system is said to have a purpose or an 'end'--"the perfection of human personality" or "the best life"--and since this 'end' is the object of the 'real will' of the individual, rights have a morally authoritative character. But, since rights, in virtue of being instituted by the state, are part of the system of law, they have a legal force as well. In short, according to Bosanquet, a right "in the fullest sense" is a claim to a legal and moral power, recognized by the state as necessary to the achievement of some purpose or end, and attributed to a position held by a person.

Like natural rights theorists, then, Bosanquet holds that rights have both a moral and a legal character. If a right

were nothing more than a legal power, then it could possibly conflict with the demands of morality. On the other hand, a 'moral right', independent of recognition by the civil order, would be vague, and the diversity of opinion about the specific character (e.g., weight) of such right--particularly in the absence of an arbitrator with binding authority--would undoubtedly lead to conflict. Here we see one of the advantages of Bosanquet's view. By not speaking of different 'kinds' of rights (e.g., moral or 'natural' versus 'legal') or of the inalienable rights of individuals (e.g., to liberty and security), Bosanquet avoids a number of problems, such as those that arise in attempting to resolve putative conflicts of rights.

Unlike natural rights theorists, however, Bosanquet does not hold that rights exist prior to the state or independently of it. In fact, Bosanquet would agree with Bentham that rights are the product of the activity of the state, for it is the state that 'recognizes' or 'creates' (i.e., defines, distributes and protects) rights in law. Yet this does not mean that rights are based on 'might' or that the state can 'sacrifice' individuals for interests other than their own. For rights are recognized by the state precisely because they are necessary to the realization of an 'end' which each individual wills--"the best life". And, since it is the 'end' which every individual wills, it is binding on all. Moreover--here, unlike Bentham--because Bosanquet sees morality and law as having the

same purpose, the moral side and the legal side of right are inextricably united. Because of this, and because of the particular teleological character of rights, one could not have--as one could in Bentham--a 'right' to act immorally.⁴ To the extent that one has a 'right' that, in fact, is in conflict with what one ought to do, it is only because of a defect in the law. A right "in the fullest sense" is, in law, what it ought to be.

Bosanquet would also reject the view that individual rights can be used against, or used to limit, the state. (As we have seen in Chapters 3 and 4, such a view would presuppose a relation between the individual and the state that Bosanquet would deny.) Admittedly, given that no state is entirely without 'contradiction'--that sometimes the state does not do "its duty" (PTS 1) as a means to the development of human personality--there is room for conflict between a state and its citizens. But Bosanquet would say that here the state is not "at its best". We have seen him argue that, in fact, the state progresses, little by little, towards the elimination of these 'inconsistencies' and responds both to the demands of individuals and social institutions and to 'facts'. Thus, he does not see that such a conflict can last.

⁴ While Bosanquet would deny that one could properly have a right to do what is wrong, recall that Bosanquet also denies that personal "immorality... as such" should be subject to legal sanctions.

Yet even where there is a conflict, individuals cannot, strictly speaking, claim that their rights have priority over the activity of the state. As a product of the state, rights are always subject to a state. Even in extreme cases, the most Bosanquet believes we can say is that we may have a duty⁵ to resist or rebel. (Thus, if individuals find themselves in a despotic state, the fact that they have no right to rebel entails neither that they are obliged simply to acquiesce to it nor that they may not justifiably resist it.) Nor should one fear that such a view of rights might entail that an individual is just a 'means' to the community; on Bosanquet's view, the state, as such, has as its function "the maintenance of rights" (PTS 189; cf. FS 277).

But Bosanquet's position does more than challenge the adequacy of the descriptions of the nature of rights found in these "theories of the first look"; it maintains that the explanations these theories give concerning the ascription of rights are either incomplete or question-begging.

Consider, for example, the 'natural rights' view. To begin with, when one uses the term 'natural rights' in general, it is not at all obvious how such rights are 'natural'.⁶ For Spencer, an individual organism has rights so far

⁵ As distinct, of course, from an 'obligation'. Recall the discussion of this distinction in Chapter 2, section 1.

⁶ Some suggestions of what the term could mean, within the so-called natural rights tradition itself, are: that these rights are discovered 'in nature' like the so-called 'laws of nature'; that they are deducible from such laws; that they are

as it has life. But to say that life--or any subsidiary characteristic, such as rationality, moral personality, or membership in a community as such--is the basis for rights--particularly, 'inalienable rights'--ignores a number of important questions. What sense does it make to speak of rights, independently of a particular social context and without there being any authority to enforce them? Moreover, not only are the criteria for the characteristics necessary for rights to be 'ascribed' rather vague, but it is not altogether clear why these particular criteria are required, and it seems purely arbitrary to maintain that they must be present for rights to be ascribed to persons. In fact, Spencer himself admits that 'life', by itself, is not a sufficient criterion; one must agree to respect the rights of others before one's own rights have moral weight (MS 196). But then rights appear to be as much conventional as they are natural, and the myriad of problems associated with social contract theory (e.g., What form is this 'agreement' to take? How does it bind successive generations? Under what conditions is it revocable?) become problems for the Spencerian rights theorist, too.

rights which would be discovered in a "state of nature", if there ever were one; that they are necessary to individuals in society and hence part of their nature; that they are part of, or are the property of, 'natural' beings; they are related to the nature of what it is to be a moral person. It is not my purpose here, however, to discuss the problems and ambiguities in this notion.

Bentham, who rejects the natural rights view altogether, sees rights as determined by law, and it is as a member of a social order--as one subject to the law--that one has rights. In this respect, then, Bosanquet and Bentham are in agreement. But for Bentham, there is no basis for the ascription of rights other than legal fiat, and the positions that individuals hold in the social order need have no connexion to their capacities or qualities. To the extent that there is a moral claim for rights, it is because it is supported by its utility--which means simply that it promotes a sum of individual interests--not, for example, because it is one's 'good'. And, further, rights can exist without there being a moral justification of their existence. In short, then, Bosanquet would object that Bentham does not consider or recognize that a theory of rights must address the question of why the legal order assigns certain rights to certain persons--for example, what 'good' is to be achieved--and that a state which does this without consideration of any moral 'end', would be acting arbitrarily if not immorally.

Bosanquet's position raises a number of problems concerning Mill's account of the ascription of rights. A minor point, noted above, is that he would claim that Mill does not make explicit what, exactly, is the foundation of rights. Is it based on the principle of utility, as Mill suggests in Utilitarianism, or is it related to a deontological value of the individual, which seems implied in On Liberty? More

important, however, is that Bosanquet would argue that Mill's view--and, similarly, those of Bentham and Spencer--fail, first, because the rights they defend derive their moral weight from the value of the individual and, second, because (to have individual rights in the way these authors describe) one must be able to isolate a 'private sphere' in which the individual enjoys such rights, and be able to say what it is that is unique about individuals that warrants these rights.

Bosanquet insists, however, that it is practically impossible for us to separate an individual from all of his or her relations to others and that rights cannot be ascribed to individuals outside of the context of, and their relations in, a social order. Unless there is a social position or function to which one can refer, there is no way of determining whether an individual ought to have certain powers or rights.

Bosanquet's solution to the problems involved in the liberal individualist account of the ascription of rights would be, as we have seen, to argue that rights are not attributes or properties or possessions of persons as such, but of the positions in society that these individuals have. For Bosanquet, the ascription of rights does not depend just on whether a person has a certain characteristic (or set of characteristics), nor is it something that is, in principle, entirely arbitrary. Rather, determining whether a person has, or should have, rights depends on whether a person is fulfilling, or can fulfil, certain recognized positions and on what

rights are necessary in order to fulfil the requirements of those positions.

While no state is perfectly consistent in recognizing all that it ought to, Bosanquet would hold that there is no arbitrariness in whether a certain right is necessary to a specific position and whether an individual has the requisite capacities for fulfilling a particular position. Nor does his solution ignore the interests of the person. Although the nature of an individual is not exhausted by listing all of his or her positions, it is through fulfilling the requirements of these positions that one develops one's capacities and one's "fuller self". One's 'positions', then, are essential to what that person is. Thus, the ascription of rights to positions is not opposed to the development of human personality in general, or the development of individual character in particular. And because rights are tied to positions that are, in turn, determined by an 'end', one can avoid (or, at least, diminish the effect of) such problems as putative conflicts of rights, by focusing, instead, on what is actually required by the relevant positions or, if necessary, by the 'end'.

Bosanquet would maintain, moreover, that because a position is, by definition, 'recognized' by the state, the corresponding rights would also be recognized. If, by chance, they were not, there is a clear basis from which one can make a claim to such rights, and one can charge that, so long as the state does not recognize them, it is being inconsistent

with itself. Finally, Bosanquet's account notes that, as one's positions in society change, one's rights change. But rather than constituting a threat to individual well-being, it is a means by which this is protected. As we saw in Chapter 3 (section 2.3), by insisting that no rights are absolute and inalienable, Bosanquet is able to avoid the kind of ossification of rights and positions that is possible on the liberal individualist views.

Bosanquet can, then, provide an explanation of the origin of rights and criteria according to which individuals acquire them. Moreover, his account provides a means of dealing with those 'hard cases' where, traditionally, one is uncertain whether a being has rights. Unlike many recent rights theorists (for example, A.I. Melden⁷), Bosanquet would deny that, to avoid being treated arbitrarily, a being must possess certain rights. On Bosanquet's view, no particular human characteristic entails, by itself, having a position or right, although it may be a condition for having a position or right. While individuals who have few, if any, positions would have few, if any, rights, this does not imply that in such cases the individuals concerned lack moral standing for, even if they do not possess rights, others may still have duties that affect them.

⁷ See A.I. Melden's discussion of 'hard cases' in his Rights and Persons, (Berkeley, CA: University of California Press, 1977), Ch. 6, sec. 7, pp. 207-223.

In short, on the one hand, Bosanquet would insist that there is more than some incidental "point of intersection"⁸ between law (and the rights assigned by the state) and morality, as Bentham might hold, but, on the other hand, he would maintain that individual rights do not constitute some external or independent moral standard which the law must always respect, as Spencer's (natural rights) account would suggest. And while Bosanquet notes that the possession of rights is related to characteristics of the individual him or herself, their ascription must be the product of a public recognition by the state.

A critic might argue, however, that even if Bosanquet's account of rights is more complete than--and is able to avoid the kinds of problems found in--the theories of Bentham, Mill and Spencer, it fails in two fundamental respects: it has implications that are clearly inconsistent with the whole point of a rights theory, and it has not clearly described what is involved in the process of recognition.

To begin with, it seems that for rights to be rights (and not merely permissions or privileges), they must, in some significant way, place limits on what others--including the state--can do. They must not be entirely subject to control by the state; they must also not be entirely dependent on social

⁸ This expression comes from H.L.A. Hart, "Positivism and the Separation of Law and Morals," 71 Harvard Law Review 593 (1958), reprinted in Philosophy of Law, 2nd. ed., (ed. Joel Feinberg and Hyman Gross), (Belmont, CA: Wadsworth Publ. Co., 1980), pp. 49-67.

recognition and historical circumstances for their existence, or else they will not have the authority that rights are supposed to have.⁹ But, since Bosanquet holds that rights depend on 'recognition' by the state, and since 'recognition' can be withheld or withdrawn by the state, it seems that, to make an appeal to rights is of little actual value should one be in conflict with the state. Moreover, because the account that Bosanquet has provided maintains that rights depend on social context and recognition and on the particular system of law in place at the time, what counts as a 'human right' could vary widely--even among states that are at the same level of development. What Bosanquet describes, then, is at best a social practice; it is not a right.

The critic will conclude, therefore, that Bosanquet's description of the nature of rights is too (culturally) relativistic and that he confuses a 'human right' with a custom or a social convention about what, at a particular time, people could or could not do. In any event, what Bosanquet appears to be describing is not what one would normally call a 'right'.

