The mythological state and its empire

**Author:**
Grant, David John

**Publication Date:**
2006

**DOI:**
https://doi.org/10.26190/unswworks/15944

**License:**
https://creativecommons.org/licenses/by-nc-nd/3.0/au/
Link to license to see what you are allowed to do with this resource.

Downloaded from http://hdl.handle.net/1959.4/26140 in https://unswworks.unsw.edu.au on 2023-09-13
The Mythological State and its Empire

David Grant

A thesis submitted to the University of New South Wales

For the degree of Doctor of Philosophy

2006
Thesis Abstract

Title: ‘The Mythological State and its Empire’

In *The Legitimacy of the Modern Age*, Blumenberg argues that the modern State is legitimate because it is not the persistence of a secularised theological concept. Although it reoccupied mirror-image pre-Enlightenment questions, say regarding absolutism, it is not first concerned with such categories as ‘sovereignty, raison d’etat, will, decision, friend-enemy’ but with ‘contract, consent, liberty, law and rights’.

However, in *Work on Myth*, he proposes that man, and has always been, a maker of mythological magnitudes, of which there can be argued to be an archetypal form. These magnitudes are so fearsome as to allow man to convert his existential fear into fear of an entity the fate of which he can gradually bring into his own hands. In this way, there is the promise of the elimination of existential fear and of the experience of sympathetic conditions of existence. Blumenberg does not address political issues, such as the nature of the State. However, if the State can be shown to be such a magnitude and therefore a political realisation of such an archetype, then it is mythological and so is not modern, even if it is legitimate. It then needs to be criticised to allow the introduction of a radical notion of Enlightenment.

The effect of such criticisms would be the replacement of the notions of fear and sympathy with that of self-responsibility as the first interest of the State. Self-responsibility would need to be promoted progressively. It would require a reconfigured State the prime purpose of which is the promotion of respect and self-reliance of individuals. Its first concern would therefore not be the elimination of fear, which would be understood as unable to be eliminated, nor the creation by it of sympathetic conditions of existence, which would be better a matter for properly prepared and supported, self-reliant individuals. The debate then would be around this axis, where contingency is accepted and managed, not the mythological axis of liberalism and republicanism which has dominated modern political theory since Hobbes.

This thesis is first an exploration of the viability of the mythological idea of the State, whether the State is a political realisation of the archetypal myth. It does this through an examination of such thinkers in the political tradition as Hobbes, Locke, Montesquieu, Rousseau, Kant, Rawls and Pettit. The conclusion of this examination is, in sum, that the idea of the State since Hobbes has been, and remains, mythological since it shows all the key characteristics of a mythological entity and the arguments for it have mythological presumptions. It is still first concerned with the fear/sympathy nexus and the debates of the political tradition from Hobbes to Pettit have been carried out around that axis. Further, this is argued to be an arrangement which promotes dominant interests rather than widespread participation of non-autonomous, self-responsible individuals.

But if this notion of the State as a progressively refined and dispersed mythological entity is viable, it cannot have existed only in the minds of those in the political theoretical tradition. We should expect to see evidence of it in the beliefs and practices of individual
men and women. It must have been not just a political realisation of the mythological State as an idea, but an embodied notion. This thesis is also an exploration of the evidence for that embodiment. It does this by looking at Elias’ analysis of the civilising process in the Middle Ages, at Foucault’s analysis of the emergence and proliferation of the disciplines and the art of government from the 17th century and at the dispersal of the myth through cultural imperialism in the 18th century. The conclusions of these analyses are reinforced by the social ontology of Wittgenstein. Further argument for this embodiment is presented regarding both the common notion of citizenship and the perception of other cultures, that each manifest mythological characteristics. Such embodied practices can be seen as strategies promoted through the State by dominant interests, the purpose of which are the claims to generally eliminate fear and create sympathetic conditions of existence. This embodiment reinforces the initial argument that the idea of the State did emerge and has been established and gradually refined as mythological.

In essence and in large part, this is a genealogy of post-Hobbesian political society as mythological. That is, as the political realisation of the archetypal mythological form and its embodiment in the material practice of individuals. The explanatory value of this way of perceiving the State is then demonstrated by its application to the complex conditions of the destruction of traditional Aboriginal culture by the colonising and civilising British, that is the dispersal of the mythological State as empire. From this, it is argued that the mythological understanding of the State is more illuminating that other approaches.

************
Table of Contents

Preface 1

Part 1 – The Nature of Political Mythology 2

Chapter 1 – Introduction 2
- Preamble 2
- Enlightenment 4
- Self-responsibility 9
- Limits of Self-responsibility 13
- Fear, Sympathy and the State 15
- State, Tradition, Legitimacy and Myth 19
- State, dominant interests and citizenship 24
- Some implications 26
- Outline of the thesis 27

Chapter 2 – The Disposition to Myth: Plato and Blumenberg 29
- The past as a paradigm for the present and future: Plato and Myth 30
- Existential Anxiety, Mythological Magnitudes and Covenants: Blumenberg 34
- The extension of mythological theory 43
- The State as mythological 50

Chapter 3 – ‘The Myth of the State’: Cassirer’s mythology reconsidered 60
- The Greeks 62
- The Middle Ages 65
- The Early Modern Era 69
- The Late Modern Era 71
- Nature of Cassirer’s Mythology 75

Part 2 – Establishment and Refinement 79

Chapter 4 – Establishment and Refinement of the Modern Political Myth: Hobbes, Locke and Montesquieu 79
- Hobbes 79
- Blumenberg and Hobbes 80
Hobbes and the Construction of the Modern State  81
Hobbes and Archetypal Myth  91
Mythological Significance of Hobbes  95
Locke  97
Locke, the Calling and the Legitimate Polity  98
Coherence of Locke’s Thought  111
Locke and Mythology  114
Montesquieu  121

Chapter 5 – The Conversion of the Political Myth: Rousseau  129
Rousseau  129
Implications of Rousseauan Thought  146
Rousseau and Mythology  157
Significance of Rousseau  163

Chapter 6 – The Consolidation of the Political Myth: Kant  167
Rousseau, the General Will and the Kantian State  170
Implications of Kantian Political Thought  180
Kant and Mythology  197

Part 3 – Modernisation  204

Chapter 7 – Rawls  204
Rawls and Mythology  214
Rawls’ early Kantianism  215
Rawls’ work on the Kantian myth  225
Rawls forgoes Kantian metaphysics but the myth remains  229
Rawls’ amended Kantian mythology remains flawed  234
Summary  244

Chapter 8 – The Republican form of the Political Myth: Pettit  249
The Attractions of Republicanism  249
Pettit and Mythology  251
The Strong Republican State  252
Republican State is Freedom  256
Republican State assumes responsibility for its citizens  256
Constraining the Republican State  259
Constraint through Corporatisation  263
Pettit’s mythology of justice  265
Republican inclusiveness 269
Republican, Rousseau, Kant and Hobbes 273
Republic and Civility 277
Republic and Trust 278
Republic and Material Inequality 279
Republic and the Intangible Hand 281
Republic and Concealment 283
Some Observations 284
Conclusions – the Mythology of Pettit’s Republicanism 287

Part 4 – Embodiment 292

Chapter 9 – Elias 293
Fear, Civilisation and Habitus 293
Civilising, Monopolies and the Formation of the State 299
Elias and Mythology 304
Resisting criticisms of Elias though mythology 307
Implications 313

Chapter 10 – Governmentality, Discipline and Certainty: Foucault and Wittgenstein 315
Dimensions of Post-Medieval Embodiment 317
Art of Government 318
Discipline 324
Individuation as Subjectivation 327
Foucault and mythology 330
Affirming the mythological account of the State 330
Clarifying the nature of the political myth 339
Mythological interpretation of Foucault 342
Foucauldian account of the State reconceived 345
Comment 347
Wittgenstein, normalisation and certainty 349
Fields of embodiment 360
Citizenship and rights 360
Other cultures 367
Wittgenstein, Foucault and mythology 372
Comment 375
Part 5 – Myth’s Empire  378

Chapter 11 – The Mythological State in practice: colonisation and Aboriginal policy  378
  ➢  Fear, Conditions of Existence, Civilising and Governing Aboriginal People  383
  ➢  The Pastoral, the Prison and the Law – governing and disciplining Aboriginal people  407
  ➢  The Christian Pastoral - civilising Aboriginal people  413
  ➢  Discipline - Civilising Aboriginal people  416
  ➢  The Constitution - civilising of Aboriginal People  421
  ➢  Self-Responsibility in Aboriginal Affairs  423
  ➢  Mythological State and Aboriginal People  429

Part 6 – Concluding Remarks  436

Chapter 12 – Summary of Argument  436

Bibliography  444
Preface

During a long career in Criminal Justice, including at Chief Executive Officer level, I was constantly confronted with legislative, judicial and prison practices that were heavily disposed to a punitive regime regarding Aboriginal people. One result of these practices was a disproportionately high level of Aboriginal deaths in custody. Publication of this fact led to various strategies to lower Aboriginal imprisonment levels and to deal equitably with Aboriginal offenders. Nonetheless, the punitive practices have persisted.

My attempts to understand the foundation of these practices, resilient in the face of their failure to deal with the issues involved, repeatedly came up against well-established explanations. In the end, these explanations almost always translated into the habituated behaviour of a marginalised people and the need for the political and justice institutions to accept that habituation and do the best it could within its established regimes to deal with it. In this, there often seemed to be a strong sense that there was some inherent characteristic that contributed to that habituation.

This raised the question for me whether this was a fatalism that was at least understandable in the face of a seemingly intractable social problem or whether this fatalism was blind to deeper issues that went to such matters as the instrumental role of the institutions of the State and, finally, to the nature of the State itself. This thesis emerged out of an attempt to understand these broader questions. It has led me into a consideration of certain dominant traditions of thought and their embodiment in practice, an investigation to which the bulk of the thesis is devoted.

However, while undertaking this, I did not lose my original impulse. After a lengthy exploration that has led me to a new understanding of the State, I return in the final chapter to the question of Aboriginal policy and look at my first questions in the light of that new understanding. The intention, and I believe the outcome, is to illuminate those questions in a manner that has advantages over other accounts. This approach of combining explication and illustration is a little unusual but not unheard of. In fact,

---

1 Avishai Margalit points to the distinction and the value of each in talking about philosophical style: ‘There are two styles of philosophers: e.g. philosophers and i.e. philosophers - illustrators and explicators. Illustrators trust, first and foremost, striking examples, in contrast with explicators, who
there is for me greater force in coming to a new understanding of the State, for example, if it is shown to better illuminate what has been seen to be an intractable social problem. This is not to say that the value of the explication relies on the illustration, as it is valid in its own right, but it is no weaker, and might even be stronger, for illuminating an important problem better than other accounts.

Part 1 – The Nature of Political Mythology

Chapter One – Introduction

Preamble

This thesis proposes a new way of understanding the modern State, as a mythological arrangement. To support this proposal, it attempts three things. First, it undertakes an extended examination of the emergence, development and the nature of the idea of the modern State, comparing its features to those of a particular notion of the nature of mythological entities. Second, it argues that this idea of the State is not only an idea but can also be seen to measure the embodied practices of citizens. Third, it proposes that this understanding of the State as mythological and embodied is a uniquely rewarding way of illuminating specific social and cultural circumstances, for example regarding the destruction of traditional Australian Aboriginal society.

This Chapter pegs out the ground on which the three elements of the thesis are argued. It indicates a preferred context within which to begin to understand the State mythologically, based on the second of two answers to the question whether the modern State is in fact truly modern. The first of these answers is that the modern State should be seen as truly modern, in that it has fulfilled the promise of the Enlightenment to establish institutional arrangements that are based on reason not trust, first and foremost, definitions and general principles. Explicators may use examples, but their examples are stylized and are more like those that appear after i.e. than the genuine examples that follow e.g. The illustrators, for their part, run the risk of using examples as little anecdotes that serve no philosophical purpose. The dangers of each style in philosophy are clear and almost unavoidable; yet, I believe that style in philosophy matters greatly. When examples are apt, they are illuminations, not just didactic illustrations. When definitions are good, they are explications, not mere stipulations. I see merit in both styles, but in temperament if not by conviction I subscribe to e.g. philosophy.' The Ethics of Memory p.ix
faith. This is an argument that there has been progressive refinement of both the idea and the practices of the State since the Enlightenment, including the promotion of the rights of individual citizens, which have effectively realised that promise. This long refinement over time has been ‘slowly getting the State right’, both as an idea and in practice. In this context, the destruction of Australian Aboriginal society should be seen as an aberration which needs to be addressed to bring Aboriginal policy and practice into line with the Enlightened manner in which the State generally operates in relation to its citizens.

The second answer sees the modern State as not truly modern, since it has continued to be engaged with pre-Enlightenment questions. The refinements to the idea of it and to its practices have been a refinement of the responses to those outdated questions. Consequently, although the changing status of the citizen has increasingly recognised individual rights and it is modern in that sense, the institutional arrangements remain on a non-rational foundation which deeply colour those rights. This argument acknowledges that the foundation of the State is not faith but neither is it reason. The foundation is myth and its first concern, before the promotion of reason, is to eliminate fear. These long refinements have therefore been ‘slowly getting the State wrong’ because they are primarily concerned with this elimination of fear. The significance of fear is elaborated in Chapter 2. In this case, rather than being an aberration, the destruction of Aboriginal society is fully consistent with and even a manifestation of the persistent pre-Enlightenment idea and practices of the State.

Within the context of the question of the true modernity of the State and the value of a mythological answer to that question, this Chapter introduces the reader to key concepts and arguments which will be the subject of the exploration which comprises the thesis. These include, in turn, the sense in which Enlightenment is used here; the notion of self-responsibility and its limits; the nature of the key concepts of fear and sympathetic conditions of existence and their mythological value; the question of the legitimacy of the State in the context of a mythological model; and the mythological relationship between the State and its dominant interests, and its implication for the notion of citizenship.
Enlightenment

It is important first to say a few things about the sense in which Enlightenment is understood here and the extent to which this is drawn from the Enlightenment as a wide current in the cultural and intellectual history of Europe, as an historical reality. As the bulk of this thesis will show, there is certainly no adoption here of the universalist, rationalist arguments and inferences from that historical reality. Nor, certainly, is there any general endorsement of arguments produced by Locke, Montesquieu, Rousseau or Kant as they might be argued to be Enlightenment figures. In fact, this thesis is substantially a rejection of key political arguments of those thinkers and their modern successors.

However, neither is there any simple acceptance of the criticisms that have been made of the Enlightenment, whether by conservative reactionaries, Romantics or by radical political and social reformers. Rather, it is argued here that there is a way to look at the Enlightenment which draws out certain sustainable elements and intellectual themes and by which, at the same time, the errors that are displayed in the political theories of those key Enlightenment thinkers from Locke to Kant can be understood.

This way of looking at the Enlightenment is to see it in its aspiration to be a liberating force. This is to say that provisional, incremental progress can be made in human affairs, the effect of which would be the realisation of the key feature of political individuality as self-responsible self-assertion. This sense of progress would result from the promotion of self-responsibility rather than from continuing to address political questions inherited from medieval Christian ways of thinking and which are based on myth not reason. Although this thesis does not endorse the political theory that he developed from it, this is the sense given to Enlightenment by Kant: ‘Enlightenment is the human being’s emergence from his self-incurred minority. Minority is inability to make use of one’s own understanding without direction from another…Have courage to make use of your own understanding!' is thus the motto of

2 It is not common to see Locke as a figure of the Enlightenment, a cultural and intellectual current typically regarded as gaining influence from the 1680s to the 1780s. However, the Essay Concerning Human Understanding was published in 1690 and the Two Treatises of Government in 1689. This at least puts him on the cusp of the Enlightenment and certainly locates him as a figure of modernity.

3 H. Blumenberg The Legitimacy of the Modern Age Translator’s Introduction pp.xxv-xxx and pp.97, 99
enlightenment’. He continues: ‘For this enlightenment, however, nothing is required but freedom, and indeed the least harmful of anything that could even be called freedom: namely, freedom to make public use of one’s reason in all matters…The public use of one’s reason must always be free, and it alone can bring about enlightenment among human beings.’

Seeing Enlightenment in this way helps to resolve what may be regarded as secondary criticisms levelled at it, especially by conservatives and Romantics. Nisbet gives some insight into the way that conservatives, generally against the arguments of radicals and liberals, responded to what they saw as the inevitably destructive implications of the Enlightenment and the modernity which it heralded. What Nisbet saw in conservative thought is that, whereas nineteenth century liberals sustained the faith of the Enlightenment by promoting the emancipation of man’s mind from religious and traditional bonds and radicals saw in it the dismantling of the institutional structures of oppression, conservatives regarded the Reformation and the Industrial and French Revolutions that consequentially followed as having largely socially destructive effects.

These effects included the equalitarianism that ended traditional hierarchy and authority, the excesses of centralised popular power, the substitution of passion for the restraints of tradition, the replacement of sacred values with impersonal norms of contract, the decline of religious and political authority in favour of power, the loss of liberty not as freedom but as principled right, the debasement of culture through mass dissemination and the sense of progress that saw the past as bad and the future as best. In saying so, conservatives rejected the Enlightenment claim that individuality, progress, contract, nature and reason were means by which the oppressions of traditional arrangements, which they saw as good, could be relieved. They preferred the traditionalism of the Middle Ages to the analytical reason of the Enlightenment, as they did its communalism and kinship to later individualism. The main reasons were that the claimed progress only brought, to their eyes, the tyranny of popular sovereignty, the poverty and degradation of the working class, the instability that

---

5 R. A. Nisbet *The Sociological Tradition* p.10
6 ibid p.14
came from the conversion of landed property into capital, the alienation that came with industrial cities and the growth of technology\textsuperscript{7}. They also saw the instability that came with the abolition of the guilds and corporations, the undermining of the patriarchialism of the family and the loss of moral influence that came with the subjugation of the Catholic Church to the State, which took control of education and welfare, one manifestation of which was the slide into Jacobin terror\textsuperscript{8}.

It might well be said in response that to visit on the idea of Enlightenment the sins of those who took advantage of its loosening of the oppressive bonds of tradition is misjudged, even unfair. It might also be said that the proper response to such sin, where there was sin, was not to revert to oppressive tradition, or ‘myth’ in terms that this thesis will explore, but to seek a new way, a radicalisation of the originating sentiments of Enlightenment, those sentiments expressed by Kant.

A different attack on Enlightenment comes in the name of Romanticism. Berlin’s argument is that this tradition dealt a blow to the Enlightenment from which it could not, and did not, recover. This is an argument with which this thesis disagrees, so long as one takes the Kantian aspiration of the free public use of one’s own understanding to be the touchstone of the Enlightenment. Berlin refers to the impact of the arguments of Herder and, interestingly, of Kant, whom he sees as a father of Romanticism. From Herder he gathers three criticisms: first, the fundamental importance to being human that individuals express themselves; second, the notion of belonging, that is what it means to belong to a group; and third the notion that ideals are both often incompatible with one another and are irreconcilable\textsuperscript{9}. Berlin’s claim is that the importance of each of these is denied by Enlightenment thinking. In response, it may be said that, to the extent that Enlightenment thinkers denied the importance of these arguments, they were themselves wrong. However, Herder’s attack makes no mark on the primary Enlightened Kantian notion of the free public use of one’s own understanding.

\textsuperscript{7} ibid pp.24-29  
\textsuperscript{8} ibid pp.36-42  
\textsuperscript{9} I. Berlin \textit{The Roots of Romanticism} p.58
Regarding Kant, Berlin attempts to co-opt him in his criticism of the Enlightenment by portraying him as the father of Romanticism. He acknowledged that Kant was someone who ‘hated romanticism. He detested every form of extravagance, fantasy, what he called Schwarmerie, any form of exaggeration, mysticism, vagueness, confusion. Nevertheless, he is justly regarded as one of the fathers of romanticism’¹⁰. Berlin’s argument comes from his claim that ‘Kant was virtually intoxicated by the idea of human freedom’ and ‘In the case of Kant it became an obsessive central principle. Man is man, for Kant, only because he chooses…man is free to choose what he wishes. This, the will, is the thing which distinguishes human beings from other objects in nature’¹¹. For Berlin, ‘This was, of course, to assert the primacy of the will. In a certain sense Kant was still a child of eighteenth century enlightenment, because he thought that all men, if their hearts were pure, and when they asked themselves what it was right to do, would in similar circumstances arrive at identical conclusions, because to all questions reason in all men give the selfsame answer’¹². However, Berlin is saying that, despite his enlightenment rationalism, Kant’s emphasis on the independence of the will makes him a ‘restrained’ Romantic.

The problem for this argument of Berlin is that the Kantian will is not the Romantic will, say of Schiller. He as much as admits this himself. Schiller’s theory of tragedy, Berlin claims, ‘is founded upon this notion of (spiritual) freedom…and this is the way in which, perhaps more than through direct reading of Kant, it had such a powerful effect upon romantic art’¹³. Berlin also identifies the contrast between nature and the moral individual as ‘the central doctrine in Schiller’ but says ‘Schiller rejected the Kantian solution, fundamentally because it seemed to him that though Kant’s will liberates us from nature, he puts us on a very narrow moral road, into too grim, too confining a Calvinist world, where the only alternatives are either being the plaything of nature or following this grim path of Lutheran duty which Kant thought in terms of’¹⁴.

¹⁰ ibid p.68
¹¹ ibid p.69-70
¹² ibid pp.77-78
¹³ ibid p.79
¹⁴ ibid p.81
In fact, Kant constrains the free use of reason and in a way that the Romantic Schiller would resist. As Blumenberg points out, ‘For Kant, the hypertrophy of the appetite for knowledge is the root of all the spiritual phenomena whose negation is called ‘enlightenment’. ‘Passive reason’, in its instinct to go beyond what has been achieved without regard to what can be achieved, must be helplessly inclined towards prejudice and superstition. Enlightenment…is more than ‘thinking for oneself’; it is the removal, as it were, of the opportunities for the passivity and thus the seduceability of reason’. Further, it is the intervention of the political process into this problem by which freedom of thought ‘finally destroys itself’.

Kant’s promotion of reason and the will is not the romantic will and Kant can’t himself be used convincingly, as Berlin attempts to do to strengthen his Romantic criticism of Enlightenment, as a father of Romanticism, even as a ‘restrained’ member of that party. The Kantian aspiration for the elaborated but consistent use of one’s reason, understood as denying unfettered freedom of thought, remains as the touchstone of the Enlightenment, not of Romanticism. Where Kant does falter is the way that he fetters this use of reason through political arguments and processes which, as will be extensively examined below, reveal him as having a mythological disposition. By this strategy, Kant compromises his own aspiration by employing a mythological tactic. It might be added, further in criticism, that although Berlin sees Romanticism as having left a positive legacy, it has much in common with ‘many (if not all) of the prominent theories of myth’ and, like Kant’s mythological politics, is in itself highly problematic for that. Where Romanticism can be seen as having

15 H. Blumenberg *The Legitimacy of the Modern Age* p.429
16 ibid p.433
17 Berlin argues that Romanticism has left us the legacy which includes the freedom of the artist, the notion that a unified answer in human affairs is likely to be ruinous, the notion that there are many values and that they are incompatible and the notion that there is no single answer which claims to be perfect and true. ‘The result of romanticism, then, is liberalism, toleration, decency and the appreciation of the imperfections of life; some degree of increased rational self-understanding…(even though) this was very far from the intentions of the romantics’, see *The Roots of Romanticism* pp.146-147. All this appears to be a heavy burden for Romanticism to carry.
19 op cit pp.116-117, where Berlin refers to the Romantic figure Adam Muller, who ‘says that Christ died not only for individuals but for States, which was a very extreme statement of theological politics, and then explains that the State is a mystical institution profoundly rooted in the deepest possible, the least fathomable and least intelligible aspects of human existence, which was essentially in a perpetual criss-crossing movement; the attempt to reduce this to constitutions, to laws, is doomed to failure because of written lives; no constitution, if it is written, can possibly survive, because writing is dead and the constitution must be a living flame within the hearts of human beings who live together as one passionate mystical family. When that kind of talk begins this doctrine starts to penetrate into regions
made a positive contribution is where it was not mythological, that is where it promotes self-assertion and self-creation\textsuperscript{20}.

The general point is that the Kantian sense of Enlightenment adopted here stands its ground against the criticisms of both conservatives and Romantics. Used in this sense, it is a principal reference point for what follows.

**Self-responsibility**

The second concept that needs some early clarification is that of self-responsibility. In particular ways, the distinction between the two principal, alternative ways of understanding the modern State that introduced this chapter is reflected in different meanings of the word ‘responsible’. In the first account, it is taken to mean that one’s behaviour realises the arrangements of an Enlightened, rational State which promotes the rationality of the individual and his widest necessary engagement in the rational processes of the State. In the alternative account, it would mean that one’s behaviour reflects the prescriptions of a pre-rational, mythological State which does not promote, even denies, the widest proper engagement of the rational individual because it is more concerned with eliminating the fearsomeness of the individual and with creating for him sympathetic conditions of existence than with promoting his capacity for reasoned behaviour and self-reliance. It is the argument here that the meaning of ‘responsible’ which reflects the ideals of the Enlightenment, one that ultimately reflects rather than denies the capacity of the individual to be substantially rational, remains to be established.

\textsuperscript{20} ibid pp.119–120, where Berlin outlines the Romantic proposition that ‘There is no pattern to which you must adapt yourself. There is only, if not the flow, the endless self-creation of the universe. The universe must not be conceived of as a set of facts, as a pattern of events, as a collection of lumps in space, three-dimensional entities bound together by certain unbreakable relations, as taught to us by physics, chemistry and other natural sciences; the universe is a process of perpetual forward self-thrusting, perpetual self-creation, which can be conceived of either as hostile to man, as by Schopenhauer or even to some extent by Nietzsche, so that it will overthrow all human efforts to check it, to organise it, to feel at home in it, to make oneself some kind of cosy pattern in which one can rest – either in that way, or as friendly, because by identifying yourself with it, by creating with it, by throwing yourself into this great process, indeed by discovering in yourself those very creative forces which you also discover outside, by identifying on the one hand spirit, on the other hand matter, by seeing the whole thing as a vast self-organising and self-creating process, you will at last be free’.
The thesis takes the second of the two accounts of the State seriously. It therefore asserts that, if this perception of the State can be demonstrated by argument, then the former perception cannot be true. The State, then, is not modern and the refinements to the idea of it and to its practices over a long period have been about ‘getting the State wrong’ and for interesting reasons. They are generated by this concern about eliminating man’s fearsomeness rather than promoting his rationality. Consequently, even if there is a claimed concern for the avowed Enlightenment aspiration to fulfil this rationality, it remains premised on a more fundamental concern to eliminate fear. It is not a rationality of self-responsibility, which is that the individual is responsible to and for himself and, therefore, responsible to or for no other. Neither is any other therefore responsible to or for him. Therefore, he accepts and deals with one’s fear in a manner respectful of others, through social institutions and practices redesigned to promote that. Respect is such that he allows others to be self-responsible, that he does not assume responsibility for others, either by force or inducement. Until the State begins to promote the individual as ‘self-responsible’ in this sense rather than be first concerned about him as fearsome, it is argued that the Kantian ideal of the Enlightenment cannot be realised.

To begin to address these issues, the thesis introduces two arguments by Hans Blumenberg, which taken together propose that the ‘modern’ State is legitimate but not in fact modern, since it remains concerned with pre-Enlightenment questions that are mythological in nature. The bulk of the thesis is a detailed exploration of the proposition that the State is mythological and its conclusion is that Blumenberg is correct but not quite for the reasons that he espouses in *The Legitimacy of the Modern Age*. That is, despite the modernity which has produced such outcomes as greater individual rights, this has occurred through the occupation of a mythological, not mirror-image theological but still pre-Enlightenment, concept of the State. This is not merely the modern State being legitimate although reoccupying pre-Enlightenment questions but is the State properly understood in its very fabric as a mythological entity which is alien to the avowed aspirations of the Enlightenment. In the end, this allows a further argument that such cultural circumstances as the destruction of Australian Aboriginal society is consistent with this mythological understanding of the State and therefore not an aberration of an otherwise Enlightened State.
As a corollary to this analysis, it is possible to conceive of a State which is not mythological, albeit a very different kind of State from that with which we are familiar, the practices of which would promote the rationality and wide engagement of respectful, self-responsible individual subjects. The penultimate chapter presents a first outline of certain non-mythological State practices, although these are not intended as an elaborate architecture for the future. That example is intended only to provide a reference point against which to compare the nature and practices of the State in what will be argued to be its current, pre-Enlightenment form. These practices are identified in the detailed exploration of the mythology of the State of which this thesis is largely comprised. It is because its practices deny the self-responsibility of individual subjects, and because such practices are symptomatic of the way the mythological State operates across social space, that the State should be regarded as being still in a pre-Enlightenment form.

It should not be taken that self-responsibility is being set up here as an absolute reference point against which the ongoing efforts of liberalism or republicanism are too easily criticised or dismissed. Arrangements based on the principle of self-responsibility would themselves require similar ongoing efforts, that is, like liberal or republican arrangements, they would be progressively established by degree. But its starting point is different, the former argued here to be first concerned with the desire for the elimination of fear and the creation of sympathetic conditions of existence through a particular strategy, while the latter is first concerned with the establishment of respectful responsibility to and for oneself in the context of accepting the inevitability of fear. As the bulk of this thesis argues, most of the interesting debate about the political theories of Hobbes, Locke, Montesquieu, Rousseau, Kant, Rawls and Pettit occurs around the liberal or republican axis and the substantial amount they have in common. What this thesis attempts to argue is that this axis has mythological presumptions and that an alternative starting point, one concerned with the agonistic promotion of respectful self-responsibility, can provide an axis for debate which is not mythological, which is not infused with the responses to pre-Enlightenment questions but takes the Kantian notion of Enlightenment seriously.

Given that self-responsibility is established incrementally through respectful, agonistic processes, an argument for it is not an argument for the notion of
autonomous individuality, free from the heteronomous influences of existence. It is an argument for the possibility of political and other arrangements that honour reflective decision-making for an increasingly self-determined form of life which accepts the inescapability of fear. This is so, as we shall see in Chapter 10, despite the nature of the inherent disposition to create mythological magnitudes and the effect of early and effective training of individuals to adopt preferred, mythological practices.

Given that this thesis is concerned to identify the mythological basis of the liberal and republican traditions and the connection between them, no full elaboration is provided here of the ideas and practices of self-responsibility, except in passing and by example in the penultimate chapter. However, so that there is an early reference point in relation to which the following analysis can be considered, some examples can be put forward as indicative. In matters of criminal justice, there is a difference in kind between the progressively amended but still commanding punitive practices of judicial officer and correctional institution, on the one hand, and, on the other, one in which the primary concern is the genuine engagement with offender and victim in which judicial and institutional roles would be to facilitate respect and self-reliance. In a similar vein, there are categorical differences between democratic political arrangements dominated by the corporate interests of political organisations and their influential allies, on the one hand, and, on the other, those which allow and promote sensible, wide participation in political decision-making. Similarly, there is wide difference in indigenous affairs between arrangements which sustain Aboriginal people on life-time welfare, in the stated hope that these people will acquire marketable skills, on the one hand, and, on the other, the return of viable amounts of traditional land for their own sustenance or exploitation. The latter in each case is taken to be indicative of the principle of self-responsibility.