In response to this first objection, Bosanquet would no doubt reply that to say that a right is context-dependent or dependent on recognition is to say neither that it is arbitrary nor that it cannot lead one to examine critically the

⁹ This is similar to a criticism often made of utilitarianism. (See, for example, David Lyons, "Utility as a Possible Ground of Rights," in *Nous*, XIV (1980), pp. 17-28.)

context on which it depends.¹⁰ Still, as noted in Chapter 2, no right is absolute. It would, for example, be absurd to speak of the right of a Roman slave to freedom and to treatment as an equal; at that time, there was neither the notion of a general equality of human beings nor the possibility of a social recognition of such a notion, on which a claim to such a right could be based. Before one can insist on the existence of a right--even a 'human right'--there must be an environment in which this right could have a meaning and a role. It is also necessary that there be a general awareness of the legitimacy of such a right--an awareness that is at least implied in the recognition of some position. Without such a position and without such an environment, it seems senseless to demand, or even to speak of, such a right. Thus, it should be no surprise that there are societies where the existence of certain rights, and the understanding of what it means to have a right, are different from what one finds in liberal democracies.

But to say all this is not to suggest that it is never reasonable to demand a right. For it seems that Bosanquet would say that wherever the objective conditions and cultures are similar, one would--and should--have similar rights. It is not mere coincidence, for example, that in liberal democracies

¹⁰ Recall that Bosanquet holds not only that the aim of state action is "the maintenance of rights" (PTS 213), which provides a standard against which it may be evaluated, but that the state has a number of duties, determined by the nature of its 'end'.

one finds more or less the same rights. And this supports Bosanquet's view that rights are not merely arbitrary creations of a state or of historical contingency.

A second objection that a critic might raise to Bosanquet's theory of rights is that it is never clear what, exactly, Bosanquet means by 'recognition'. The point here is not that Bosanquet does not spell out what the process of recognition is--this has been discussed in Chapter 4. It is, rather, that the concept of 'recognition' itself is ambiguous. Since both rights and the positions to which they are attached must, Bosanquet says, be 'recognized' by the state, this problem is serious.

This objection seems quite strong, since there are at least three distinct ways in which one can talk of 'recognition'. For example, one can say that 'recognition' occurs when one being is merely aware of another; for example, I recognize my friends when I meet them in the street. Or again, there is the sense in which one can give or refuse recognition to things that one is well aware of. Here, one may think of the role of the chair of a meeting during the course of a discussion. Or yet again, one can speak of 'implicit recognitions'--that is, cases where one recognizes phenomena that provide the context for being aware of something, but without being conscious of all that is implied by these phenomena. For example, one might recognize that children are weak and are susceptible to abuse, from which it may follow

that others should take special measures to protect them from harm--and yet this consequence may not be 'recognized' until someone draws attention to the fact that it does follow from what one already recognizes. Which sense, one might ask, does Bosanquet have in mind?

If, when he is speaking of the ascription of rights, Bosanquet is understood to be using the notion of 'recognition' in this first sense, it would seem that so long as the state is aware of the fact that a particular person is fulfilling (or is capable of fulfilling) a particular position, recognition of the correlative rights is virtually automatic. But this does not seem at all to be how ascriptions of rights generally occur. The recognition of the humanity of slaves long antedated the recognition of the personhood of slaves and the rights that went with it. There certainly seems to be, then, a significant temporal gap between the recognition of having the capacity to fill certain positions and the recognition of rights as law.

Consider the third sense of 'recognition'. It may be true that claims to rights often draw their force from a claim that there is already an implicit recognition of them, and certainly Bosanquet does speak of such recognition. In fact, we have seen that, on his view, one person can 'recognize' another and, yet, not be aware of the specific place that person has in the moral world (PTS 164). But the legal force of such a recognition is, at least, moot. One could use this

'recognition' as the basis for a claim to a right--think of the arguments for special 'children's rights'--but to be able to "hinder" others from interfering with such claims, it seems that, on Bosanquet's view, 'recognition' by the state would have to be explicit.

In fact, rights often seem to be ascribed in the second sense--where the state 'recognizes' someone by explicitly creating, or by giving that person, a function or position that he or she did not have before. But many would hold that this ignores that there are rights (such as the 'right to be told the truth') that do not explicitly exist in law. More importantly, perhaps, this second sense of 'recognition' would allow a state to refuse to recognize a 'right', even though it was aware of the moral legitimacy of the claim. Indeed, it could even revoke a right that is already recognized in the law. This, critics would argue, is simply unacceptable as an account of rights.

In response, Bosanquet would no doubt draw our attention to three points. In the first place, he would emphasize that such putative 'rights' as the 'right to be told the truth', are not 'rights' at all. They are, at best, moral claims, and it is by no means obvious that they gain anything by being called 'rights'. Clearly, they do not have legal force--nor would Bosanquet think that it would be desirable for such alleged 'rights' to have such a sanction.

Second, as we have seen, Bosanquet seems to think it rather unlikely that there are large gaps between the social conditions that give rise to certain positions and rights, and the explicit recognition of these positions and rights. Perhaps here he is being optimistic, but Bosanquet holds that there is a progressive tendency in the state and also that it is up to its members to work for "a purification of the will of each state"¹¹ and to do what they can to lead the state to the recognition and the resolution of the contradictions within itself. Finally, Bosanquet would remind us that, should a state not recognize certain rights, one could criticize it for being inconsistent with its 'end' and, hence, with itself. Still, the state is not answerable for this 'inconsistency' either to society as a whole or to its individual members; rather, it is (as noted in Chapter 4) "judged before the tribunal of humanity and of history" (PTS 304, n. 1).¹² And here the critic might reply simply that such a response has more the character of a confession of powerlessness than of a moral criticism.

¹¹ R.F.A. Hoernlé, "Bernard Bosanquet's Philosophy of the State," Political Science Quarterly, 34 (1919), pp. 609-631, p. 623. What Hoernlé has in mind here is one's participation in the process of 'criticism' or 'adjustment' of dominant ideas, that Bosanquet says takes place within society and the state.

¹² This view seems to echo Locke's view on how one is to resolve a conflict between the people as a whole and the sovereign. Locke writes that "the appeal then lies only to heaven". (See Locke's Two Treatises of Government, (ed. Peter Laslett), (Cambridge: Cambridge University Press, 1988), Second Treatise, sec. 242.)

Nevertheless, it is clear that Bosanquet's view provides an alternative to the "theories of the first look". In virtue of his analysis of the moral character of a right, we can see why--without falling victim to the problems of either a natural rights or a legal positivist view--Bosanquet can maintain that rights have moral weight, that individuals are bound by them, and that there can be no right to act immorally. Moreover, Bosanquet's approach explains the origin of rights, what they are for, what the role of society is in the existence of rights, and what their limits are, without running the risk of either negating or overemphasizing the value of the individual. Further, given Bosanquet's arguments that rights must be legal rights, his analysis allows us to settle problems in the ascription of rights and to avoid a number of difficulties in the putative conflict of rights.

Yet while Bosanquet's account of rights is clearly at odds with those provided by Bentham, Mill and Spencer, it has been argued that this opposition is rooted in differences on other issues. What was it that led these liberal individualists to emphasize individual rights and to limit state action? How did they account for the obligatory character of rights? What was it that led them to assign the state the role they do in the ascription and protection of rights? Bosanquet's view is that these aspects of the liberal individualist position are problematic. But, to see why, exactly, Bosanquet thought these aspects were problematic, and to provide a complete

account of his alternative to it, we saw that it was necessary to examine Bosanquet's 'social ontology'. An assessment of Bosanquet's theory of rights--particularly, in relation to those of Bentham, Mill and Spencer--requires, then, an assessment of this as well.

1.2 The Social Ontology of Rights

Bosanquet has argued that these liberal individualist theories of rights fail because of inadequacies in the concept of the individual, the analysis of the nature of law and the state, and the notion of the 'end' or the 'good' that their theories imply. In other words, the locus for much of the disagreement between liberal individualism and Bosanquet's theory of rights has been seen to be on issues concerning the "entities... and the fundamental structures of social interaction and of social change".¹³ Although these issues are not unique to the theory of rights, they are nevertheless central to it. As we have seen in Chapter 1, while Bentham, Mill and Spencer do make some tentative remarks in this direction, Bosanquet finds what would pass for their 'social ontology' to be inconsistent and incomplete.

But, a critic might ask, is a 'social ontology' necessary to, or implied in, a theory of rights? It is true that, at least since Hume, there has been a tendency in the Anglo-Saxon

¹³ Carol Gould, Marx's Social Ontology: Individuality and Community in Marx's Theory of Social Reality, (Cambridge, MA, 1978), p. ix.

world to be suspicious of political or moral theories rooted in a philosophical anthropology or a metaphysic.¹⁴ In the first place, it has been accepted by many moderns that there is a gap between the 'is' and the 'ought' and, therefore, that an analysis of fundamental social structures would be irrelevant to moral and political questions about what we ought to do.¹⁵ Moreover, it has been suggested that metaphysical discussions are themselves problematic because 'unfalsifiable' or 'unscientific'¹⁶ and, if so, they cannot provide a ground for a theory of rights.¹⁷ In fact, in the middle decades of this century, it was widely maintained in Anglo-American philosophy that the role of political philosophy was, at best, the analysis of political concepts--but certainly not the resolution of normative questions.¹⁸ Finally, it has been

¹⁴ Bentham, for example, rejects certain investigations as being of "too metaphysical a cast" (IPML, Ch. 5, [ed. Burns and Hart], p. 42, n. 1), including some aspects concerning rights and duties (A Fragment on Government, Ch. 5, [ed. Burns and Hart], p. 494, n. 2).

¹⁵ Such an argument appears to be suggested in Bosanquet's idealist contemporary, J.M.E. McTaggart. McTaggart writes that "[p]hilosophy... can give us no information as to which [steps], here and now, we have to take next" (see his Studies in Hegelian Cosmology, [Cambridge: Cambridge University Press, 1901], sec. 204, p. 195).

¹⁶ See, for example, Karl R. Popper, The Logic of Scientific Discovery, (New York: Harper and Row, 1968), pp. 34-39.

¹⁷ This is suggested by Ronald Dworkin in Taking Rights Seriously, (Cambridge, MA: Harvard University Press, 1977), pp. xi-xii.

¹⁸ See Peter Laslett (ed.), Philosophy, Politics and Society, first series, (New York: Macmillan, 1956). Laslett notes that, "[f]or the moment, anyway, political philosophy is

claimed that theories which referred to a "collective will" or a "common good" and which spoke of a central role of the state were--because founded on a single conception of what is true--antithetical to democracy, liberalism and pluralism. Many philosophers have, therefore, come to believe that a political theory derived from a metaphysics or a systematic philosophy will ultimately lead to a justification of totalitarianism.¹⁹

Bosanquet would insist, however, that all political theories--including liberal individualism itself--make certain 'metaphysical' presuppositions. And even if one were to grant the existence of a gap between the 'is' and the 'ought' that would challenge there being any necessary relation between a political theory and metaphysical principles--a view which is, perhaps, no longer as strong as it once was--it is arguable that there is at least some relation between the two. Bosanquet is not alone in maintaining that the more one knows about the nature of the individual, society, the state and the law, the better one understands which political theories are realizable. Furthermore, it is by no means obvious that a

dead" (op. cit., p. vii). As an example of the non-normative character of political philosophy at this time, see Margaret MacDonald, "The Language of Political Theory," in Proceedings of the Aristotelian Society, XLI (1940-41), pp. 91-112, and her "Natural Rights," in Proceedings of the Aristotelian Society, XLVII (1946-47), pp. 225-250, reprinted in Laslett, op. cit., pp. 35-55.

¹⁹ See Karl Popper, The Open Society and its Enemies, 4th revised ed., 2 vols., (New York: Harper Torchbooks, 1963).

theory centred on a common good or a common will²⁰ is an enemy of pluralism.²¹ And it is far from obvious that a political theory entails or implies the existence of a totalitarian state, simply because it is rooted in a metaphysics or social ontology.

In any event, as is clear from Chapter 1, while some authors claim that a theory of rights--an 'ought'--can be articulated entirely independently of a theory of human nature--an 'is'--, this is not the position of Bentham, Mill or Spencer. According to John Skorupski, for example, "Mill is perfectly clear about the political theorist's need of an interpretive conception of human nature. His liberalism rests firmly on a substantive view of human powers and human ends".²² Bentham, too, notes how sanctions imposing pleasure and pain (which are the base of our obligation to obey the state) are effective because of the constitution of human nature.²³ And Spencer's 'biological proof' of natural rights

²⁰ Indeed, the notion clearly has its equivalence in standard political discourse. In liberal democracies, for example, reference is often made to the notion of 'the will of the people', and this is not obviously the same as 'public opinion'.

²¹ See, for example, Michael Walzer, Spheres of Justice, (New York: Basic Books, 1983). For a not dissimilar view, see Leslie Armour, The Idea of Canada and the Crisis of Community, (Ottawa, ON: Steel Rail Publishing, 1981).

²² Skorupski, p. 45. See also William Leonard Courtenay, The Metaphysics of John Stuart Mill, (London: Kegan Paul, 1879).

²³ See IPML, Ch. 3, secs. 1-8, (ed. Burns and Hart), pp. 34-35.

clearly shows that he, too, believes that a philosophical anthropology is necessary to a proper understanding of the nature and source of rights.

To assess Bosanquet's theory of rights and his criticisms of the "theories of the first look", one must, then, also assess his 'social ontology'. And to see how Bosanquet's view compares with those of Bentham, Mill and Spencer, it will be useful to focus on the key problems that he identifies in their accounts: the nature of the individual, the nature and function of the state and law. and the standard of value or the 'good'.

1.21 The Social Nature of the Individual

Bosanquet argues that a central problem with liberal individualist rights theories is that they misunderstand or misrepresent the nature of the human individual. These theories refer to human beings, for example, as if they were 'atoms' that, in principle, can be adequately described entirely independently of one another. Social units are simply 'aggregates of individuals'. Although there may be a general conception of 'the good' (such as pleasure or happiness), it is left to each person to determine his or her own particular 'good'. It is not essential that such a being live in the state, there are no 'natural duties' to others, and what relation there is between the individual and the state, is seen to be virtually antagonistic.

Bosanquet objects that human beings ought not to be understood in such an abstract and formal way, and that such a picture of the human individual is far too narrow a description of the historical and social being that one encounters in everyday experience. To oppose 'self' to 'other' is, in the end, to emphasize our eccentricity over what we have in common with others. Moreover, the demarcation drawn here between 'self' and 'other' is "hopelessly confused" (PTS 64). It is, moreover, arbitrary and implausible, and both overlooks and underestimates the extent to which the individual is dependent on others and on social life in general for the development of his or her personality.

Instead, Bosanquet maintains that the human individual is formed in and by society and cannot be separated from it without doing violence to his or her nature. To see what an individual is, one should not focus on what sets him or her apart from others but, more importantly, on what it is that he or she has in common with them. Indeed, what would individuals be if there were no social order of which they were members and in which they could grow and develop? According to the paradigmatically individualistic 'anthropology' that one finds in Hobbes, the nature of the human individual leads to a state where "there is no place for industry... no culture of the earth... no commodious living... no knowledge of the face of the earth; no account of time; no arts; no letters" and, since there is a lack of all of the necessary means, "no society".

It is only by means of a civil order that one is able to leave this life that is "solitary, poor, nasty, brutish and short".²⁴ Thus, separate from all social order and its benefits, Bosanquet would wonder whether the atomistic individual of liberal individualism is, in any sense, a person.

What is the human individual, then? Although, as noted earlier, one finds several distinct uses of the concept of individuality in Bosanquet's work, it is clear that he sees the human individual as a social being and as a 'mind'. It is in virtue of their living in society that human beings come to be self conscious, to be rational, to be morally aware, to have a vocation, and are able to engage in such activities as art, philosophy and religion. It is life in society, with the positions, rights and responsibilities that follow from it, that makes a human being an individual.

By looking at human beings in this way, Bosanquet points out, there is no fundamental distinction or opposition between 'self' and 'other', nor is there any reason to see 'self' as a means to 'other', or of 'other' to 'self'. Moreover, the relation among individuals here is not merely physical and contingent, but exists on the level of mind. One can, of course, distinguish human individuals from one another; they are separate biological entities. As Bosanquet suggests, however, it is not their physical separateness, but the

²⁴ Thomas Hobbes, Leviathan, (ed. Michael Oakeshott), (New York: Collier Books, 1962), Ch. 13, p. 100.

relations they have to one another--in short, their positions--that are of primary importance (see PTS 165).

Still, despite the inadequacies of an 'atomistic' account of the human individual, is Bosanquet's any better? One might criticize Bosanquet's description as being, in some respects, ambiguous and, in other respects, too narrow. Moreover, one might claim that Bosanquet is ultimately inconsistent in how he describes the individual and that, in the end, he does not place sufficient emphasis on the value of the human person.

The charge of ambiguity, here, is not that signalled in Chapter 3--sc., that Bosanquet uses the term 'individual' to mean, at times, 'the human individual' and, at others, 'the concrete Universal,' or 'the Absolute'. The issue is, rather, that even when Bosanquet focuses on the notion of the human individual, he shifts between two different pictures of it: that is, as a 'mind' or 'will'--a description which isolates specific attributes of the individual--but also as 'a being that fulfils a number of positions' and whose 'individuality' is dependent in some way upon recognition by others--a description which concentrates on one's relations with other human beings.

The critic will note, moreover, that the former characterization of the individual is too narrow--it suggests an overly intellectual or rationalistic view of the human

person.²⁵ The latter description is also unacceptable because it is purely arbitrary, if not false (since having 'positions' presupposes that one must live in a state, and not just society), and because it denies any real value of the individual.

Finally, one may argue that Bosanquet often abandons the definition of the human individual that he putatively defends. When Bosanquet insists that he does not ignore the value of the human individual, or when he refers to the existence of limits on state action, it seems that the being that he is concerned about is, in fact, the same as that which is defended in the "theories of the first look"--namely, the particular human being who is physically distinct from all other beings.

Still, given the arguments outlined in Chapters 3 and 4, Bosanquet has attempted to address at least some of these criticisms. First, there is no inconsistency between an individual as a 'mind' or "a mental system" (RGW 311), and an individual as a being, recognized as having certain positions. Individuals are 'minds' in a community of minds, and it is in this community that one is 'recognized'--that is, 'recognized as having (or as having the capacity to fill) certain positions'. To move from one description of the individual to the

²⁵ See Adam Ulam, The Philosophical Foundations of English Socialism, (Cambridge, MA: Harvard University Press, 1951), p. 119.

other is not, therefore, to shift senses, but simply to focus on different aspects of the same thing.

Second, while it may be true that Bosanquet's account of the person emphasizes 'reason' and 'rationality', and that the movement from the individual to society is 'intellectualistic', he does not ignore feeling or aesthetic and religious experience. Were one to claim that his view of the individual is, nevertheless, 'rationalistic' in the sense that it suggests a gradual 'working out of inconsistencies' in the person, Bosanquet would no doubt reply that this process is not purely mechanical. Nor is he committed to a view that this process will ultimately produce passionless automatons. Such a conclusion depends on too narrow an understanding of his teleology and of the nature of rationality. Moreover, Bosanquet would acknowledge that such a process will never be accomplished in its entirety. He is well aware that the demands of our 'animal nature' will always influence our actions. Whether Bosanquet is justified in believing that there will be a gradual improvement in human character is another matter but, as we have seen in Chapter 3, he does believe that there is some empirical evidence for this.

Third, while Bosanquet is concerned with the protection and welfare of human beings, his focus is not at the level of physical differentiation, but at the level of mind. It is here that a human being is distinctively a person and an individual. But, of course, the human individual is a mind and is a

body and cannot be separated from either. To have 'positions' in a community that is in the world is, obviously, dependent on this being so. And when Bosanquet insists that such a being must be a member of a state, this is not because he thinks that society cannot do for a person what the state can, but simply because he maintains that societies cannot exist without states.

When it comes to the question of the value of the individual, Bosanquet would say that human beings have a value, but that this value is not absolute. This does not mean, however, that their value is based on serving as a 'means' to some external 'end'. Admittedly, Bosanquet often focuses on the importance of making a direct or indirect contribution to a common good. But his point is that we have value because we reflect values larger than ourselves--values which cannot be separated from the good of others. The greatness of an artist, for example, is a product of the greatness of his or her art; not the other way around. So to reflect a larger value is not to be a means to that value. Indeed, apart from our relation to values greater than ourselves, how one could establish that human individuals have value at all?²⁶

²⁶ One also ought not forget that Bosanquet frequently expresses concern about individuals and their development, and that this is a part of "the best life"--the development of human personality. Again, one will recall that, according to Bosanquet, the state is limited in what it can do to coerce or to force an individual to act since that would eliminate the moral character of the action. This, at least prima facie,

Clearly, if one were to argue that Bosanquet's view of the human individual ought to be adopted tout court, more must be said about the precise relation between one's mind and other minds, the influence of 'facts' and external phenomena on consciousness, and how far an enumeration of one's 'positions' can provide an exhaustive account of the individual. Indeed, the notion of 'position' itself needs a more precise analysis. And since all these issues affect the notion of the individual in Bosanquet's 'social ontology', they also bear on his political thought.

Yet despite the fact that Bosanquet's account of the individual may need further argument, it seems plausible to hold that his analysis provides a more complete view than that found in the "theories of the first look". The value of a life shared with others is, of course, acknowledged by Bentham, Mill and Spencer, but its importance seems purely 'instrumental' and contingent. The description of the individual that Bosanquet provides, includes both what we have in common with, and what distinguishes us from, others, and it also explains more clearly the nature and ground of our relations to one another in society.

As argued earlier, however, the accounts given by these "theories of the first look" fail in two other respects: they reflect first, an inadequate notion of law and the state, of

should count against any attempt to view his theory as opposed to the value of the human person.

political obligation, and of the limits of state action and, second, an inadequate view of the principle of value. It is to a consideration of these two features that I now wish to turn.

1.22 Liberty, Law and the State

Another of the central problems underlying the account of rights in the liberal individualist theories of Bentham, Mill and Spencer is, Bosanquet would argue, that they present law and state action as being fundamentally at odds with the liberties of individuals and their interests. Thus, it is no surprise that these theories often portray rights as simply a means of securing the individual's life from interventions by the state. But, as one might infer from the discussion in the previous section, Bosanquet would claim that this misunderstands the nature of society, the state and law, and the relation of the human individual to them.

In the Spencerian natural rights tradition, for example, life in a particular state is optional--it is analogous to being a shareholder in a "joint-stock company". Spencer recognizes, however, that by not living in a state one runs a risk of being harmed, and there are clearly certain benefits to be gained by living and working with others. We enter into community, then, in order to achieve our particular goals, and the authority of the state is, therefore, justified in virtue of a kind of agreement or social contract.

In Bentham and Mill, the legal authority of the state is based simply on its power to enforce sanctions; the moral justification of a state would rest, presumably, on its ability to secure the basic goods recognized by utility (e.g., security)--but this, Bosanquet would argue, still leaves it as being dependent upon the satisfaction of individuals' desires.²⁷

Still, despite the fact that Bentham, Spencer and Mill admit the usefulness of the state, they see its operation as involving the limitation of liberty, which is 'painful' to the individual. Thus, law and the state are, at best, 'necessary evils' for, while they are required in order to guarantee and protect individuals and their liberty (which are goods), they also impose limits on what one may wish to do. The account these authors give, concerning the obligation to obey the law and the state, and concerning the limits on state action, reflects this view of the values of the individual and of liberty, as well as that of the negative character of law. Political obligation is determined by the extent to which the state respects either our individual rights and liberties (as in Spencer) or the sum of individual goods (as in Bentham) or, arguably, somewhere in the middle (as in Mill), and these

²⁷ While Mill and Bentham both exclude the possibility of any 'social contract' as providing an explanation of government, recall that Mill seems to acknowledge that the moral basis of law reflects the existence of a de facto contract, grounded in utility. (See Chapter 1, section 1.2 above.)

rights or these goods set moral limits on what the state can or cannot do.

Yet, as noted earlier, Bosanquet objects that neither this emphasis on the value of individual liberty nor the view that law is necessarily a limitation of liberty is actually established. To the extent that these ideas concerning 'liberty' and 'law' are persuasive, it is largely because the liberal individualist account of the nature and value of the individual that underlies them is already presupposed. Moreover, Bosanquet points out that it seems paradoxical, if not inconsistent, for Bentham, Mill and Spencer to say, that the 'limits' imposed by law or the state are alien to an individual and 'evil' when they also admit that these 'limits' also lead to that person's own development.