The nature and role of the State would differ between these axes. It will be argued extensively below that both liberalism, as represented for example by Locke and Kant, and republicanism, as argued by Pettit, intrude into individual lives for the first purpose of the elimination of fear and then the creation of sympathetic conditions of existence, especially but not exclusively for dominant interests. The principle of self-responsibility is first concerned with the promotion, including by re-arrangement of the State form, of respectful self-reliance rather than securing this fear/sympathy
nexus. This is to say that the State may not intrude except minimally and only for the purpose of promoting self-responsibility. The self-responsible individual by definition will not intrude into the lives of others but the State will be justified to intrude into the lives of those who intrude into others’ lives by not acting responsibly in this sense. But this State intrusion may only be for the first purpose of promoting self-responsible behaviour through constructive engagement with the offender. It may not be guided by the elimination of fear and the creation of sympathetic conditions, especially for dominant interests, each of which relegates such engagement low on the list of preferred means and outcomes. Using the broad examples provided, this principle would be progressively applied in justice, political decision-making and indigenous affairs: there would be a focus on reconciliation and the provision of negotiated developmental offender programmes in justice; carefully extended but widespread participation in political decision-making; and the return of traditional lands to indigenous owners along with the sensible withdrawal of welfare support.

The limits of self-responsibility

It is not being claimed here that the forgoing of self-responsibility upon which present mythological political arrangements are founded is total. What is forgone is the individual attempt to deal with fear without being fearsome and to attempt to create the conditions of one’s own existence rather than have this undertaken by the State and its dominant interests. This still allows ‘secondary’ responsibilities to be retained by individuals, for example the raising of children or the periodic casting of votes as to which dominant interests should have the role of securing the fear/sympathy nexus, the principal responsibility of the State, so long as the individual satisfies certain minimum requirements of the State. These secondary responsibilities are at their most extensive in a liberal State but restricted in a communitarian society and effectively eliminated in a totalitarian State. This does not imply that secondary responsibilities have no mythological content. On the contrary, child-rearing can certainly comprise training offspring to have expectations of the State that encourage the forgoing of responsibility and one’s attitude to voting can be merely an intention to legitimise the actions of alternative dominant interests.
Complementing this delimitation of the forgoing under mythological arrangements is the nature of responsibility that is resumed in a non-mythological State. An example of what some practices of a non-mythological State might be like are provided in the penultimate chapter. Broadly, however, self-responsibility would be a circumstance wherein individuals participate fully in the resolution of fearsome circumstances in a manner that does not create more fear, and in the creation of the conditions of their existence. In its purest form, the individual would be fully responsible in this way, that is only to and for himself. In a circumstance of self-responsibility, the individual is not bracketed from but is widely, deeply and fundamentally engaged in such processes.

In anticipation of expected doubts about the practicability or wisdom of such arrangements, there is an important caveat. The claim for self-responsibility is not based on a claim that it is a quality which individuals could assume overnight, particularly when its forgoing will be argued here to have been common at least since the emergence of the modern State with Hobbes. Even with redesigned social institutions and practices, there will be slow learners. It is a characteristic to be acquired over time throughout a community and from an early age for the individual, through reconfigured institutions whose charge is to increasingly broker outcomes of engagement and self-responsibility rather than determine or deny them.

Regarding the example to be provided hereunder of what an Enlightened non-mythological State would be like, it should immediately be said that to provide a comprehensive elaboration would over-burden this thesis. Indeed, it would be another thesis. More importantly, it is something which cannot be prescribed, since it is by its nature the working out of alternative social arrangements by different kinds of individuals with the support of substantially different State practices. However, what should be preferred to common arrangements, informed principally by pre-Enlightenment questions, the ‘compared to what’ that this thesis needs as a reference point, can be indicated. This will complement what ‘getting it right’ about the State would be like. The example to be given in the penultimate Chapter relates to Aboriginal affairs. It should be said here that this example will do nothing more than indicate what such a way of living might be like. It would only be when cultural diversity is part of a mix of life that also includes for the individual wide political
participation, student-centred education for life, living sustainably in various forms of social life, that is when these examples are embedded in a framework allowing different patterns of life, that self-responsibility would take root.

**Fear, Sympathy and the State**

The elaboration of the argument that the State can be conceived as a mythological arrangement is provided in chapter 2. However, it is appropriate here to introduce some of the key features that the State must show to qualify as mythological. The first is the combination of the elimination of fear and the expression of sympathy for man as primary concerns of the mythological State, as conditions for the forgoing of individual self-responsibility. Although this thesis is only consequentially concerned with the impact of the mythological State on specific social and cultural circumstances, these key features are outlined now in terms of the destruction of Aboriginal culture. This is done merely as a signal that, following on from the development of its main idea throughout the bulk of the thesis, there is an attempt in the penultimate chapter to illustrate the value of that idea by examining the circumstances of that destruction.

The Aboriginal people of Australia have been in a state of subjection since the arrival of the British in the late nineteenth century. They have been variously subject to dispossession, physical punishment, murder, denial of legal status, enforced family disconnection, christianisation, ruin of their traditions, normalisation through training in European practices, incarceration and welfare dependency, for over two centuries. This subjection has amounted to the assumption by the State and its allies of responsibility for Aboriginal people and the imposition of the conditions of existence that are alien to their traditions. This has persisted within a society that boasts of having secured wide individual freedoms for its citizens. This subjection may be argued to be an aberration but it can also be seen as a response to what was conceived on initial contact to be a fearsome circumstance, triggering the primary strategy of the State to eliminate fear through the assumption of responsibility for the fearsome, amounting to the denial of their self-responsibility.
The thesis argues that fear can help explain this radical and persistent assumption of responsibility, and therefore ultimately provide a basis for seeing the democratic State differently, although not in a straightforward way. That is, it is fear and not reason upon which social and political arrangements are founded. Certainly, there is plenty of evidence that many early British settlers were personally fearful of Aboriginal people. This would explain the establishment of a regime to eliminate such fearsome behaviour but not the continuation of this regime well beyond the early time when the direct, physical threat from Aboriginal people ended. Some other question needs to be asked.

What is explored here is whether we might identify this further question and find an answer to it by examining the nature and the consequential practices of the State itself. That is, could the State be understood as an entity established primarily for two inseparable purposes: the elimination of fear, real or potential and from within and outside a community; and the proactive construction of sympathetic conditions of existence for a community, which has a secondary benefit of reinforcing the ‘fear limiting’ credentials of the State. In such an argument, the State would have been created and gradually refined over time in its structural arrangements and in its institutional practices to do these two things before anything else. These would be its connected primary purposes and its force would be brought to bear when fearsome circumstances emerge or sufficiently sympathetic conditions do not exist. The powerful elimination of fear would then be the basis of seeing the State differently and therefore the basis of the second account of its nature presented at the beginning of this Introduction.

This reference to the State is made regarding both its conception and its practices. This connection between the idea of the State and the way it operates is of course not a necessary one. It is conceivable, even common, for there to be a disconnection between these and this is acknowledged as a factor in the nature of the Australian State. However, if it can be demonstrated that the State exists for the two purposes suggested, it would not only tell us much about why Aboriginal people have experienced persistent subjection but much about how the State operates across social space. That is, that there is a connection between the practices of the State and the
idea of it that has been refined over time. That connection is extensively explored hereunder.

In this context, fear would first be considered as the result of what is understood or imagined, even before it is seen as the product of direct personal threat. That is, whether fear is at first existential in nature, triggered by threatening incidents certainly but most profoundly the result of feeling isolated and vulnerable. In his account of the early settlement of Australia by the Europeans, Atkinson appears to see Pascal in this sense: “I am overcome by fear like a man who has been carried off during sleep and deposited on some terrifying desert island, who wakes up without knowing where he is and without any means of escape”. Atkinson continues, “On that island time was dissolved. Memory was undermined and the will was enslaved by the horror of distance. The poet Cowper wrote in 1803 about much the same kind of fear, reflecting on the imagination of a man fallen overboard at sea: ‘He long survives, who lives an hour / In ocean self-upheld’. Both told of the agony, momentary but infinite, of a soul suddenly displaced. The first Europeans in Australia experienced this sense of loss, and of being lost, in various ways”21. This sense of isolation and loss was worsened by the discovery of the vast size of the continent, the flip side of the excitement which came with the crossing of the Blue Mountains by Blaxland, Wentworth and Lawson in 1813. Atkinson refers to ‘a new sense of size of the continent…which only a series of generations could hope to comprehend. The (coastal) farms became by comparison small and familiar. Ideas of limitless bush and of large, remote possessions began to enter the Australian-European imagination’22.

The desire for a protective, institutional arrangement to provide a sense of comfort and security against such existential fear might be seen as the circumstance for the creation of a State, even before any worrying incident. Such understandings and imaginings would then be made real by actual fearful experiences, existential fear then converted into immediate, visceral terror by such incidents, which then bring to bear the full force of the institutional arrangements put together to neutralise the fear from these incidents.

21 Alan Atkinson The Europeans in Australia – A History Volume 1 p.343
22 ibid p.345
But fear cannot be understood as only existential or visceral. It may also come from the belief that threat may lie in mere difference, in practices other than those to which one has been accustomed and which one therefore does not fully understand or which one does understand but does not want to acknowledge. That is, it may lie in ways of looking at the world or ways of living that are alien to one’s own. It came to be understood by the British that it was the world picture which framed the life of Aboriginal people which drove their practices, a picture which when directly threatened by the activities of the British inspired those very fearsome acts. The acts of resistance against the taking of the land in which Aboriginal people have always seen themselves embedded can be properly seen in this way and in this context guilt may also be seen to have been a generator of British fear. Similarly, the taking by Aboriginal people of British goods, producing concern among the settlers that their survival depended on the prevention of the theft and killing of livestock, may be seen in this way. Means were needed to ensure that such life-threatening acts ceased so that conditions sympathetic to the survival and then the prosperity of the settlers could be assured.

This is the question of the gradual emergence of the view that the way that Aboriginal people looked at the world had to be eliminated, that is, beyond as well as including the violent responses perpetrated by the British in response to the fearsome acts of the Aboriginal people. This is especially so when Aboriginal demand for the return of their land persisted and still persists. By eliminating these fears in their various forms, an important start would also be made on the construction of conditions of existence sympathetic to the settlers, although doing so through a rationale of paternalism against the continuing passive resistance of the indigenous population would have to be a protracted business involving elaborate strategies of legislation, containment and normalisation. These strategies could also deal with fear that may come from other directions, such as from sexual practice, where a threat to one’s sense of racial purity may be perceived and measures are then required to eliminate that dilution.

From early in the colonial period, the proto-typical British/Australian State seemed to be expected to deal with all these fears of the settlers, fears of their own creation. The State was expected to do what individuals could not by themselves do, to forcefully eliminate fear by a range of practices immediate and persistent and in doing so create
sympathetic conditions generally through the construction of a framework of security and economy, beginning with making lawful the assumption of ownership of the land.

There is a broader question whether these were practices adopted by the State only to deal with an external threat, that is if they were a use of its powers, or whether they are more immanently inherent in its nature. This is the question whether the treatment of Aboriginal people was only a response to what became a marginal, external threat or whether it has been an application of the mainstream practice of the State, that is of the manner in which the agencies of the State and its allies generally operate within a community, eliminating fear by inducing or enforcing compliance through promise, punishment and normalisation, while actively creating sympathetic conditions of existence.

This thesis considers whether the latter suggestion provides a better understanding of the State generally. That is whether, without claiming there is simple uniformity within it, dealing with external threat and ensuring effective normalisation within a community are both properly seen as manifestations of a civilising process to which not only Aboriginal people were subjected in an extreme form but to which all citizens are subject, the ultimate aims of which are the elimination of fear from within as much as from outside and the complementary creation of sympathetic conditions of existence.

State, Tradition, Legitimacy and Myth

The examination of this relationship between fear, sympathy and the State will be approached through a particular conceptual model of the State. This model recognises the role played by traditional political thought and, in that context, emphasises the importance of distinguishing between legitimacy and modernity when considering the mythological credentials of the State. There are two elements of this model. The first concerns the conditions of the emergence of the model, the second concerns its nature.

Regarding the conditions of its emergence, the approach will be to acknowledge a long-established discursive tradition regarding the conception of the State. It is one
based on certain accepted elements about which there have been particular presumptions made by the political theorists working within that tradition. The notion of tradition used here is drawn from the Platonic concept of *pheme* as a form of speech which is collective in nature and which is sustained over the long term, the object of which is to set the past apart and make it paradigmatic in relation to the present and the future. It is within the context of this tradition that individual political theorists fashion their accounts of the State, not in each instance as on a tabula rasa but based on the elements and presumptions contained in the tradition up to the point of their entry. Without such intervention and interpretation, those elements suffer degradation and will not be sustained.

It is as both transmitters and ‘fabricators’ of such collective speech that the political theorists examined throughout this thesis will be considered. In effect, this is an examination of what it means to work within a political tradition. In that context, it is not necessarily the specific intentions of the theorist, psychological or historical, that are to be examined here but what their work amounts to, individually and collectively. This is not merely the effect of them considering certain questions in historical, political context but also how doing so has connected them to traditions other than the political. One such other tradition is the mythological and the coincidence of these two traditions is the central focus of this thesis.

The presumptions made by these theorists include *inter alia* that, because fear is otherwise universal and intolerable, there needs to be wide empowerment of the entity we call the State; that individual sovereign responsibility needs to be forgone to that entity as the basis of that empowerment; and that this forgoing is conditional upon the State undertaking to utilise that power to substantially eliminate fear and create conditions under which individuals will live with whatever they come to or are brought to assume as their aspirations.

Regarding the nature of the model, the position adopted here is to consider the nature of the modern State through two propositions of Blumenberg. This is not a Procrustean presumption in favour of these propositions but, if you like, an

---

23 Luc Brisson *Plato the Myth Maker* pp.32-33
examination of whether these two hypotheses are sustained by evidence and argument. If the conclusion to be drawn from this examination is that, despite the aspirations of the Enlightenment, the modern State remains concerned with pre-Enlightenment or mythological questions and is therefore not modern, then we shall have a firm basis for the second account of the State outlined above. That is, that the State cannot be seen as ‘working well’ in the delivery of individual rights and freedoms with particular issues still to be addressed, but that the treatment of citizens generally, including Aboriginal people, by the modern democratic State should be seen as one end of a comprehensive and intrusive continuum of social practice based on the forgoing of self-responsibility on condition of the elimination of fear and the creation of sympathetic conditions of existence. That is, the ‘modern’ State is not modern and its role, including the destruction of Aboriginal traditional culture is, within a strategy that applies across social space, a symptom of that.

The first of these propositions of Blumenberg is that, although the Modern Age must be regarded as legitimate and therefore not a secularisation of Christian concepts, it does reoccupy pre-Enlightenment positions. An example is the mirror-image emergence of political absolutism, for example with Hobbes, in the wake of the violent disintegration of theological absolutism due to the Reformation. It is because of this reoccupation that the modern doctrine of the State might be argued as primarily concerned with such concepts as ‘sovereignty, raison d’état, will, decision, friend and enemy’ and that these will always override the interests of individuals when its own interests are at stake. Against Carl Schmitt, Blumenberg argues that the promotion of individual interests is an attempt to comprehend politics through what the Enlightenment promised as ‘self assertion’, that is as ‘contract, consent, liberty, law and rights’. These are elements of the notion of self-assertion or existence beyond mere self-preservation. Self-assertion is ‘an existential programme’ in which ‘a fundamental change takes place’ and which represents for the individual ‘a summary

24 The notion of ‘legitimacy’ is the alternative to the view put by Karl Lowith in his Meaning in History (1949) that the modern age is illegitimate because some central modern ideas (especially that of progress) were secularised versions of what were originally medieval Christian ideas. See H.Blumenberg The Legitimacy of the Modern Age pp.27-29
25 ibid p.90
26 ibid Introduction p.xxiii
27 ibid pp.96-97
28 ibid Introduction p.xxiii
of things taken for granted in advance (Prasumptionen), which in their turn determine the horizon of possible experiences and their interpretation and embody the a priori of the world’s significance for man\(^{29}\).

However, any over-riding by the State of interests that do not coincide with its own is not the simple destructive ‘rolling back’ of genuinely established individual rights at times when the interests of the State are threatened. It is a ‘constructive’ process in which individual rights in their current form should be seen from the start as a reinforcing element in the sovereignty of the State. Due to this disposition towards re-occupation, which however is not the secularisation of Christianity\(^{30}\), Blumenberg argues that the ‘modern’ doctrine of the State is not modern at all. This is despite apparent progress regarding individual rights and liberties. The modern State is the delay of Enlightenment. In fact, it needs to be ‘radically criticised if self-assertion and modernity are ever to prevail’\(^{31}\). Consequently, ‘contract, consent, liberty, law and rights’ constitute self-assertion only if they are designed so that they deny the interests and pre-eminent sovereignty of the State. How it might be that these elements could actively contribute to the interests of the State through a ‘constructive’ process and therefore deny self-assertion is made clearer by Blumenberg’s work on myth.

The second of these propositions is that it is the nature of myth to realise mankind’s disposition to imagine magnitudes as tangible realisations of our existential fear. Chapter 2 comprises an extended exploration of this notion of myth, not of myth generally. Magnitudes are created as something of which we must be afraid but with which we can engage, initially by being submissive. This is the forgoing to it of our ‘responsibility to and for ourselves’, of our self-responsibility. This fearsome entity is created in the hope that it can eliminate fear and be brought to be sympathetic towards

\(^{29}\) ibid p.138

\(^{30}\) Blumenberg makes a similar argument regarding the pre- and post-Copernican era, the distinction between which he sees as represented respectively by Nicholas of Cusa and Giordano Bruno: “The most instructive point of difference between the Cusan’s relation to the epochal threshold and the Nolan’s can be gathered from the attitudes of the two speculative metaphysicians to the questions associated with the Copernican reform. The pre-Copernican character of Nicholas of Cusa is just as specific to his thought system, insofar as it is ‘not yet’ modern, as is the post-Copernican character of Giordano Bruno, insofar as it is not a mere assent to an astronomical theory but rather an elevation of it into the guiding principle of cosmological and anthropological metaphysics. The Copernican reform represents a systematic point of reference for both thought systems that at the same time makes obvious the impossibility of exchanging their historical positions” ibid p.479

\(^{31}\) ibid Introduction p.xxv
man, by eliminating his fear. This strategy of engagement becomes the ground for taking control of the magnitude so that finally its fate comes into the hands of man. This does create the opportunity to finally dispel the myth and for individuals to resume self-responsibility. But it is argued here that, by then, it is against the interests of those who come to dominate the magnitude to dispel the myth and eliminate the power of the magnitude which they dominate. It does remain in their interests for the magnitude to reinforce the engagement of non-dominant interests by systematically being seen to eliminate fear, even if they themselves create such fear for that purpose, and to create what come to be accepted as sympathetic conditions of existence.

‘Self-assertion’, of which Blumenberg speaks in *The Legitimacy of the Modern Age*, and ‘self-responsibility’, of which he speaks in *Work on Myth*, are therefore concepts with substantially similar content, in that both are founded on the claim of responsibility for the terms and conditions for one’s life, including the management of fear without becoming fearsome and the creation of sympathetic conditions of one’s existence. Nothing in this precludes the possibility that the artifice of a reconfigured State can play but a supporting role in the realisation of these two responsibilities.

The frustrating of ‘self assertion’ or ‘self responsibility’ points to a strong connection between the pre-modern nature of the State and the concept of mythological magnitude, and therefore to an implication that the State remains pre-modern in the sense that it is mythological in its nature, that is even if it has such modern features as a concern for individual rights. If it can be demonstrated that the idea of the modern State possesses all the key characteristics of a mythological magnitude, then it can be argued that the State is an arrangement by which dominant interests promote the forgoing of self-responsibility, the end game of which is a form of rights and liberties that reinforce the arrangements of the State and its dominant interests rather than realise individual self-responsibility. The bulk of this thesis is taken up by an examination of the evidence that the ‘modern’ State does have those characteristics and that the work on the refinement of the political myth, a pre-Enlightenment concept of the State, has been ongoing since Hobbes even up to the present. The modern State, then, could properly be claimed to remain in a pre-Enlightened form rather than one that is truly modern, as it is commonly thought to be. In ensuring the forgoing of the self-responsibility of its citizens, the State could not be argued to be
‘working well but still being refined’, but as remaining concerned with reoccupied mythological questions rather than those of the Enlightenment. This is the context within which the ‘mythological’ model will be used in the penultimate chapter of this thesis to illuminate the destruction of Aboriginal society, as a demonstration of the mythological State in action. The aim of such a mythological arrangement has been to ensure the elimination of fear within the community and, in return for the assumption of responsibility for Aboriginal people, the creation of generally ‘sympathetic’ conditions of existence, but for them in the form of welfarism. More of that in due course.

To give more context to these arguments, that is the relationship between the idea of the State and the State itself referred to above, we may say that there are three identifiably distinct but related elements: the ideal or archetypal State that rests in the presumptions of the overlapping political and mythological traditions; the various ideas of the State as fabricated from the presumptions of that archetype by political theorists working within that tradition; then finally the State itself, real in the world and realising to a greater or lesser extent, for example by the application of policy, those ideas and that archetype. Each of these is explored in this thesis.

State, dominant interests and citizenship

A further set of key concepts with which this thesis is concerned is the relationship between the State, its dominant interests, the nature of citizenship, and how these find meaning within a mythological framework.

An arrangement where responsibility is forgone to the State would help explain why particular interests come to dominate the State. That is, the State is empowered only through the forgoing of individual responsibility to it and is therefore ontologically vacuous in itself. This is to say that the structural arrangements of the State are not predisposed to any particular interests but are occupied by whatever emerge as the currently dominant interests. The State is then a formal structure established and refined to allow the occupation by whatever interests can claim to relieve fear and create sympathetic conditions. This vacuum invites the creation of such interests: the competition between those that seek to assume the responsibility forgone by
individuals leads to certain interests becoming dominant; and these assume the positions of influence in what are otherwise vacuous structural arrangements of government. However, once dominant, such interests have significant influence over the understanding of what is fearsome and what is sympathetic and they engage State strategies to embed these understandings. It will be argued that it is towards themselves that these dominant interests direct the most benefit. These determinations would be the ‘rules of the game’ which through normalising practices generally become the certainties of individual lives, in the sense to be explored in Chapter 7 through Wittgenstein.

Such an arrangement also has implications for the relationship between the individual and the State, that is for the concept of citizenship, since the status of citizen would be that gained from acceptance or compliance with such mutually binding determinations regarding fear and sympathy: the individual forgoes self-responsibility but only on condition that the State will create the circumstances within which her citizenship can be exercised. This informal but strong contract applies not merely to such external threats found by settlers with Aboriginal people but across social space in a community. More broadly, it would be the forgoing by British citizens of this self-responsibility that generated the subjection of Aboriginal people, since one forgoes to the State only on the condition that all others are required similarly to forgo self-responsibility, especially if they demonstrate fearsomeness, otherwise the State is not legitimately empowered to realise its two primary, connected responsibilities. This will be argued to be the process of civilisation, and it is explored in Chapter 7.

This thesis is therefore largely concerned with an elaboration of this traditional, mythological model of the State, of its historical emergence, of its nature and of its activity. The work will be brought to a close with an attempt to illustrate the explanatory power of such a model by showing how it illuminates the destruction of traditional Aboriginal culture. In this, it will demonstrate why it is that the State emerges as an entity in vacuo, the dynamic that governs its practices, how this largely gives effect to the relationship between State and individual, the consequential nature of citizenship and how this dynamic has led to the continuous subjection of Aboriginal people. In this, the story of the treatment of Aboriginal people might tell us a lot about the relationship between citizens and the State more generally.
Some Implications

If it can be convincingly argued that the slow refinement of the idea and practices of the State since Hobbes, which is the first task of the thesis, is the refinement of the mythology of the State, then various implications follow. First, the ‘modern’ State cannot be regarded as modern, despite certain apparently modern features, but is an entity primarily concerned to sustain the assumption of individual self-responsibility, that is it is a mythological entity. It promotes ‘contract, consent, liberty, law and rights’ but only in the service of ‘sovereignty, raison d’etat, will, decision and friend/enemy’. Second, individuals are typically complicit in this, for the purpose of the relief of fear and the creation of sympathetic conditions of existence or, for those unwilling to forgo self-responsibility, subjection is imposed by strategies of the State, by its dominant interests and by its allies. Third, the political theorists who have refined this idea of the State, and who continue to do so, are part of a tradition whose key presumptions are mythological. Fourth, the destruction of Aboriginal society is not an aberration of ‘not fully refined’ Enlightened State practice but a severe example of what applies mythologically across social space.

Further, it is possible to conceive of a non-mythological State but of a different kind from current arrangements and practices in that they would promote individual self-responsibility. None would rule or be ruled, except in the sense intended here. Finally, self-responsibility would promote peace: a self-responsible person would not take responsibility for, that is determine the life circumstances of, others where every sentient and able adult is allowed and readied to become responsible only to and for himself. This requires a State the purpose of which is to promote responsibility in this sense rather than one that promotes its forgoing. So fear may be dealt with without being fearsome and the conditions of one’s existence could be created without forgoing one’s responsibility to the State or its dominant interests. So would the aspirations of the Enlightenment, in the Kantian sense outlined above, begin to be fulfilled. None of this is to say that, due to the nature of this embedded mythological arrangement and the normalisation and certainty it entails, there would be any easy way to establish non-mythological arrangements. The example in the penultimate
Chapter is intended as a pointer towards this, that is to begin to make explicit the ‘compared to what’ that is the strongly implied concern of this thesis.

**Outline of the Thesis**

The four principal elements of the thesis are: first, the presentation of an extended argument for the coherence of the mythological idea of the State; second, irrespective of the intentions of the analysts considered but within the long tradition of political theorising, the establishment and slow emergence of this idea of the State into its current form through ‘work on myth’; third, the embedding or, literally, the embodiment of this mythological idea of the State in the material practices of individuals, how individual subjects come to think and behave mythologically; and fourth, the use of this concept to better illuminate Aboriginal policy since British settlement. The balance of the thesis is structured as follows:

*Nature of the Political Myth*

Chapter 2 presents an outline of the theories of myth provided by Plato and Blumenberg. The key features of the latter are identified and a range of amendments are suggested. It is argued that the Western constitutional democratic State features all the key characteristics of such a mythological entity.

Chapter 3 examines an alternative account of myth as it has been applied to the State, that is by Cassirer. This Chapter argues why it is that that account of the State as myth fails and so should not be preferred to that presented here.

*Establishment and Refinement*

Chapter 4 explains how the idea of the State came to be established as a mythological magnitude through the work of Hobbes and was then worked on by Locke and Montesquieu, in effect to begin to bring the fate of the myth into man’s hands and add sympathy to its fearsomeness, as necessary mythological refinements of the Hobbesian concept.
Chapter 5 examines the significance of Rousseau in identifying a key flaw in the Hobbesian myth, even following its refinement by Locke and Montesquieu, in particular the lack of engagement of its citizens, and the correction of this through the notion of the general will. There follows in Chapter 6 an exploration of how the notion of the general will was taken up by Kant to further consolidate the mythology of the State.

Modernisation

Chapter 7 argues that the disposition to mythologise, that is the disposition to affirm and to work on myth within the political tradition, has continued into the modern era. This chapter examines two contemporary theorists of the State to identify how their work has also been profoundly affected by this disposition. First, it explains how the mythological State of Kant has been transported into contemporary analysis by Rawls, although he further refines it to emphasise its fear-eliminating and sympathetic nature. In Chapter 8, Pettit’s republicanism is examined as being subject to this disposition.

Embodiment

Chapters 9 and 10 explore how this continually refined idea of the State as myth has been complemented by changes in the material practices of individuals. That is, how myth has become the way we live as well as the way we think. The intersection of the work of Elias, Foucault and Wittgenstein is examined in this regard. Comment is also made about the way that both individual rights and attitudes to other cultures are symptoms of embodied mythology.

Myth’s Empire

Chapter 11 attempts to show how this account of the State illuminates the treatment of traditional Australian Aboriginal people better than other accounts.

Closing Remarks

Chapter 12 is a summary of the principal arguments and conclusions of the thesis.
Chapter Two – The Disposition to Myth: Plato and Blumenberg

The argument to be presented here is that, from within the long tradition of political theorising about the State and by refashioning elements manufactured by his predecessors in that tradition, Hobbes fabricated a new idea of the State. Further, it will be argued that this idea has been worked on in turn by his successors within that tradition even up to now. It will be argued that the Hobbesian idea of the State was mythological.

This claim requires an outline of the model of myth used here, by comparison with which the work of Hobbes may be considered mythological. This outline is the first focus of this chapter. This is not an examination of mythological theory generally, only of the particular approach used here, that proposed by Plato and, especially, by Hans Blumenberg. The reason for selecting Blumenberg from among the wide number of theorists of myth is that his approach provides particular opportunities for insights into the political tradition. Later, we will look at the extent to which the notion of the State that has emerged from Hobbes and his successors in the tradition can be considered to be a sustained mythological entity. If this notion of the State does satisfy such an assessment, it will clearly allow a judgment to be made about the extent to which Hobbes and the others have been mythological in their thinking. That is, the extent to which this tradition is mythological.

Although the work of Blumenberg is the principal theoretical reference point of this analysis, it will be argued that there are important intersections with the Platonic notion of myth, especially as it is explored by the work of Brisson. Further, apart from its broad explanatory force regarding the Hobbesian notion of the State, the choice of Blumenberg’s mythological work is made here because it offers, along with significant praise, telling criticisms of the work of Ernst Cassirer, whose work *The Myth of the State* remains a benchmark for the application of mythological theory to the State. This thesis is therefore presented as an advance on the work of Cassirer. In this context, the work of Blumenberg is not accepted as flawless. A number of significant amendments are made
here to both correct and extend the application of his analysis, especially as a basis for an enhanced application of mythological theory to the State.

**The past as a paradigm for present and future – Plato and Myth**

Although this thesis will draw primarily on the mythological theorising of Blumenberg, the intersections of his work with that of Plato will be informative in the elaboration of the model developed here.

For Plato, *muthos* was a message by means of which a community transmits from generation to generation that which it preserves in memory of its past. In that way the past becomes the present whenever it is transmitted and is set apart so it is made the paradigm of the present and future. This is not to say that the story remains the same: ‘a message experiences a certain number of transformations each time it is transmitted’ but writing can minimise this by recording the latest version of the tradition on the subject. For Plato, these transformations are fabrications but not from nothing. As Brisson observes: “The poet makes this ‘myth’, not by creating something from nothing, but by taking up one of more element(s) of a specific tradition - whether or not they have already undergone poetic elaboration - in the manner of a story. This is done to either preserve or recall the memory of these elements, in accordance with a specific context.”

Regarding ‘specific context’, Brisson states: ‘In each tragedy, well-known myths are taken up and retold according to the preoccupations of the city of the time. Their context was marked by…religious, political and competitive aspects’. That is, myth is engaged as a means of dealing with, among other things, political issues of the day.

Importantly, the communication of myth as a discourse is the transmission of a fabrication or imitation or copy of the reality to which it refers but the process of

---

1. L. Brisson p.13; see also p.17, where Brisson makes the related point that myths never relate to an actual or recent experience, and so can never be validated, but are intended to evoke a recollection preserved in the collective memory of the community over a long period of time.
2. ibid p.32
3. In doing so, writing presents itself as complete reality although it is merely a copy, ibid pp.33, 36, 37
4. ibid p.45, where Brisson refers to the *Timaeus* at 21c4-d3 (see Plato *The Collected Dialogues* p.1156)
5. ibid p.55
representing it through language makes reality appear ‘albeit in another mode: that of the presence of absence’. It is an illusion. That is, ‘By means of this artifice, the myth-tellers and the poets try to make their audience forget the real absence of the god or hero for whom they give up their own identities; not only in word, but also in deed, since they sometimes take on the attitudes which correspond to the words they relate’. The intention of this communication is to provoke a precise spoken and/or acted reaction from the addressee. Myth may be illusory but it is ‘formidably effective’. It is intended to persuade children ‘and the majority of adults in whom reason has not attained, or will never attain, the ultimate stage of its development’ to imitate and thereby ‘settle into habits and second nature in the body, the speech and the thought’. Thereby, the communication being so intense, the actual absence is forgotten so that an identification process begins which modifies the physical and moral behaviour of the receiver.