Bosanquet finds other problems in the liberal individualist view as well. First, by understanding liberty as essentially 'negative liberty', these authors lose sight of what it is for. And this emphasis on 'negative liberty' also leads to difficulties in determining when law or the state can appropriately intervene in an individual's life and how either can promote the development of the person. Moreover, these "theories of the first look" misrepresent and misunderstand the relation of the individual to the state by describing the state as merely a 'means' to the individual who is its 'end'. Finally, Bosanquet would say that such a view of individual liberty and of authority leads to a paradox concerning

political obligation and the nature and the justification of the legitimacy of the state. Liberal individualists often advocate the ideal of 'self-government' but fail, Bosanquet would argue, to address adequately the difficulties involved in the notion of majority rule. He notes, for example, that their analysis of the basis of the authority of the state and law does not succeed in explaining why a majority has the right to set rules or enforce laws that affect everyone in a society or, alternatively put, why a minority is morally obliged to obey the decisions of the majority (PTS 71). Neither does it explain exactly when and how far an individual may legitimately be forced to obey these decisions.

What, then, is Bosanquet's response to these difficulties in the liberal individualist account of law and the state? To begin with, he claims that he can account for political obligation. Like both utilitarians and natural rights theorists, Bosanquet acknowledges the fundamental value of human autonomy. But, as we have seen, he refuses to identify 'autonomy' with doing what one wants or obeying one's own 'private will'. Because the human person is a social being and is essentially related to others, no one's 'will' can be described independently of the other wills in society. To arrive at what one really wills--as distinct from what one wants at a particular moment--one must be as informed and as coherent and consistent in one's reasoning as possible. To be autonomous, then, means that one is doing what one really

wills--i.e., it requires that each person's actions must accord as far as possible with his or her own 'real will'. If the state represents that will, it is clear how the state can enforce laws on individuals and how the activities of the state (e.,g., assigning positions and corresponding rights and duties) are ultimately justified. In obeying the state, the individual (perhaps even unknown to him or herself) is obeying only his or her own 'real will'.

Here, Bosanquet believes we have a paradigm of self-government. Moreover, so far as the activity of the state reflects the will of the individual, and since the individual is a social being supported in its activities by social institutions, the force exercised by the state is not ultimately negative and is not opposed to liberty; one can, then, even be "forced to be free". This also explains the obligation--even that of minorities--towards the law and the state, while avoiding the problems involved in a theory of 'majority rule'. Because of the relation between the state and each person's 'real will', then, the state can legitimately exercise power even over those who do not explicitly agree to it.

Of course, Bosanquet is supposing here a broader understanding of 'liberty' than that found in Bentham, Mill and Spencer. Liberty is not just the absence of restraint; it is, rather, determined by the extent to which one can participate in one's self-realization and is, on occasion, described as

being this condition of self-realization. So far as the state reflects the 'real will' of the individual, then, it is 'the condition for the liberty and the development of the person' and 'the environment where the value of the person is understood and justified'. Obviously, therefore, here there is no fundamental antagonism between the state and individuals and their liberty, as suggested in the "theories of the first look". Neither law nor the state is a limitation of liberty or a 'necessary evil' which one must simply tolerate; rather, both allow for the realization of a genuine liberty.

The compatibility of the state and the individual is also clear from Bosanquet's view of the nature of the state. Since the state, like all 'ethical ideas', is 'natural' and is an institution that exists on the level of mind, neither the state nor the individual is the means to the other; they constitute, as we have seen, "a single web of content" which "in its totality" is the former and, "in its differentiations" is the latter (PTS 168). And because the relation between the state and the individual is at the level of consciousness, Bosanquet believes that there should be no difficulty in accepting the view that positions and rights must be recognized by the state. For to be an individual, itself implies that there has already been a recognition.

Nevertheless, although the state is not a means to the individual, and although it can 'force us to be free', this does not imply that the state can do anything and that its

authority is inherently absolute. One will recall that Bosanquet acknowledges that the state is subject to moral rules--even though these rules are not the same as those which are used to assess individual behaviour (PTS 300-305). Thus, as argued in the previous chapter, even if Bosanquet is no liberal individualist, he is no "statist" either.

It is true that Bosanquet gives more attention to his analysis of the state than to any other aspect of his political thought, and one finds repeated attempts to clarify it--particularly, in response to the kinds of the criticisms already discussed in Chapter 4. Yet despite this and despite the apparent advantages of his account over the "theories of the first look", one might still object that there are problems to be found.

For example, even given the arguments noted earlier as possible responses to his critics, there seem to be several difficulties with Bosanquet's description of the state: that he ignores or glosses over the fact that no state actually resembles the nation state he describes, that he shifts between two different definitions of the state, and that he removes the possibility of effective moral criticism of state action. Moreover, there still remain a number of problems with the concept of the general will--a concept on which not only Bosanquet's account of the legitimacy of the state, but the rest of his political thought, depend.

Consider, to begin with, Bosanquet's description of the state. We have already seen Bosanquet's response to the criticisms that his theory confuses, or shifts between, the concept of 'society' and the concept of the 'state' and that his definition of the state is both descriptive and normative. But there is yet another alleged ambiguity in his analysis of the state--one signalled, but not discussed, in Chapter 2, section 3 above--and that is, that, even when just speaking of the state 'as such', Bosanquet shifts between a descriptive and an 'idealized' or 'Hegelian' view of the state.

According to this objection, one finds two distinct accounts of the state in Bosanquet's political thought. Sometimes, Bosanquet speaks of 'the state' as the nation state, whose existence is determined "through historical trial and failure" (PTS xlvi). Here, one finds a system of law, customs, institutions and traditions (PTS 142). It is, moreover, an institution whose action is "negative" (PTS 177), and which can be dominated by private interests (PTS 88) or display "stupidity" (PTS 65). In short, in several passages, Bosanquet gives us a portrait of existing states. Yet, one finds a second picture of the state which seems more 'idealized'. For example, Bosanquet describes the limits of the state as being "rational" (PTS 262), rather than historical and accidental. Again, he writes that the state is a "hieroglyph of reason" (PTS 262) and that each state has a "mission" (PTS 298; FS 275) that is to bring all institutions

"into rational shape" (PTS 111; see PTS 140). Further, despite the fact that nation states have generally been founded on force, Bosanquet says that the state not merely ought to be, but is, based on "will" (PTS 189; PTS 274). A critic will say that it is doubtful that any state possesses these latter characteristics. Besides, a state which has a will, which is "an intelligent system" (PTS 174) and which is almost (if not actually) "self-conscious" (PTS 4; see PTS xlviii-xlix), seems to be much more than an ordinary nation-state. Moreover, it seems that there are two radically distinct descriptions of the state here. Given that Bosanquet makes no clear break between them, the critic concludes that this theory of the state suffers from a fundamental ambiguity.

A second objection, noted above, is that Bosanquet's view appears to place the state above effective moral criticism. He says, for example, that the state can neither be "bound by the private honour or the conscience" of its agents (PTS 305) nor is the fact that corrupt civil servants can use the state to pursue their private interests any proof that the state has, in some way, failed. Should its agents act in the ways described, Bosanquet claims, it is not that the state has erred but simply that, in these cases, "the State, the organ of the public good, had not been given a chance to speak" (PTS 305). But, a critic might note, since no state can act except through its agents, Bosanquet's analysis effectively removes all possibility of moral blame attaching to it. In fact, this

conclusion seems to be quite consistent with Bosanquet's account of the state as a concrete indication of morality. So long as one sees the general will to constitute the standard of morality, and the state as the best reflection of the general will, the state is, then, at least de facto the standard of morality and, therefore would be beyond all critique whatsoever.

A third set of objections might be pressed here. as we have seen, the notion of the general or real will is central to Bosanquet's theory of the state. Bosanquet has claimed that individuals have an obligation to obey the state because, even if it does not reflect an individual's private will, it does express that person's 'real' or 'general will'. But is there any reason to believe that such a will exists and, even if there is, why should we believe that it would provide a moral standard or a moral justification for a state?

To begin with, even if the general will is what Bosanquet says it is--that is, that which an individual would have if he or she were rational and fully informed or the set of dominant ideas in a society that is imperative on its members and serves as a principle of action--this does not show that such a will actually exists, any more than specifying the criteria for the existence of an ideal observer would constitute a proof for saying that such an observer exists. What Bosanquet has given us here, this argument goes, is a definition of the general will, rather than a proof of its existence. And even

if one could establish that a general will or a set of dominant ideas existed in a particular society, it does not follow that they are 'ideas' which individuals ought to respect or obey. Think, for example, of the sorts of ideas that are dominant in countries that practice racist or other discriminatory policies. In short, then, a critic would insist that there is no reason to believe that the general will could provide a moral standard or basis of any kind.

If these additional criticisms hold, then the theory of the state that underlies Bosanquet's theory of rights clearly fails, for it would be difficult to identify Bosanquet's view of the state, the method he employs to establish the legitimacy of the state would be problematic and, in any event, it would be difficult to see how effective moral criticism of it is possible.

In response, Bosanquet would first point out that the descriptions of the state, noted above, are compatible and that the 'idealized' characteristics of the state are, in fact, "at the root of the common life of every state or community" (PTS 50). As we saw in Chapter 4, Bosanquet argues that the institutions which constitute society are both "facts" and "ideas" (PTS 276); they exist in both material objects and a 'relation of minds'. He clearly wishes to avoid a reductionist view that would reduce society and social relations to external phenomena, and insists upon the teleological and 'spiritual' dimension underlying institutions. In

the second description of the state, then, Bosanquet is focusing on this spiritual dimension--and it is this that underlies the other, empirical dimension. But he does not and need not claim that any state must perfectly exemplify the characteristics listed in this second description. Yet neither would he exclude the fact that experience--accidents and history--bears on consciousness and, hence, on the growth and development of states. The state is, after all, something that exists in the world.

On the issue of the possibility of effective moral criticism, when Bosanquet says that the state cannot be faulted for committing certain acts, he is not saying that there is nothing and no one to be criticized. It is important, however, to understand what the state does and how it 'acts'. The state, like a system of law, is concerned with classes of acts, and leaves it to its agents to apply them in specific cases. Since the state does not, therefore, aim at particulars (PTS 216; PTS 303), the only way in which its actions might be criticized, is to focus on how "the organs which act for the State, as such, exhibit in their public action, on its behalf, a narrow, selfish or brutal conception of the interests of the State as a whole, in which, so far as can be judged, public opinion at that time agrees" (PTS 304). Bosanquet offers, as an example of this, a case where, with the knowledge of Parliament, state institutions "offered [a price] for the killing of a hostile statesman or general" (PTS 304, n. 1). In

light of this description, then, one sees that it is not so much that the state has violated some external moral rule, as that it is acting in conflict with its 'end'--"its main duty to sustain the conditions of as much good life as possible" (PTS 304). It is, then, likely rare that one will have occasion to criticize the state as such. But this is not to deny that there are situations where the state is not properly represented by its agents and, here, Bosanquet would say that there would be no problem in calling them to account when they act in a way inconsistent with moral principle.

How would Bosanquet respond to the criticisms concerning the nature of the general will and its relation to the state? Again, he would likely suggest that there is no serious problem here. First, when one refers to the 'general will' or the set of dominant ideas, Bosanquet would say that it must exist. Given the definition of the general will, or given what is obviously meant by referring to 'dominant ideas' in a society, it is clear that, for any group of people to be part of the same social unit, such a thing must exist. As examples of 'dominant ideas', one might think of the role the idea of 'freedom' has in democracies or that of "the American way of life"²⁸ has in the United States. In short, the 'dominant ideas' of a society are simply those that we recognize

²⁸ Bernard Mayo uses this as an analogue for the 'general will' in "Is there a case for the general will?," in Philosophy, Politics and Society, first series, (ed. Peter Laslett), (New York: Macmillan, 1956), pp. 92-97.

(explicitly or implicitly) in institutions--a descriptive feature--but which we also recognize (explicitly or implicitly) as imperative on us--a prescriptive feature--because, ultimately, they reflect a 'good' or what we really will. In this way we can also see how the general will can be said by Bosanquet to be essential for moral discourse.

But what, then, of the objections that Bosanquet's theory allows 'racist' or 'sexist' dominant ideas to be imperative--though clearly they ought not to be? Bosanquet, however, would likely reply, first, that to say an idea is imperative on us is simply to describe the effect it has on an individual or a community. And, arguably, so far as an idea is dominant, until countervailing ideas become explicit and, themselves, dominant, there is no means by which one can judge whether an idea is no longer imperative. But, second, the set of dominant ideas in a society are not static, and given the dynamic nature of consciousness, Bosanquet would expect that ideas which are inconsistent with the development of human character and human personality, will cease to be dominant.

Nevertheless, such responses are, it may be objected, simply too easy. First, while it may be plausible to speak of 'dominant ideas' that characterize or are peculiar to a society or state, it seems clear that a state need not be a community of minds that has a common will, a common experience and a common good and, even a 'mission'. (These are, at best, what we might use to identify a 'nation', but, by itself, the

concept of 'nation' does not imply any of the structure or legal powers that it would need in order to arbitrate, regulate or recognize positions and rights.) A critic might note, moreover, that Bosanquet's notion of the nation state is defective. It seems obvious that the general will and common good of a 'nation' need not stop at national frontiers determined by history. (One can think of the German 'nation', when it was divided into the former German Democratic Republic and the Federal Republic of Germany.) It is possible that the inhabitants of several states be part of a single nation with a single common good. Alternately, there may be 'general wills' of nations which do not extend as far as the frontiers of a particular state. (As an illustration, consider the example of distinct ethnic and cultural units in countries such as Canada, Belgium and Switzerland.) There are, then, nation states whose identities are not based on the existence of a general will or a common good.

It follows, therefore, that there need be no identity between the general will of a nation and the existence of a nation state. Presumably, what would justify the authority of a state is not that it reflects a common experience or a common good, but simply that it is able to control effectively the various institutions and cultural groups within it. Moreover, since one can apparently make a distinction between the 'general will' of a nation and the will of a state, and since it is the general will that is, strictly speaking, the

standard of morality in a culture, it seems that the legitimate authority over an individual may lie beyond the state. The critic will conclude, then, that either Bosanquet is wrong to say that the nation state is, in some way, a product, or a reflection, of a common consciousness, or the state that Bosanquet describes is not the nation state.

Concerning Bosanquet's explanation of the possibility of moral criticism, a critic would press the point that, while one can distinguish the actions of civil servants from the action of the state they serve, there clearly comes a point at which the former can be an accurate gauge of the latter. Were the actions of the agents of a state generally corrupt, how can one reasonably avoid the conclusion that that state is itself corrupt? After all, according to Bosanquet, an institution is and must be reflected throughout the consciousnesses of its members. If a corrupt individual is the product of a certain state, and if that person is able to keep his or her position, and even progress, within its bureaucracy, it seems reasonable to say that that state reflects that corrupt character. Indeed, if it is not by reference to the activities of its citizens and agents that one is able to talk about the character of the state, on what basis could one describe it?

Objections such as these must be addressed if one is to have a complete, if not conclusive, defense of Bosanquet's analysis of liberty, law and the state. It is not, however, necessary to the present purpose that they be addressed here

(though it would not be difficult to imagine the kind of responses that Bosanquet might give). In light of the preceding discussion and that of Chapter 4, it is clear that Bosanquet's theory of the state can be defended against a number of criticisms traditionally brought against it and that, to this extent, it is at least much more plausible a view than it has been reputed to be. By turning to a theory that looks at the nature of social life at the level of consciousness, that sees the basis of law and the state in the general will, and that provides a broad conception of human liberty, Bosanquet provides an analysis that not only better reflects our everyday experience, but that avoids (when it comes to questions of political obligation and the range of state intervention) the tensions and paradoxes that one finds within the liberal individualist tradition.

1.23 The Standard of Value and "The Best Life"

A third problem underlying liberal individualist rights theories is, Bosanquet would claim, that they reflect an inadequate conception of the 'good' or of the moral 'end'. Admittedly, like Bentham, Spencer and, arguably, Mill, Bosanquet holds that the basis for the moral authority of rights is the 'good'--that is, rights have moral weight because of their relation to an 'end'. But, as we saw in Chapter 1, he claims that these liberal individualist theories provide too narrow a view of this 'end'; their notion of the

'good' is fundamentally subjectivistic and hedonistic, and focuses on the 'isolated individual' as the source of value.

Bosanquet would argue that, in these "theories of the first look", the standard of value is either individual life itself or an 'aggregate' good that is based on the 'pleasures' of individuals. He points out that such a view of the good depends on the possibility of defining clearly what the individual is. But given that it is difficult to fix a boundary line between 'self' and 'other'--he says, in fact, that any such line would be "perfectly arbitrary" (PTS 60)--Bosanquet suggests that we could never use the individual as a principle of value. Moreover, such a principle would be self-defeating for the liberal individualist for, since little or nothing affects only the individual concerned, there is little or nothing which is exempt from "social interference" (PTS 59). Thus, individualism could collapse into collectivism and annihilate the individual. And even if one could 'isolate' the individual in his or her 'particularity', this theory of the good is question begging, for it is never explained why the individual should have a fundamental value or should be a basis for value.

Again, on the liberal individualist view, the good is identifiable as 'life', or pleasure and absence of pain, or what the individual desires. But, Bosanquet would point out, individuals may not be best suited to determine their own good; there is a difference between what is one's good and

what one perceives to be one's good. By allowing each individual to determine his or her own good, liberal individualists must concede that the 'good' of a person may not be good for that person. And because this account of the 'good' is fundamentally non-social (PTS 67-68), it ignores that one's own good, and one's ability to identify this good, are possible only through social life, and excludes (or, at least, puts far into the background) the possibility that the good might be something that reflects human nature in general and involves the full development of human potential.

Utilitarianism, of course, does appeal to a 'common good', but Bosanquet would argue that this standard is ultimately individualistic and inadequate. In the first place, it asserts that the common good of a group is just the sum of the goods of the members of that group. But, Bosanquet would object, wholes are more than the sum of their parts and a common good is more than the sum of the private goods of each individual (and certainly more than the sum of what each individual thinks his or her good may be). Moreover, even if utilitarianism did provide an acceptable statement of the 'common good', its explanation of why this conception of the good should be binding on us is "fundamentally unsound".²⁹ The

²⁹ Recall A.D. Lindsay's comment, noted in Chapter 3, that the idealists saw Mill's argument as an "obvious" case of the fallacy of composition and "fundamentally unsound" (Lindsay, "T.H. Green," pp. 153-154).

utilitarian concept of the 'common good', Bosanquet would conclude, cannot account for the moral character of rights.

Bosanquet believes, however, that the teleological view that he describes avoids the problems of 'subjectivity' and of an inadequate explanation of the basis of value. As noted earlier, he argues that rights acquire their moral weight from their relation to an 'end'. This 'end' is an 'end' that individuals themselves will, namely, "the best life"--the full development of one's capacities. Here the 'end' is something objective, though it may be something which a particular person may not, in fact, be in a position to articulate clearly or to identify. (Thus, what one's good is may not be what one, at some specific moment, may want.)

This 'end' or 'standard of value' is, Bosanquet says, a 'common good' and also each individual's good, but it is neither the 'good' of every individual, qua individual, nor reducible to a sum of individual 'goods'. It is because it fails to reflect this that he would say that the utilitarian account of the 'common good' breaks down. When Bosanquet refers to this 'common good' or 'best life', he does not mean simply a consensus in what individuals will, nor just what might 'satisfy' their subjective desires, but the kind of life that would satisfy a human being as such (i.e., as a being that is rational, free, capable of emotional, aesthetic and religious experience, and so on.) In fact, he describes this

'end' as the 'perfection and development of human personality' as a whole and as the standard of value.

Although this 'end' is the same 'end' for all of humanity, what specifically it may be as the 'common good' of a particular society will, of course, vary and, since no society is absolutely consistent with itself, it can change and 'progress'. Still, each person's good is something objective, and because no one person has (nor can have) a complete awareness of precisely what 'the development of human personality as a whole' involves, it is clear that one could be forced to act against one's (private) will for one's own good. (Otherwise, it seems that it would be morally allowable to act against one's own best interests or one's own well-being.) What is essential to Bosanquet's view, then, is that this 'end' or 'common good' is determined in light of what it is to be a human person--not by individual volition, or public opinion or even by an appeal to the consensus of individuals of good judgement.

It might be objected that this account of the standard of value violates Bosanquet's putative commitment to the importance of 'autonomy' and is much more likely than utilitarianism to 'annihilate the individual'. Indeed, a critic might point out, the reason why it is so important to liberal individualists to leave it to each person to determine his or her own good, is that one is generally, if not always, better off.

But three points should be noted here that would serve to clarify and, perhaps, defend Bosanquet's view. First, this objection to Bosanquet's position is, at best, an empirical one--i.e., that, if subject to the 'common good' described by Bosanquet, the individual would be worse off than under a liberal individualist view--and this is, at best, only contingently true. Second, Bosanquet would argue that the reason why some may be opposed to the idea of forcing people 'to be free' or to act for a common good, is that they fear that such a good is, in reality, simply the private good of one, or a group, of other individuals. But this is precisely what Bosanquet's notion of the 'common good' is not. This common good is, rather, each individual's good, and while there may be a conflict between an individual's good and his or her desires--something of which Bosanquet was obviously aware--he would insist that there can be no ultimate conflict between one's good and the object of one's fully informed, rational will. Finally, to say that it may be morally allowable to force a person to act for his or her own good, is not to say that this will happen very often. One will recall from the fourth chapter that Bosanquet was emphatic about leaving room for the individual to act, and that intervention was justified only when not intervening would be more of an impediment to the realization of the 'good'.

In short, then, because the 'end' or 'good' that Bosanquet describes is each individual's good, there is no

annihilation of the individual. And while he denies that the individual is of 'supreme value', this is not to say that the individual has little or no value at all. Indeed, it is precisely because he sees the individual as a basis for, and a participant in, the common good, that Bosanquet believes he has an objective basis for individual value. And because this common good is not the good of some 'other,' there is no question of individuals being used as a means to some good which is not their own.

Bosanquet's account of the standard of value and the best life, then, seems to be able to avoid the problems inherent in the individualism and the subjectivism that he finds in the "theories of the first look". It is only by adopting a teleological view in the sense he describes that, Bosanquet would say, one can explain the nature, role and moral warrant of the state. As we have seen, since the state is a necessary element in the realisation of the "best life", individuals have a moral obligation to obey it. But, given this relation of the individual to the state, Bosanquet can now show why and how far the individual must be protected by the law. Again, since the positions of individuals and their corresponding rights are determined by the state in relation to this 'end', rights must have both a moral and legal character. So far as they employ an individualistic conception of the good, the "theories of the first look" cannot, Bosanquet would claim,

provide an adequate account of the nature, source, and limits of rights.

Still, a critic might claim that Bosanquet's description of the standard of value is inconsistent.³⁰ Bosanquet refers to the 'end' as the 'development of human personality', emphasizes the centrality of human freedom and stresses the importance of the limits on state action, and yet he also refers to the moral 'end' as more than an individual's 'good', says that one can be 'forced to be free' and describes the state as 'absolute'. This should not be surprising since, as noted earlier, Bosanquet acknowledges Kant and Hegel as his "masters"³¹ and, it would seem, here draws on both of them. But Kant is usually seen as representing a deontological, and Hegel a teleological, perspective and, the critic will say, one cannot have it both ways. The critic will conclude, then, that Bosanquet does not, in the end, provide a coherent account of the standard of value.

³⁰ This is suggested by J.L. Hemingway, The Emergence of an Ethical Liberalism: A Study in Idealist Liberalism from Thomas Hill Green to the Present, (Ph.D. thesis in political science, University of Iowa, 1979), and Stefan Collini, "Hobhouse, Bosanquet and State," p. 99. According to W.H. Walsh, Bosanquet's theory "was wrong in a serious way: [because] he did not see the contradiction between adopting the Hegelian standpoint and continuing to lay stress on the individual will" (Hegelian Ethics, (London: Macmillan, 1969), p. 75). Vincent argues that this tension is present in Hegel himself (See Andrew Vincent, "The Individual in Hegelian Thought," in Idealistic Studies, 12 (1982), pp. 156-168, at pp. 165-166).

³¹ Muirhead, Friends, p. 21.

Admittedly, it does seem that there are tensions in Bosanquet's moral theory. One obvious example is that there seem to be two distinct principles that he uses in determining the moral character of an act: one that looks to consequences, another that refers to motive. Bosanquet seems to follow Kant in claiming that the moral character of an act is determined by the motive of the agent; in other words, if an act is constrained, it has no moral character. A second example might be drawn from Bosanquet's account of punishment. He refuses to allow that punishment be based simply on the consideration that it would serve to deter an individual from committing a crime (SS 195), and he rejects the possibility that the state, rather than punishing, could reward individuals to ensure that they not commit criminal acts (PTS 203-204). In fact, it appears that Bosanquet would insist that the state punish a criminal, even if such an action would do more harm than good (PTS 211). In short, for Bosanquet the aim of punishment is, as in Kant, to respond appropriately to the violation of the law, not simply to avoid recidivism.