The purposes of all this technique are varied. Certainly, it is to free oneself from the fear of death, as the dialogue between Socrates and Cebes regarding the eschatological myth in the *Phaedo* shows: ‘You are afraid, as children are, that when the soul emerges from the body the wind may already puff it away and scatter it’, to which Cebes replies ‘Probably even in us there is a little boy who has these childish terrors. Try to persuade him not to be afraid of death as though it were a bogey’, which elicits from Socrates ‘What you should do is to say a magic spell over him every day until you have charmed his fears away’. Myth is curative for an individual. But it is more than that. Myth is comprised of a small number of basic elements yet the relationship between them allows for the fabrication of an almost infinite number of stories. These are stories which, over a long period of time, undergo degradation if there is no poetic intervention. That is, myths require continuous reworking to keep them relevant. One cause of this reworking, another purpose to which this technique is put, is politics: “the founder of the city must provide

---

6 ibid pp.67, 69, 73
7 ibid p.75, 74
8 Brisson p.78 where he refers to the *Phaedo* at 77d5-78a2 (see *Collected Dialogues* p.61), also Brisson p.117
9 ibid p.99
the poet with the molds that they must employ to cast, out of the ‘wax’ of sensible things, the artifacts that are myths. These molds (tupoi) are the laws (nomoi)\textsuperscript{10}. In that context:

(m)yth, as a story, constitutes…a privileged instrument for modifying the behaviour of the inferior part of the human soul…There are two types of constraint - in ethics, for the individual, and in politics, for the community - which are indispensable for ensuring that our behaviour conforms to rules and laws, whatever the particular rules or laws may be: a physical constraint, exerted on the body through violence, and a moral constraint, exerted on the soul through persuasion…Plato appeals to persuasion rather than violence. Now, myth constitutes an instrument of persuasion which is all the more effective in that its audience, within the framework of a given community, is universal…(F)or ordinary people…(i)t serves as a model to which we can refer, in order to determine the behaviour which we should adopt in any given case\textsuperscript{11}.

And, ‘Plato’s goal in doing so is that the behaviour of the citizens of the city - whether the ones described in the Republic or in the Laws - may be in accord with the necessities of communal life - myth is used as a preamble to laws which are about to be proclaimed\textsuperscript{12}. Further, ‘[t]o persuade the citizens to respect such and such a law, the legislator begins by recalling a myth which illustrates the behaviour required by the law…myth plays the role of a paradigm, and it is by means not of education but of persuasion that all those who are not philosophers - that is, the majority of human beings - are led to embrace this paradigm in order to adapt their behaviour to it\textsuperscript{13}. That is, myth performs the important function of acting as a persuasive behavioural paradigm in the political context. Myth may not only be about an irrecoverable past, however. In the Timaeus, Plato argues that myth can be a model for preferred political arrangements\textsuperscript{14}: ‘a

\textsuperscript{10} ibid p.109 where Brisson refers to the Republic III 379a1 (Collected Dialogues p.625) where Socrates says ‘And to founders it pertains to know the molds on which poets must relate their myths and from which their poems must not be allowed to deviate each time they compose them’. This does not contradict the rightful role of the poet to rework myth.
\textsuperscript{11} ibid pp.116-117
\textsuperscript{12} ibid p.119-120
\textsuperscript{13} ibid p.121
\textsuperscript{14} see Timaeus 26c7-d4 (Collected Dialogues p.1160): ‘I am ready to tell you the whole tale. I will give you not only the general heads, but the particulars, as they were told to me. The city and citizens, which you yesterday described to us in fiction, we will now transfer to the world of reality. It shall be the ancient city
political model is elaborated which is intended to regulate the foundation of a real city in a future of unspecified proximity\textsuperscript{15}. That is, myth acts as a paradigm whose elements and framework guide the development of future arrangements of State.

The reading that Brisson gives Plato, therefore, is that mythology works not on an object which is given to it, but on an object which it gives itself. Further, ‘Myth thus appears as a discourse through which is communicated everything that a given community conserves in memory and transmits orally from generation to generation, whether or not through the intermediary of a professional and whether or not this discourse was developed by a technician of oral communication like the poet. As the result of redoubled imitation, myth, since it represents a reality inaccessible both to the intellect and the senses, is destined to model or modify in a more or less spectacular way the behaviour of the souls of those who listen to it\textsuperscript{16}.

There are a number of elements of this Platonic notion of myth which are important for the idea of myth to be developed in this thesis. Foremost among these is the notion of tradition. Plato might be regarded as the first analyst of the notion that there was a collective speech which was not only communicated from generation to generation but was worked on, that is refabricated through the reconfiguration of its persistent key elements, to ensure its refinement and varying contemporaneous relevance. In this way the past, the features of which cannot be confirmed or denied, is made the paradigm for both present and future. Its purposes include being curative for individuals in their fear of death and being a persuasive model for preferred behaviour. For him, it is effective on children and those adults whose reason is not fully developed, that is the majority of the population and only philosophers were exempted from this condition. Plato might have acknowledged in this regard that it was myth itself that was a real obstacle to that full development. It works through an imitation which settles down into the habits of body, speech and thought as second nature. That it forces forgetfulness of the original absence,

\textsuperscript{15} op cit p.131
\textsuperscript{16} ibid pp.137-138
that is that one forgets its illusory nature and regards it as real, is a sign of its formidable effectiveness.

Complementing its function in normalising behaviour, myth also plays an important role for Plato regarding the establishment of preferred political arrangements. It acts as a preamble to the laws and persuades citizens that they are brothers in submission to the prescriptions of the legislators and founders of the city. It also elaborates a paradigm of the city that is intended to regulate the foundation of a real city of the future\textsuperscript{17}. Finally, myth is a cultural artifact whose relevance to ancient Greece does not prevent it, through ‘constant labor’\textsuperscript{18}, from being continuously adapted. These features of Platonic myth resonate with key characteristics of the account of myth proposed by Blumenberg.

Existential Anxiety, Mythological Magnitudes and Covenants: Blumenberg

The key notions in Blumenberg’s analysis of myth, and which complement these Platonic elements, include the idea of the absolutism of reality; its realisation in a fearsome mythological magnitude; the constitutional limiting of the power of that entity; the opportunity for its fate to come into man’s hands by covenant, for the purpose of establishing man’s security in the world by eliminating his fear; that there is continuous work on this myth, thereby establishing its persistence in the world of man; that its fate finally comes into man’s hands; that this can provide the opportunity for each individual to ultimately take responsibility for himself; and that the notion of myth has contemporary relevance. It is the combination of these ideas of Plato and Blumenberg which form the basis of the idea of myth which is used here to argue for its relevance for an understanding of the State. These concepts will now be examined in turn.

\textsuperscript{17} “Socrates’ discourse on the ideal city is likened to a myth because the tradition concerning primeval Athens, which corresponded to this model in reality (Tim. 25d7-c5) has vanished, at least in ancient Greece. Consequently, this ideal city no longer has any existence except in the mind of the person describing its constitution; thus one can only hope for its realisation in the future. The interest of this derivative use of the term \textit{muthos} resides in the introduction of this future dimension into the realm of myth which, until now, has been restricted to a distant past”, ibid p.131, the reference to the \textit{Timaeus} used here being \textit{Collected Dialogues} 26c7-d5 (p.1160)

\textsuperscript{18} ibid p.139
Of primary importance in Blumenberg’s analysis of the nature of myth is his notion that, as a primary strategy in dealing with profound existential anxiety about what he calls the ‘absolutism of reality’, mankind has fabricated powerful illusory entities or ‘calculable magnitudes’. This anxiety, which is the human response to this absolutism, accompanies the profound awareness early in man’s existence that he ‘came close to not having control of the conditions of his existence and, what is more important, believed that he simply lacked control of them’\(^{19}\). Such anxiety is, however, not merely an original condition but continues as a condition of existence of all mankind over time and so for each individual. For Blumenberg it is the very act of the creating through imagination a magnitude that, unlike the source of existential anxiety, can be comprehended or even visualised, which is the first step along the road to first reducing this profound anxiety to controllable levels, in the hope of moving towards its elimination.

As it is first conceived, the magnitude is neutral to the interests of man. As a fabrication, it was the distribution of ‘a block of opaque powerfulness, which stood over man and opposite him’. But it did not stand alone, as it came to be among many such powers that were progressively and strategically created and ‘are played off against one another or even cancel one another out. Not only to be able to shield oneself from one power with the aid of another, but simply to see one as always occupied and entangled with the other, was an encouragement to man deriving from their multiplicity…(this is the) confining of a diffusely distributed quality of uncanniness and unmanageability into enclaves limited by strict sanctions’\(^{20}\). For Blumenberg, it is naming which creates, that is which selects,

---

\(^{19}\) H. Blumenberg *Work on Myth* pp.3-4. The concept of the absolutism of reality is a notion referred to by Hans Lindahl in *Democracy and the Symbolic Constitution of Society*, his article in *Ratio Juris* Vol.11 No.1 March 1998 (pp.12-37). In that article, Lindahl does refer to *Work on Myth* and two other works of Blumenberg, including the notion of the ‘absolutism of reality’, but he does not explore Blumenberg’s account of myth. His principal references are to Kelsen, Lefort and Cassirer. Chapter 3 of this thesis provides a substantial critique of Cassirer’s account of the myth of the State. In settling on Kelsen, Lefort and Cassirer, rather than Blumenberg, it is the position of this thesis that Lindahl deprives himself of a significant account of the nature of myth as an entity and is the reason he wrongly settles on law as the mythological substance and not the State. Lindahl also claims a fundamental difference between the nature of politics as it shifts its medieval form into modern democracy as a move from substance to function. This thesis adopts the position that there is more continuity than difference in that transition, with the assumption of the position of mythological dominance by the State, following the crisis in the theological myth as a consequence of the Reformation, and then the gradual refinement of the political myth of the State.

\(^{20}\) *Work on Myth* pp.13-14
the nature of each power. In the early history of man this typically took the form of a God or gods\textsuperscript{21}. Further, to ‘equip the world with names means to divide up and classify the undivided, to make the intangible tangible…the setting up of means of orientation also counteracts elementary forms of confusion - of perplexity, at the least, and, in the limiting case, of panic\textsuperscript{22}. Man fills the world with such named entities and thereby brings existential anxiety under control.

But for Blumenberg, although myths are powerful, they are not infinitely so. The ‘powers of myth cannot be pictured as able to have what they want in whatever way they like. They have to submit to procedures…Without artifice and disguise, without metamorphosis and compromise, without checks to and retardation of arbitrary power, it wouldn’t come off…Even the most irate god is forced into circumstantiality’. This is the way that myth operates, that is, always in the context of the antithetical motives of “the consolidation of the state that the world has arrived at as a ‘cosmos’ and the restriction of the absolutism that arises in this process”, i.e. ‘constituting’ the features that reflect the nature and limits of its power\textsuperscript{23}. Without such agreed limits to the power of these magnitudes, there would presumably be little to distinguish the effect of the myth on man from the anxiety of the absolutism of reality, apart from its mere conceptualisation.

Myth allows man to live by this regulated depletion of power\textsuperscript{24}. ‘There must be a weakening of the superior power which is not carried out only by man, and there must be proofs of its reliability, at least preliminary forms of lawfulness and of fidelity to agreements. The technique of weakening operates through the division of power; the exclusion of omnipotence; rivalry and entanglement in affairs; the mutual jealousy and envy of the powers; their precinct and department mentality; the complication of their genealogies and successions; and the god’s defined weaknesses and capacities for distraction…Bringing out this element of divine fidelity in agreements is more than confirming a juridical capacity to enter into agreements. Faithfulness to a covenant is

\textsuperscript{21} ‘(T)hese names are not only appellations, but also designations of the various ways in which God operates and is active’, ibid p.37
\textsuperscript{22} ibid p.42
\textsuperscript{23} ibid p.142, 120
\textsuperscript{24} ibid p.31
something that can be demonstrated...only by telling a true history...(but)...[w]hat matters is not that the written history is true but that it has to be true\textsuperscript{25}.

Once created, this power is therefore engaged. This is so that its neutrality can be converted to an interest in man\textsuperscript{26}. However, engagement is not only achieved circumstantially but also through the striking of agreement. The ability to enter into a covenant or contract is the foundation of the history of the magnitude with men and those who observe its conditions, including through absolute obedience, can be sure of enjoying what is promised due to the magnitude’s unconditional sympathy with man\textsuperscript{27}. That is, man’s obedience to the prescriptions of the covenant will ensure that the fearsome magnitude will be sympathetic to the obedient. This is not merely for the individual man, since the strife that the magnitude can visit on a community is best prevented if there is collective compliance. So there is a significant inducement for all people to ensure the delivery of this collective compliance. A collective will to comply best ensures peace from the Gods, as well as their active sympathy. But with this comes the pain of self-denial that is born of compliance, and especially so if the behavioural features of compliance are determined by something other than oneself, in which case the benefits of peace from the Gods may be outweighed by the pain of the imposition by others of compliance.

But for Blumenberg, the purpose of constructing such magnitudes is to enable man to deal with the absolutism of reality in the hypothetical state of nature\textsuperscript{28}, in which he lacks control over the conditions of his existence and consequently experiences the pure state of indefinite anticipation which is anxiety\textsuperscript{29}. The function of myth is therefore centred on

\textsuperscript{25} ibid p.124-125. Here, Blumenberg claims that faithfulness to a covenant can only be held fast only by telling a true story not a myth. This will be argued to be an unnecessary exclusion of myth as the basis of a covenant.
\textsuperscript{26} This engagement is achieved through ‘reverence’, ‘seeking favour’, ‘provocation’, ‘forcing commitment’, ‘even of malicious cunning’, ‘good conduct’, ‘absolute obedience’ as wilful surrender, ‘efforts to obtain favour’, ‘compensatory actions’ and ‘exchange of gestures’. These are strategies that ‘belong to the repertory of ways of coercing a power that it is all-important to make sure of’, ibid pp.16, 20 and 22
\textsuperscript{27} ibid pp.19, 20, 23
\textsuperscript{28} ibid p.21
\textsuperscript{29} ibid p.4
man’s security in the world\textsuperscript{30}. Because anxiety cannot be managed indefinitely, this
generalised excitement must always be reduced, that is, anxiety must continuously be
rationalised into fear of something, importantly ‘both in the history of mankind and in
that of the individual’\textsuperscript{31}. This occurs primarily, not through experience and knowledge,
‘but rather through devices such as the substitution of the familiar for the unfamiliar, of
explanations for the inexplicable, of names for the unnameable. Something is put
forward, so as to make what is not present into an object of averting, conjuring up,
mollifying, or power-depleting action. By means of names, the identity of such an entity
is demonstrated and made approachable and a way of dealing with it is generated. What
has become identifiable by means of a name is raised out of its unfamiliarity by means of
metaphor and is made accessible, in terms of its significance, by telling stories. Panic and
paralysis, as the two extremes of anxiety behaviour, are dissolved by the appearance of
calculable magnitudes to deal with and regulate ways of dealing with them, even if the
results of the magical and ritual \textit{quid pro quo} now and then make a mockery of the
intention of gaining the favour of the powers on behalf of man\textsuperscript{32}.

In this way, myth expresses as fact that the world and the powers that hold sway in it are
not abandoned to pure arbitrariness. However this may be signified, “whether by a
separation of powers or through a codification of competences or through a ‘legalization’
of relationships, it is a system of the elimination of arbitrariness”\textsuperscript{33}. Even the names
attributed and the stories associated with myth are told in order ‘to kill fear’ of what we
are not acquainted with, and bestow trust\textsuperscript{34}.

But mythologising goes beyond this transformation of existential anxiety, which is the
primal fear without a particular source, into fear, which is of something. Myth transforms
this anxiety into distance, to elaborate it as something concretely perceptible ‘for
instance, in the way in which, in ritual, the numinous object is shown, presented,
conveyed in a procession, displayed, or touched’. In this way, ‘fear (may be) reduced in

\begin{itemize}
\item \textsuperscript{30} ibid p.30, 135
\item \textsuperscript{31} ibid p.5
\item \textsuperscript{32} ibid pp.5-6
\item \textsuperscript{33} ibid pp.42-3
\item \textsuperscript{34} ibid pp.34-35
\end{itemize}
intensity in the milder forms of awe and reverence, wonder and amazement’. But the numinous is not only reduced in this way. It is also then distributed “to objects, persons, directions…While the ‘reduction’ function relates to what was originally and involuntarily uncanny, the function of transfer and simulation affects things that of themselves neither have this quality at all nor can attain it, as in the distinction that is accorded to priestly persons, chiefs, and shamans”. In effect, numinousness is converted into a regulated institution through myth, which is also to say that ‘myth allows man to live by depleting superior power’.

For Blumenberg, such mythical magnitudes are not created instantaneously. As for Plato, only by persistent work on myth is myth made manifest. This work on myth is first constituted by its conversion from an original bearer to a prototype with higher mythical pregnance, thereby allowing some reliable authority to certify human experience. By this transition, a status of significance as the emergence ‘from the diffuse surrounding field of probabilities’, is attained. However, although we may deal with this significance by reverence, astonishment, enthusiasm, obedience, rejection, protective custody or conservation, the charging of parts of the human world as pregnant in this sense is not something we can choose to do or even decisively imagine. An entity evolves into such a status and, having attained it, it becomes capable of resisting effacement or diffusion, for example by ‘time, which nevertheless is suspected of being able to produce pregnance through the process of aging’. That is, once ‘the imprinted forms are there, they are difficult to alter…Their being imprinted and even the tangibility that is added to that have a conserving effect. Thanks to this they stand firm in the temporal flux, just as stones simply outlast the passage of time’. And so a mythological tradition, which is the persistence of old questions, is established.

35 Sanctions, as something resting on oath, are applied to these agents through penalties for violation of the institution ‘or that can be inflicted on sworn persons who lapse from the role that is defined and protected by it, for example, as experts, officials, or soldiers’, ibid pp.31, 62-64
36 ibid pp.26, 118
37 ibid pp.68-69
This does not prevent later speculation about the primeval origin of the myth\textsuperscript{38}, for example their connection to an original state of nature, whose overcoming is part of the logos of myth\textsuperscript{39} but it does mean that the evolution of myth has the force of gravity and that the pace of that is necessarily glacial. Although Blumenberg does not specifically say so, by this is meant that this evolution can take place within a community over many generations, as indicated by Plato. It is this which constitutes the tradition within which its interpreters, for example its poets and theorists, exist and work. As to the question of how myths both emerge and then persist, Blumenberg makes several suggestions. They may have emerged at the behest of those who would benefit most from their creation, in the manner in which the priests were accused during the Enlightenment of having been the inventors of religion\textsuperscript{40}, although Blumenberg’s own analysis of myth as the primary means of satisfying the human desire to limit fear seems to discourage this as a first cause. This is not to say that their creation for the benefit of particular interests cannot have been an important secondary cause. In a separate argument but one that relates to the persistence of myth, he has argued that the disposition to reoccupy pre-Enlightenment questions is an identifiable feature of post-Enlightenment thought, which is to say that we have not yet fully entered into an age of Enlightenment\textsuperscript{41}. Another take on the same explanation would be that the persistence or reoccupation of myth reflects the persistence of existential fear, real or imagined, as a condition of man. This would bring together important themes from his major works, that is \textit{Work on Myth} and \textit{The Legitimacy of the Modern Age}. The implication of this reoccupation is that the mythological perception of the world persists even though ‘enlightened’ or rational perceptions are available. We shall see that this is in contrast to Cassirer, for whom myth is made obsolete by reason, which however must defend itself at times of crisis from the irrationality of myth. The consequence of Blumenberg’s argument is that the world continues largely to be seen, and beliefs and practices remain, in mythological terms.

\textsuperscript{38} ibid p.67
\textsuperscript{39} ibid p.124
\textsuperscript{40} ibid p.64
\textsuperscript{41} \textit{Legitimacy of the Modern Age} Introduction pp.xxiv-xxv
Although myth is not infinitely powerful, for Blumenberg its aspiration is finally fulfilled, albeit by theodicy and the speculative philosophy of history. Its fulfillment not only moderates the difference in power between Gods and men, depriving it of its bitterest seriousness, but also reverses it. “As God’s defender, as the subject of history, man enters the role in which he is indispensable. It is not only for the world that, as its observer and actor, indeed as the producer of its ‘reality’, he cannot be imagined as absent, but also indirectly, by way of this role in the world, for God as well, whose ‘fortune’ is now suspected of lying in man’s hands” 42. So, when combined with the absolute obedience towards the magnitude in the context of the covenant, not only is there a mutually formative relationship between man and his mythical magnitudes but it is also one in which there is finally an opportunity for the shift from domination by a created powerful entity to one whose nature comes to be determined by man. Although Blumenberg does not say so, this allows for the possibility that the means by which the magnitude comes ‘into man’s hands’ is a competitive process, ultimately producing dominant interests who come to determine the meaning and strategy for the minimising of fear and the expression of sympathy. Such interests would therefore be the principal beneficiaries of such strategies, so long as there are means by which all others may be brought to either willing or enforced acceptance of what is determined to constitute fear and sympathy.

However, in this determination, myth should not be projected onto any scheme of Progress. On the contrary, it “has its own procedure…The world ceases to contain as many monsters. In a sense that initially is not ethical at all, but more nearly physiognomic, the world becomes ‘friendlier’. It approaches what the man who listens to myth needs: to be at home in the world. It is true that the generations of the gods supplant one another, in dominion over the world, by means of deception, cunning and cruelty, but as power becomes more consolidated, its exercise becomes more bearable…What is decisive for the function of myth is that something that one could call the ‘quality’ of the divine is represented as not originally being given, from the beginning or from

42 op cit p.32
eternity”. In his search to end existential anxiety, myth becomes the condition of the life
of man. That is, man lives not with but within myth.

As to its contemporary relevance, Blumenberg indicates that myth has been mistakenly
assigned, as we shall see for example by Cassirer, “so definitively to an ‘epoch’ that
everything after that can only be a specialty of the histories of literature and art. The
identification of myth with ‘its’ primeval epoch places the accent of theory on the
question…of its origin. Only if we take into consideration the history of myth, to the
extent that it is not primeval, will we be able to approach the question that we naturally
ask: What after all does the disposition towards mythical ways of looking at things
consist in and why is it not only able to compete with theoretical, dogmatic, and mystical
ways, but actually increased in its attractiveness by the needs that they awaken? No one
will want to maintain that myth has better arguments than science; no one will want to
maintain that myth has martyrs, as dogma and ideology do, or that it has the intensity of
experience of which mysticism speaks. Nevertheless it has something to offer that…still
constitutes satisfaction of intelligent expectations. The quality on which this depends can
be designated by the term significance”.

One feature of significance is symmetry and ‘[p]erhaps symmetry is the elementary
example of a figure that resists interpretation as accident, that suggests meaning but that
is not yet aesthetic. We no longer perceive this immediately, because we inhabit a world
of technical mass distribution that conceals the concentrated improbability of the
appearance of symmetries. But we still notice such symptoms when they consist in the
unexpected coincidence of events, in the self-closing of a circle of vital events, or in the
latent identity of things, persons, even of fictive subjects, across wide stretches of space
or time”. Appreciating these features of the symmetrical nature of myth helps not only
the understanding of the conceptual patterns in the life of man but also opens up the
opportunity for finding those patterns. These are characteristics that show myth as not

---

43 He continues “What is made sure of for consciousness is something that it is supposed to know that it has
behind it once and for all. That could be the meaning of every story; but only myth can afford to subject the
facts, which may in any case be lost, to the demand for ‘significance’ ”, ibid pp.113-114
44 ibid p.67 but see also p.160
45 ibid p.74
merely primeval and thereby irrelevant in the age of science or even the present state of the tradition of political theorising.

Finally, as a consequence of all this, Blumenberg sees the *non plus ultra* of myth, which cannot be eliminated since it is a disposition of man, as proposed by Schopenhauer, which is ‘the exclusiveness of the subject’s responsibility to himself and for himself’

The Extension of Mythological Theory

The internal logic of this broad argument by Blumenberg appears to be robust. He has identified in the absolutism of reality the cause of the creation of fearful mythological magnitudes and therefore of the need for engagement by which the attempt may be made to eliminate fear. This elimination is attempted especially through the striking of a testable covenant through which obedience brings the expression of mythological sympathy towards man through the actions of the magnitude. He identifies how the further reduction of fear comes through the dispersal of the magnitude across a network of functions and functionaries, by which there is the weakening of the superior power by which man lives. He outlines the means by which such magnitudes are constructed through persistent attention and refinement over time, as well as the logic of the evolution of myth such that its future comes to lie in man’s hands. He argues that this evolution is not to be seen in any sense as inevitable progress but that myth nonetheless has contemporary relevance. These elements of the broad argument appear to be coherent.

However, there does appear to be at least one significant problem here. Blumenberg argues that the process of engaging the magnitude must lead to its weakening and that it is by that weakening that man can live. This does not seem to be right. Irrespective of arguments regarding its instigation, the first cause of the creation of the magnitude is its

\[\text{ibid p.291}\]
representation of existential anxiety produced by the absolutism of reality, in the history of both the species and of each individual. This ‘reality’ or anxiety must therefore not only be absolute in its nature but it must also be a profound condition of all human existence. Its representation by myth must therefore be not only absolutely fearsome, that is before the varying strategies are developed to attempt to eliminate this fear, since it is absolutely powerful. It must also be an ever-present condition, persisting in that state over time. Under these circumstances, man must continue to require a means of its representation which is fully empowered. That is, weakening this entity might be an argument for reducing fear, but it denies the premise for its creation. Neither does it make the notion of the need to bring the entity into a state of sympathy for man meaningful: it would be insignificant that a weakened entity is sympathetic to man. A fully empowered but effectively engaged and fully sympathetic magnitude would satisfy the needs of mankind but a weakened magnitude would not. Blumenberg seems to be opting for the latter.

A better way to look at this issue, while remaining within the terms of Blumenberg’s broad argument, is that the magnitude remains absolutely fearsome throughout its evolution over time and that the engagement given effect by entering into a covenant seeks to combine, rather than to weaken, that fearsomeness with an equally strong sympathy. In this way, the magnitude remains absolutely fearsome but can still be sympathetic towards mankind. This combination would be effected through continuing and absolute obedience, as the pre-eminent means of constraining the magnitude, thereby generating such sympathy. In effect, mankind generates absolute sympathy from persistent absolute fear through absolute obedience. It will be argued that this three-part absolutism amounts to the archetypal conception of the State, the elements of which provide the material for the subsequent conceptual fabrications of the State by political theorists within the tradition.

Absolutism is not an optional feature of the archetypal concept because to have created an absolutely fearsome entity and then negotiate a covenant to progressively weaken it would trigger the re-emergence of existential fear. This would be a self-defeating
strategy. The implication of this point is that submission to the magnitude is always conditional. That is, despite existential fear and even at the archetypal level, one forgoes always and only on the condition that fear will be eliminated. Otherwise one’s fear may be worsened and even in the state of existential fear we understand that. This conditionality means that, even though we forgo, we always retain some fear, for the entity may either fail its covenant to eliminate fear or be merely fearsome itself.

The implication of this re-drawing of Blumenberg’s thesis is that the dispersal of the magnitude, through the deployment of functionaries and the proliferation of preferred practices, is not a weakening but an extension and therefore a strengthening of the magnitude across social space. This has two effects. First, this dispersal allows for the expression by individuals of their submissive forgoing of responsibility by becoming themselves part of the magnitude as experts and functionaries. They thereby share ‘membership’ of the magnitude. More importantly, the individual must be satisfied that, in return for this submission, the magnitude does satisfy its three responsibilities: that it does give effect to the conversion of existential anxiety into fear, that it can then effectively minimise that fear and that it can combine this with the sympathy that submission brings. Becoming part of it allows the exercise of some influence to ensure the fulfillment of these purposes. It is ‘some influence’ because the ‘becoming part of’ never fully absorbs the individual, who preserves a modest protective distance from this creation that he expects to limit his existential fear. However, it does motivate the colonisation of the magnitude to ensure, ideally, universal sympathy but, more typically, strong sectional interest. The effect of these two purposes, submissiveness and then gaining control, in combination is that we create what it is that we wish to create us and others: we are submissive, or ‘not fearsome’, only on condition that others are, or are made to be, so. This interpretation is not inconsistent with Blumenberg’s own claim that the first intention of myth is fulfilled in that it finally comes into man’s hands, although it does give that outcome a fundamentally different purpose.

The account of myth which emerges from this redrawing of the Blumenberg argument comprises some essential elements. These include that man intentionally created,
continues to create and sustains magnitudes as absolutely fearsome, as a conceptual limit of existential anxiety. Such creation may have been instigated by those legitimately interested in the limiting of fear or by those who would exploit the obedience that its fearsome nature would induce. Either way, absolute obedience is conditional but typically willing on the part of individuals due to the desire to limit existential anxiety by objectifying it and thereby converting it to fear. Fear in this context would especially but not exclusively include fear of others. Such absolute obedience also has the strategic purpose, as the corollary to the limiting of fear, of inducing the magnitude to express an absolute sympathy for mankind as a constraint to the absolute fearsomeness for which it was created.

Importantly, on the condition that the magnitude fulfills its role to radically limit fear, this obedience effectively constitutes a willing forgoing by each individual of responsibility ‘to and for oneself’, that is the responsibility to eliminate fear without being fearsome because the individual feels, or is made to feel, incapable of fulfilling such responsibility. By ‘eliminating fear without being fearsome’ is simply meant that individuals who become responsible to and for themselves would not be the cause of fear, as their only legitimate concern is with their own interests, save for non-selfish action that is guided by respectful agreement. The magnitude would be required to progressively promote such respectful agreement by constructively engaging with any person intruding into the lives of others, who is acting without self-responsibility. Other than through the application of this principle, the magnitude could not itself intrude. The elimination of fear would not be its primary goal. Blumenberg doesn’t canvass this issue but it is argued here to be a logical extension of his account of the non plus ultra of myth, and one necessary to properly appreciate the significance of the radical critique of myth that he has undertaken.

So, this responsibility is transferred to the magnitude but this transfer cannot be done without making the magnitude absolutely fearsome, even if conditionally so: it is this transfer of responsibility from each individual to the magnitude which constitutes the full empowerment - and thereby generates the inherent fearsomeness - of the magnitude. Further, for the purpose of elaborating the form and practice of this necessary
fearsomeness, of this consequential obedience and of the consequential constraint through absolute sympathy, a covenant is generated which must be personal between each individual and the magnitude, since the limiting of fear is ultimately testable only at the individual level. Blumenberg doesn’t elaborate the notion of this covenant but it is rigorously within his logic. He talks of the need to ‘constitute’ the nature and limits of the power of the magnitude. This covenant is therefore a ‘constitution’ of the magnitude, being its form and its relation with each individual, and which can be the subject of refinement, if necessary over an extended period. Importantly, the generation of absolute sympathy is not a weakening of the magnitude but takes place in the context of its extension across social space and is therefore a complementary strengthening of its fearsomeness, the effect of which is mitigated by the generation of absolute sympathy through obedience. In the face of questions regarding the need that absolutism be the benchmark here, it is to be remembered that it is a mythological archetype being conceived and not a playing out of such an archetype in the world, wherein compromise and qualification would be required. Hobbes and his successors in the tradition will be argued to have undertaken that playing out.