Now, if motive and the development of moral character are fundamental, or if neither deterrence nor prevention are the ultimate grounds of punishment, it may seem that Bosanquet could not hold a teleological view of morality--i.e., one that claims that the rightness or wrongness of an act is determined by how it contributes to the 'end'. Indeed, on a 'Kantian' or deontological view, the 'common good' would seem to be, in

principle, subordinate to other values, such as the development of moral personality or a 'good will'. Are the two preceding examples, then, not incompatible with Bosanquet's professed teleological commitments?

Bosanquet would maintain, however, that these Kantian elements are not inconsistent with a teleological theory where the 'end' is "the best life". Two things should be noted here: first, as argued in Chapter 3, a teleological view does not entail a principle of expediency³² and, second, it need not violate the Kantian injunction against using individuals as 'means'. Indeed, the 'end' to be achieved is simply the complete statement of the very principles that are the individual's own ultimate good.

Bosanquet's account of punishment is, then, genuinely teleological--it aims at "the 'negation' of a bad will by the reaction of the social will for good" (SS 195), and it is applied to those who are still recognized as being capable of a common good. Again, on Bosanquet's view, the 'common good' involves the individual's moral, spiritual, and intellectual development. The development of character requires, however, that individuals act morally and this, in turn, depends on their ability to act out of a moral motive--not just that certain consequences result. Thus, the 'perfection of human

³² Bosanquet says that the principle which guides our action, therefore, "and all we really need, is devotion to supreme values, common sense, and bonafides... The fundamental role of morality is to be equal to the situation" (PTS lii).

personality'--which includes the development of individual character--cannot be achieved if the state precludes one's acting out of a moral motive or if it intervenes at every moment in order to ensure that individuals act in particular ways.

A critic might argue that there is, nevertheless, an inconsistency in Bosanquet's account of the origin of the value of the individual. On the one hand, it seems that individuals have a fundamental value--which is why, presumably, Bosanquet is so concerned to provide the conditions for self-realization and the development of individual character. Moreover, individuals are clearly important because of their wills, since the individual will serves as the foundation of the general will and, hence, of the standard of morality. On the other hand, however, it seems that it is the 'end' that determines the value of the individual--specifically, how each person participates in the realization of this 'end' through fulfilling the requirements of his or her positions in society. The first option, then, would appear to lead again to a valorization of the individual over the community; the latter, it has been claimed, would reduce individuals and their activities to the status of cogs in a machine.

Of course, Bosanquet would again maintain that these elements are not incompatible. On his view, the development of the individual is a necessary part of the development of human personality as a whole. Thus, as suggested in Chapter 2, when

one acts, one should choose that option which is most conducive to the common good--but this, Bosanquet says, must respect those limits which favour the development of the person--that is, which minimize coercion and maximize the possibilities of moral growth. And while the will of the individual is important because it is necessary to the realization of the 'end' and reflects it, it is still not the 'end' itself. Thus, the individual is not of ultimate or absolute value.

Other questions have been raised concerning the teleological dimension of Bosanquet's view. Is there not a tension between the nature of the 'end' envisaged by Bosanquet and his insistence on the importance of the social? The development of human personality, and the activities associated with it (such as art, religion and philosophy) would seem to be best achieved by the individual without the distractions of social life. In fact, it seems that one can pursue such activities only by oneself. But, in the first place, humans are social and material beings and, as such, cannot be what they are, independently of these elements of their nature. More importantly, Bosanquet argues that, while the activities noted above and their corresponding experiences may be pursued by an individual by him or herself, they are dependent upon (and imply goods for) others and are rooted in a social context. Thus, Bosanquet writes that "[s]uch apparent exceptions as art and religion, which may be taken to be independent of the social medium, are really... its quintessence" (PTS 168).

Finally, one might also wonder whether there is not an ambiguity in the nature of the 'end' or 'common good' described by Bosanquet that ultimately vitiates his account of political obligation. According to Bosanquet, wherever one finds a number of persons who cooperate or have a common experience, there is a general will and a common good (PTS xxix). Since each state is "the widest organisation which has the common experience necessary to found a common life" (PTS 298), each state has its own 'common good', and it is here, according to Bosanquet, that each person finds his or her own 'good'. The critic will point out, however, that the 'common good' of one state is not necessarily that of another. In fact, it seems that one can correctly speak of a plurality of common goods. Yet has not Bosanquet also said that the 'common good' is not simply the harmonization of all the personal interests of a particular social group, but "the perfection of human personality" as a whole? In what sense, then, is such an 'ultimate good' the same 'common good' represented by the state? It is odd to think that one finds one's 'good' within the frontiers of the state in which one lives, particularly when the concept of the 'common good' seems to go beyond such frontiers. Surely, the 'rational elaboration' of one's 'good' will lead that person beyond the state to the "idea" of "humanity", and surely one's moral and political obligation is owed to this entity--not to any particular nation state.

This issue has been dealt with, indirectly and in part, in Chapters 2 and 4. Now, however, one can understand why Bosanquet responds as he does. According to Bosanquet, all states do, in fact, have the same ultimate common good and 'end', but that, at the moment, the possibility of completely articulating the elements of such a good are impossible. As noted in Chapter 4, there is simply not enough common experience or "common sentiment" (FS 292) at the international level that could provide the basis for some transnational civil order that reflected such a good. And even if a 'common good' extended beyond the frontiers of the nation state, there is no other 'institution' which could represent it.

Still, as we have seen, this is not an a priori principle, and Bosanquet is open to the possibility that, some day, there could be a world community--for "unifying activity can not cease with the state" (PTS lix).³³ But for such an institution to come to exist--for there to be structures that organize and harmonize social institutions and states, which favour the development of persons, which enforce international law and which recognize the positions and rights of persons on a global scale--there would first have to be "a thoroughly coherent general will" (PTS 306; see FS 292) and a basis of "identical experience" (PTS 307) which reflects a clearer notion of a common good. Insofar as these conditions are not met, however, "any unitary authority which it may be attempted

³³ See also PTS lvi, 302, n. 1, 307.

to set up will be superficial, external, arbitrary, and liable to disruption" (FS 294). In the interim, then, to the extent that we can have a clear notion of a common good, we must look at that represented in existing states.

Consequently, despite concern about the nature of "the best life" and the 'common good' and about the implications of this teleological view for the value of the individual, it seems clear that Bosanquet has resources which allow him to reply to his critics. It does, therefore, seem plausible to hold that there is a coherence and consistency in Bosanquet's teleology that underlies his theory of rights.

1.24 Recapitulation

The social ontology that Bosanquet has provided allows him, therefore, to address a number of the subsidiary problems that arise in the articulation of a theory of rights. He has shown, for example, what it means to think of the person as having a 'social nature', and how this overcomes the difficulties in the 'atomistic' view found in Bentham, Mill and Spencer. He has also shown how a broad view of liberty, that recognizes the contribution of the state and law to it, avoids the inconsistencies of the individualist account and its paradoxes of self-government and of political obligation. Finally, Bosanquet has demonstrated how his teleological view of the good is not susceptible to the problems he finds in those theories that emphasize the value of the individual--

sc., that they are inherently subjectivistic and fail to account for the obligations of oneself and of others to obey 'the good'.

1.3 Summary of Bosanquet's Response to the "Theories of the First Look"

In the preceding sections (1.1-1.24), we have seen how Bosanquet addresses some of the specific issues underlying the discussion in this study--namely, how his theory of rights and the principles on which it depends respond to the liberal individualist theories of Bentham, Spencer and Mill. It seems clear that Bosanquet does respond to the problems that he has identified in their views and, given the arguments of the past three chapters, he has been able to answer a number of criticisms raised against his position as well. One may conclude, then, that Bosanquet's account is more complete than those provided in Bentham, Spencer and Mill, that the view he provides appears to respond to what he has identified as the inadequacies, incompleteness and inconsistencies in these liberal individualist theories of rights, and that it constitutes a plausible, if not preferable, analysis of the nature, source and limits of rights.

Given the nature of his criticisms and of the response he provides, Bosanquet's view is clearly more than a 'middle ground' between utilitarianism and natural rights theory. How, then, are we to understand the nature of his response? Is it

an extension and development of, or is it a radical departure from, liberal individualism? It is to this issue that I now turn.

2. Is Bosanquet's Theory of Rights an Alternative or a Development?

According to Rudolf Metz, in his Die philosophischen Strömungen der Gegenwart in Grossbritannien³⁴, British idealism was not merely an alternative to the preceding utilitarian and empiricist movements, but it represented "a complete change" from the British tradition³⁵; it was "a complete recoil from the old ways, a turning of the philosophic rudder in an entirely new direction"³⁶ from that of "John Stuart Mill, in whom all the currents of philosophical thought then really alive met"³⁷. This position was taken up, developed and applied to idealist political thought by Klaus Dockhorn, in

³⁴ Leipzig: Felix Meiner Verlag, 1935; (A Hundred Years of British Philosophy, tr. J.W. Harvey, T.E. Jessop and Henry Sturt; ed. J.H. Muirhead, (London: Allen and Unwin, 1938).

³⁵ See Metz, p. 237. This view, long accepted in the Anglo-Saxon world, can also be seen in Bertrand Russell's comments on idealism in his "Philosophy in the Twentieth Century" (in Sceptical Essays, [London: Allen and Unwin, 1962], p. 39). Similarly, J.L. Hemingway argues that idealism represents "a significant break in the liberal tradition, particularly in its introduction of German idealist elements into Anglo-Saxon liberalism" (See his The Emergence of an Ethical Liberalism: A Study in Idealist Liberalism from Thomas Hill Green to the Present, [Ph.D. thesis in political science. University of Iowa, 1979].).

³⁶ Metz, p. 237.

³⁷ Metz, pp. 244-245.

his 1937 study, Die Staatsphilosophie des englischen Idealismus, ihre Lehre und Wirkung.³⁸

Dockhorn argues that, traditionally, there had been a contrast between German and English theories of the state. Germanic political thought, he claims, has focused on "the realization of the moral worth of the state, the grandeur of the political, [and] the spiritual-organic way of being of the community" whereas English political theorists have concentrated on "living together as 'society', as [a kind of] 'limited company', as an aggregate and as the association of interests of bare individuals".³⁹ With the introduction of idealism into England, however, Dockhorn holds that "the individualistic tradition [was confronted with] a new organic theory that exalts the supremacy of the national state".⁴⁰ With the idealists there was a "demand for a unity of spirit" which entailed a "unity of forms of society, of the state, and the place of the individual in his environment".⁴¹ Idealism,

³⁸ Köln/Bochum-Langendreer: Heinrich Poppinghaus o. H.-G., 1937.

³⁹ Dockhorn opposes "die Erkenntnis der sittlichen Würde des Staates, der Erhabenheit des Politischen, der geistig-organischen Wesenart der Gemeinschaft" of German "Staatslehre" with the English "Zusammenleben als 'society', als 'limited company', als Aggregat und Interessenverband bloßer Individuen zu begreifen" (Dockhorn, p. vii).

⁴⁰ Harris, p. 3.

⁴¹ "Die wichtigste begriffliche Konsequenz der Forderung nach der Einheit des Geistes ist die Einheit der Gemeinschaftsformen, des Staates, die Einordnung des Individuums in seinen Kreis" (Dockhorn, p. 5).

then, replaces "unheroic-bourgeois, liberal-individualist, unconnected-secular, humanitarian-moral, positivistic, Enlightenment-abstract" thought⁴² with a "Gemeinschafts-metaphysik, that enables the individual to lose himself in a mystical union with the superior unity of the state".⁴³ In short, on this view, British idealism in general, and its political thought in particular, is an aberration in the history of Anglo-Saxon philosophy, and this (so this argument might be extended) explains why its influence in philosophy seems to have lasted only as long as its major exponents were alive.⁴⁴

Yet this view is by no means universally accepted. It has also been argued, not only that nineteenth and early twentieth-century British idealism reflects a continuous tradition of idealist thought in the Anglo-Saxon world⁴⁵ but that, in its political theory, it is continuous with liberal individualism and, particularly, with utilitarianism. According to

⁴² Dockhorn, describes the British tradition as "Bürgerlich-unheroisch, individualistisch-liberal, bindungslos-säkularisch, moralistisch-humanitär, zivilisatorisch-positivistisch, aufklärerisch-abstrakt" (Dockhorn, p. vii).