What constitutes this absolute sympathy is the subject of ongoing negotiation within the community of individuals over time and is typically subject to wide variation and competitive strategies, but in its essence it is constituted by a concern for the welfare and sense of security of the individual. The forms which sympathy may therefore take include the forceful constraint of fearsome individuals, the delineation of actively fearsome action by the magnitude itself, the creation of spheres of activity from which the magnitude withdraws except by retaining its responsibility to limit fear, as well as directly sympathetic actions by the magnitude, such as the creation of conditions of self-fulfillment and welfare. The creation of spheres of activity from which the magnitude ‘excludes’ itself, perhaps such as certain theological or economic interests, would not preclude, in fact would positively allow for, alliances between interests active in those areas and the magnitude itself, through which those interests are promoted. In fact, such alliances are likely to be promoted by the magnitude, as much as by those interests, to fill such a vacuum created by ‘excluded’ activity.
It will also be argued here that these variations of absolute sympathy constitute the concept and forms of individual rights and that absolute obedience is not inconsistent with the notion of individual rights, since the expectation of myth to attempt the elimination of absolute fear is always retained by the individual. This is so even if this expectation always requires absolute obedience to the magnitude. So, obedience of the prescriptions of the magnitude is required, but only to the extent that the magnitude satisfies its responsibility to limit fear and be sympathetic. This obedience qualifies individuals for rights and defines the nature of those rights.

It is an important consequence of this account of myth that, because of this continuous responsibility to limit fear and be the subject of negotiation about the preferred forms of sympathy, the magnitude is, beyond its original conception, in no respect ever effectively neutral to the interests of man. Further, it is the desire to establish preferred regimes for dealing with the fear/sympathy nexus that induces individuals to ‘become part of’ the magnitude, for example by adopting the role of expert or functionary or by aligning themselves to potentially dominant interests, as means of exercising control over this creation. This desire to control the magnitude is symptomatic of the competitive strategies regarding what should constitute absolute sympathy. This gaining control by ‘becoming part of’ is still the forgoing of responsibility to and for oneself, since the control gained is only to ensure the limiting of fear and the promotion of absolute sympathy. This requires the empowerment that only this forgoing can create.

The full consequence of all this is that this ‘becoming part of’, which emerges in the context of the generation and refinement of the covenant and which leads to ‘gaining control’, means that the fate of the magnitude finally comes into man’s hands. This gaining control thereby also allows the possibility that the fundamental conceptual flaw and inherent instability of this entire strategy, that is that fear can be limited by creating an absolutely fearsome entity and then constraining this fearsomeness by inducing the entity to be absolutely sympathetic to the obedient, could be eliminated. This elimination would be achieved by creating a non-mythological magnitude that was not inherently
fearsome but which actively promoted individual responsibility to and for oneself, in the form of individuals who addressed their fear without themselves becoming fearsome and assumed the responsibility to create sympathetic conditions of their existence. But this would require an acceptance, rather than a rejection, of existential fear. Courage as the price of responsibility.

This is not an argument that to return self-responsibility to individuals is a matter of inevitable progress, for it is possible only with the deconstruction, what for Blumenberg is the radical critique, of myth and its replacement with a new quality. Further, it is argued here that self-responsibility does not preclude mutual support between individuals in the enhancement of their respective self-responsibility but it does imply mutual respect between individuals who are responsible in this sense. However, given at least the widely promised benefits of such magnitudes, it is acknowledged that the continuing refusal to accept existential fear makes the elimination of the flawed strategy unlikely, the consequence of which is the likely persistence of the apparatus of a fearsome mythology.

In summary, the mythology of Plato and especially of Blumenberg, in particular the nature of the magnitudes that are imagined within it for the dual purposes outlined, appears robust, subject to certain amendments or extensions. These are that the magnitude comes into man’s hands first through a covenant between each individual and the magnitude and then through a competitive process, producing dominant sectional interests who are the principal beneficiaries of the attempt to eliminate fear and the expression of sympathy; that the fearsomeness of the magnitude is dispersed across social space by coming into man’s hands but that this dispersal does not dilute that fearsomeness; and that the evolution of the myth is glacial in the sense that its structural refinement and its coming ‘into man’s hands’ can extend over the life of a series of generations in a community due to a continuing attempt to realise the mythological conception.
The State as mythological

With the observations of both Plato and Blumenberg as reference points, we will now begin to examine whether it is arguable that the State is characterised by these features, that it can be seen as a mythological magnitude.

Preliminary comments

As Plato demonstrates, the idea of applying mythological theory to the State is a coherent one, both in relation to preferred political arrangements and preferred individual behaviour. We will recall that for Plato, *muthos* is a preamble to the laws, also a means of persuading citizens regarding behaviour and at the same time elaborates a paradigm of the idea of the city which can be worked on over time. Such an application is best seen in the context of thinking within a tradition, that is there is an original conception of the ‘well-known myth’, the elements of which are reconfigured and represented according to the preoccupations of the city at the time. Their context was marked by…political and competitive aspects. This points to an aspect which Blumenberg does not emphasise in the manner it will be emphasised here, that is that work on myth not only produces reconfigurations of the elements of the myth but that this can take place over a very extended period, for example over many generations or even centuries, carried forward by tradition. This would only happen in the case of an important myth, such as that of the City or State, as a primary means of dealing with constant anxiety and fear.

To this point we are not yet talking about the State itself but the idea of the State. As has been indicated, there are three identifiably distinct but related elements of the expression of myth: the ideal or archetypal State that rests in the presumptions of the tradition and whose elements are reconfigured over time; those various reconfigured ideas of the State, fabricated for example as institutional arrangements from the elements of that archetype by political theorists working within that tradition; then finally the State itself, real in the world and attempting to realise to a greater or lesser extent, for example by the

---

47 Brisson p.55
application of policy and practice, that archetype and those ideas. Here we are still dealing with the first of these elements. It is in subsequent chapters that there will be an examination of the second, that is the various reconfigurations and refinements made by Hobbes and his successors within the tradition down to Pettit, then finally an examination of how this traditional idea has been made practice and also illuminates Aboriginal policy, the State in the material world.

_Seeing the State within a mythological framework_

The remainder of this section will comprise an application of the accounts of Plato and Blumenberg, extended and amended in the manner already outlined, from their chosen domain of mythology to that of the State. That is, beginning to conceive the State as an example of the mythological magnitudes of which, in particular, Blumenberg speaks. Although Plato does, Blumenberg does not make such an extension, but, with the amendments that have been introduced, it is argued here that this is an appropriate and informative application: it can be fairly argued that mankind is not only disposed to create myths for the purpose of limiting fear through the construction of explanatory systems, for example in the construction of his spiritual apparatus, but that it also applied this disposition to myth in the construction of their social institutions, using the construct of the purely mythological magnitude as the archetypal model. Myth not only has archetypal characteristics but also has something like a collective or ‘tectonic’ presence in the public affairs of mankind. It is argued here that one such application can be seen in the conception and ongoing work on establishing and refining the State. That is, the State shares the essential features of a mythological magnitude and operates in a manner consistent with that nature.

If this mythological framework is applicable to the understanding of the nature of the State and its relationship to individuals and therefore to the original questions of this thesis, it should be able to be argued that the idea of the State was established and has been the subject of continuing attempts at reconfiguration and refinement over a long period with the intention that it adopts a form, and therefore has a range of
characteristics, which is identifiably mythological in the sense outlined. This process of refinement implies that there is an archetypal State form drawn from this collective or ‘tectonic’ presence, which would satisfy man’s mythological disposition and to which there would be full allegiance, distinct from, but used as a reference for, the variety of actual State forms to which only conditional allegiance is offered. This conditionality is due to the concern that individuals hold about the extent to which the real State form will satisfy the expectations embedded in this archetype. Given the persistent and pervasive effect of fear, there is only formal conditionality regarding the covenant between the individual and the archetypal State: there is absolute obedience to the idea of the absolutely fearsome entity since there is certainty that there will be absolute sympathy in return, to deal with the ‘absolutism of reality’ in the form of existential fear. This is not to claim that there is an existing form of the State which has fully realised such an archetypal or tectonic form but it is to claim that an examination of the emergence of such existing forms will reveal varying protracted attempts to realise this archetype which rests tectonically in our social, and in particular our political, tradition. Here, it is the emergence of the constitutional parliamentary State that is examined, although by direct implication this argument can be applied to other variations of the State form.

Other key mythological characteristics include that the idea of the State has a form over and opposite man, with an archetypal nature which was absolutely fearsome, and that both its authority and empowerment - and therefore its fearsomeness - would be the consequence of the willing forgoing of authority and power of each individual, that is their sovereignty, to the State. This forgoing is formally unconditional or absolute but only because the State’s fearsomeness and sympathy are also absolute. The first purpose of the creation of this idea was the radical limiting of fear, as was imagined to exist in an original state of nature, by transferring the responsibility for this limitation to the State. This obedience becomes conditional rather than absolute when it comes to the actualisation of this archetypal State, since subjects will always be uncertain that the real State will eliminate fear without itself becoming a source of fear.
Following this archetypal conception, there was soon, and there remains, the idea that the State must be engaged through the application of various techniques and strategies, the purpose of which is the commitment to the striking and continuing refinement of a testable covenant between each individual and the State. The purpose of such covenants is to ensure the forgoing of individual sovereignty and then to protect the individual from the fearsomeness of the State and of other individuals by various means. These include having it exercise its fearsome power for the welfare of each individual to further reducing the fear of the obedient but also by displaying absolute archetypal sympathy for man without weakening the absolute fearfulness of the State. The endgame in this process is the unrealised, in fact unrealisable, search for an ideal stasis in which there would be perfect balance between this necessary total fearsomeness and this desired absolute sympathy. To the State in this archetypal form, there would be unconditional obedience. What is forgone in this absolute obedience is the responsibility of each individual to undertake measures to eliminate his fear without himself being fearsome and to create for himself sympathetic conditions of existence.

None of this is to say that the obedience to any real State will be unconditional, since the individual will always reserve judgement whether the real State and its incumbent dominant interests are satisfying the expectations of it to eliminate fear and create sympathetic conditions of existence, that is whether the State has realised its archetypal or mythological form. Neither is it to say that the forgoing of responsibility to the real State is total, for there are ‘secondary’ or ‘derivative’ areas of responsibility beyond the two primary areas for which the individual is responsible, depending on the actual State being considered. It is to say, however, that these secondary areas are always to be seen in the context of the forgoing of responsibility in those two fundamental areas. For example, as we have seen, parents will still be expected to carry responsibility for raising children but to do so in a manner that has children understand that they are to forgo these two areas of responsibility to the State. Equally, late in its historical refinement, people will generally be expected to contribute to their own welfare and comfort by generating their own income but the State will be expected to create the conditions under which that
can occur. Where individuals are unable to contribute in this way, it would become the responsibility of the sympathetic State to do so by one method or another.

This archetypal covenant is therefore founded on the full individual submission which is required by the nature of existential anxiety objectified as fear. It is this submission that is the basis for the desire that the State adopt an absolutely sympathetic attitude towards man and thereby that it be engaged through obedience and other strategies to focus on man’s security in the world. The direct implication is that this obedience is the instinctive but tactical (that is, for the purpose of attaining this security) forgoing to the State of responsibility of individuals to and for themselves, from which the State derives its authority and power, that is its fearsomeness. Further, this covenant is the means by which the idea of the State is constituted in its form and practice, this requiring persistence over an extended period of time as the desired stasis is sought. As a consequence, it is argued here that the idea of constitutionalism, including separation of powers, representation and other individual rights - whether civil, political or social - is to be seen as a tactic to limit fear and generate sympathy, premised as its elements are on this forgoing of individual responsibility. Constitutionalism therefore embodies key mythological elements, limiting the power of the entity through separation and therefore instituting competition between these separated powers, allowing man to take the destiny of the magnitude into his hands by representation and ensuring sympathetic conditions of existence by establishing a range of protective and assertive individual rights.

In this context, constitutionalism would be before all else the means of regulatory constraint of the otherwise fully empowered and fearsome magnitude. It would be fearsome but would be claimed to be not itself an arbitrary source of fear and it would ensure the delivery of the covenant which limits fear in return for the submission born of this fear. The notion of absolute submission, which would only be due to a fully realised archetypal State, is not inconsistent with the notion of individual rights since the responsibility of the State to limit fear and be sympathetic, which are the source of such rights, remains the desire of the individual and so requires absolute obedience. Obedience is assured so long as the State satisfies its responsibility, although only conditionally
since, despite the promises of absolutism, no State is seen as having or as capable of realising its archetypal form.

It is also argued here that the consequence of the covenant is that the State is extended across, and therefore becomes intimate with, social space. By this is meant that, for the purpose of fulfilling its responsibility to attempt to eliminate fear, the institutions and agencies and allies of the State are extended towards, in fact into, the lives of individual subjects. This reinforces rather than weakens its fearsomeness, since weakening would induce the return of existential anxiety. By the intimacy which this extension or dispersal brings and by the reinforced obedience that results, it can also more easily fulfill its appointed concern for man’s security, for example by dealing with fearsome individuals, and his welfare. Should the State not fulfill its responsibilities, the covenant would be further refined or its experts and functionaries replaced. We shall see below that the various governmental-disciplinary practices sponsored by the State exemplify the intimacy which comes from this dispersal.

Within the context of this progressive constitutionalism, the arrangements of the mythological State would be required to ensure that there are means by which the inevitable competition between interests, through which the dominant forms of dealing with fear and sympathy is determined, can be resolved. Representation is one means of claiming that this is achieved. Provision is also typically made for the State to exclude itself from various spheres of activity, as a means of asserting that its fearsomeness is constrained. This absence is not to claim that the State forgoes the responsibility to resolve competitive disputes between those competing for that space left vacant by the State, for example between corporations, or that the State itself may not attempt to reoccupy that space de facto by alliance with other interests, such as the Church for the purpose of promoting the civilising process. It is a consequence of this that the archetypal State is originally conceived as neutral to man but that, given the immediate, persistent and elaborate engagement which has followed its creation, the State can no longer ever be neutral, since it is always required to intervene to limit fear and resolve the
competition between the interests that compete for control of the State so that they may determine the preferred forms of fear and sympathy.

Such resolution cannot be too inequitable but, taking advantage of the common willingness to subjection, it is typically sectional and is established through the force of the State itself. The State, through its dominant interests, must exercise this responsibility with some care, attending to the range of competing interests while exercising its own fearsome powers, as the practices of the real State show. That is, the viability of particular governments of the State depends on the common belief that it acts through the covenant in the interests of every individual. Given that the limiting of fear converted from existential anxiety is the ultimate motivation for the referral of these responsibilities to the State, this is confirmation of justification of the forgoing of individual responsibility. That is, all this is not the mere development of rational, utilitarian arrangements of government. In this, the notion of dominant interests is not one which implies that individuals or groups exercise power as a quantitative capacity. Instead, dominant interests are embedded in and reflective of a pattern of features which are the conditions of its existence and which form the conditions of the deployment of power. This pattern of features includes individual existential fear, including both its natural occurrence and its strategic generation by dominant interests; the created magnitude; the disposition to the forgoing of self-responsibility; the methods of dispersal and so on.

As a corollary, given the extent to which the mythological State has come to be engaged over time through progressive constitutionalism, the choice is presented to man to have the State converted into a means by which there may be a return to each individual of self-responsibility. This choice is presented through the process by which there is gaining control through ‘becoming a part of’ the State. By this constitutionalism and colonisation, the fate of the State comes into man’s hands, even though the reality is that the competition for control to promote a preferred arrangement of fearfulness and sympathy largely favours sectional interests. If the State were to be converted to a form that returned responsibility to individuals, this would need to be triggered by a perception of

---

48 see B. Hindess *Discourses of Power* pp.14, 25
the seismic flaw at the heart of this mythological or transcendent metaphysical edifice. That is, due first to its own archetypal absolute fearsomeness and then its disposition to sectional interest in the constraint of the State and in the establishment of sympathy for man, the State always has to convincingly claim that it satisfies the high risk of maintaining the balance between dominant and more widespread interests, otherwise it becomes more the cause of fear and lack of universal sympathy than other causes, for example from other individuals.

What the State as a mythological magnitude has in its favour against any consideration of the need for such reform is, first, the typical willingness of individuals to forgo responsibility so that fear is limited and welfare promoted; second, that the idea allows the option to conditionally appoint interests responsible for the realisation of the two primary responsibilities but their replacement if they fail to satisfy those expectations; third, the process of civilising, or persuasion in Plato’s terms, which aligns individuals to mythological arrangements and expectations; and, fourth, a consequential preparedness to continue to refine the arrangements of State through amended prescriptions, or replace its incumbent officials, in the hope that the archetypal State is ever closer. These factors overwhelm any awareness that obedience to the mythological State has come at the high price of forgoing of one’s self-responsibility. In the case of the archetypal mythological State, this forgoing of responsibility for oneself would be complete, but in return for this there would be effective attention given to the fear/sympathy nexus. It is at the heart of the relationship between the mythological State and the individual that this idealised or archetypal existence is apparently attainable. That is the power of the illusion of the real mythology. This, the privilege of dominant interests and the consequential high price of forgoing responsibility that continues to be paid for pursuing it over the long historical period during which the modern State has been evolving, constitute the flaw in the arrangement.

Transformation of the State from a conception based on a mythological premise to one which is non-mythological would require that the perception of this flaw would be followed by an acceptance rather than the denial of the existential fear which is the
primary motive for the creation of the fearful magnitude. In this Enlightened context, where the idea and practice of the State would remain but not as a fearsome entity, there would therefore be a disposition against fearful obedience. Moreover, the constitutional practices of representation, litigation and the exercise of other rights could be radically different than under a mythological State. The self-responsible individual could be engaged at the centre of any such practice rather than be only peripherally present or even bracketed from such practices. In that context, responsibility to and for oneself does not preclude, in fact it requires, mutual respect. Yet none of this is in any sense inevitable Progress, a myth to which the Enlightenment fell victim. It is only the deconstruction of myth and its replacement with a ‘new quality’ which depends upon the establishment of a revised State form, with non-mythological practices.

The argument put by Blumenberg that there should not be an overreaction 49, that is that the abolition of dominant metaphor or myth should not lead to the rejection of representation born of the desire ‘espoused by those who want to decide everything’, since that would ‘deprive the weaker person, who previously never had to be found out, of his protection’, is accepted but qualified here. The identification of the State as mythological should not lead to an abolition of the State. It should lead to its reconfiguration, one consequence of which would be that the ‘weaker person’ would be ‘enabled’ in a way that is prevented by the manner in which mythological arrangements respond with apparent but false neutrality to the strongest sectional representation.

However, due to the mythological premise of its existence and nature, the likely persistence of its form and nature overwhelmingly outweighs the likelihood of such transformation. It is likely that there will be persistence of mythological belief, practice and perception, which is the provision of answers to or the reoccupation of obsolete questions for the primary purpose of having a more powerful entity than oneself to be responsible for dealing with the fear/sympathy nexus. This outcome also includes, just as the compliant assume mythological modes of behaviour, attributing mythological status to those individuals or groups who through frustration or mere difference are perceived as

49 Work on Myth p.6-7
threatening, either generally to the dominant world picture or directly in a physical manner due to discontent. Consequently, the tactic of the State in response is determined as mythological, as we shall see in the penultimate Chapter in this work, one which focuses on Aboriginal policy. In this context therefore, that is where there is the typically willing forgoing of self-responsibility, citizenship itself would properly be seen as a realisation of mythological thought and practice.

In short, irrespective of the challenges of realising self-responsibility, it is stated here that the State may properly be considered as mythological, in the sense that Plato intended, and further as a mythological magnitude, in the sense that Blumenberg intended: it is an entity constructed as fearsome; it has constitutional form, incorporating separated powers; it is empowered by the forgoing of individual self-responsibility; its infrastructure is colonised by dominant interests; it disperses across social space through the engagement of all individuals; and all these features are conditional upon a claim that the fear/sympathy nexus is being addressed. What is now required is an exploration of the conceptual, then material, emergence of the State to demonstrate how it was realised as a real, political magnitude, the subject of continuous work within the political tradition. That will commence with Hobbes and move onto an examination of a series of thinkers in the tradition who followed and were deeply influenced by the paradigm of government he established. Before doing so, we will look at another, but unsatisfactory, attempt to see the State as significantly mythological, the political work of Cassirer. Doing so is intended to bring into higher relief the attractions of the notion of political mythology presented here.
Chapter Three – ‘The Myth of the State’: Cassirer’s mythology reconsidered

This thesis is of course not the first attempt to apply mythological theory to the State. The most widely recognised attempt to do so was that of Ernst Cassirer. In fact, Blumenberg not only acknowledged the value of that analysis but praised it. Nonetheless, he offered a theory of myth that went well beyond that of Cassirer. Blumenberg’s theoretical position, especially as complemented by Platonic mythology and as amended by the work of this thesis, proposes an approach to myth which not only avoids the shortcomings in the Cassirer analysis but identifies explanatory opportunities not available to Cassirer in his consideration of the State.

In *The Myth of the State*, Cassirer gives us an account of various ideas of the State from Plato to Hegel and into the late modern era, and offers an explanation of the impact of mythology on each of them. More precisely, his is an account of what he sees as the long struggle between reason and mythology for control of these ideas. His approach is highly informative but, in presenting these two ways of thinking as separate and in contest, he does not appear to see the important possibility of any connection between them, a connection which may well have enriched the answers to some of the questions he confronts.

Cassirer begins with a range of broad observations about mythical thought, its structure, its function in the social life of man and its relation to the emotions and language. In these first observations he is at pains to acknowledge the original vitality of myth. The significant claims he makes in this regard include that, although they differ in method and in the material to which that method is applied, both mythological and rational thought manage to create order by applying system to the world of sense experience\(^1\); that, given the rich contribution of myth to human culture, it is unacceptable to regard it as merely the result of an inexperienced mind seduced by the ambiguity of words\(^2\); and that, whether seen through the prism of ancient naturalism or that of modern psychoanalysis,

\(^1\) E. Cassirer *The Myth of the State* p.15, also p.9 and p.11
\(^2\) ibid p.19, also p.22
the broad impact of myth on human life cannot properly be seen as driven by any single motive, for example the glorification of nature or sex\(^3\). Importantly, he states that myth deals with the strong emotions of man and should be understood in the context of the metamorphosis of fear\(^4\). It is in this context that he talks of man’s solving the fear of death, through an objectification that transforms this fear into an ‘understandable and supportable’ experience\(^5\). These insights are fully consistent with the account of myth presented in this work and, given Blumenberg’s endorsement of much of the work of Cassirer, his work was almost certainly one of the sources of Blumenberg’s work on myth, and thereby one ultimate source for the analysis presented here.

The problem comes in the manner that Cassirer applies these insights to an analysis of the relevance of myth to the State. One is left with a sense that Cassirer has not fully explored the nature of myth in his conception of it as an original, powerful force in the life of man which has been continuously and with varying success opposed by reason. This contestatory or ‘oppositionist’ approach seems to miss a series of opportunities to realise a more profound understanding of the nature of myth and how it relates to reason and the State. In particular, his view of myth as manifesting some original condition does not allow him to fully explore the fundamental strength and therefore the possible continuity and adaptability of myth from the gods to God to the World Spirit in history and up to now, that is rather than just seeing it as lurking in the dark and reappearing for example through Carlyle or Gobineau in times of modern political crisis. Perhaps because of his ‘oppositionist’ approach, he does not ask if reason, which for him is opposed to myth, may not be enlisted to promote mythological thought, including in the Platonic, the Hobbesian and the Kantian concepts of the State. Certainly there is no sense that there is a mythological concept which has been worked on and refined over the long term and across generations. All of this despite his own acknowledgement that myth deals with the strong emotions of man, leading to the transformation of myth, through objectification,

\(^3\) ibid p.35  
\(^4\) ‘[f]ear is a universal biological instinct. It can never be completely overcome or suppressed, but it can change its form. Myth is filled with the most violent emotions…But in myth man begins to learn a new and strange art: the art of expressing, and that means organising, his most deeply rooted instincts, his hopes and fears’, ibid pp.47-48  
\(^5\) ibid pp.45, 49
into an understandable and supportable experience. We can see these missed opportunities in his analysis of each of the historical periods he examines. It is worthwhile taking a brief look at these, since they reveal not only something about the shortcomings of Cassirer’s approach but more usefully, by constructive criticism and comparison, about what is being said concerning myth in this thesis.

The Greeks

Cassirer maintains that the attack on the heart of myth came first from the ethical and rational rejection of a multitude of gods who are also made in the image of man, although the dominance of myth in man’s self-understanding still had to be dealt with. This was done through the development of a rational account of human nature, especially through the Socratic emphasis on the unity of human will that produces a coherent notion of self-knowledge. That is, escape from the influence of the Gods would come not from reinterpreting myths in a ‘rational’ manner as the Sophists wanted to do but through a process of ethical self-examination that would produce a more coherent sense of the key question of good and evil, one which therefore did not rely on the miscellaneous whims of the gods.

Cassirer is right to see an advance in the demythologising of human thought in the Socratic method and purpose. However, although he has already identified the crucial role of myth in objectifying and therefore relieving human fear, he has made no connection between this relief of fear and the implication of the Socratic method. Unless this gap is bridged, that is unless the rational Socratic method is explained as a means of deterring man from reliance on the gods, it remains finally unclear how that method could have been of use as a tool against myth. Such an explanation would be that Socratic self-examination would produce an understanding that it was fear, for example of death, that produces in mankind the desire to construct mythological magnitudes as evil and good gods as a means of relieving that fear. In fact, by not doing this, Cassirer leaves

---

6 ibid pp.55, 56
7 ibid 57, 59, 60
open the possibility that reason, despite its increasing sophistication, will not deter man from that reliance. Myth would then persist beside reason, even working with it, thereby leaving the further possibility that, given its fundamental hold on man as a means of relieving his fear, it could come to dominate reason and even enlist reason as a means of its propagation. This is a logical outcome of which the ‘oppositionist’ approach of Cassirer seems unaware.

Cassirer then considers the Republic, presented as providing a political context within which the Socratic lessons in ethics and psychology are put in place. There Plato develops his view that, unless we eliminate the influence of the idea of combative and deceptive gods, a projection of man’s own life, ‘cities will never cease from ill’\(^8\). The mythical gods must be replaced with the Idea of the Good. Apparently not seeing in this Idea any mythology, Cassirer regards this move by Plato against both the gods and against the poetry of Homer and Hesiod not as possibly the move of a myth maker\(^9\) but as an assault on myth and myth makers. For Cassirer, however, Plato’s greatest contribution, one which stamped the entire future of political thought, was the positive postulate that the State was the administrator of justice, the role of which was to establish a general principle of order, regularity, unity and lawfulness\(^10\). Again, Cassirer does not see any mythological implications in this beautiful, geometric and orderly arrangement, especially one which, as was argued in the previous Chapter, was an idea projected as an ideal through \textit{pheme} as the tradition of the community sustained across generations. For Cassirer, Plato was creating a rational theory of the State and to do so had ‘to lay the ax to the tree: he had to break the power of myth’. That is, for Cassirer, the myth making in Plato’s natural philosophy was entirely separable from his anti-mythological political theorising\(^11\), a judgement that could be made by Cassirer because he sees mythology in the gods, whose influence Plato rejected, and because mythology relates only to an historically original condition to which individuals and communities become habituated.

---

\(^8\) ibid p.66
\(^9\) see Brisson p.11; Cassirer does not deny Plato’s myth making, only in this circumstance, \textit{Myth of the State} p.71
\(^10\) Cassirer p.68-69
\(^11\) ibid p.71-72
rather than one that may have a continuing and evolving positive purpose in the life of man\textsuperscript{12}.

Cassirer also claims that for Plato the concept of justice (as based on reason) and the notion of will to power (as ‘might is right’) are necessarily in opposition, because any excess of the latter would lead to the destruction of the order and balance for which the Ideal of the Legal State is intended. Perhaps it is because he makes this distinction that he does not ask whether, constrained by law, power is an essential means by which the Platonic State will generate justice and order, and can thereby claim to eliminate fear. It is an obvious question in a society in which slavery was embedded and therefore remained a constant source of fear. Cassirer endorses the Platonic responsibility of the State through reason to create its own fate: ‘To rule others it must first learn to rule itself’ and happiness will follow only if a good demon is chosen. Only the exercise of reasoned morality which exists in the minds of men, not the development of physical might nor wealth nor the drafting of a binding constitution, will produce this result. All this required Plato to banish the immoderation of myth from the political world and to create unity, order and harmony in the State as in the individual soul\textsuperscript{13}. Although the consequential adoption of self-determining responsibility through reason is an unarguably positive move away from the influence of the myth of the gods, Plato does not make this sense of self-responsibility the condition of a State that can ‘rule others’ without the application of power. He cannot insist that, in a State in which slavery is embedded, reason is all that would be required. In that case, rational citizenship would be consistent with, and certainly require, a widely empowered and fearsome State. Cassirer does not see this, preferring to see the Platonic State as fully rational. In short, due to his ‘oppositionist’ approach and to his failure to fully explore the nature of Greek myth, Cassirer is unaware of the possibility that reason and politics can be brought to serve myth.

\textsuperscript{12} ibid p.73
\textsuperscript{13} ibid pp.75-77
The Middle Ages

We can see the same pattern in Cassirer’s analysis of the Middle Ages. The Platonic model is, for Cassirer, adopted by the medieval Church but transformed to comply with the imperative that the Ideas are the thoughts of God. For Augustine, the notion that the eternal law was impersonal or ‘geometric’ was impossible: for there to be a guarantee of the truth of law, there had to be a law-giver. Greek intellectualism was thus accommodated within religious voluntarism. For Cassirer, reason thereby forgoes its autonomy, for wisdom and good is only in God. However, he denies that the dissonance between these two systems of thought was resolved by Aquinas, as is often claimed. This is because Plato developed no coherent theology: for him, any Platonic religious thought lies only in the Republic in the Idea of the Good, the final cause, and not empirical reality. Neither could the Aristotelian God be taken as a foundation for Aquinas’ theology, even though Aristotle’s insistence on the inseparability of the phenomenal and the intelligible made their thought more compatible. Aristotle’s God may have necessarily existed and therefore necessarily have been good but he was not a personal law giver. His essence was not will but an act of pure thought and His law is proven by reason rather than given by revelation. For the medieval mystics, such reason interrupted the principal aim of the mystical union of soul and God. There were Christian thinkers like Aquinas, Anselm and Abelard who came to the defence of rational thought as a complement to revelation but none suggested that the product of an autonomous reason was superior to revealed truth. Cassirer saw all this as a constant struggle throughout Medieval thought between reason and faith, one may say between reason and myth, although he stops short of describing theology as mythology. Perhaps because he does stop short, he does not see the possibility that the Christian God was a means of objectification, and thereby the relief, of fear. Perhaps more significantly, Cassirer does not see mythology in the Platonic Idea of Good, that is in addition to the reason of it which the medieval theologians saw as compatible with their own mythology and which generated their interest in incorporating it.

14 ibid pp.88, 89, 90
15 ibid pp. 91, 92
16 ibid pp.94-96
If it was the rational mythology of the Platonic Idea of the Good that was the cause of this constant struggle, that is as the cause of the theologians’ attempts to subsume it, this explains an important political implication. That is, the sense of justice which was the *raison d'être* of the Platonic Legal State was seen by the theologians not as an abstract, impersonal and therefore accidental justice but as ultimately sourced in the will of their supreme law giver. In Augustine, the Idea of the Good became the thought of God. A second implication was that the sense of human inequality inherent in both the Platonic and Aristotelian conceptions of the State and thereby in their respective notions of justice, an inequality which justified the practice of enslavement, did not take root in Medieval thought. It was the Stoic sense of the fundamental equality of men that became one of the cardinal points of medieval Christian theory and it was the belief in the endowment of reason, as the image of God, given as inalienable to each man, upon which this sense of equality was founded. Thereby was the idea and practice of slavery rejected. Consequently, political power cannot be absolute as it is always bound by this divine law of justice. It was a just king that must be obeyed. From all this, Cassirer draws the conclusion that Church and State are united by the common principle in which the temporal order ‘has a true eternity, the eternity of the law and, therefore, a spiritual value of its own’.