⁴³ Harris, p. 3.

⁴⁴ As noted in the Introduction, Bosanquet died in 1923, Bradley in 1924 and McTaggart in 1925. By the time that A.J. Ayer's Language, Truth and Logic was published, in 1936, idealism as a philosophical school in England was in decline (See Metz, p. 258).

⁴⁵ See J.H. Muirhead, The Platonic Tradition in Anglo-Saxon Philosophy; studies in the history of idealism in England, (London: Allen and Unwin, 1931).

Frederick Harris, "the social philosophy of British Neo-idealism exhibits a fundamental continuity with British liberal thought from the time of Locke,"⁴⁶ and A.D. Lindsay says that "so far as their political and social theories are concerned, the idealists 'are all of them, for all their Platonism and Hegelianism, in the succession of the utilitarians'".⁴⁷

As proof here, Lindsay points out that the idealists were "individualists and democrats",⁴⁸ and Harris remarks that "idealist liberalism was a continuation of what was essential and lasting in the earlier liberalism" (such as the notion of 'self-realization').⁴⁹ Specifically, Harris claims that "the idealists were reinterpreting an indigenous empirical theory and bringing to a more complete development the British concept of individuality"⁵⁰--which he calls "socialized

⁴⁶ Harris, p. 1.

⁴⁷ See Lindsay, "T.H. Green," p. 151 (cited in Harris, pp. 2-3).

⁴⁸ Lindsay, "T.H. Green," p. 151. According to Lindsay, the idealists were not social scientists, approaching "the problems of democracy as superior persons", but "approached the problem of democracy from the standpoint of the ordinary citizen" (Lindsay, "T.H. Green," p. 155-156).

⁴⁹ Harris, p. 5. One example of this might be found in Mill's reference to the "Greek ideal of self-development" (L 59).

⁵⁰ Harris, p. 2. This characteristic is also emphasized by Gerald Gaus (See his The Modern Liberal Theory of Man, [Canberra: Croom Helm, 1983.])

individuality".⁵¹ For these reasons, then, Lindsay and Harris conclude that there is clearly an important continuity between idealism and earlier nineteenth century political thought. Not only is there a general acceptance of liberal democratic institutions, such as representative government, but a continuity in aims and in basic concepts.

Nevertheless, a number of authors have argued that there are many more important differences between idealist political thought and the earlier British liberalism. They have added, moreover, that, in any event, Bosanquet's political philosophy is much more conservative⁵² and "illiberal"⁵³ than that of Green. Indeed, evidence for this view can easily be distilled from the discussion in this study of Bosanquet's views on the nature of the individual, the general will and the state.

For example, consider Bosanquet's view of the state as 'absolute' and that there is little with which the state should not concern itself (PTS xxii). In fact, as we have seen, Bosanquet allows that the state may do "with the moral approval of all what the explicit theory of scarcely one will morally justify".⁵⁴ Again, Bosanquet has repeatedly insisted that the individual is not a fundamental, or ultimate standard

⁵¹ Harris, p. 101.

⁵² See Hobhouse, p. 24, and J.A. Hobson, The Crisis of Liberalism, p. 197, cited in Harris, p. 109, n. 104.

⁵³ Morrow, p. 108.

⁵⁴ FS 274, citing Bradley, ES 184.

of, value and that the state can "force" individuals "to be free". This seems to be in clear conflict with allowing the widest range possible for individuals to determine and to pursue their private conceptions of the good and insisting that individuals have a right to judge and to impose restrictions on the actions of the state. Finally, Bosanquet's notions of a common good and of a general will that represents rationality par excellence, would seem to be incompatible with the emphasis on a wide sphere for the exercise of individual liberty, the cultural diversity and the ideal of pluralism that are commonly part of modern democracies. It appears, then, that Bosanquet's view is quite different from the British liberal tradition.

Still, this evidence is far from conclusive, and there is much to be said in favour of the reading of Lindsay and Harris. To begin with, in the history of the late 19th and early 20th century, one finds proponents of idealism in both the British Liberal and Conservative parties--and even among the founders of the British Labour party--and it seems implausible, then, to say that idealism is particularly conservative.⁵⁵ In fact, Bosanquet considers himself to be within the 'liberal' tradition,⁵⁶ and sometimes finds himself

⁵⁵ See Ulam, pp. 16-71.

⁵⁶ According to Bosanquet's wife, Helen, Bosanquet "was always an advanced Liberal with a strong sympathy for Labour aspirations" (Bernard Bosanquet: A Short Account of his Life, [London: Macmillan, 1924], p. 97). McBriar summarizes the various aspects of Bosanquet's "Liberal" affiliations (A.M.

rather close to socialism.⁵⁷ Nor is Bosanquet alone in seeing himself in this way. Gerald Gaus includes both Bosanquet and Green, along with John Rawls, in a list of modern "liberal" thinkers,⁵⁸ and Adam Ulam allows that Bosanquet's "theory as a whole" is not inconsistent with socialism.⁵⁹

More substantively, it is clear that Bosanquet adopts many of the ideals of the liberal tradition. When one considers the theory of 'liberalism' in general,⁶⁰ one sees a

McBriar, An Edwardian Mixed Doubles: The Bosanquets versus the Webbs; A Study in British Social Policy, [Oxford: Clarendon Press, 1987], p. 8). See also Harris, pp. 37-38 and 110, n. 136.

Peter Nicholson claims Bosanquet was himself a member of the Labour Party ("Bradley as a Political Philosopher," The Philosophy of F.H. Bradley, [ed. Anthony Manser and Guy Stock], [Oxford, Clarendon Press, 1984], pp. 117-130, at p. 118). I have been unable to find any direct proof of this, although one might note Bosanquet's comment to R.F.A. Hoernlé in 1919 that "I should like a labour government with one or two good liberals in it" (cited in J.H. Muirhead, (ed.) Bernard Bosanquet and his Friends, [London, 1935], pp. 218-219).

⁵⁷ Recall Bosanquet's comments on his "moral socialism" and how this, if made the basis of an "economic socialism" would be "heaven", cited in Chapter 4, section 2.3, above. See "The Antithesis between Individualism and Socialism Philosophically Considered" in Bosanquet, The Civilization of Christendom and Other Studies, (London: Sonnenschein, 1893), pp. 304-357, and McBriar, p. 113.

⁵⁸ Gaus, op. cit.

⁵⁹ Ulam, p. 60.

⁶⁰ See Joseph Raz's definition of "liberalism" as the view that political authorities "are bound by principles requiring the promotion and protection of freedom" (see Raz, The Morality of Freedom, [New York: Oxford University Press, 1986], p. 21). For some important recent discussions of the term, see William Galston, Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State, (New York: Cambridge University Press, 1991) and Jeremy Waldron, "Theoretical

primary concern with questions about the nature, form and limits of government and the value of individuals and of human liberty. Now, it was noted in Chapter 1 that Bosanquet emphasized the importance of autonomy and self-government (which, for him, implied representative, democratic rule), was concerned to promote the improvement of character and the self-realization of the individual human person, and saw that limits must be imposed on the state to prevent it from interfering with this development.⁶¹ Moreover, rights ascribed to individuals were not arbitrary, had legal weight, and served as a measure to evaluate the moral quality of states (PTS 189).

Furthermore, Bosanquet describes a 'state' which, he says, is based on the will of the individual, favours liberty and personal development, and is subject to certain limits--namely, those imposed by its 'end'--"the best life". State action is described as the "hindrance of hindrances", and it is to be employed only to ensure and protect individual moral

Foundations of Liberalism," in The Philosophical Quarterly, 37 (1987), pp. 127-150, at p. 128. It is interesting that Gaus does not explicitly define what he means by 'liberal', here. Instead, he appears to use the six authors of his study to establish a "consensus" about what form liberalism might take and what "prescriptions" liberalism would support (see Gaus, pp. 3-9).

⁶¹ As noted in Chapter 4, there is a remarkable similarity between Mill's three restrictions on state action (L 107-109) and Bosanquet's enumeration of the three circumstances under which state intervention in an individual's life is morally allowable (PTS 179-180).

activity.⁶² The state is also subject to change as a result of 'criticism' from within and, in the event that a particular government does not respond to such criticism, Bosanquet says that one may even have a duty to rebel against it.

Since the exercise of power over the individual is ultimately an expression of that person's own will, Bosanquet insists that the only legitimate form of government is 'self government'. Admittedly, the notion of 'self government' here is quite different from that employed by Bentham, Spencer and Mill, for it seems that, wherever one finds a hierarchy of institutions which function in order to attain a public and common good, Bosanquet would allow that one has an example of genuine and legitimate self government--even if, paradoxically, that government turns out not to be democratic. Thus, for Bosanquet, it is possible to have 'self government' where the form of government is neither popularly elected nor representative--and even where the state is directed by a single individual.⁶³ Nevertheless, for peoples that have reached a level of civilization comparable to his own, Bosanquet would

⁶² Recall that this was one of the major reasons why Bosanquet was accused of being too individualistic. In fact, Vincent and Plant have noted that there was some relation between "COS individualism" and "Spencer's evolutionary individualistic theories" (See Andrew Vincent and Raymond Plant, Philosophy, Politics and Citizenship: the Life and Thought of the British Idealists, (Oxford, 1984), p. 100).

⁶³ Remember that Hegel speaks of a single head of state--a "monarch"--who establishes, promulgates and enforces law. (See Hegel's Philosophy of Right, (tr. T.M. Knox), secs. 279ff and 286.)

insist that the norm of government would be that of a representative, parliamentary democracy.⁶⁴

Finally, consider the role of the individual in Bosanquet's thought. The importance of the individual is clear in the remarks above; we have also noted, earlier in this chapter, a number of Kantian influences on Bosanquet's work, such as the emphasis on the value of motive in moral action and on the development of moral character--the 'good will'--as the end of moral life. Bosanquet's recognition of this value is also reflected in his claim that the aim of the state is the maintenance of rights.

It seems obvious, then, that there are a number of key liberal values present in Bosanquet's political thought. But he argues that it would be impossible to justify respect for the law, social practices and--as a consequence--for rights unless one drew on his analysis of the individual, the general will and the common good, and the state. Indeed, this notion of a common good provides a means by which one can preserve the very values of freedom and democracy against the attacks of both individualism and tribalism. Certainly, if one looks at history, the notion of a common good, by itself, no more leads to political totalitarianism than a positivistic theory of law would, and Bosanquet would undoubtedly claim that neither pluralism nor broad individual 'licence' is necessary

⁶⁴ As we have seen, Bosanquet frequently makes reference to this. See, for example, PTS xxx; lviii; 51; 66.

to either democracy or liberalism. And one might note that, in any event, it seems as if the existence of a common good does not exclude the possibility of a private sphere where individuals can pursue their private interests.⁶⁵

Bosanquet's emphasis on the social and the political is, admittedly, central to his understanding of the value of the individual. By reminding his readers of the important role played by society in the development of the individual, Bosanquet avoids the kinds of problems that arise in a theory that insists that individuals have an absolute value. Bosanquet, instead, draws attention to there being certain limits on the value of the individual--limits which reflect the general recognition that individuals are weak and fallible--and the alternative that he offers provides a means by which one can resolve those cases where the desires--and the putative rights--of individuals may conflict.

Given this view of the nature, authority and limits of the state, it is clearly inappropriate and unjust to describe Bosanquet's thought as "illiberal", even if it is not "individualist". Bosanquet shares many of the same aims and concerns as 'liberals' before him, he obviously champions a

⁶⁵ One may, nevertheless, object that, so far as Bosanquet allows the state to determine our real interests (i.e., perfectionism), his thought can be described as "illiberal". It is not possible to pursue this question further, here. Still, it does not seem that pluralism or the absolute freedom to determine one's own good is essential to liberalism, although it may be characteristic of many democratic traditions. See Steven M. DeLue, Political Obligation in a Liberal State, (Albany: SUNY Press, 1989).

number of liberal institutions and, since there is no necessary connexion between liberalism and individualism,⁶⁶ there seems no sufficient reason to hold that he has abandoned liberalism. And even though Bosanquet and Green do not have identical views on the role and limits of the state, there do not seem to be sufficient grounds to argue that Bosanquet is any less a member of the liberal tradition.