By this subsuming of Platonic Good by Christianity, two means by which fear could be reduced were brought together, through the union of the order of the just State and the object of a mythological deity. It is a little surprising that Cassirer sees no mythological connection between these, especially since he provides a thorough account of the reconciliation of the two types of entity. He begins with Dante, by whom the State was not only glorified but was declared necessary for the ‘safety and advantage’ of the world, that is one might say through the elimination of fear and the creation of sympathetic conditions of existence. This view required that the Christian dogma of the origin of the State in original sin had to be overcome: man’s departure from God saw him fall into

---

17 ibid pp.98-103  
18 ibid pp.104, 105
hatred and disorder and so God imposed fear of man upon men so that he might be compelled to reach some justice. This opposed the Greek notion of the polis, since for Augustine human reason is corrupt and so even the orderly and just Platonic State cannot find the true State, the City of God\(^{19}\). It was Aquinas who recognised the Aristotelian claim that reason and revelation are each expressions of the truth of God and so cannot be contradictory. Thus does he reject the difference between the intellectual and sensible worlds and reverse the Platonic and Augustinian separation of body and soul. They are organically in union. So in his political philosophy, the State was not merely a divine institution to remedy human sin. As a moral order, it is a human order and therefore rational. God remains a \textit{causa remota} but man is not relieved of his obligation to right and justice. ‘In this conception man’s political life has won a new dignity. The earthly state and the city of God are no longer opposite poles; they are related to each other and complement each other\(^{20}\). Such an analysis, bringing God and State so closely together, might immediately raise questions about the impact of mythology on the medieval State as an entity in itself. It did not do so for Cassirer, perhaps because he did not see the attraction to the theologians of the rational mythology in Platonism.

Cassirer then turns to Machiavelli, making a number of observations about his reception by later philosophers. The first and common opinion of the apparently abominable nature of his thought was revised by Bacon and Spinoza, ‘who regarded him as a champion of freedom’ but wrongly saw him as insincere. Enlightenment thinkers, in particular Herder, saw \textit{The Prince} as neither satirical nor moral nor as a general theory of politics, but simply as an analysis of contemporary political custom\(^{21}\). Cassirer also sees Machiavelli’s thought as being converted by Hegel into an idealised ethical system, before he was projected into the nationalistic maelstrom of the nineteenth century. In trying to make sense of the significance of Machiavelli, Cassirer proposes the view that, although he

\(^{19}\) ibid pp.106-109
\(^{20}\) ibid p.115
\(^{21}\) ibid p.119, 121
wrote at and about a time in Italian Renaissance history, he was someone whose political theory has continuing relevance\textsuperscript{22}.

Cassirer saw this new science as based on a rejection of the medieval belief that to understand something we must return to its first principle and see how it evolved from that. So in the State, the highest power is concentrated in the Emperor, a symbol of the hierarchical cosmic order, who delegates his power to his inferiors\textsuperscript{23}. But this system began to fade in the Quattrocento and Cinquecento, with the crumbling of feudalism. New political bodies appeared in the form of Renaissance tyrannies created by individual men, whence comes Machiavelli’s fascination with Cesare Borgia and his political methods for ridding himself of his enemies by force and in doing so introducing the structure of the new State. In explaining his admiration for Borgia, he destroyed the cornerstone of the scholastic tradition, the hierarchical system, and its location of the origin of the State in the divine. Machiavelli did not reject religion but saw it as having rendered man weak and merely a tool for political leaders. For Cassirer, Machiavelli has completed the secularisation of the State\textsuperscript{24}, that is he legitimised the non-Christian and thereby non-mythological State. However, because Cassirer does not consider that the secular State might be a mythological entity, there is no thought that Machiavellianism as a political technique might have a place within a mythological order. That is, that such techniques might be those applied by interests seeking to come to a position of dominance within the apparatus of the mythological State.

This analysis allows Cassirer to claim that the State had lost its connection not only with religion and metaphysics but also with all other forms of man’s ethical and cultural life. Even if Machiavelli may personally have preferred a republic and even honoured the possible wisdom of the people, in the world of realpolitik the people were unable to rule themselves. The multitude are helpless without a head and require a strong leader: the

\textsuperscript{22} ‘Machiavelli wrote not for Italy nor even for his own epoch, but for the world’. He was ‘the founder of a new science of politics - the great constructive thinker whose conceptions and theories revolutionized the modern world and shook the social order to its foundations’, ibid p.126, 128
\textsuperscript{23} ibid p.131, 132
\textsuperscript{24} ibid pp.134, 135,139
great Machiavellian statesman is ruthless and splendidly wicked\textsuperscript{25}. This is necessary because man is not fundamentally good and his depravity can only be cured by force not law. \textit{The Prince} is a technical text, an instruction as to how one can reach and then sustain dominance. Whereas Plato proposed a Legal State, the Machiavellian art of politics was equally fit for the legal and the illegal State\textsuperscript{26}.

Cassirer is effectively arguing that Machiavelli demythologised the State. However, his claims regarding the Machiavellian secularisation of the State would be different if he had not only fully extended his account of the mythological implications of his analysis regarding the role of the State as an objectification and eliminator of fear through submission, but also had allowed that the Machiavellian political method might have mythological implications as a set of techniques by which a mythology of the State could be sustained by the dominant.

\textbf{The Early Modern Era}

Cassirer then sees the influence of the rationality of Galileo and Descartes in political science. He starts with the great ambition of Hobbes, which ‘was to create a theory of the body politic equal to the Galilean theory of physical bodies’ and to do so through metaphysics rather than theology\textsuperscript{27}. The principles upon which such a rational political science of the seventeenth century was to be based were rejuvenated, rationalist Stoic ideas, especially regarding equality and inalienable rights. Thereby the social life of man was emancipated from theological thought. In a heliocentric world where man was an exile, only Stoicism seemed able to provide a natural foundation and restore ethical dignity to man\textsuperscript{28}. Absolutist systems of political thought like Hobbes’ and those that defended popular rights both drew on Stoicism, especially through the doctrine of the social contract, a voluntary submission of the governed. Cassirer correctly sees Hobbes’ doctrine as a logical or rational principle of identifying first causes rather than as an

\begin{itemize}
\item \textsuperscript{25} ibid p.145
\item \textsuperscript{26} ibid p.155
\item \textsuperscript{27} ibid p.165
\item \textsuperscript{28} ibid p.169
\end{itemize}
historical event\textsuperscript{29} and he sees that the contradiction in Hobbes was that this voluntary submission of the individual was total and thereby contradicted the principle of the inalienable right of the free personality of the individual\textsuperscript{30}. However, Cassirer does not ask if absolute human rights can exist in a mythological context nor, more importantly, does he ask if the doctrine of the social contract might contribute to a mythology of the State.

For Cassirer, the Enlightenment created no new metaphysics of either nature or morals. Its interest was in action. Both Rousseau and Kant sought to affirm the first principles of man’s social life and, especially in the case of the latter, to affirm human rights through the application of reason\textsuperscript{31}. Kant did not separate speculation from life, theoretical from practical reason: action was derived from general rational principles. But again, because he does not imagine the State as a mythological entity, no questions come from Cassirer about what will be argued in this thesis to have been the mythological nature of the Kantian State, irrespective of the claims of reason. This is especially so, as we shall see, given the impact on that of Rousseau’s criticism of the Lockean and Montesquieuene arrangements of State, these being inspired as the reform of the Leviathan.

The subsequent Romantic reaction against this rationalism could not, for Cassirer, be attributed only to the unfulfilled promises of the Revolution or to the social and political chaos that followed it. For him, this reaction was not political. Romanticism was more concerned with history and with a revived interest in myth. Unlike the eighteenth century Enlightenment thinkers who studied history to prepare for a better future, nineteenth century German Romanticism idealised and spiritualised the past. Cassirer sees this as the next round in the contest between reason and myth\textsuperscript{32}, wherein universal ahistorical principles of reason, morality and natural right are rejected in a belief that history is the origin of right. For Schelling, human culture is not the product of free and conscious human activity. It was the higher metaphysical necessity of myth that was the source not

\textsuperscript{29} ibid p.173
\textsuperscript{30} ibid pp.174, 175
\textsuperscript{31} ibid p.178
\textsuperscript{32} ibid p.180, 182
only of art, history and poetry but also of a German national cultural pride which could also see a unified, even Christian, Europe\textsuperscript{33}. Cassirer here again sees reason and myth as in a clear and simple opposition. He does not see a possible relationship between these two, the production of myth being driven by fear, as was clear to both Plato and Blumenberg, myth then enlisting reason in the construction of a higher, stronger hybrid.

**The Late Modern Era**

Cassirer then selects Carlyle, prominent mid-nineteenth century Romantic, as the next key figure in his long-drawn contest. He sees him as a conservative convinced that the stabilisation of the social and political order could be achieved by hero worship, and as an unsystematic thinker who, in this hero worship\textsuperscript{34}, unwittingly contributed to the eventual emergence of fascism. History was for Carlyle the actions of great men, who share common characteristics and who are the mystic windows through which we penetrate the ways of nature. Carlyle’s own theoretical development sprang from the experience in his youth of a deep existential fear of death which, when confronted, apparently gave him unknown strength\textsuperscript{35}. Then, inspired by Goethe, he confirmed for himself that doubt can only be ended by action\textsuperscript{36}. This reinforced the importance to him of history, inspired as he was by Fichte: not by our intellect but by our will do we grasp reality\textsuperscript{37}.

It was in history that Carlyle found the absolute grounds of hero worship\textsuperscript{38}. This is not the hero worship of fascism. His hero had insight, intelligence, sincerity and displayed moral behaviour. This was a reaction against the Enlightenment, which he saw as a period of disbelief and as unproductive because it was lost in philosophical quarrelling. But neither was he political, since his concern was with individual men not systems of government. His nationalism was also coloured by his notion of moral life and intellectual achievements as indicators of the greatness of a nation. He proposed might as right, but

\textsuperscript{33} ibid pp.182, 183, 185  
\textsuperscript{34} ibid pp.189, 190  
\textsuperscript{35} ibid p.199  
\textsuperscript{36} ibid p.204  
\textsuperscript{37} ibid p.211  
\textsuperscript{38} ibid p.215, 216
only moral might\textsuperscript{39}. Cassirer thereby provides a thorough account of Carlyle’s thought but he does not explore the causes which produce individuals for whom worship of the hero is a fundamental feature of human nature, even though he acknowledges the significance of Carlyle’s own existential fear in the development of his mythology. Without this, his concept of myth as hero worship should be seen as merely symptomatic. Neither does Cassirer see the universalising of the misconstrued characteristics of the hero, that is of each individual as a maker of his own myth, as a means of ending rather than promoting dominant myth.

Cassirer then turns to Gobineau, whom he sees as the author of the other pillar of modern political myth, race worship. Like Carlyle, Gobineau was uninterested in social or political reform. He was an historical fatalist but sought to understand the course of events. For him, the variance between races in moral, cultural and intellectual matters, with supremacy going to the white race, was incontestable and it was the science of this variance which he claimed but failed to elaborate\textsuperscript{40}. For him, the real universals are not to be sought in the thoughts of men but in the substantial forces that determine his destiny and of these the most unquestionable is race\textsuperscript{41}. In arguing that race is the only master of the historical world, Gobineau prepared the ideology of the totalitarian State. With race he attempts to destroy all other values, including Christian or the brand of individual autonomy promoted by Kant\textsuperscript{42}. Racism was the pre-eminent factor not nationalism, the unity of which was nothing but a mixture of blood. For him, Greek nationalism was driven by the law, an abstract ideal borrowed from the Semites. Roman institutions were equally subordinate to the ethnic state of the people and its arts were all borrowed from other peoples. Although art is the gift of all races, it is a product of imagination, which comes from Negro exuberance and is therefore not of first importance\textsuperscript{43}. Cassirer does make strong claims for the mythological nature of race as proposed by Gobineau but he gives us no clue as to how it relates to other characteristics of myth that he has called up or how it differs in kind from the rational political forms he prefers.

\textsuperscript{39} ibid p.222
\textsuperscript{40} ibid pp.224, 225, 226
\textsuperscript{41} ibid p.231
\textsuperscript{42} ibid p.235
\textsuperscript{43} ibid p.241
He then considers Hegel, whose philosophy of right and philosophy of history he sees as having influenced all modern political ideologies but at the cost of losing its inner harmony: although founded in a rational conservatism that led German liberals to see it as reactionary, its dialectic form allowed over-interpretation and over-extension by Bolshevism, Fascism and National Socialism. In effect, it is the destiny of the Absolute Spirit to give birth to itself into objectness, to submit to suffering and death and to rise from its ashes into new glory. In his reconciliation of the historical and the religious, Hegel proposed a new sense of reason which did not deny the cruelty of the world and a new sense of divine providence which embraced the implications of the fact of the incarnation of Christ. In the Hegelian system, God is history.

In consequence, the Hegelian State is the essence of historical life, the absolute incarnation of the Spirit of the World. Hegel rejects mechanical theories according to which the State is an aggregate of individual wills, held together by Natural Right theories, the legal bonds of a social contract or contract of submission. In its place he sees an organic unity but it is for him, unlike Schelling, a unity of contraries. He accepted war and rejected humanitarian ideals. As with Machiavelli, truth for Hegel lies in power. This applies to nations but also, as with Carlyle, there is hero worship, although as an agent of the world spirit not as a generator of ideas. He respected the idealism of the Enlightenment, especially its conviction that man is the source of the laws of nature and ethics, but rejected these as an adequate means of organising the political and social worlds because they were formal rather than immediate and dynamic. History itself is the only judge of what is transitory and what is real, especially regarding the emergence of any nation as the agent of the world-spirit. However, for Hegel this spirit includes art, religion and philosophy, which the State should set free. Further, the strength of a State lies in the spirit and the history of a nation and could never be subservient to the will of a political party or leader. In this, he would have rejected the totalitarian assumption of his

---

44 ibid p.253
45 ibid p.262
46 ibid p.267 but also pp.263, 265-6
47 ibid pp.270, 271, 272
thought\textsuperscript{48}. Despite this form of tolerance, Cassirer makes the point that the mythological features of the Hegelian State, especially its association with the notion of Absolute Spirit, contradict the sense of reason which he claims as the obverse of mythological thought.

Cassirer finishes by drawing together the elements that for him constitute myth and by outlining how this pastiche has operated in the late modern era. He focuses especially on Germany, where he believed that the near total breakdown of the social and economic system after the First World War created an environment especially conducive to the emergence of myth. These conditions reach full force in dangerous times, that is when man is confronted with a task that seems far beyond his natural or secular powers. In all critical moments of man’s social life, the rational forces that resist the rise of the old mythical conceptions are no longer sure of themselves: ‘the time for myth has come again. For myth has not really been vanquished and subjugated. It is always there, lurking in the dark and waiting for its hour and opportunity’\textsuperscript{49}.

In such convulsive times, the collective wish for leadership emerges as law, justice and constitutions are seen to have no value. The will of the hero becomes the law. Cassirer finds ‘paradoxical’ this combination of the myth of the hero and the exercise of reason by which he is given power and by which myths are technically elaborated through word and ritual. He sees in such ritual the replacement of individual with collective responsibility\textsuperscript{50}. In this context, he observes that freedom, as ethical individual autonomy, is not a natural inheritance of man: ‘If man were simply to follow his natural instincts he would not strive for freedom; he would rather choose dependence…Under extremely difficult conditions…(The) totalitarian state and the political myths…relieve men from all personal responsibility’\textsuperscript{51}. He identifies as a prominent claim of myth the power of prophecy, that is the comforting prediction that in face of decline a new start may be made and a new world created. He points out here that, in the history of human thought,

\textsuperscript{48} ibid p.274, 275
\textsuperscript{49} ibid p.279-280
\textsuperscript{50} ibid p.285
\textsuperscript{51} ibid p.288
natural science has only relatively recently separated itself from magic, alchemy and astrology. Again, Cassirer has raised a series of issues that he might have seen as significant for mythological theory and practice. These include the juxtaposition, although not connection, of myth and reason; mankind’s preference for dependence rather than personal responsibility; the claim that the totalitarian State can assure the individual of peace and sympathetic conditions of existence; and that science and mythology have until recently been long connected. But he does not develop these elements into a fully coherent theory of myth or relate them to a theory of the State.

Cassirer ends with a plea to understand the invulnerability of myth in order to know how to combat it. For him, human culture may be described in the words of a Babylonian legend, that is that culture could not arise until the darkness of myth was fought and overcome. ‘But the mythical monsters were not entirely destroyed. They were used for the creation of a new universe, and they still survive in this universe. The powers of myth were checked and subdued by superior forces. As long as these forces, intellectual, ethical and artistic, are in full strength, myth is tamed and subdued. But once they begin to lose their strength chaos is come again. Mythical thought then starts to rise anew and to pervade the whole of man’s cultural and social life’.

The Nature of Cassirer’s Mythology

There are a number of difficulties with this analysis by Cassirer of myth and the State. The first is that he does not actually settle on what is for him the nature of myth. Rather he presents various forms which he believes myth has taken throughout history. Certainly he provides a wide range of examples, including the Greek gods, apparently the God of Christian faith, history, hero worship, race, the Absolute Spirit and Nazism. As forms of myth, they do all share an opposition to reason but they are so diverse as to make it difficult to say that myth has any particular nature or form. These forms do share an originary, even primitive quality, although that is not to say that Cassirer thought myth to be simple. For him myth is complex, vital and a maker of order out of the chaos of the

52 ibid p.298
sensible world. Importantly, it is a means by which we metamorphose fear, ultimately of death, by transforming it through objectification into an understandable experience. But it is this diversity, this lack of distillation or continuity in the concept, that seems to cause him not to see a range of connections, meanings and opportunities to explain and even predict. Because of this, and especially due to the ‘oppositionist’ analysis he adopted concerning the relationship between myth and reason, he sees it ‘lurking in the dark, waiting for its hour and opportunity’. He cannot see myth and reason as complementary, let alone as united, integrated and mutually informing. Further, he sees myth as persistent, in the sense of it recurring, but not continuous, as something which has essential elements that are conserved but undergo the reconfiguration determined by the demands and interests of any era. Thus he can properly talk of myth and the State, but not the myth of the State, despite the title of his work.

It is in this context that Blumenberg can say, or can be understood to say, that myth is not merely a concept that concerns man’s origins but one that passes the test of selection. Therefore a myth may be durable, standing the test of time including even over a long period. Some myths, an example of which is argued here to be the political myth of the State, even acquire a timeless quality\textsuperscript{53}. It is proper to see myth as therefore legitimated, evolved story telling. One consequence is that Cassirer is wrong in portraying Nazism as myth because it was a reversion to some original state and therefore irrational. For Blumenberg, Nazism merely tried illegitimately to appropriate myth\textsuperscript{54}. Blumenberg also disagrees with Cassirer’s conception of myth as being a spontaneous expression of man’s nature, presenting it instead as a solution to a problem inherent in man’s biological nature, that is the experience of real threat to his life throughout his existence, but including during the early stages of his evolution as a species\textsuperscript{55}. For Blumenberg, therefore, Cassirer’s argument that myth was made obsolete by science is misconceived\textsuperscript{56}. It sits alongside science as legitimate story telling because it has passed

\textsuperscript{53} Work on Myth p.160
\textsuperscript{54} ibid p.xxvi
\textsuperscript{55} ibid p.x
\textsuperscript{56} ibid pp.viii-ix
the test of selection and those who believe in myths are not to be seen as deprived in some way but are dealing with an inherent problem of being human.

Because he does not see myth in this way, Cassirer doesn’t explore the mythological implications of Socratic self-examination nor can he see the Platonic State as mythological, because he sees it is comprised of rational citizens and decisions. He certainly does not perceive that it may have been the mythological status of Platonic Ideas that attracted medieval theologians like Aquinas. Nor does he see the utilitarian mythological implications in the Machiavellian account of power. The mythology of the Leviathan goes unnoticed, even though he brushes close in identifying the significance of the social contract as a contract of submission. He does not connect Carlyle’s personal fear of death with his hero worship, nor does he explain how racism could be perceived to be a means to eliminate fear. Nor apparently does he see any continuity, let alone gradual refinement, of these manifestations of myth.

As a consequence, Cassirer sees myth as lurking in the shadows rather than under his feet, even though he acknowledges that mankind turns to myth in crisis because he prefers dependency rather than autonomy or responsibility. Because of the various forms which it assumes for him, he cannot propose that it might be a concept developed and worked on through the long tradition of political theorising about the State, let alone that the State might itself be that concept which has been worked on. Notwithstanding Blumenberg’s lack of attention to the State, it is these features which are accounted for by Blumenberg in his notion of the mythological magnitude as fearsome but induced to be sympathetic. As amended and extended in this work, this conception provides an account which has wider explanatory and predictive capacity, especially when supplemented by the Platonic sense of myth, than that provided by Cassirer. In this context, it is preferable to see mankind, rather than willingly casting off the burden of responsibility in times of crisis, as not ever having fully realised individual self-responsibility. Individuals have always commonly been disposed or induced or required to have such myths as that of the State to assume this fundamental responsibility for them. In this case the ‘casting off’ of responsibility that Cassirer sees as occurring in times of crisis would not be so radical as
he considers it to be. The question to ask is whether myth might not be sought within the heart of modern culture and the modern State rather than seen as an enemy that lurks in a predatory manner in the shadows of this heart. Cassirer does not allow that question but an amended and extended Blumenberg, enriched by Plato, does.
Part 2 - Establishment and Refinement

It is the argument of this thesis that Hobbes can be seen as the creator of the State as a mythological magnitude, in effect that he was the initiator of the modern political myth. This is not to say that he worked with a clean palette but that, using arguments familiar to his predecessors, he attempted to resolve the problems that came with the beginning of the violent disintegration of the theological myth. It is also to argue that he initiated a political tradition whose participants took the tenets of his argument and have continued to work on the implications of these tenets down to the present. This is not to argue that these individuals were conscious mythologists but that, given that the Hobbesian tenets were mythological, the effect of their work has been to sustain and refine the notion of the mythological State as participants in the mythological political tradition.

Chapter 4 - Establishment and Refinement of the Modern Political Myth: Hobbes, Locke and Montesquieu

Hobbes

There are good reasons why a search for the establishment of the modern mythological State might find Hobbes\(^1\). Even at a first glance, essential elements of such an idea of the State seem to feature in his conception of the *Leviathan*.

To start with Hobbes is not to say that there was no mythology within the thought of political philosophy before him. Indeed the contrary. Neither is it to say that Hobbes himself was a conscious mythologist. As the owner of a ‘highly Opiniative and Magisterial manner’\(^2\) and belonging ‘to that phase of the scientific revolution which had not yet relinquished the hope

---

1 The word ‘modern’ is used here because this thesis is not the place to trace the elements common in the political tradition back to Plato which Hobbes then reassembled in a manner that would resolve the problems with which he was confronted. However, any examination of the history on the idea of the State reveals that, although he assembled these ideas in a particular manner, he was working with ideas that generally were well established in a long tradition of theorising about the State. His ideas were not *sui generis*.

2 This was the opinion held of Hobbes by his contemporaries in the Royal Society, Wallis and Boyle, cited in Q. Skinner *Visions of Politics Volume III – Hobbes and Civil Science* p.329
of taking all knowledge for its province’\(^3\), he would no doubt have bristled against such a
description. It is uncontestable that he regarded himself as a scientist and as one whose
intention was to put politics on a scientific basis.

**Blumenberg and Hobbes**

The pointer to begin looking at Hobbes as a mythological political theorist comes from
Blumenberg. The position held by Blumenberg is that, to the extent that philosophy is a
process of dismantling things that are taken for granted, a philosophical anthropology cannot
begin with the question whether man’s physical existence is what results only from the
accomplishments ‘of his nature’. Instead, the first proposition of such an anthropology should
be that ‘It cannot be taken for granted that man is able to exist’\(^4\), that is that contingency is a
primary condition of existence and that there is nothing inevitable concerning the existence of
man. This principle applies not only to man as a species but also man as the product of his
social self-construction: not only may his existence have ceased at any time but he may have
turned out very differently than he has if contingent circumstances had intervened. It is in this
context that Blumenberg makes his only directly political statement relevant to this thesis. He
refers to the Hobbesian State as an artifice constructed by social contract to establish a civil
condition for man because his natural condition demonstrates that this ability to exist cannot
be taken for granted.

For Blumenberg, what is significant about this, although it is not its first importance, is that it
explains both the appearance of institutions such as those of the State and also explains the
appearance of the absolutist State. The Hobbesian State is an artifact constructed to
‘eliminate’\(^5\) the lethal antagonism of the ‘state of nature’ or ‘war of all against all’ or the
‘absolutism of reality’, all being realisations of absolute contingency and therefore ‘contrary
to reason’\(^6\). It is to avoid this absolute contingency, and the resulting existential anxiety that
presented itself in the violent political circumstances of the day, that Hobbesian man enters
the civil condition through voluntary social contract and constructs a State which, with its

---

\(^3\) ibid p.323
\(^4\) H. Blumenberg ‘An Anthropological Approach to the Contemporary Significance of Rhetoric’ in *After
Philosophy - End or Transformation* p.438
\(^5\) ibid p.438
\(^6\) Hans Blumenberg *Work on Myth* p.333
particular features, is argued here to be mythological in nature. Among these features is that myth performs the dual roles of a creation intended to limit existential anxiety by converting this into fear of itself and yet a creation, despite its absolute power, believed to be manageable by being engaged\textsuperscript{7}. By direct implication, since the “human relation to reality is indirect, circumstantial, delayed, selective, and above all ‘metaphorical’”, mankind is not distinguished by any ‘human nature’ but by his symbolic forms, such as the State, which he constructs to solve the problem of his existential vulnerability and which are then claimed for and ascribed to his nature, for example as they are by Aristotle, as a political animal. So Blumenberg sees “no other scientific course for an anthropology except...to destroy what is supposedly ‘natural’ and convict it of its ‘artificiality’ in the functional system of the elementary human accomplishment called ‘life’”\textsuperscript{8}.

Hobbes himself emphasises the artificiality of the Leviathan as a construct necessary to solve the problem posed by the combination of man’s nature and the hostility of his social predicament. However, the question that flows from this reference by Blumenberg to Hobbes is whether the Leviathan actually includes all of the essential characteristics of the mythological magnitude, including its absolute empowerment through full submission to it by individuals in return for the claim to deal with the fear/sympathy nexus, the emergence of dominant interests and the prospect of its coming into man’s hands. If it does, then the foundation of the argument for the mythological nature of the modern State can begin to be argued. This question will be approached by first examining the Hobbesian enterprise in its own terms. The work of Skinner will inform this examination. Then a judgment will be able to be made about the extent of Hobbes’ mythological disposition.

**Hobbes and the Construction of the Modern State**

Hobbes is best seen as a key thinker of the political theoretical tradition, not as a radical or renegade philosopher who wrote one influential work on politics. This ‘traditional’ perception of Hobbes is the one adopted by Oakeshott. But Oakeshott does more than merely

\textsuperscript{7} For Blumenberg ‘What has become identifiable by means of a name is raised out of its unfamiliarity by means of metaphor and is made accessible, in terms of its significance, by telling stories. Panic and paralysis, as the two extremes of anxiety behaviour, are dissolved by the appearance of calculable magnitudes to deal with and regulate ways of dealing with them’, ibid p.6

\textsuperscript{8} H. Blumenberg *An Anthropological Approach to the Contemporary Significance of Rhetoric* pp.438-439
situate Hobbes in a tradition. He elaborates what a concept of a tradition is. Regarding the
traditional ‘situating’ of Hobbes, he observes ‘The *Leviathan* is a masterpiece, and we must
understand it according to our means. If our poverty is great…we may read it not looking
beyond its two covers…This will be a notable achievement, if somewhat narrow….But the
*Leviathan* is more than a tour de force. And something of its larger character will be
perceived if we read it with the other works of Hobbes open beside it. Or again, at greater
expense of learning, we may consider it in its tradition, and doing so will find fresh meaning
in the world of ideas it opens to us’. ⁹

Oakeshott speaks generally about the nature of tradition ¹⁰. He then goes on to identify three
traditions, respectively the master-conceptions of Reason and Nature, of Will and Artifice
and the Rational Will. The first two are for him at the root of European intellectual history,
the third not appearing until the eighteenth century. The *Republic* represents the first, the
*Leviathan* is the head and crown of the second and the *Philosophie des Rechts* represents
the third. The notion of the political tradition argued for in this thesis is not that put by
Oakeshott, since here it is argued that there is a significant cohering theme whose aspirations
and internal inconsistencies are the source of the twists and turns that he separates out, but the
broad comments he makes do apply to the concept of tradition presented here as the context
of the principal argument.

Hobbes’ perception of himself might have been as a ‘traditionalist’ but this was as far as is
imaginable from being a mythologist. He saw himself as a scientist, but as more than that.
Not only did he employ rational methods in the pursuit of his range of scientific interests but
his work was also directly focused on addressing the real and urgent problems created by the
political turmoil of his time ¹¹. In effect, he was attempting to justify an idea of the State with
which ‘those that contend, on one side for too great liberty, and on the other side for too
much Authority’ ¹² could be accommodated, that is between the Parliamentarians and the

⁹ M. Oakeshott Introduction to *Leviathan* p.xii
¹⁰ ‘Every masterpiece of political philosophy springs from a new vision of the predicament (of human life); each
is the glimpse of a deliverance or the suggestion of a remedy…If the unity of the history of political philosophy
lies in a pervading sense of human life as a predicament…. its significant variety will be found in three great
traditions of thought….These I call traditions because it belongs to the nature of a tradition to tolerate and unite
an internal variety, not insisting upon conformity to a single character, and because, further, it has the ability to
change without losing its identity’, ibid p.xi-xii
¹² T. Hobbes *Leviathan* p.3
divine rightists defending the Crown who between them had plunged England into civil turmoil during a substantial period in the seventeenth century. That is, his primary aim was to argue for a political arrangement which would rationally establish a regime of peace and which would be sustained because it was accepted as legitimate. His method was scientific, his aim political.

It was in this context that Skinner’s examination of Hobbes explores the poor foundation in history of the influential Whig ideology of an immemorial parliamentary tradition, especially given that there had been deep institutional rupture created by the Norman conquest of 1066, on which much of the Parliamentary position was based\textsuperscript{13}. Realising this allowed Hobbes to gather and reinforce the arguments of others, against the position of the Parliamentarians, in favour of the \textit{de facto} legitimacy of the royalist line, established by force and, then, absolutist in nature. This legitimacy was based on the demonstrated capacity of such \textit{de facto} power to draw allegiance through the provision of protection to its subjects, that is, through an argument as to the ‘mutual Relation between Protection and Obedience’\textsuperscript{14}, to establish a regime of peace as the only rationally arguable alternative to anarchy. On this view, expressed first by such others as Ascham and Nedham, Hobbes established the basis for his analysis of political obligation generally\textsuperscript{15} and thereby, along with a diverse company of Christians and secularists as well as royalists and parliamentarians, for his justification of engagement with the newly established Commonwealth in 1649\textsuperscript{16}. Much of this thinking by Hobbes and others was based on the presumption of the inherently warlike behaviour to which mankind is disposed, generating a need for someone more potent than the rest that might restrain them by force\textsuperscript{17}. So protection constitutes a sufficient title to allegiance, from which follows the validity of any conquering government that delivers protection\textsuperscript{18}. It was in this way that Hobbes proudly boasted that he had ‘framed the minds of a thousand gentlemen to a conscientious obedience to present government’\textsuperscript{19}.

\begin{itemize}
\item \textsuperscript{13} op cit p.238ff
\item \textsuperscript{14} \textit{Leviathan} p.491
\item \textsuperscript{15} ibid pp.88, 120, 128
\item \textsuperscript{16} Christopher Hill \textit{The Century of Revolution 1603-1714} (Routledge 1989) pp.150-151
\item \textsuperscript{17} ‘If a monarch subdued by war, render himself Subject to the Victor; his Subjects are delivered from their former obligations, and become obliged to the Victor’ op cit p.154
\item \textsuperscript{18} ‘The Obligation of Subjects to the Soveraign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them’ ibid p.153
\item \textsuperscript{19} Hobbes \textit{Six Lessons to the Professors of Mathematics} p.336, quoted by Skinner in \textit{Visions of Politics} p.306
\end{itemize}
Hobbes’ purpose was to eliminate the widespread fear caused by this political turmoil and to do so by claiming legitimacy for particular political arrangements. He felt this fear so strongly at a personal level that it caused him to flee to France in 1640 and to remain there for eleven years\textsuperscript{20}. At the heart of this turmoil was, for Hobbes, ‘a general inclination of all mankind, a perpetuall and restless desire for Power after power, that ceaseth only in Death’ and that men ‘naturally love Liberty, and dominion over others’\textsuperscript{21}.

In pursuing this purpose, his stated method was to put politics on a scientific basis\textsuperscript{22}, that is, reason was to be the persuader. This is not to deny that he came back to the view, following an early rejection of the humanistic arts, that rational persuasion could be most effective when promoted through rhetoric\textsuperscript{23}. The rhetorical devices he preferred included the use of irony and mockery against his opponents, especially the Catholic Church, although not beyond the point where it would lead to violence or offend civilised society, as all men ‘ought to endeavour peace’\textsuperscript{24}. However, he retained a sceptical attitude towards rhetoric\textsuperscript{25}, as he argued that linguistic confusion, deriving for example from the camouflaging of meanings in paradiastolic speech\textsuperscript{26}, fuelled breaches of the law and thereby the fear that accompanied the state of war\textsuperscript{27}. It was this that generated his solution that clarity about moral virtue comes from seeing virtue as whatever conduces to peace. Then, since whether a given action will conduce to peace remains a matter of opinion, it is necessary to appoint some person or persons as Arbitrator or judge, conformity to whose decisions must be agreed in advance despite the necessarily arbitrary nature of those decisions. That is, this Arbitrator must be a sovereign power\textsuperscript{28}. However, this power maintains the peace not merely by arbitration but

\begin{itemize}
  \item \textsuperscript{20} Skinner ibid pp.8-9
  \item \textsuperscript{21} Leviathan pp.70, 117
  \item \textsuperscript{22} ibid p.60
  \item \textsuperscript{23} Skinner Visions of Politics pp.80-85, where he argues that, although Leviathan is not a work of rhetoric, Hobbes comes to the view that scientific argument is insufficient as a means to convince and, therefore, eloquence is also indispensable, see Leviathan p.483 regarding both Reasoning and Eloquence
  \item \textsuperscript{24} Leviathan p.92; see Skinner Visions of Politics p.172, where he refers to Norbert Elias’ work on civilised practices, this being germane to the discussion of Elias in Chapter 7 of this thesis
  \item \textsuperscript{25} Leviathan p.51, where he points out that the intention of praise and invective is not truth but to honour or dishonour
  \item \textsuperscript{26} Skinner explains that the purpose of the figura of the paradiastole for rhetoricians was to show that any given action can always be redescribed to suggest that its moral character may be open to doubt, Visions of Politics p.89
  \item \textsuperscript{27} op cit pp.111 and 88, where Hobbes argues that the science of moral philosophy is put under threat by the fact that good and evil signify our appetites and, if they effectively define moral meaning, we return to the state of nature and the war of all against all
  \item \textsuperscript{28} Leviathan pp.32-33
\end{itemize}
also by punishment, power and strength and ‘by terror thereof he is inabled to conforme the wills of them all’\textsuperscript{29}. So the authority of the sovereign Arbitrator must be absolute.

Hobbes’ way through to this position was not the simple move of fully empowering the person of the Sovereign or Parliament but to imagine the State as an artifice\textsuperscript{30} as the seat of sovereignty, to make laws, punish and do all else to provide for ‘the safety of the people…(by which) is not meant a bare Preservation, but also all other Contentments of life’\textsuperscript{31}. This artifice could be occupied by such particular incumbents as a King or a Parliament. These operate by way of attributed actions, by which the State, as ‘personator’ or representative of the sole authority of individual citizens, can perform actions which are validly counted as having been performed by those voluntarily authorising citizens. These then are the actions of them all as united.

By such authorising, that is by converting oneself from a natural person acting for oneself into an artificial person being represented by an artificial entity, the citizen forgoes any right to interfere in the actions which he has authorised and which are performed on his behalf\textsuperscript{32}. He gives up his right to govern himself and must not oppose the sovereign. In fact, since it is he who authorises the sovereign, it would make no sense in the Hobbesian world to oppose the sovereign authority\textsuperscript{33}. This is important, as it is a point on which Hobbes is sometimes misunderstood as a defender of individual rights\textsuperscript{34}. It is true that the Hobbesian individual never forgoes the right of self protection. In fact Hobbes is clear that not all rights are alienable\textsuperscript{35}, especially the right to protect one’s life against forceful assault. However, should any political regime claim to satisfy that individual need, that regime cannot be resisted. Skinner emphasises the point\textsuperscript{36}.

\textsuperscript{29} ibid p.120  
\textsuperscript{30} ibid p.9  
\textsuperscript{31} ibid p.231  
\textsuperscript{32} ibid pp.112, 92  
\textsuperscript{33} ibid p.120  
\textsuperscript{34} B. Kriegel \textit{The State and the Rule of Law} pp.39-40  
\textsuperscript{35} op cit p.93  
\textsuperscript{36} “It follows according to Hobbes’ theory of authorisation that the members of the multitude must now be under an absolute obligation not to interfere with their sovereign in the exercise of the rights they have transferred to him. The sovereign acquires complete discretion and absolute power to decide what shall be done to preserve the safety and contentment of every subject under his charge. Hobbes goes still further. Not only do the members of the multitude have no remaining right to question the actions of their sovereign; they have a positive duty to ‘own’ whatever actions their sovereign may undertake in seeking their safety and contentment”, Skinner \textit{Visions of Politics} p.207
This is close to the heart of Hobbes’ absolutism. That is, whereas he is commonly thought to have left a contradiction at the heart of his system and thus left open the door to liberalism, the inalienable right to protect oneself was only real in the scarce circumstance that government failed to claim responsibility for the safety of the people. Because of this, Hobbes was wrong within his own argument when he called this right inalienable. But the import of his assertion about the fundamental nature of individual safety, and the justification for him making it, was that this ‘right’ was the limit case for government, rather than an inalienable claim by individuals.

Hobbes’ approach to artificiality is demonstrated by his interest in the representation of individuals, certainly those who were natural persons and who voluntarily authorise others to represent them but also especially those who are not natural persons. The latter are those who can be represented but are incapable of authorising their own representatives. Skinner observes: ‘It follows that, while it is possible for such artificial persons to speak and act, it is possible for them to do so only if their words and actions can validly be attributed to them on the basis of their performance by some other person or collectively licensed to act in their name’\(^{37}\). Hobbes adds to these a final group who are artificial and can have words or actions attributed to them but who are either inanimate or, if persons, either ‘Children, Fooles, and Mad-men’, that is those who are unable through incapacity to authorise their guardians\(^{38}\). The significance of this for indigenous people will be explored below. Through this strategy, Hobbes has effectively provided for the representation of every person or thing, whether they voluntarily enter such a relationship or do not. Complemented by his argument concerning the provision by government of the protection of each individual, this is the heart of his absolutism. Beyond that, he has thereby effected the process by which the sovereign State is created, by which each individual agrees ‘to conferre all their power and strength upon one Man, or one Assembly of men, that may reduce all their wills, by plurality of voices, unto one Will’\(^{39}\). It was this artifice, whose actions we authorise and which fully represents us as individuals\(^{40}\), with which each individual has a personal political relationship and by which

\(^{37}\) ibid p.192  
\(^{38}\) *Leviathan* p.113  
\(^{39}\) ibid p.120  
\(^{40}\) ibid p.129
device alone are the people brought to a unity. There was no ‘body of the people’ which preceded or could intervene in that relationship\textsuperscript{41}.

Hobbes’ prescription, therefore, was that any incumbent of this artificial entity, that is the sovereign as person or council who bears the person of the State, was due unreserved obedience\textsuperscript{42}, in return for which protection must be provided by them\textsuperscript{43}. Should they fail in this, obedience may properly be redirected to any new incumbent who could provide it, although the people themselves cannot instigate this change due to the nature of their authorisation of the sovereign and thereby the forgoing of the right to interfere in his actions and the responsibility to own the actions of the created sovereign power\textsuperscript{44}. Hobbes did not conceive that there might be a solution to the problems of fear and contentment that did not entail the creation of such an entity.

As a consequence of all this, Hobbes has a particular notion of liberty. Argued within his scientific framework, liberty is comprised of an underlying ability to act, complemented by the absence of any impediment to this ability being exercised, whether by preventing or obliging action\textsuperscript{45}. However, since for him covenants in the state of nature do not fall into either category, as they may always be broken, they do not compromise our liberty\textsuperscript{46}. When we move into the Commonwealth we are bound by its laws and so our liberty is constrained, except for the theoretical right to protect oneself. However, although our liberty as subjects is constrained by such laws, our fundamental liberty is not, because we make the rational choice, for reasons of protection, to be obedient\textsuperscript{47}. In other words, we are not constrained to act or not to act in making this choice. Hobbes relies on this argument to justify a rejection of the freedom of Classical Greek democratic thought on which he blamed the Civil War, any recurrence of which he was determined to prevent\textsuperscript{48}.

He also relies on this argument in his claim that people were free to submit to the post-regicide Government in 1649 because that government claimed the right to protect and

\textsuperscript{41} O. Gierke \textit{Natural Law and the Theory of Society 1500-1800} pp.60-61
\textsuperscript{42} \textit{Leviathan} p.120
\textsuperscript{43} ibid p.491
\textsuperscript{44} ibid p.120
\textsuperscript{45} ibid p.91
\textsuperscript{46} ibid p.89-90
\textsuperscript{47} ibid p.148
\textsuperscript{48} ibid pp.149, 150
provide for all individuals\textsuperscript{49}. The power and authority available to the incumbent of this artificial entity must be absolute, that is unlimited\textsuperscript{50}, so that it could ensure compliance with the prescriptions, as laws, that would provide for the safety and contentment of the people\textsuperscript{51}. Hobbes is clear about the absolute nature of the power of the incumbent\textsuperscript{52}. Because the State represents every person and because its actions are voluntarily authorised by and attributed to each individual citizen, then \textit{ipso facto} the citizen authorises the laws enacted by the State to enforce preferred behaviour on himself and others. The constraints provided by these laws constituted the coercion that was the condition of liberty for Hobbes.

In effect, on this account Hobbes was a scientist arguing in a logical and scientific manner for the defence of absolutist \textit{de facto} power arrangements, chosen through the free choice of individuals because these arrangements offered protection. On this account, my argument that the ‘inalienability of the right of self-protection’ is essentially only a limit case for a protective government seems even a little pale.

However, one can see problems of both argument and emphasis in the theoretical work which forms the basis of the arguments in the \textit{Leviathan}. The first is that Hobbes argues that fear of others in mere nature is insufficient to enforce compliance with covenants, because nature has created us all equal\textsuperscript{53}. This contradicts his account of the widespread fear that exists in the state of nature due to the war of all against all. Despite the possibility of transitory alliances between individuals, this results in some making slaves of others and so is the motivation for the entry of each individual into the protective relationship with the absolute State. That is, on the one hand the state of nature\textsuperscript{54} is where individuals exist in a state of such equality that there is no cause for fear and on the other it is a circumstance of intolerable fear. Skinner acknowledges the failure of Hobbes to deal with this important point\textsuperscript{55}, but Skinner does not

\textsuperscript{49} ibid pp.484, 491
\textsuperscript{50} ibid pp.120-121, 148
\textsuperscript{51} ibid p.231
\textsuperscript{52} ‘he hath the use of so much Power and Strength conferred on him, that by terror thereof he is enabled to conforme the wills of them all, to Peace at home, and mutuall ayd against their enemies abroad’, ibid pp.120-121
\textsuperscript{53} ibid pp.86-87
\textsuperscript{54} Brisson’s comment regarding myth might be mentioned here in the context of the notion of a State of Nature: ‘A myth never relates an actual or recent experience. Instead, it always evokes a recollection preserved in the memory of an entire community, which has orally transmitted it from generation to generation, over a long period of time. So, if we want to define myth, we must begin by determining the criteria a group employs in order to preserve within its memory the recollection of a specific event’ L. Brisson p.17
\textsuperscript{55} Skinner \textit{Visions of Politics} p.218 at note 67
explore this failure. More broadly, Hobbes acknowledges that, with the move to the Commonwealth, fear of the consequences of disobedience is the only means to ensure compliance. However, he denies that this constrains the fundamental freedom of the individual in any way since compliance is still the choice he makes, even though fear causes him to want to make this choice: we always remain free to break the laws\textsuperscript{56}. He uses a similar argument regarding the move into civil society in the first place: we are always free not to enter\textsuperscript{57}.

The problem for such an argument is of course that, constrained to comply with the laws by both the ‘continuall feare, and danger of violent death’\textsuperscript{58} in the state of nature and the fear of being punished by the ‘terror’\textsuperscript{59} of the State for not complying with laws that we not attack others, we are still free, that is in his terms unconstrained, to choose, according to Hobbes. There are problems here regarding fear. On the one hand, he regards it as the fundamental condition of social and political arrangements, arguing that the state of nature is so fearsome that it is the overwhelming cause of individual submission to the lawful State, and then describes the lawful State itself as a source of terror, necessary to ensure compliance with its laws\textsuperscript{60}. On the other hand, to support the argument he is attempting to put regarding the legitimacy of political arrangements that he prefers, that is that a government can only be legitimate if allegiance to it is freely given, he is dismissive of the impact of fear and any claim that it affects the freedom of choice is a ‘fraudulent pretence’\textsuperscript{61}, insisting that it does not in any way constrain such freedom.

One could accept this latter argument if fear was an occasional or secondary factor in any such choice situation. But Hobbes himself has made it the very condition of the decisions both to enter civil society and to submit to the laws. Indeed it is a condition of such overwhelming significance that any claim that the choices to leave the fearsome state of nature and then to comply with the prescriptions of a legitimate but terrorising sovereign power are free, cannot be sustained with any credibility, except perhaps as a nice point of argument. If one makes a choice to avoid terror and death, either in escaping the state of

\textsuperscript{56} \textit{Leviathan} p.204
\textsuperscript{57} ibid pp.119-120, 146
\textsuperscript{58} ibid p.89
\textsuperscript{59} ibid 120-121
\textsuperscript{60} ibid p.469
\textsuperscript{61} ibid p.230
nature or in submitting to a terrifying sovereign power, it can hardly be claimed that this was a free choice in any real sense. It is better described as a primal reaction to a profound threat to one’s very existence. Hobbes apparently does not see this. The significance is that one cannot credibly argue as Hobbes does that an individual has the inalienable right of self-protection, when the sovereign can claim at any time an irresistible responsibility for the protection of each individual and that such a claim requires complete concurrence on the part of the individual. It is in this context that the claim for such an inalienable right is here regarded as merely a reflection of the limit case for government.

In fact, the point might be made against Hobbes, and by strictly applying his premises that fear is not a determinant and that lack of constraint is the criterion of freedom, that it would in fact be by choosing to remain outside any Commonwealth of the kind he prefers, that is to govern oneself, that we would demonstrate freedom. In effect, one might accept Hobbes’ latter argument if he had not made the case for entry into civil society so compelling, that is if there was real choice in this. But that would have required him to make the state of nature a more accommodating place, in effect that man’s nature is other than naturally warlike. His entire case for an absolutist state would then have been in serious difficulty on that score.

From all this, it could fairly be said that Hobbes was someone who experienced political turmoil even to the extent of strong personal fear. Irrespective of enmities or alliances with the contemporary political interests, his determination was to construct an argument which would help prevent any recurrence of this vast and fearsome trouble. He did this by generalising the cause of the turmoil into a universal feature of human conduct which mankind would be strongly motivated to avoid. He then imagined an artifice, vacuous in itself but terrifying when ‘personated’ by an ‘authorised’ incumbent, which was the only means to bring peace to the compliant, through the establishment of a regime of law which operated through universal fear of punishment. He then made legitimate the allegiance to any ruling incumbent of that artifice that established this peace, through the construction of an argument that claimed this allegiance to be the result of free universal choice. In other words, reason was engaged by Hobbes to establish the legitimacy of a fearsome personated artifice which was constructed to eliminate fear through the inducement and enforcement of compliance. The problem is that he made the desire for compliance so compelling that it is
proper to take the rational choice of compliance as a limit case for government rather than as an actual demonstration of the use of reason or the exercise of liberty.

**Hobbes and Archetypal Myth**

Hobbes was clearly doing something new. What that was had significance in itself, but its further significance will be brought to life when we consider the later unfolding of the political myth, especially in the context of the discussion of Rousseau. What was new is seen by Gierke as Hobbes’ substitution for the two original contracts of society and government a single contract through which each individual submits to a common ruler who himself plays no part in the making of the contract\(^{62}\).

\(^{62}\) ‘It was an event of the first importance when Hobbes, boldly demolishing what had hitherto been the foundation of all natural-law political systems, went at last to the root of the matter. He substituted for the two original contracts (the contract of society and the contract of government) a single contract by which each pledges himself to each to submit to a common Ruler, who, on his side, takes no part in the making of the contract. This assumption destroyed, in the very germ, any personality of the People. According to Hobbes, there has never existed, at any time, a *societas civilis* based simply upon itself. The personality of the People died at its birth. But just as there has never existed an original right of the People, so, when the State has been formed, it is equally impossible to think of any right of the People, even of the most modest description, as either surviving by reservation (since there was nothing to reserve), or as introduced *de novo* by contract, since a relation of contract between Ruler and People is inconceivable. With a logical inevitability all public right is absorbed, in every possible form of State, by a Sovereignty of the Ruler which is absolutely unlimited and illimitable, irresponsible and omnipotent, free from all obligation of law and duty, the engulfing reservoir of all rights both of individual subjects and of the aggregate body they form. Intolerant of any division, and thus excluding any mixed form of government, this authority is necessarily concentrated, in all its plenitude, at a single centre. Its ‘Subject’ can only be either a single and self-subsisting individual, or a sum of individuals united in a visible assembly and armed with the power which a majority has to control a minority…In this way there arises, out of the artificial life (*vita artificialis*) of the great automaton (*homo artificialis*), an artificial person (*persona artificialis*) which, under the technical designation of *persona civitatis*, becomes the centre of public law…This was the solution provided by Hobbes for the riddle which so many thinkers has so long attempted to solve. Basing himself on arbitrarily assumed premises, but wielding a remorseless logic, he wrested a single State-personality from the individualistic philosophy of Natural Law. He had extended the idea of Natural Right until it meant the right of all to everything, and he had done so in order that it might perish, as a right of all, from the very abundance of its own strength, and, then, surviving only in the…hands of a single man, or a single body of men, might proceed to convert itself into mere naked power. He had made the individual omnipotent, with the object of forcing him to destroy himself instantly in virtue of his own omnipotence, and thus enthroning the ‘bearer’ of the State-authority as a mortal god (*Deus mortalis*). In this materialistic and mechanical consummation the natural law theory of the State seemed to have reached the end of its development. But instead of falling into the sterility of premature death, it drew a new and unexpected vitality from the very crisis which threatened its life. In the march of its onward movement in the future, it might sometimes be constructive, and sometimes critical; but it was always to remain dependent on the system of thought constructed by Hobbes. And the element which was to prove itself most fertile in its future progress was to be the idea of a single State-personality which he had managed to attain - even though that idea, as it stood in his presentation was purely external and formal’, Gierke *Natural Law and the Theory of Society 1500 to 1800* pp.60-61
In this, the features of the Hobbesian concept of the State can be seen to be virtually archetypal, or are at least proto-typical, regarding the establishment of a mythological magnitude. That is, regarding the three stages of myth making outlined in Chapter 1 of this thesis, Hobbes comes close to establishing the credentials of his idea of the State as the archetypal myth. In doing so, he is also setting up the premises, as it were, for its subsequent ongoing refinement.

We have seen that the features which any such archetypal idea would need to satisfy to qualify as mythological include the creation of an absolutely empowered artificial entity, that is a mythological magnitude, to which individuals forgo their individual self-responsibility typically willingly but otherwise by inducement or compulsion. In return for such submissiveness, in the form of an understanding or covenant between each individual and the magnitude, the entity claims responsibility to eliminate individual fear and create sympathetic conditions of existence. Such sympathy reinforces the requirement that the entity is brought to exercise its fearsomeness only in the realisation of compliance, that is in no arbitrary manner. Finally, the fate of the magnitude comes into man’s hands. This assumption of the fate of the magnitude by man opens the door to its slow activation over time and results in the dispersal of the magnitude across social space, the purpose of which is to ensure at least that no individual can be a source of fear. The consequences are that, though incumbent, authorised ‘personators’ of the magnitude may be replaced, the entity itself is never forgone, due to the continuing fearful concerns of individuals, and that individuals are incorporated into the dispersed magnitude. In effect, this allows competition between interests to colonise the entity as ‘personators’ to determine what constitutes fear and sympathy.

With one important exception, an exception that points only to the process of historical refinement of the political myth after Hobbes, these characteristics are all fundamental to the Hobbesian account of the State as Leviathan. The Leviathan satisfies the conditions to qualify as a mythological magnitude. Although Hobbes was concerned with the immediacy and urgency of the political problems of his day, his disposition towards mythological concepts as the ground for his idea of a State that would solve those problems is clear. His definition of the nature of mankind as warlike led him to conceive the absolutist entity to which submission of each individual is induced, for the purposes of the elimination of fear and the creation of sympathetic conditions of existence. That is, for the ‘safety of the people (and)
also all other Contentments of life. Not only are these characteristics featured in the conceptual machinery of the Leviathan but they are also featured archetypally. Hobbes instituted the modern political myth.

The one mythological characteristic which is not a feature of the Leviathan is the coming of the magnitude into man’s hands, along with the related notion of its dispersal. Beyond the effective creation of the concept of the mythological magnitude, Hobbes does not explore the full potential complexity of the nature of the magnitude and its relationship to man, although the seeds of that complexity are all present. Although his emphasis on both the preservation of individual will and attributed behaviour allows it, there is no exploration of the potential of individuals to engage with sovereign power and negotiate the elaborate dimensions of governance and rights, beyond stating that sovereign power may take a parliamentary form. Although there is a cold presumption of sympathy towards the individual by the State built into Hobbes’ notion of representation, there is no full consideration given by him to the conversion of subjection, to guide the State regarding the elimination of fear or to induce sympathy from the State towards the individual. That is, there is no conversion of the testable covenant to one based on the matching of absolute power with absolute sympathy, and there is therefore no wide colonisation of the State by individuals or groups of interest and so no dispersal of the magnitude across social space.

These issues are of particular relevance to the comments by Gierke referred to above. In commenting on the importance of Hobbes’ resolution of the issue of the two contracts, that is of society and of government, he is effectively dealing with what in the long-term refinement of the myth of the State will become significant, especially for Rousseau and then Kant. This is the issue of the general will. In denying any contract of society, that is of a general will, Hobbes was developing a rationale for a direct relationship between the individual and the sovereign power. This was an understandable approach for someone concerned to limit individual fear, which is argued by Hobbes to be at the heart of all government, through a relationship between the individual and the sovereign power. Fear is personal so is best dealt with through such a personal relationship.

63 Leviathan p.231
64 ibid p.186
The problem with such an arrangement, a problem to be seen by Rousseau and Kant, is that this leaves each individual with only his own concerns, that is uninterested in the interests of others. So, the individual must be brought to a concern for others as well as himself. At the heart of this problem, which Rousseau saw as the key weakness of the Hobbesian arrangement, including as that was amended by Locke, is that for Hobbes any notion of community comes only through and therefore after the creation of the sovereign entity and so is itself artificial because it is derivative of that artifice. Rousseau’s solution is to imagine a general will created between individuals without primary regard for any government. The government itself is secondary to that general will but carries out its imperatives. This shift is the realisation of the coming of the fate of the entity into man’s hands and is the fulfilment of the Hobbesian political myth, to be thoroughly refined in Kant.

This shift is what is meant by the dispersal of the mythological entity, which itself first requires its initial colonisation by man: the fate of the myth is to come into man’s hands, as Blumenberg argued, and this is achieved by the authorised power of the sovereign magnitude generating a general will through processes of dispersal across social space. This colonisation and then dispersal can ensure that, through its functionaries and practices, each individual (the responsibility for whose fears has been transferred to the entity) is prevented from being fearsome: the purpose of the myth can be fulfilled. This also places the artificial Hobbesian notion of membership, which is unlike the organic Rousseauean notion, in a new perspective. This is an issue the seeds of which therefore lie in Hobbes but which his successors, beginning with Locke then continuing with Rousseau and Kant, deal with as the ongoing refinement of the political myth.

What Hobbes did, in proposing a solution for the problem of existential fear, is to set the terms for such refinement. The exploration of colonisation and dispersal in this sense was not his primary purpose. He is concerned with the establishment of absolute power to eliminate absolute fear. To that extent, Hobbes’ mythological disposition is clear and he set the framework for the subsequent development and refinement of the political myth. For him, this absolute power has a single, central subject which is the source of all prescriptions regarding behaviour, that is in law. It is god-like in its nature. He established the centrepiece of the idea of the mythological arrangement of State which his successors in the political tradition were to refine by arguing for its dispersal across social space and by making the
myth more sympathetic, without diluting the fearsomeness on which its elimination of fear depended. Theirs is the work on this myth.

The Mythological Significance of Hobbes

In fulfilling the mythological disposition of earlier political analysts, Hobbes crystallised and, it will be argued, transferred to those that became his successors in the tradition a problem with which we continue to be concerned. In Blumenberg’s terms, we remain unnecessarily consumed with answering pre-Enlightenment questions. This has been done by the establishment and then ongoing work on myth, achieved through the elaboration and then continuous refinement of the process of engaging the fully empowered State, by the forgoing of self-responsibility, to ensure its sympathy without diluting the fearsomeness needed to eliminate our existential and particular anxieties. It is properly arguable that, given that subsequent political theory and practice in the Western political tradition remains fundamentally concerned with addressing the implications of absolutism, Hobbes established the principal reference point for that concern. That is, his argument concerning the features of the preferred form of the State not only fulfilled all the key criteria of mythology but also established the principal reference point for the idea of the modern State itself. As a consequence of the mythology of his analysis, he created the modern State as mythological and set the idea of it on a firm course. It is true that he did not bring the fate of myth into man’s hands but he did set that issue up for ongoing refinement, in the manner that he addressed the issue of the elimination of fear.

It should be restated that the important distinction between the idea of the State and the actual forms which it takes is fully acknowledged. This point was made in Chapter 1. What is argued in this work is that Hobbes made the mark which became the primary, one might even say primal, reference point for subsequent elaboration of the idea of the State, this elaboration constituting one key aspect of the ongoing work on myth, the other being the material application of these ideas. It was his idea of the State which subsequent political theorists, beginning with Locke, have amended, that is to say have worked on. This work continues, both conceptually and through its concretisation. This is not to deny a relationship between this idea as a work in progress and the structural and practical work on the real State. On the contrary, it was the political circumstances of each time which allowed the emergence of both
the initial establishment of the Hobbesian idea and the serial refinements that it has since undergone, as will be argued with Locke, Montesquieu and Rousseau at least. That is, these historical circumstances allowed, even inspired, the disposition, realisation and refinement of the embedded archetypal, tectonic myth in its political form.

Further, to the extent that political theorists had influence, and it is arguable that many of those being considered here had such influence, their mythological theoretical propositions in turn serially influenced the structural refinement and therefore the operation of the concrete State. It is in this latter context that practical political judgements are made within communities regarding the extent to which these refinements have moved political arrangements closer to the realisation of the archetype. It is also in this context that judgements are made regarding whether the performance of particular governments, that is incumbents, of State are satisfying the dual mythological expectations held of them or whether they should be replaced, or whether such performance reveals structural flaws that require further refinement. Further, as will be seen in the penultimate Chapter of this work, these ideas also illuminate the concrete reality of the practices of the State.

Despite Hobbes’ intentions, despite the immediate political problems he was attempting to address and the scientific nature of his enterprise, it is clear that the model of the State which he conceived shares all the key features of a mythological magnitude. Further even than that, this model was not only mythological but was at least prototypically mythological65, in that it was a magnitude which man was induced to create and over which the community generally neither had nor wanted to have control, due to the nature of attributed action and because of the fully beneficent nature of the sovereign power. That is, it was an absolute power, to which there was a claimed desire for absolute submission and from which was a claimed expectation of absolute sympathy. There was no concern in here that absolutism could itself be a source of arbitrary, absolute fear. This idea was to be mankind’s escape from existential anxiety into a protective State and it was the absolute nature of the sovereign power that ensured this protection. It would be for others, beginning with Locke, to deal with the fearsomeness of the mythological State by beginning to bring it into man’s hands, though without diluting that fearsomeness.

65 see above Chapter 1, section on ‘State, Legitimacy and Myth’, regarding the three elements of the relationship between the idea of the State and the State itself
Although there are clear differences in their key premises, the Hobbesian paradigm will be argued to be the context within which the Lockean analysis should be seen. This will be argued to be so on conceptual grounds, that is that Locke worked, within the political theoretical tradition, on problems posed by Hobbes’ conception of the State rather than worked on the idea of the State as on a *tabula rasa* or in some other context. Secondly, it will be argued that Locke not only worked within the Hobbesian paradigm but was surely aware he was doing so, even though his immediate protagonist was Filmer. As with Hobbes, before any judgement can be made about Locke’s mythological disposition, it is necessary to examine the Lockean enterprise in its own terms. The examination of the Lockean text will be informed by the analysis of Locke’s work by Dunn, and to a lesser extent by Waldron, Strauss, Macpherson and Manent. In effect, the textual examination of Locke will be more a test of the interpretation by Dunn and Waldron than that of Macpherson and Strauss. In establishing his critical position regarding Locke, Dunn distances himself from the analyses of Locke by Macpherson and Strauss. He regards the Marxist analysis of the former as penetrating but a distortion of the Lockean argument and he states that Strauss’ claim of the strong connection between Locke and Hobbes would have been unknowing on Locke’s part. Although the Straussian position would lend immediate and strong support for the position adopted in this thesis, that is that Locke was building directly on Hobbes’ work, there are elements of the interpretation of Locke put by Dunn and Waldron that, if

---

66 This will be against the sense of the argument by J. Dunn in *The Political Thought of John Locke*. Dunn claims that Locke ‘merely and blandly ignored’ Hobbesian arguments in the *Two Treatises* (see p.83). Although Dunn, like Laslett, is correct in asserting that Filmer and not Hobbes was Locke’s target, it is enough for this thesis to argue that Locke’s target was absolutism, an enthusiasm that Hobbes and Filmer shared. As Laslett states: ‘Nevertheless Hobbes and Filmer shared nearly every one of the attributes of absolutism as it was rejected by English parliamentarians – will as the source of all law and the form of all authority, the necessity of perpetual and absolute submission to the arbitrary dictates of an invisible sovereign, the impossibility of mixed government. In so far as Locke’s writing was directed against these things, it would not seem to have mattered whether it was Hobbes or Filmer he had in mind’, in P. Laslett Introduction to Locke’s *Two Treatises of Government* p.70. But Filmer constructed no political society from his absolutist views, and therefore had no direct political mythology. Hobbes did. It is the political society of Hobbes, drawn from the absolutism he shares with Filmer, which is of mythological interest, so it is proper to look at the mythological implications of Locke’s rejection of absolutism by looking at that rejection in the context of Hobbes, more so than Filmer.