What is continuous in British political thought, then, is an ideal of a democratic society where "free individuals, freely discussing and investigating, may freely develop their interests and their capacities."⁶⁷ Indeed, Bosanquet himself suggests that there was a continuity. In a letter of January 1907 to Andrew Seth Pringle-Pattison, he writes that there was at least "one remarkable thread of continuity between the Philos.[ophic] Radicals and the later development of the social spirit"⁶⁸--though it is not surprising that Bosanquet would think that there would be a continuity between his views and those of his predecessors, given his view of the progressive nature of society and social change.

Thus, while it is clear that the "arrival" of German thought in England provided idealists, like Bosanquet, with new approaches and arguments, there is not enough evidence to

⁶⁶ For a recent recognition of this, see DeLue (e.g., pp. x-xi). DeLue speaks of two competing kinds of liberalism: individualism and that of liberal "communalists".

⁶⁷ Harris, p. iii; cf. p. 103.

⁶⁸ Muirhead, Friends, p. 114.

establish "a complete break"⁶⁹ or "a complete recoil" from the liberal tradition of the early nineteenth century.⁷⁰ Even the speculative character of idealist political philosophy has the strong empirical tenor of British philosophy. Bosanquet frequently appeals to ordinary experience to justify his views and often refers to the "plain man's view of the matter" (PTS 147).⁷¹

In light of these similarities to the nineteenth-century liberal tradition, and given that such allegedly "Germanic" influences as the view of the individual as a social and political being owe at least as much to Plato and Aristotle as to Hegel and Kant, Dockhorn obviously goes too far. There is no need to accept his claim that the interest in the theory of the state that one finds in idealist philosophical work was motivated by an interest in defending the state as such.

⁶⁹ Harris, p. 59.

⁷⁰ Metz argues that British idealism "was neither directly nor indirectly connected with" the "idealistic systems and motives" of earlier centuries, and that "it could not have sprung directly from a native tradition" (Metz, p. 238).

But for all the admitted indebtedness to Kant and Hegel, this does not prove that there is a break with the older tradition, and Metz touches only lightly on the fact that the need for, and the development of, Kantian and Hegelian ideas were quite clearly a product of the distinctive situation in philosophy in mid-nineteenth century Britain. Metz does not, moreover, address the argument of J.H. Muirhead, that the "German" influences on idealism have been exaggerated and that many have failed to recognize the lengthy tradition of 'Platonic' philosophy in England (see Muirhead, Platonic Tradition, pp. 14-15).

⁷¹ Pfannenstill quotes Metz as saying that idealism was "hungry for experience" (erfahrungshungrig) (Pfannenstill, p. 118).

Moreover, the focus of the British idealists on understanding the nature of individuals within the context of the state should not be confused with an attempt to have individuals lose themselves in it.

Yet despite this continuity, Bosanquet's political thought does break with the liberal individualist tradition in a number of important respects--this has been suggested throughout the first section of this chapter. For example, as we have seen, on Bosanquet's view, the individualism that underlies the "theories of the first look" is not only incomplete and inconsistent, but simply inadequate to describe the nature, source and limits of rights.

Recall, here, Bosanquet's argument that the boundary drawn in liberal individualism between 'self' and 'other' is simply "arbitrary", and that the concept of 'self' employed in Bentham, Mill and Spencer is too narrow, contradictory and--because it does not serve to place real limits on the state--ultimately ineffective. (Even if, as Harris suggests, Mill eventually came to recognize this,⁷² the 'principle of demarcation' is still clearly present in Bentham and Spencer.) And Bosanquet has also pointed out that, within the liberal individualist theories examined here, there is also an opposition between 'self' and 'other'--something which Bosanquet himself explicitly rejects.

⁷² Harris, p. 60. It is important to note that much of Harris's argument here depends on the disputed On Social Freedom, (ed. Dorothy Fosdick), New York, 1941.

A second example of the break with the liberal individualist tradition concerns the attitude to liberty, authority and, particularly, to law. While Harris may be right to say that the idealists were not particularly interested in "a theory of security such as that of Hobbes", it is quite misleading to suggest that they were "inclined to accept Mill's theory of liberty".⁷³ As we saw earlier, Bosanquet disagrees not only with Mill's definition of liberty, but with both the justification that he believes Mill provides for it (e.g., the value of the individual self) and the limits Mill imposes on it. (This is, of course, not to say that, for Bosanquet, there is no boundary between the individual and the state or that the worth of the individual is negligible in light of the "dignity of the state".⁷⁴ Instead, Bosanquet would object that both views cited above misunderstand the idealist conception of relation of the individual to the state; neither is the means to the other.)

Moreover, unlike the individualist view, Bosanquet simply rejects that there could be any a priori incompatibility or antithesis of law and human liberty. As we have seen, for liberal individualism, law is a limitation of natural liberty, and the moral justification of the law is dependent upon its necessity to preserving and protecting individual liberty. Instead, Bosanquet insists on law and the state as being

⁷³ Harris, p. 102.

⁷⁴ See Dockhorn, p. vii.

fundamental to individual liberty and self-realization (PTS 142; PTS 200)--indeed, so basic that people are scarcely conscious of them (PTS 189).

Finally, while embracing democratic and representative government, Bosanquet rejects liberal individualism because he sees it as implying a theory of political obligation and of social unity that he thinks to be inadequate. As noted earlier, even though Bentham, Mill and Spencer look to representative government as the authority that is entitled to employ coercive force on individuals, laws based on the right of the majority still involve the coercion of 'the others' over 'the one' (see PTS 71-72). Because it misunderstands the nature of autonomy and ignores the possibility of a "real" or "general" will that has authority over an individual's 'actual will', Bosanquet believes that, in the end, liberal individualism can turn only to force as the basis of the state.

Thus, despite the continuity with the liberal individualist tradition in historical origin and in aim, by explicitly grounding their political theory in a non-individualist metaphysic or ontology⁷⁵, the idealists are not merely

⁷⁵ Hence, I would reject the view that British idealist social philosophy can be separated entirely from its metaphysics--though the question then becomes how far the relation between the two extends. According to Pfannenstill, the relation is essential. He writes that "[i]f, as Bosanquet does, a philosopher calls his political theory philosophical, metaphysical, or speculative, the natural result will be that the political theory, severed from its theoretical philosophical relations, will appear to be, so to say, floating in the air" (Pfannenstill, p. 116). A.J.M. Milne, however, argues that the political philosophy can, at least, be separated from

reformers of a tradition, but provide a genuine alternative to it. Bosanquet's view, then, is not only that the metaphysical underpinnings of liberal individualism need to be articulated and expressed, nor even that they have to be modified, but that they have to be rethought.⁷⁶

It is clear, then, that Bosanquet is not an individualist, his theory is more teleological than deontological and there is a focus on the common good, rather than ensuring the pursuit of private individual goods. And since Bosanquet sees that the state and law plays a pivotal role in the development of the individual, he is certainly not a 'classical' liberal.

Still, despite his reputation, there is no strong reason to consider Bosanquet's work to be "illiberal". Given his defense of liberty, human development, and representative democratic institutions, and since it is not obvious that

a theory of the Absolute (see Milne, p. 196). Collini simply notes that there is "sufficient overlap in [the idealists's] social theories and their metaphysical foundations to justify considering the structure of their philosophy, and the nature of its conceptual legacy, as a whole" (Collini, "Sociology and Idealism," pp. 10-11).

By arguing that Bosanquet's social philosophy cannot be separated from questions such as the nature of the moral good or end, the individual, the general will, society or the state, the position suggested in this study is reducible to none of these options.

⁷⁶ Lindsay acknowledges this when he says that the idealists "were convinced... that no further progress could be made in an understanding of politics till a new philosophic basis was found for liberalism" (Lindsay, "T.H. Green," p. 151). Similarly, according to Ernest Barker, "[n]ot a modification of the old Benthamite premises, but a new philosophy was needed; and that philosophy was provided by the idealist school" (See Ernest Barker, Political Thought in England: 1848-1914, [London, 1915], pp. 10-11).

either individualism or opposition to the state are essential to 'liberalism', there seems to be no good reason to exclude Bosanquet from the liberal tradition in Anglo-Saxon thought, or to say that his work represents a radical denial of nineteenth century liberalism in the way in which Metz and, particularly, Dockhorn suggest. In fact, Bosanquet may well be seen as pointing to a 'liberalism' that puts the lie to some of the notions often associated with it.

3. A Final Note

In this study, I have addressed the question of whether Bosanquet's theory of rights is an adequate response to those of Jeremy Bentham, Herbert Spencer and J.S. Mill. My claim has been to show that Bosanquet provides an alternative to these theories and that he answers, or has the resources to answer the major criticisms directed against his view. In large part, then, this has been an historical investigation concerned with dissolving much of the misunderstanding and prejudice against Bosanquet's view--and this, in turn, has required an analysis, elaboration and, at times, reconstruction of it. One of the difficulties in employing such an approach here is that no part of Bosanquet's theory can be understood in isolation. There is a unity and an interconnectedness among its different elements and, to unpack any one necessitates an unpacking along several different lines. Given Bosanquet's teleology this is, no doubt, as one should expect. It is as each

successive concept is elaborated that the other concepts in his theory are more fully understood. Yet, by engaging in this process, one also has the occasion to examine and test the coherence of his account.

One of the attractions of Bosanquet's theory is that it provides a clear definition and explanation of the nature, origin and limits of rights. It is attentive to both the moral and the legal dimension, and is particularly conscious of the problems involved in speaking about rights, independently of social and historical context. Moreover, it argues that while rights are important, they do not have an absolute and inalienable character. Given Bosanquet's analysis of rights as requiring recognition and as related to 'positions' or 'functions', he can provide a mechanism for dealing with putative conflicts of rights. Clearly, such a view has implications for the more general question of the role of rights in political discussion. Much recent work in Anglo-Saxon analytic political thought has suggested that, if a concern for rights rests on liberal individualist presuppositions, and if communitarians are justified in claiming that these presuppositions are inadequate, it seems that there is little good, and much harm, to be done in continuing to use the discourse of rights. While he would acknowledge the legitimacy of some of these objections, Bosanquet would obviously deny their conclusion.

Importantly, and unlike liberal individualism, Bosanquet bases his theory of rights on what has here been called a 'social ontology'. He has suggested that, in order to have a complete account of rights, we need to understand and establish certain basic principles concerning the nature of social reality. Thus, his theory is founded on considerations which attempt to define what the individual is, and which emphasize the extent to which that individual is constituted by its social relations and realises itself "in a complex of institutions" (PTS xxx). Bosanquet sees rights, then, as tied to the positions human beings have within the social order, rather than to humans in abstracto. This notion of the individual and of the relation with the general will and the state provides an alternative set of categories that enables Bosanquet to avoid a number of obstacles which seem "insurmountable when considered within the individualist paradigm".⁷⁷ Moreover, it recognizes the positive role of the state in the development of individuals. Still, the weaknesses in the foundations of the "theories of the first look", do not lead Bosanquet to abandon 'rights-talk'. Rather, he maintains that one can have a coherent theory of rights only if one rejects such presuppositions.

This is not to suggest, however, that there are no problems or unresolved questions in Bosanquet's account. An explanation of the justification of the state, of the possi-

⁷⁷ Collini, "Hobhouse, Bosanquet and State," p. 110.

bility of moral discourse and political obligation and, ultimately, a justification of rights depends on Bosanquet's own understanding of the individual, the state, and the general will. The breadth in the sense of these notions in his work lends weight to the criticism that they are vague or ambiguous. While Bosanquet did make some effort to state them clearly, it is, perhaps, a matter of continuing debate whether he has been successful. Yet it does seem fair to say that his account has addressed, or can address, many of the criticisms raised against it.

To conclude, then, Bosanquet's approach to human rights responds to the problems with liberal individualism noted in the first chapter and is a plausible alternative to those of Bentham, Spencer and Mill. Still, while this investigation has illustrated the character of the idealist perspective on human rights, Bosanquet's theory is by no means the last word. Given the account in the preceding pages, however, it is clear that there is much more to be said for this approach. and that it more accurately corresponds to our understanding of the alienable character of rights, the social nature of the individual, and the moral justification of the state. Perhaps, despite whatever imperfections it may have, one can turn to a theory of rights like that of Bosanquet, without having to adopt a liberal individualist paradigm of political philosophy.

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