67 L. Strauss *Natural Right and History* (Chicago 1965) pp.221, 222, 227-9, 231-233 (especially), 249, 250 (especially)

68 *The Political Thought of John Locke* p.158, 219

69 op cit p.233, where Strauss talks of Locke’s construction of his own ‘leviathan’, and p.250, where he states that Locke ‘Moved by the same spirit (as Hobbes) identifies the rational life with the life dominated by the pain which relieves pain’
sustainable, better fill out the argument put here. This is no denial of the impact of Hobbes on Locke. On the contrary, their connection is merely given a more circuitous but richer route by looking at Dunn. It is this route which will now be explored in depth. Further, although Dunn’s argument may in the end be regarded as richer than that of Macpherson, there is no denial here that one clear effect of the Lockean argument was to contribute to the exploitation of non-propertied workers and that this fact might be argued to have a place in the mythology of the modern State. But all this must follow upon the examination of the Lockean text.

The purpose of this examination of the text is to allow a judgement regarding the extent to which Locke can be seen as having amended but consolidated the Hobbesian mythological State. To this end, we will now consider, in turn, the theological base of his argument against the absolutist Filmer; the central role of the religious calling of the individual, and the value of one’s property broadly defined, as being within that; how the oppressiveness of social organisation is overridden only by that; the supremacy of the Parliament as a strategy to avoid the exercise of prerogative power; the way that his theological and jural conception of the state of nature complemented his argument for equality and freedom; the need for a constitutionalist framework to constrain the abuse of power that followed the move to civil society; his highly conservative conception of political participation and the obligation of tacit and express consent; and the conservative nature of his conception of political resistance.

**Locke, the Calling and the Legitimate Polity**

The first premise of the argument by Dunn and Waldron is that one must first see the thought of Locke in theological terms. That is, only in that context can the full range of Locke’s conceptual elements and arguments be made full sense of. In particular, although Dunn firmly places Locke in historical, political time and acknowledges the impact of that on his thought, in the end it is the firmly held religious convictions, especially the Calvinism, in which he was raised, which are argued to have been predominant in Locke’s political theory. It is the argument to be put here that, beyond his Calvinism but complementing it, it was his own insecurity that made unlikely other interpretations of the world: he is clear that ‘The

---

70 Certainly Dunn thinks so. See pp.132, 215, 217, 219, 221-222, 228, 233-234, 250, 262-265
71 Waldron emphasises Locke’s Christianity rather than his specific Calvinism in *God, Locke and Equality* p.12
great end of Men entering into Society…(is)…the enjoyment of their Properties in Peace and Safety”\textsuperscript{72}.

The primary reference of his religion provides the context of the central role of the ‘calling’ for Locke, which is the foundation of the lives of all men because it is the role determined for each person by God. Locke accepts the oppressiveness of existing social structures, except where they contravene this foundation. So, the liberties that he champions are either those which allow the individual to meet his calling or allow him to oppose those structures when they seek to sanction the forcible appropriation of property from their legal possessors or when they claim religious endorsement for the corrupt practices of the powerful\textsuperscript{73}. Contrary to those like Macpherson who argued that he was a leading proponent of possessive individualism, Locke regarded unlimited appropriation as morally perilous, even if it did raise the standard of living\textsuperscript{74}. His egalitarianism was Christian\textsuperscript{75}, in that for him it was not the authority of any human minister which counted but each individual confronting his God in a social world which neither made.

This is the individualisation of the religious experience which relegates social organisation to the minimal value of ‘contingent convenience’\textsuperscript{76}. The individual remains within an intractable hierarchy but his individual theological needs become for Locke of pre-eminent importance. This pre-eminence of individual expectation was not incompatible with the fact of social inequality, unless that interfered with the calling. The calling was sustained by labour. However, the purpose of this was the fulfillment of the will of God\textsuperscript{77} and therefore the attainment by the individual of salvation, rather than the underpinning of the capitalist system of production. Terrestrial utility was to be allowed but men were owned by God and should act to satisfy his expectations. This was the law of reason\textsuperscript{78}. For Locke, the calling gave each individual his place in a social structure which was, and for him would remain, unequal but in which the economic conditions that were associated with his religious responsibilities, the satisfaction of which were protected, could be pursued.

\textsuperscript{72} J. Locke \textit{Two Treatises of Government} II s.134 p.355  
\textsuperscript{73} ibid II s.12 p.275 ‘As much as Reason is easier to be understood, than the Phansies and intricate Contrivances of Men, following contrary and hidden interests put into Words’  
\textsuperscript{74} ibid II s.41 pp.296-297  
\textsuperscript{75} Waldron pp.5, 12  
\textsuperscript{76} Dunn pp.249-250  
\textsuperscript{77} \textit{Two Treatises} I ss.41, 42 pp.169, 170  
\textsuperscript{78} Dunn pp.252-253.
Locke’s arguments were theological and they were patently directed against Filmer. This was largely because, irrespective of Locke’s own Calvinism, the absolutist arguments which threatened Locke’s beliefs were argued by Filmer in theological terms. Locke’s argument concerns the extent to which, in such an unequal social structure as the England of the seventeenth century, a man may have power over another man. The centrepoint of Filmer’s argument was that the existent social world embodied the providence of God. There was always continuity and homogeneity between man and God, who must have provided to man throughout his existence a set of rules for social behaviour which were embodied in institutions of social control.

For Filmer, contractarian political theories implied anarchy. That is, they breach the great chain of being from God. But the transfer of authority from God, which began with Adam, plays a double role in Filmer. The transfer of authority and of God’s gift of property were a single act: that is, all authority is property and all property depends on authority. The relationship between man and the natural world was only conceivable through property and no-one but those with authority has a prima facie legal and moral claim. It was this which forced Locke, in response, to argue that property right is not reducible only to positive law, that the king is not its only owner by any process of transfer and that holding it is a right against forceful seizure by anyone including the monarch. “More searchingly, (this) forced (Locke) to give an account of how…the human race could have alienated irrevocably their entire freedom to political institutions which under…the British Constitution left them substantially unfree. The abstract relationship which Locke employed to set out his answer, the state of nature, is the focus of the most startling of the myths and misconceptions which surround his thought. The tactics in each case were to substitute a more complicated set of relations for the unitary simplicity of Filmer’s model. In place of the crude antithesis between

---

79 ‘These institutions must have been subject to a single supreme authority at every point and all rights under them must have been determinations of his will. And because all rights and all powers are determinations of his will, because it is the sole locus of legitimate human authority, his power must be transferable. Dominion is a form of perpetual property. It belongs to God, is conferred by him upon individual men, and transferred from one man to another by his will’, ibid p.61
80 R. Filmer Patriarcha p.71
81 Two Treatises I ss.41-43
everything belonging to everybody…or everything belonging to Adam or his heir, the world is presented as belonging to nobody but available for the appropriation of all" \(^{82}\).

But Locke’s response to Filmer was across a range of issues. He rejected Filmer’s argument that the Old Testament’s revelation of God’s bequest to Adam is a sample of divine positive law: where God has spoken, mere men must be silent. For Locke’s state of nature, his alternative to Genesis, is not historical but it does specify the continuing moral order within which human beings themselves make history by their voluntary actions \(^{83}\). Further, his response to Filmer’s challenge regarding the issue of the derivation of right from the people was undertaken through his concept of conditional tacit consent. He also accepted Filmer’s charge that natural freedom implied the permanent right of individual secession from a polity. For Filmer, God’s intentions in creating government, the grounds for obedience owed to the usurper and the duties of the latter are all directed to preserving life \(^{84}\), that is to make it secure. For him the contractarians denied the existence of this structure of authority, which went from the monarch through to the father of the family: all kings were fathers and all fathers ruled \(^{85}\), hence his invocation of the fifth commandment as a means of insisting on obedience. For Locke, many of these issues come down to who should judge the degree of oppression which justifies popular resistance to the government \(^{86}\) and, by implication, how to deal with fear. In this context, it can be argued that the oppression and resistance are what the Two Treatises were about. Therein lies the seed of his mythological significance.

Locke had to deal with this question of authority and do so in terms that dealt with Filmer’s account of it. The practical problem which Locke faced, a problem chrysalised in Patriarcha, was how to deal with the factors that were generating the deep fear among the Whigs. These included the threat of popery and its associated menace of the arbitrary use of prerogative power, the perceived solution to which was to establish the supremacy of the parliament, thereby eliminating autonomous executive power. For their part, the Tories were intent on preserving the autonomy of the executive and the hereditary succession to the throne. But the Whigs were conscious of the subversive implications of their strategy, so they

---

\(^{82}\) Dunn p.67, where he refers to Patriarcha pp.273, 157, see also Two Treatises II s.25 p.286

\(^{83}\) Dunn p.68

\(^{84}\) Patriarcha pp.232, 233, 234

\(^{85}\) Dunn p.73;

\(^{86}\) Two Treatises II ss.224, 225 pp.414-415
sustained a commitment to the ‘true Prerogative’, that is one exercised in the interests of the people as interpreted by their representatives, that is themselves. But they needed an ideological position that avoided Filmer’s charge of anarchy and assimilated their position ‘firmly to the solid continuous historical order of the English polity.

This was Locke’s enterprise in the Two Treatises, that is to provide a systematic refutation of absolutist theory in the form of Filmer’s patriarchalism. It set the limits to legitimate royal authority and empowered the community to judge whether they had been transgressed: it was the proclamation of the right to revolution although he hardly encouraged the exercise of that right. The background to this remained the desire for order and allegiance but the rights of the individual to resist the excessive use of absolute power within God’s world were now in the foreground. This is the context in which Locke asserts the superiority of the legislature over executive power. Indeed ‘the legislature is not only the supreme power, but sacred and unalterable’. Once the legislature is constituted, the people have no power to act so long as the Government stands, that is except for revolution. The legislature was important because it provided representatives chosen by their communities, thereby binding them to the laws they pass and in so doing providing an institutional check on taxation and therefore on the arbitrary appropriation of private property. Shaftesbury wanted greater representation of the landed gentry but Locke, in a manner that will be explained below, opted for a novel argument regarding the use of prerogative power.

It was against this wide background that Locke assembled his argument in the Two Treatises. Its direct premises came from the background he shared with Filmer, that is that God created the universe, and the relation of every part to the whole, for His purpose. The question that follows, given that the lower ranks of creatures subserve the higher ranks, is whether this justifies the jural relations between men, that is how much political power can one man have over another and especially if a monarch uses his power immorally. Locke’s challenge was to

87 op cit pp.44-46, for Locke’s views, and regarding which see Two Treatises ss.159-168 pp.374-380; see also Waldron p.135 regarding Locke’s insistence on the principle of equality in the exercise of prerogative powers

88 Two Treatises II s.209 pp.404-405
89 ibid s.134 pp.355-356
90 ibid II s.198 pp.397-398
91 ibid II s.205 p.402
92 ibid II s.138 p.361
93 ibid II s.158 p.373
94 Dunn p.89 but Waldron at p.54 argues that the direct relevance of the ‘Great Chain of Being’ argument for Locke is exaggerated, if not wrong.
unpack political relationships to the point that such immorality could be resisted but not so far as to undermine God’s purpose for man\(^95\).

Locke’s notion of the state of nature, along with the embedded Law of Nature, reveals how he begins to meet this challenge, since, in that state, man belongs to the created order of nature but can make his own history. This state is ahistorical but not asocial\(^96\). It is the state in which men are placed by God, so the reading of God’s purpose for man, especially through Christian revelation, is crucial. In saying so, Locke rejects Filmer’s reliance on the Old Testament in favour of a natural theology which emphasises the Christian normative creaturely equality of all men\(^97\). This is Locke’s entrée into both the constitutional limits of political authority and bourgeois property rights: men make claims on, and have responsibilities towards, other men and nature. His state of nature is a criterion outside history in terms of which to judge its moral notions. So not only is it not asocial but it is also not psychologically or logically prior to society. It was a response to the denial by Filmer of any government emerging from a state of nature and Filmer’s reference in that context to Genesis\(^98\). Filmer’s argument that the unitary authority devolved from Adam to the sovereign was despatched by Locke by pointing to the plurality of legitimate sovereign authorities, including those in conflict. Filmer could not claim in this situation any law by which to judge sovereigns because there was no sovereign to validate it\(^99\).

So in Locke’s ahistorical state of nature under the theological law of nature, men were equal and free. None had authority over another or the right to restrict his law-abiding behaviour. Only if they breach the normative behaviour sanctioned by God or are enslaved following a just war should they be treated as beasts\(^100\). But by definition the state of nature is a jural condition of equality and freedom, uncontaminated by history as the source of wickedness. Rather than an exhaustive set of rights and responsibilities, it is the jural context against which these should be set and understood, a jural template if you like. It is logically prior to the state of war or the legitimate polity. It is any relationship between men without aggression

---

\(^95\) ibid p.94
\(^96\) *Two Treatises* II s.145 p.365
\(^97\) Waldron pp.5 and 12
\(^98\) *Two Treatises* II s.14 p.276 and s.100 p.333
\(^99\) ibid II s.14 p.276
\(^100\) ibid II s.172 pp.382-383
and without the explicit reciprocal normative understandings that constitute a polity\textsuperscript{101}. Locke does not deny that men are born into families, biologically incapable of survival outside such units and requiring a long period of education to produce the habits of moral conduct, but he dealt with this at such length only because of Filmer’s patriarchal model. Men are forced into society by the enticements of the family but also, due to the Fall, the need to embrace labour and, because there is scarcity, private property.

This is the cause of insecurity which men meet at the hands of other men. So in these pre-political conditions, they remain with the family and accept the authority of their father as their agent with the world\textsuperscript{102}. Locke was baffled by the manner in which families became a society, except to explain it by accretion, cooperation and ultimately consent, converting this into a political community. This was the early golden age of government, where kings were fathers, which was disrupted by the acceptance of money as a means to exchange and wealth. It is the differentiation of wealth between men that creates social conflict and moral degradation: political organisation is not a precondition for an advanced commercial society but it is a precondition for its continuance over time. This was due to external conflict caused by the hunger for land, the result of economic development and population growth, and internal conflict, due to scarcity and acquisitiveness. These combine to make government essential as a protection both against external aggression and for internal order. But it is the extensive power consequently given to the good ruler that is inevitably abused by the bad, leading to revolution and to ways to fetter monarchical authority. For Locke, only Christian revelation and the restraining effect of constitutionalism could limit the disasters which threatened social order\textsuperscript{103}.

The Lockean argument regarding the logical pre-conditions for a legitimate polity derived from his move against Filmer’s position that God provided moral education in eternal structures of social authority. Locke saw this as the manipulation of His order by a handful of rulers and he responded by arguing that God has imposed religious duties on each individual through their intellectual capacity to know moral truth: all men are equal because their jural situation is the set of duties they owe God, for which they logically rather than contingently

\textsuperscript{101} ibid II s.19 p.280  
\textsuperscript{102} ibid II s.105 p.336 and s.74 p.316; see Waldron p.39 regarding Locke’s view of the equal importance of the authority of mothers  
\textsuperscript{103} Dunn pp.117-119
require the particular kind of freedom that allows autonomous choice. The highly conservative consequence is that the legitimacy of social arrangements is drawn from the will of its participants.\textsuperscript{104}

This is not a call for mass democracy\textsuperscript{105} but a series of relationships necessary to accomplish God’s assignment. Against Filmer, Locke argued that rulers had no indefeasible rights. It was the behavioural realisation of the duties of submission by subjects which only contingently realised those rights and only so long as rulers did not deploy these duties to adorn their private purposes. Locke never proposed an egalitarian political structure as an alternative to the repressive society of seventeenth century England. All society had to do was enable individual religious duty in an environment of the innocent delights that came from economic progress. This was the insensitive basis of legitimacy. In this context, the rights of rulers derive from the wills of subjects. Mutual obligation has been created and political obligation is inseparable from the structure of individual religious duty.\textsuperscript{106} The problem for Locke was the authority to deal with those who encroach on others’ jural space. His solution was to invoke the law of nature, which governs the relationships between men and allows punishments for infractions and which derives its legislative power from God. Its foundation is logical not historical and it applies only to the execution of His purposes.

This is the backdrop for his specification of a political society, a key condition of which is that it has a binding decision procedure. Since this must recognise that no man has authority over another, the procedure must take account of each person. Hence his prescription of majority voting on legislative issues, although this is not majority voting by the whole population, which he would see as both dangerous and practically absurd. For Locke, tacit consent to the views of the majority, tightly defined, is obligatory for all citizens, generated by the hypothetical agreement of the individual to be a member of the society.\textsuperscript{107} These obligations require that all individuals sit in formal structures of reciprocal rights and duties, none of which relate to any rights of rulers but only to each other as fellow subjects and based

\textsuperscript{104} Two Treatises II s.54 p.304
\textsuperscript{105} Although Waldron does argue that Locke’s sentiments were more democratic than has been generally accepted pp.84, 116
\textsuperscript{106} Dunn pp.122-125; Waldron emphasises that in Locke there is a strong link between basic equality and religious doctrine p.19
\textsuperscript{107} Dunn pp.126-129; Waldron argues that Locke’s views about consent cannot be read to exclude those without property, for example, from the political process pp.120, 125-126, 136

105
on the principle of prudence, that is the consequence to others of disobedience. Such obligations are logically dependent on the prior consent of those subject to them and this takes two forms. Tacit consent is incurred by anyone who voluntarily takes advantage of the resources of the country and simple voluntary territorial presence is sufficient for this. It is this which in part forms the basis of sovereign executive power, for it ‘is derived from the transferred power to execute the law of nature possessed by each member of (the society)’. The other form is express consent, such as an oath of allegiance, which is the making of a sign of indefinite agreement to obey the rules.

Locke’s argument strikes some trouble at this point, for, as Dunn points out, although he stresses the voluntary nature of the commitment which makes a man a full member of a society, he describes these as terms imposed on him by a society as a condition of his drawing benefits, such as the right to inherit property. In dismissing Macpherson’s argument that this is the only motive in Locke for entering political society, for Dunn it is ‘coming of age’ that is the occasion of the giving of consent. This brings with it full political responsibility, not just the right to dispose of property. Locke is trying to dismiss Filmer’s claim that allegiance is a natural relationship, based on the paternal relationship with a territorial overtone, so that he can argue that legitimacy and therefore allegiance is contractual. The problem is the additional claim that society sets the terms under which an individual, landed gentry or not, will be given the status and therefore rights of a member of society and subject: ‘As an incipient member of the society he does not have a right to reject such membership and remain within the society’. This difference between voluntary and enforced allegiance, which is the trouble that Locke strikes, is located in the centre of the mythological analysis. We shall return to this shortly.

Locke’s notion of tacit consent, significant in relation to this notion of allegiance, is not incoherent. He is not here forgoing the right to resist a government should it be guilty of morally vicious behaviour, since he is only arguing in principle why a government may be resisted, not in relation to particular cases. Consent is necessary in a legitimate political society, but this consent is not a sufficient condition for the force of any act of authority in a

---

108 Two Treatises II s.119 p.347 and s.122 p.349
109 ibid II s.119 p.347
110 ibid II s. 61 p.308 and s.62 p.309
111 Dunn p.140
But Locke is not specific about the creation of a legitimate political society. He clearly accepted the historical origins of the English constitution, despite the unsteadying hiatus of the Norman Conquest. He rejected absolute monarchy because the form of its claims to legitimacy is incompatible with the logical precondition for legitimacy, which is that absolute monarchy could be based on consent, but this would make its basis consensual and this is what the theory of absolute monarchy denies. This issue also has mythological implications, as we shall see. Unlike Hobbes, Locke also denies that conquest can ever be a basis of legitimacy, since legitimacy requires the voluntary and formal acceptance by its subjects and general submission is not a general consent. Locke did not provide any criteria for free, mutual agreement but did consider agreement as being made on behalf of the subject by representatives. But their selection would involve no egalitarian, or even formal, process: for Locke, social structure is such that hierarchy was unthinkingly accepted by most men and this was morally appropriate. It is the acceptance of the distribution of power and authority that constitutes legitimacy, so long as there is a framework of recognised institutions for articulating the will of the people.

Legitimacy does not for Locke exclude the authoritative use of prerogative power. Certainly he elaborates the authority of the prescriptions of a consensually based legislature, wherein the legislative sovereign executes his rights to execute the law of nature, and the consequential right to demand the obedience of subjects. These rights are determined by the constitutionally proper positive laws. But a more extensive power of execution is the prerogative power, necessary because legislation is incapable of providing for the full complexity of social circumstance. Filmer argued that, although its proper exercise is located in the rule-bound tradition of constitutional practice, it is properly seen as logically prior to statute. Locke, acknowledging the fact that there are many cases to which rules do not apply and in which there is a demand for the deployment of force, faced the challenge of the control

---

112 Two Treatises II s.151 p.368
113 ibid II s.192 p.394
114 ibid II s.192 p.394
115 Waldron argues that majority consent does not deny equality in the process of participation (p.130), although he struggles heroically in arguing that Locke did not intend to exclude such groups as married women from such participation (p.124); cf. Two Treatises II s.2 p.268 where Locke says ‘To this purpose, I think it may not be amiss, to set down what I take to be Political Power. That the Power of a Magistrate over a Subject, may be distinguished from that of a Father over his children, a Master over his Servant, a Husband over his Wife, and a Lord over his Slave’
116 op cit II s.7 p.271
of this power\textsuperscript{117}. The challenge derives from the fact that the constitution determines what the power may not do, not what it may do. In principle, therefore, it may be used against the law and there can be no terrestrial judge of the rights of the issue.

Locke realised that the prospect of the use of this power reverting to that imagined in the idealised paternalism of Filmer, with the tacit consent for socially good acts that this would draw, was impossible. Men made the social world, with all its manipulations in the interest of men’s historically heterogeneous purposes, and could not transfer responsibility for this to God\textsuperscript{118}. Equally, the social world is totally historical and so cannot furnish any abstract criterion with which to judge history, so there can be no complete resolution of social dilemmas. Here the issue of prerogative is felt hardest. Individuals retain the right of appealing against the misdeeds of the legislative to an eternal authority, thus reducing the polity to anarchy. Despite his support for such action in principle, Locke keeps this possibility behind the historical consent to a complex of social and political institutions which served their interests. Men have consigned their social fate to be determined by a set of rules and its custodians. In so doing they have both conferred on their environment a greatly enhanced predictability and order and avoided the naked confrontation of self-righteous wills. But in some measure men could not escape entrusting their fate also to a power which cannot be regulated. The formal legitimacy of this power lies in its use for the general good\textsuperscript{119}.

But this legitimacy is not socially located. The final criterion is the consent of the subjects, not as constitutionally mediated consent of a legislature but the continuing consciousness of each member of society. So prerogative power finally has, unlike for a royalist like Filmer, no authority over the individual. Obligations are only those recognised as such. Locke did not deny social authority: his entire account of political change depends upon the dialectic between the urge to accept the authority of benign monarchs but reject those monarchs who abuse that authority\textsuperscript{120}. This is the archetypally mythological dilemma, wherein one apparently has the final right to direct action against the oppressive use of centralised and delegated force but where in practice one is required to forgo one’s right to do so to

\textsuperscript{117} ibid II s.164 p.377, ss.143-148 pp.364-366
\textsuperscript{118} Dunn p.153
\textsuperscript{119} Two Treatises II ss.158 p.373 and s.164 p.377
\textsuperscript{120} ibid II ss.162-166 pp.376-378
constitutional institutional processes, so that the prospect of anarchy and therefore fear may be avoided.

In this context, one can reject any claim that Locke, following Hobbes, contributed to a deterioration in the moral responsibility of political acts because these are to be judged by what comes of an act and not in terms of a legal system enforced by divine sanctions. When Locke says that the normative status of an unconstitutional act may be changed by the end for which it is performed, say in the exercise of prerogative power, he does not imply that an immoral act can be sanctioned in the same way. The exercise of such power in this way is not a breach of promise and can only be undertaken to carry out the axiomatic purposes of society, that is in the interests of subjects\textsuperscript{121}. Further, any claim that for Locke self-preservation is a right that is logically prior to any duty is rejected on the grounds that it overrides other moral considerations only when self-preservation was directly at stake\textsuperscript{122}. It might be noted in this context that Locke saw the relationships between states as predominantly conflicts for wealth and power, even if these were not justified on such grounds\textsuperscript{123}, and the justification for enthusiastic participation in the pursuit of wealth and power as to some extent the attempt to guarantee public security\textsuperscript{124} and that wealth is desirable because mankind has a right to these conveniences of life and it was God who commanded mankind to be fruitful and multiply\textsuperscript{125}.

Complementing this rightful search for prosperity drawn from one’s labour, Locke argues for the right of resistance to the State, basing his argument on the conditions that apply to the state of war or conquest, as disruptions to the peace of the state of nature. Force reduces to beasts those who use it and they may be treated accordingly\textsuperscript{126}. He proclaims this as the official theory of absolutism\textsuperscript{127}. When force is used to breach this peace, men may and should

\begin{footnotesize}
\begin{enumerate}
\item ibid II s.158 pp.373-374
\item ibid I ss.86 and 88 pp.205-207, II s.6 pp.270-271
\item ibid II s.176 pp.385-386, s.193 p.395
\item ibid II s.36 pp.292-293 regarding the attraction to the use of vacant land in America
\item ibid II s.26 pp.286-287, s.34 p.291
\item ibid II s.11 p.273-274
\item As Dunn argues: “It was because Locke so readily felt the structures of social control in the society in which he lived to be legitimate that he rejected their abuse with such intensity. They were so stable, so sheltering, so reassuring…The withdrawal of security was unendurable not only because men had come to depend so completely upon its existence, but because their dependence had itself conferred such deadly power upon their rulers…the trust which men instinctively feel towards the good ruler is so complete that the force which they consign to him (which is in its physical composition and its moral status their own force) comes to be overwhelming. The trust which they feel derives from the peace which he provides for them. The ‘trust’ with
\end{enumerate}
\end{footnotesize}
take action to restore this peace and safety, but through the magistrate\textsuperscript{128}. In this regard, Locke expresses the view that absolutism, a claim to control human beings against their will, is a claim to make them slaves, since its purpose is to prise away from the individual his freedom and open him to unlimited and immediate exploitation. Whether in a state of nature or in political society, absolute power is the loss of legal rights and freedom. Hence the individual has in perpetuity against the aggressor the right of war, that is to either destroy him or re-establish the integrity of the legal order\textsuperscript{129}.

Locke makes significant political observations in his related analysis of conquest, with its associated comments about the status of the slave. A war against an aggressor, that is a just war, may initiate the condition of slavery. But an unjust conqueror cannot acquire dominion by conquest. This is a direct rejection of a key argument of Hobbes. But no conqueror, even in a just war, can acquire title to property, especially to land, except in fair reparation. Equally, unlike for Filmer, legitimacy cannot for Locke derive from usurpation. Only the free consent of the subjects can bestow that, since the rules of succession are a constitutional matter\textsuperscript{130}.

Nor can the unjust use of force by rightful authorities carry authority over the subjects. Because subjects are highly subservient, this is unlikely to lead to the dissolution of the government unless the ruler is persistent or unless he establishes acute anxiety in the minds of subjects. In such cases, they may resist his abusive actions. The preferred means of resistance by the individual is the making of an appeal to the people, preferably to the Parliament\textsuperscript{131}. In an absolute monarchy, resistance is necessarily more individual and more physical. All this was ultimately drawn from the law of nature and the authority of that law with God. In effect, for Locke the yearning which men feel for security creates a psychological dependence upon their rulers which gives their rulers enormous freedom of action. Errors which they may

---

\textsuperscript{128} See \textit{Two Treatises} II s.8 p.272 and s.11 pp.273-274
\textsuperscript{129} ibid II s.17 p.279 and s.20 p.281
\textsuperscript{130} ibid II s.198 p.397-398
\textsuperscript{131} ibid II s.242 p.427. This is ‘appeal to Heaven’ reference, which Dunn claims can only mean the judgement of the Houses of Parliament (see p.182, footnote 1) but which for Waldron is an acknowledgement that a person embarking on a course of active resistance ‘understands there really is an objective right and wrong of the matter, and that he is ready to take the consequences at God’s hands if it turns out he is disturbing the peace and order of the realm for no good reason’ (p.226)
perpetrate will normally be accepted placidly by their subjects. But the destruction of the climate of trust will threaten their effective control and this destruction can only be caused by their gross misconduct. If it is destroyed, the people will sooner or later resist. This resistance does not necessarily turn to anarchy, even if the people become a confused multitude, because the hierarchy would not disappear and there would therefore not be a descent into a general state of war.

The Coherence of Locke’s Thought

The process of ‘making sense’ which brought Locke to the full exposition of his theological framework occurred in large part when he was in exile in Holland, where he repaired in fear from 1683 to avoid persecution for his political ideas. These ideas were not merely the result of psychology and theology but were also motivated by concern for others, what Waldron would call his sense of egalitarianism. Whereas Hobbes accepted as true an interpretation of the lives of most men which made them simply unendurable, Locke did continue to take seriously the problem of preserving rationality for the lives of all men. It was because self-preservation was in Locke’s eyes inadequate as a continuing human end that he could not abandon the majority of mankind to the careers of irrational, naturalistic deprivation which was all that the economy could make available to them. For him a state of licence was simply a destruction of security.

For Locke, it was not the economic circumstance of man that gave him the perspective to question the moral legitimacy of seventeenth century England. Rather, it was his personal relationship with God, the ‘Archimedian point outside the realm of human contingency from which the individual could judge the world and act upon it’, which allowed this because it ‘so completely and explicitly extricated men from the pressures of their contemporary society’. Locke’s religion, more than his politics or economics, would ease the pain.

This is the context in which the claim for both Locke’s liberal and bourgeois credentials should be seen. That is, the claim that he was both the proponent of the creation of a

---

132 Two Treatises II s.224 pp.414-415
133 P. Laslett Introduction to Two Treatises p.23-24
134 ibid II s.6 pp.270-271
135 Dunn pp.261, 260
predictable legal order, with the physical security and the central role of constitutionalist popular approval which goes with that, and the champion of the centrality of property rights and the spirit of capitalism. For both Waldron and Dunn, the primary motivator was neither of these, but Locke’s objection to the arguments of Filmer. As we have seen however, religion was not merely a theological exercise. It was bound to labour as the capacity to improve one’s lot in God’s world. Consequently, an important concern of Locke was to protect property against the arbitrary encroachments of political authorities. But this was not an interest in a redistributive social justice. His was more a strategy which dealt with the threat of non-Parliamentary taxation and the confiscation of freeholds.

From this argument regarding property, therefore, it is not to be taken that Locke was the champion of private economic life, although he did not discourage it so long as the motive was soundly founded in theology and the means of acquisition were consistent with one’s calling. This was the compromise delivered best through one’s labour. One’s calling was as much to those assigned as the victims of social organisation as to its beneficiaries. But hard labour could serve as a guarantee of the authenticity of one’s efforts, so long as one undertook this at God’s calling. Men are put into the world by God in particular social situations and with particular talents and their responsibility was to fulfill that role, especially by disciplining their entire lives to that fulfillment. Physical labour could serve as the concrete token of dutifulness. In all this, one may see Locke’s sense of egalitarianism - not a secular one and so with no proposals for the destruction of the terrestrial hierarchy. Men were equal but as Christians, however unequal they may be as members of societies. They were born into trouble and called to labour.

It is true that the seed of subversion may be seen in this egalitarianism, for in Locke’s account of the calling there was no role for a leisure class. But there was also dismay over those who failed to heed their calling to work. Further, God provides the knowledge necessary to

136 Waldron rejects Macpherson’s claim that Locke is to be read as allowing economic inequality in such a manner that he could not take seriously the equal humanity of those experiencing that inequality (see p.174). This rejection is consistent with his broad argument that Locke’s Christianity is the ground for his radical egalitarianism (see p.6)
137 Waldron p.5 and Dunn p.58ff
138 Two Treatises II s.140 p.362 and s.138 p.360
139 ibid II s.35 p.292
140 ibid I s.45 pp.172-173
141 ibid II s.41 pp.296-297
improve anyone’s physical situation and thereby generate economic growth so that man may procure happiness, both here and in the next world. This knowledge is attained through systematic reflection by all men, that is through hours of daily self-education. The discipline that results is not intended to control political rulers or improve civil order but is what ensures their own salvation.

For Locke, the social structures are social facts which constitute the context of individual lives: Locke’s central assumption may be seen as the ideological validity of hierarchy. He portrayed most men’s consciousness as so firmly and powerfully conventional that only the most cursory governmental attention was necessary to ensure that any social structure in which men lived over time was cemented together by profound expectations and emotional dispositions. It was this very solidity, this excessive plausibility of existing social structures which could be argued to have formed the real target of his most powerful works. The apparatus of moral indoctrination available to any society was crushing in its effectiveness and crude in its incidence. The *Two Treatises of Government* can then be seen as an attempt to develop criteria for restricting the range of legitimate claims which can be levied in terms of any society’s conventional moral principles. In effect, the social duty of intellectuals like Locke, and it can surely be argued that Locke saw himself in this light, is to create moral and social space for each individual against the compelling mass of the social structure. However, although Locke’s concern was for human freedom and despite the good arguments of Waldron in support of that, this concern did not extend into egalitarian political revolution. In fact, a fully egalitarian social democracy would have offended his deepest assumptions.

142 Dunn p.231
143 *Two Treatises* II s.208 p.404 and s.223 p.414
144 This is a claim against Waldron in that, although he rightly argues Locke’s tolerance for representative government (see Waldron p.116), there is little evidence that Locke himself supported anything like universal suffrage. Locke would have been content with the supreme power being transferred by the community to rule by a few select men, trusted nobles or oligarchs, or representatives, or even putting government into the hands of one man, perhaps electively or on a hereditary basis. See *Two Treatises* II s.132 (p.354), also Dunn pp.146, 225, 250, 265. Either way, it is not at all a fatal issue for the major theme of the thesis. Even if Waldron were right and Locke’s egalitarianism extended to a tolerance of something approaching universal suffrage, all it would mean is that Locke actually trod further down the road of refining the absolute Hobbesian magnitude, to bring it into the hands of man, than I am arguing he did.
Locke and Mythology

As a result of continuous civil strife, fear pervaded seventeenth century English society and it is hardly coincidental that Hobbes’ conceptual framework largely mirrored political arrangements at the time, arrangements that were bringing peace to what had been, and promised to continue to be, a society in turmoil.

Hobbes’ framework has been argued here to have been in effect an attempt to establish the proto-typical political myth in the Leviathan, a conceptual magnitude with absolute power created as an absolute limit to existential fear. It was itself therefore to be held in absolute fear, with the anticipated effect that it would effectively eliminate fear caused by the competing interests in the society. This fearsomeness requires the forgoing of self-responsibility to the magnitude so that the latter is absolutely empowered. This forgoing could be, and was, typically voluntary but if necessary induced or imposed and it is the basis of the understanding or covenant between the individual and the magnitude, a covenant elaborated into constitutional arrangements which reflect the undertakings of each party.

On this basis, as Hobbes argued, any incumbent acquires the legitimacy to rule so long as such a covenant can be claimed to be satisfied. Within this covenant is the responsibility of the magnitude to create sympathetic conditions of existence for its subjects or their ‘contentment’ as it was for Hobbes, as a strategic move to prevent the magnitude itself acting in an arbitrarily fearsome manner. As with the elimination of fear, however, the body of subjects have no purchase on what constitutes this ‘contentment’. Although not in its establishment phase, the Hobbesian magnitude was to become the subject of ongoing work such that its fate comes into man’s hands, as the means by which ‘fear’ and ‘contentment’ can be drawn by a wider range of subjects themselves. One means of this fatefulness is the constitutional dispersal of the magnitude across social space, which is the sustenance of the absolute strength of the magnitude rather than its weakening. Typically, what constitutes sympathy then comes to be determined for subjects by competition between interests. One manifestation of this dispersal is the conditional withdrawal of the magnitude from agreed spheres of activity, but this in turn becomes the basis of alliances between the dominant interests and the magnitude, which can ultimately never forgo its responsibility under the covenant regarding the fear/sympathy nexus. Importantly, the notion of subjection is fully
consistent with the concept of individual rights, since rights are the representation of the expectations of the individual under the covenant.

Now, if the mythological analysis of the State has validity, what should be apparent in the work of those that followed the conception of the Leviathan, itself with its roots deep in the English polity, are the beginnings of the work on this myth of the State the effect of which was to identify and resolve the implications of the Hobbesian mythology. This work should be seen to be motivated by a concern that the full empowerment of the absolute State has introduced, somewhat as a political Trojan horse, the real prospect of abuse of its power such that it becomes itself a primary source of arbitrary fear among its compliant subjects. Without diluting the fearsomeness of the magnitude, necessary always to give form to existential anxiety experienced by every individual, this work should therefore be seen to refine the constitutional arrangements that apply to the magnitude. This takes the form of the emergence of attempts to bring the fate of the entity into man’s hands by the emergence of, especially, dominant interests but a complement of which is the first extension of individual rights. There should also be evidence of the creation of space within which these interests and rights can act without interference, that is a withdrawal of the magnitude from specified areas of activity but without denying its final responsibility in relation to ‘fear’ and ‘contentment’. None of these changes are to be seen as a dilution of the fearsomeness of the magnitude but as its colonisation by and therefore the incorporation of ‘corporate’ and, less effectively, by individual interests. It is apparent from the analysis given here that all these features are in evidence in the work of Locke.

For the purpose of the argument put here then, it is not significant that Locke’s primary target is Filmer rather than Hobbes, since Locke’s real target is absolutism. What is significant regarding his opposition to Filmer is that the theological premises of Locke’s argument provides Locke with the means to establish the primacy of individual rights against the interests of the State. These rights are not only that the State may not interfere with the individual’s attempt to satisfy their religious calling but similarly regarding the individual’s laborious appropriation, enjoyment or disposal of property. It should be remembered that Locke does not restrict property to physical goods or land but includes their lives, liberties and estates, all of which rights are held but in a manner that is very insecure in the State of Nature, which ‘makes him willing to quit this Condition, which however free, is full of fears
and continual dangers; And 'tis not without reason, that he seeks out, and is willing to joyn in Society with others who are already united, or have a mind to unite for the mutual Preservation of their Lives, Liberties and Estates, which I call by the general Name, Property.\textsuperscript{145} Locke’s position against Filmer was that in none of this did those placed by God in a superior position in the social structure have power over other men. In particular, autonomous executive power would be eliminated by empowering the representative Parliament with majority voting. In such a manner would absolutism be constrained.

To effect this argument, Locke needed a notion of the State of Nature in which men are placed as equal by God. This notion was a template, uncontaminated by history, against which any polity, along with its attendant rights and responsibilities, could be judged. It was also a state in which, despite the freedom to appropriate its goods, there was insecurity due not to warring but to scarcity and from which men were therefore induced to withdraw to the security of civil society and government where they could pursue through contemplation and hard work their duty to God. The fact that he therefore felt obliged to solve this problem strongly suggests that for Locke the state of nature was still constituted by existential anxiety, although in a form not so intimidating as it was for Hobbes. He proceeded to affirm the natural or inalienable property rights of individuals\textsuperscript{146}, this forming the basis of his justification of the legislature as a powerful arrangement by which anxiety could be transformed into fear and there could be dealt with by affirming these rights: anxiety and fear could thereby be argued by him, in a manner which Hobbes could not argue, to be able to be limited. In effect and although with different results, for their own particular political purposes, neither accepted the virulence or intractability of anxiety, that is irrespective of what political arrangements were constructed for its limitation. They each therefore could not contemplate any strategy based on a self-determination which accepted that intractability and seeking self-determining ways to address it, preferring instead to assert its limitation by the construction of what was in effect rational myth.

But for Locke, man needs the freedom of choice required to properly satisfy his duties to God. The consequence is that the legitimacy of social arrangements is drawn from the will of

\textsuperscript{145} Two Treatises II s.123 p.350

\textsuperscript{146} Locke saw the state of nature more as a state of hunger than one of violence. From this derives the inalienable right of every individual to property (as life, health, liberty or possessions) and thereby the individual rights to punish transgressors; ibid II ss.6 and 8 pp.270-272; see also Gierke Natural Law pp.101, 103
its participants. For those that breach the common responsibilities of the State of Nature, or following man’s move to society, the law of nature allows for their punishment. More importantly, Locke allows for resistance against immoral acts of the State, in particular to restore the peace when absolutist force has been used to deprive individuals of their rights or freedoms. In this context, he emphasises the illegitimacy of any conqueror’s claim to property, especially land. It needs to be added here that Locke did seem to justify the enlargement of one’s possessions\textsuperscript{147}, that is the accumulation of capital. Dunn rejects any claim that Locke intended to morally legitimate capitalist production\textsuperscript{148} but it is not difficult to argue that capital accumulation was at least an intended effect, given Locke’s statements\textsuperscript{149}. It is virtually impossible to deny that, in addition to the political arrangements that he promoted, there was significant advantage from such arguments to dominant interests (that is, the propertied class) over those without such interests\textsuperscript{150}.

In all this, Locke’s mythological efforts were arguably generated by a desire to eliminate the anxiety caused by what for him was real political crisis. From all this it can also be said that Locke clearly rejected the magnitude in the absolutist form in which Hobbes had proposed it. He did so by establishing the priority of individual right to freedom and property over that of the holders of sovereign power. In mythological terms, Locke began to move the fate of the magnitude of the State significantly into man’s hands. But in establishing these rights in this way, Locke does not venture to abolish the concept of magnitude per se. On the contrary, we see that his notion of the Parliament is ‘supreme’ and, with any Government \textit{in situ}, the

\begin{itemize}
  \item \textsuperscript{147} ibid II s.49 pp.301
  \item \textsuperscript{148} Dunn p.211
  \item \textsuperscript{149} ‘as different degrees of industry were apt to give men possessions of different proportions, so this invention of money gave them the opportunity to continue and enlarge them’ and ‘it is plain that the consent of men have agreed to a disproportionate and unequal possession of the earth - I mean out of the bounds of society and compact; for in governments the laws regulate it; they having, by consent, found out and agreed in a way how a man may, rightfully and without injury, possess more than he himself can make use of by receiving gold and silver’, ibid s.50 pp.301-302
  \item \textsuperscript{150} It is not being fastidious or anachronistic to note that Locke was a stock-holder in the slave-trading Royal Africa Company, despite his claim that slavery was the antithesis of legitimate political authority - see Waldron p.204-205
\end{itemize}
people have ‘no power’. Generally, the calling gave each person a place in the social structure but Locke did not call that structure into question. Neither did he argue in principle against the use of prerogative, only that it was used in a manner approved by the Parliament. Locke certainly wanted order and allegiance to limit civil strife and it was through the legislature, to which the executive must be subject, that this would be achieved. Dunn’s claim that Locke was in difficulty regarding whether this allegiance was voluntary or obligatory can be explained within the mythological context as the difference between voluntary submission by the individual to the magnitude to eliminate fear and the enforcement of submission by others to ensure he is not fearsome.

Regarding the status of the legislature, Locke did not conceive it as a broadly representative body - he would have found any egalitarian political structure, especially mass democracy, unthinkable. Egalitarian social democracy as a moral ideal would have offended against many of his deepest social and moral assumptions. Majority consent was obligatory, and a tacit form of this was sufficient, with the presumption that sectional representation was sufficient to satisfy this feature. Hierarchy was unthinkingly accepted by most men and, for Locke, this was morally appropriate. He accepts the use by the custodians of social rules but also the use of power which cannot be regulated, so long as it is for the general good not as determined by their representatives but as judged within the consciousness of each individual. Therein lies the right to revolution, should the judgement be made of abuse of designated power in relation to the calling or property rights, although his hard preference is always that such protest be through appeal to the Parliament wherever possible. He denies that resistance should or would turn to anarchy. Locke sees that the overwhelming force consigned to rulers by the people has ‘conferred such deadly power on’ them but sees this as to be expected since their aspiration is the comfort of secure social arrangements. Further than this, he saw the ideological validity of hierarchy, though his aim was to set limits to the potential misuse of this power and this trust.

151 As Strauss says “In spite of the limitations which Locke demands, the commonwealth remains for him, as it was for Hobbes, ‘the mighty leviathan’: in entering civil society, ‘men give up all their natural power to the society which they enter into’.” Leo Strauss Natural Right and History p.231
152 Neither did he argue for any equal access to property, Dunn p.266
153 see Dunn p.146 ‘The selection of these representatives would no doubt have been carried out on at least as inegalitarian a basis as the English franchise of 1680, and it is not clear that any process of formal social choice at all was a necessary condition for their being considered as representatives. Locke’s picture of social structure is one in which hierarchy is as unthinkingly accepted by most men as it is morally appropriate for it to be so’.
So Locke has sustained the political mythological magnitude but begun to work on it to begin to bring it into man’s hands. He balances two features of this entity. On the one hand, the magnitude must be fully empowered to eliminate fear and create the conditions for contentment, especially to create a space in which each individual could exercise his right to pursue his calling. On the other, he makes a sustained attempt to have it incorporate, and therefore be the agent of, a wider range of the dominant interests of the society. He would not go so far as to include the common man, although some might argue that he laid some seeds for that with his particular notion of individual rights. It should not be seen that he left the magnitude in a more timorous condition than that of Hobbes, in that rare resistance to it was justified only if it severely abused its trust, for Locke never contemplated that there be no ‘supreme’ magnitude. Its incumbents were merely to be replaced through ‘resistance’ if they failed to satisfy their responsibilities regarding ‘fear’ and ‘contentment’ under the covenant. There must not be an abolition of magnitude per se, for that would necessarily be anarchy. As a consequence, it can be argued that Locke affirmed the mythology of the State by accepting the necessity of the existence of the widely empowered State and by beginning the work on that entity to bring it into man’s hands and make it more sympathetic to, especially dominant, interests.

Broadly, Locke’s analysis would be argued to be a correction of the two basic failures in Hobbesian theory and thereby the proper genesis of the liberal programme, that is, by establishing natural individual rights and then by protecting these against the incursions of an absolute power. However, these moves do not dislodge the Hobbesian fundamentals, that is, the edifice remains founded on the base of a presumed status of individuals as equal, free and rights-bearing but fearful of contingency in the state of nature; on the consequential presumption of a consensual move to political society and on the identification of arrangements claimed to ensure their protection and welfare. From the perspective of a rational mythology, it may be argued with equal conviction that Locke has only begun to correct the weakness in the Hobbesian myth which, despite the move to a political society from the vulnerability of the state of nature, left mankind fearful but now of the absolute monarch. The Lockean arrangements, centred on the establishment of a supremely powerful legislature, still require that individuals transfer ‘all their natural power’ to an entity subject to emerging constraint, that is they still forgo self-responsibility. The legislature is a means of

154 Two Treatises II ss.149, 150 pp.366, 367
converting anxiety to manageable fear but, despite Locke’s prescriptive insistence, by the very empowerment of the legislature it cannot ensure its elimination. Locke has amended the Hobbesian arrangements but not solved the problem which Hobbes produced. Rather than constructing a ‘final’ myth by accepting that anxiety can only be managed through individual self-responsibility, they were each committed to its limitation but, grappling with the dynamics of Reformation society, searched only circumstantially for arrangements which would give effect to this.

Although it was to wait for Montesquieu to be given its full elaboration, a key element of the Lockean framework, which has been referred to but not examined, was the separation of legislature and executive\(^\text{155}\). In this, the legislature remained supreme\(^\text{156}\) even though it ‘is not necessary...that the legislative should be always in being’\(^\text{157}\). This notion of separation is problematic, despite arguments as to legislative superiority and despite arguments that each is based upon the dual capacities of individuals in the state of nature, essentially because the deliberations of the legislature can produce law but not action and so are incomplete: only the executive can realise the necessary unity of law and action. The consequences are that, despite the Lockean argument to the contrary, the legislature is not supreme and the political state cannot be realised by representation\(^\text{158}\). What Locke thereby unwittingly effected was a limitation to the supreme power of the legislature, that is, beyond its necessary representative character and so its power to self-dissolve. The mythological effect of this was further insurance against anxiety in the form of legislative absolutism. That is, he opened the door to further work on the Hobbesian myth.

\(\text{155}\) ibid s.147 p.365

\(\text{156}\) ibid s.150 p.367

\(\text{157}\) ibid s.153 p.369

\(\text{158}\) P. Manent An Intellectual History of Liberalism p.52
Montesquieu

Locke’s attempt to limit the fear produced by the Hobbesian political arrangements was extended by Montesquieu through the doctrines of the separation of powers\(^{159}\) and the mixed form of the State, but still within the ‘Hobbesian’ framework. Montesquieu rejected the Lockean principle of legislative supremacy due to the danger it posed to individual liberty, thereby recognising in the Lockean legislature the very danger that Locke saw in the Hobbesian absolute monarch: the common desire for power\(^{160}\) and in that a continuing source of anxiety due to the likelihood of its abuse.

But Montesquieu rejected the Hobbesian claim that this desire is constitutive of human nature. Only institutional arrangements, whether monarchical, republican or legislative, produce this in individuals\(^{161}\). Therefore the solution also lay in reforming institutional arrangements, by neutralising these through separation and contest\(^{162}\). The benefit of representation perceived by Montesquieu is not so much its continuity with those it represents but its capacity to prevent the represented from taking active resolutions\(^{163}\). Like Hobbes and presumably Locke, he saw the danger and therefore the fear which results from unrestrained popular discourse. Diminishing the importance of the judiciary as generally required only when the other powers are in dispute and specifically in relation to England where this activity is exercised by the people (referring to the jury), he argues that the executive be separate from the legislature but for their effective equal strength, irrespective of the ‘in principle’ superiority of the latter, so that the tendency of the legislature to abuse its power with respect to those it represents is diminished.

\(^{159}\) See H. Blumenberg *Work on Myth* p.267, where he compares the malevolence of the single Cartesian demon with the Greek Gods, the individual power of each being capable of being pierced by another because of the ‘separation of (their) powers’

\(^{160}\) *Leviathan* pp.53, 70

\(^{161}\) Charles-Louis de Secondat, Baron de Montesquieu *The Spirit of the Laws* (Cambridge 1989) s.11.4 p.155: ‘it has eternally been observed that any man who has power is led to abuse it’

\(^{162}\) ibid bk.11.ch 4 p.155: ‘so that one cannot abuse power, power must check power by the arrangement of things’

\(^{163}\) ibid bk.11.ch 6 pp.159-160
It may be observed here that this rearrangement to promote the balance of strength between legislature and executive is not necessarily a neutralisation of their respective power as claimed by Manent. Montesquieu saw the flaw in the Locke’s ‘Hobbesian’ arrangement and attempted to resolve this within its own terms by balancing the powers. However, balancing powers is not their neutralisation. That he saw the role of the independent judiciary engaged when these two powers were in dispute implies that he was not arguing for such neutralisation. Neither is the subsequent emergence of the colonisation of the executive and judiciary by the legislature an insurmountable problem for Montesquieu. In fact, he perceived the danger of that and argued for its prevention.

There are two important features of this arrangement. First, that the necessity for decisions will overcome the competition between legislature and executive; and second, that the decisions made will tend not to be what either power wants (due to the necessity of compromise), although for Montesquieu they are likely to promote the liberty of individual citizens. This likelihood derives from the tendency of each power or party (that is, the legislature and the monarchy as executive) to attract its own partisan support, which requires satisfaction. Dynamically, the balance between these which results will be sustained by the tendency for support to shift to the party of lesser influence, due to both the desire born of personal interest and the desire of citizens not to allow one party the oppressive power which accompanies ascendancy. This also minimises any prospect of unilateral popular initiative\textsuperscript{164}. The essence of this arrangement for Manent is originary popular powerlessness, which can also be seen as a commitment to the limiting of fear. This powerlessness which limits fear

\textsuperscript{164} ibid bk.19.ch 27 pp.325-333, especially ‘most people would have more affection for one of these powers (i.e. legislature or executive) than for the other’ (p.325); ‘if one party gained too much, the effect of liberty would be to lower it while the citizens would come and raise the other party like hands rescuing the body. As each individual, always independent, would largely follow his own caprices, he would often change parties; he would abandon one and leave all friends in order to bind himself to another in which he would find all his enemies; and often, in this nation, he could forget both the laws of friendship and those of hatred’ and ‘As those who would most sharply oppose executive power would be unable to admit the interested motives of their opposition, they would increase even more the terrors of the people…But even this would help them avoid the real perils to which they might sometimes be exposed. But, as the legislative body has the trust of the people and is more enlightened than they, it could make them revise the bad impressions they had been given and calm these emotions’ and ‘Thus, if the terrors impressed on a people had no certain object, they would produce only empty clamours and insults and would even have the good effect of stretching all the springs of the government and making all the citizens attentive. But, if those terrors arose on the occasion of the overthrow of fundamental laws, they would be insidious, lamentable, and heinous, and would produce catastrophes. One would soon see an awful calm, during which everything would unite together against the power that violated the laws’ (p.326);
constitutes liberty for Montesquieu\(^{165}\). Again however, Montesquieu’s position should be seen as the balance, not the neutralisation, of powers.

The mythological implications of this are clear: liberty in such a constructed arrangement is constituted by that of which a citizen or her representative is incapable, due to the focus on the attempted elimination of anxiety or at least its radical limiting, rather than by what is able or required to be done (as responsibility for oneself) by accepting its inevitability and then constructing arrangements appropriate to that condition. Montesquieu argues that the tendency of his preferred arrangement to be both intrusive and oppressive, that is where law (which determines liberty in this context) becomes pervasive, is prevented by the denial of excessive rights or opportunities to any party, which constitutes the optimising of both liberty and independence. In a mirror image of the Hobbesian and Lockean strategy, Montesquieu may thereby be claimed in some sense to have headed back to a state of nature, in the sense that we are governed more exclusively by a State that governs us less. Without pushing this point too far, insofar as we are governed less, we are living more in a state of nature. And because this state of nature is still not a state of war, but offers us acceptable security and prosperity, we have no motive for leaving this state. Some might argue controversially that this is the fulfillment the original program of liberalism, that is by reversing the order of the factors: the representative institutional regime initially was the ingenious device making it possible to leave a state of nature that was compellingly (for Hobbes) or at least strongly (for Locke) unbearable; but finally refined (for Montesquieu), it became the ingenious device making it possible to live in an essentially satisfying state of nature as individuals came to constrain themselves through the balance of its influence\(^{166}\).

To this extent, Montesquieu can be argued to have increasingly fulfilled the Hobbesian agenda by realising the potential of the modifications made by Locke to the Hobbesian framework. For Montesquieu, existential anxiety has largely been eliminated by balancing effective powers. Manent does acknowledge that this reading of the effect of Montesquieu's arrangements, that is an artificial state of nature, is a contradiction in terms. His response is

\(^{165}\) P. Manent p.60

\(^{166}\) This is the position adopted by Manent, ibid p.63
that we are each divided between the natural man and the citizen now within us. That is, we are both in the civil state and in the state of nature\textsuperscript{167}.

This negative individualism is driven by the attempted elimination of anxiety converted to fear. It is at the heart of the Hobbesian paradigm through to Montesquieu and will be argued to continue beyond him. Its spirit is ‘to separate the will from what it desires, or to prevent each person doing what he cannot prevent himself from desiring. The people cannot do what they want, they can only elect representatives in the hope that they will do what the electorate wants; the representatives in turn cannot do what they themselves want, but must be keenly aware of what the executive wants; and the executive cannot do what it wants since it must seriously take into account what the legislature wants. A mechanism of decision-making that makes sovereignty useless now replaces the absolute sovereignty of Hobbes’ Leviathan and also that of Locke’s legislative body\textsuperscript{168}. effectively, while the concern of both Hobbes and Locke was to construct arrangements which would eliminate anxiety (from the war of all against all and from the fear of hunger), Montesquieu’s concern was to eliminate the anxiety created by those Hobbesian and Lockean solutions, thereby further shoring up the legitimate mythology of the State.

But this negative individualism is the essence of the denial of the possibility of a non-mythological self-responsibility. This ‘Hobbesian’ arrangement can be contrasted with that available in the Aristotelian Greek city-state, wherein compromise is positively sought in a genuinely agonistic deliberative process rather than institutionally pre-factored as it is in the Montesquieuean working through of Hobbesianism. The liberty which is constructed by the Montesquieuean process, based as it is on the proscription of incursions of and on others, is negative in that freedom ‘is less doing what I want than being able not to do what you want me to do’\textsuperscript{169}. This claim that the growth of liberty was negative is mythologically significant, especially given the proliferation of individual rights subsequently generated by the Montesquieuean arrangements. ‘Being able not to do what you want me to do’ is the creation of spheres of activity from which the magnitude withdraws, except that it is expected to protect that state of being itself.

\textsuperscript{167} ibid pp.63–64
\textsuperscript{168} ibid p.62
\textsuperscript{169} ibid p.62
One important effect of these complementary factors of the absolutist tendencies of State and its negative individualism was that arrangements of legitimate power continued the polarisation between State and individual that emerged during the late Middle Ages. The consequence was that the sovereignty of intermediate social and civil groups continued to be subverted, a fact which, consistent with his view of the importance of separation and balance of power but not consistent with his individualism, Montesquieu lamented. Although this trend of subversion was sourced in the long emergence of the State through both the Social Contract and the Rights of Man respectively, it is arguable to have also been reinforced by what was seen during the early Enlightenment as a greater capacity of the institutions of State to deal with the factors generating existential anxiety than could be achieved by intermediate groups. This subversion was facilitated, not instigated, by the emergence of the Hobbesian-Lockean form of the State, since it was well in evidence with the incremental destruction of the social system of the late Middle Ages, that is, with the emergence of the elements of the modern form of the State.

In Montesquieu we are therefore presented with the claim of an ultimate strengthening of the legitimate mythology of the Hobbesian-Lockean State as a device which carries the claim to radically limit anxiety, a strengthening brought about by elaborating the modifications that Locke made to the Hobbesian framework. In doing so, Montesquieu claims to have realised the mixed constitutional form of State as a state of nature devoid of war and hunger, that is, of anxiety born of social and natural causes.

It may be observed here that, following the radical contingency introduced by the turmoil that came with the factionalisation of the State following the emergence of Protestantism, it

---

170 see O. Gierke *Natural Law* 179 where he states that Montesquieu ‘expressly advocates the preservation of privileged corporations and their mediatory functions in a monarchical form of State, because their destruction inevitably perverts monarchy into despotism’

171 O. Gierke *Political Theories of the Middle Age* 82, 90

172 Blumenberg affirms the possibility of this in his argument that the emergence of political absolutism was the direct result of the factionalisation of the state which accompanied the factionalisation of theological absolutism, *Legitimacy of the Modern Age* 90

173 *op cit* 87
should not be surprising that a solution would be sought in which the State would come to assume an absolutist form: existential anxiety was generally and broadly increased, so it would be seen that a State form that provided absolute protection was needed to radically limit the fear born of that anxiety. Neither should it be surprising that the absolutist form required modification in itself, first through Locke and then Montesquieu, to eliminate the factors in these absolutist and post-absolutist (respectively) solutions to the original problem, which themselves generated fear.

However, in such arrangements there is no individual sovereignty. What there is, due to the fear of others within and outside the State, is a set of institutional dynamics which construct individual liberty in a form which proscribes, and ultimately prescribes, certain behaviour and establishes a perpetual covenant of submission to those institutions, rather than in a manner which realises individual self-responsibility. The objective meaning of these institutions is argued here to have been such that they denied any sense of positive self-responsibility.

Consequently, Montesquieu can be claimed to have demonstrated a strong mythological disposition. He did this through having accepted the Hobbesian mythological archetype, as amended by Locke, and by having protected its determinative power or fearsomeness. He attempted to protect the notion of the fully empowered magnitude of the State and to enhance that by correcting what he saw as its principal flaw, that is the danger of its possible excess which Locke had not resolved. He correctly saw that the possibility of such excess posed the greatest risk to its own continuance. So, he introduced amendments to check its power, without neutralising it, through a theoretical mechanism of internally balanced forces to prevent the dominance of any single institutional interest. This idea included creating spheres of activity from which the State sympathetically withdrew but without forgoing its dual ultimate responsibilities. Competition between dominant, institutional interests was for him preferable to any single institutional dominance, as with the legislature for Locke.

The institutions of the State as conceived by Montesquieu may not have been able to act unilaterally but they did not constitute a weak State. It was still a State to which obedience was due, so long as those who were obedient believed it acted sympathetically towards them. Appearing to constrain the fearsomeness of the State, the separation of powers promoted the dispersal of the fully empowered State across social space, even if this was still slowly being
matched by the increasing sympathy, in that it encouraged competitive alliances between an increasingly wide range of interests and thereby promoted the colonisation of the State by such interests as the landed gentry, the emerging bourgeoisie and the Church. Competition, withdrawal and colonisation ensured the continuing existence of the magnitude.

However, Montesquieu’s contribution to the mythologising of the State went beyond mere intellectual mechanics. Kriegel refers to the tracing by Emile Boutmy of the associative rather than the representative genesis of modern government\textsuperscript{174}. This reveals that Montesquieu’s emphasis on the separation of legislative, judicial and executive functions denied that there was in fact juridical unity that subordinated these other functions to its rule. That is, there was more unity than the separation that Montesquieu asserted. Rather than the myth of a founding parliament, Royal will functioned from above downward through these institutions. It is in this context that Halevy’s identification of the amalgamation of judicial and legislative powers in England early in the nineteenth century should be seen. He revealed that British judges could exercise legislative functions and legislators the functions of the judiciary. As a consequence, ‘once again we are compelled to correct Montesquieu’s interpretation of the British Constitution. His two definitions of that Constitution - a constitution based on the separation of powers, a mixed Constitution - are not equivalent, and the latter is the more accurate. The British Government was not a Government in which all the powers were clearly distinguished. It was rather a Government in which all the constituent parts were confused, and all the powers mutually encroached’\textsuperscript{175}. The point here is that Montesquieu’s idea of the advantages of the embryonic separation of the British political institutions was a misreading of the actual cross-hatched institutional arrangements as they existed and operated. His was therefore a special contribution to the political mythology: it was therefore imaginative as well as structural. But it came at an increasingly high price to the individual subject, since liberty was for him only the negative ‘being able not to do what you want me to do’ rather than the promotion of being able to become responsible for oneself.

But, despite Montesquieu’s heroic attempt to eliminate the inherent problems and contradictions within the Hobbesian paradigm, what was perceived to be a further, fundamental problem still existed. It is this which was of concern to Rousseau. Its essence

\textsuperscript{174} B. Kriegel p.76
\textsuperscript{175} Elie Halevy \textit{A History of the English People in the Nineteenth Century} trans. Watkins and Barker (New York, 1949) 1:35
was that the ‘Hobbesian’ paradigm, especially as amended by Locke, was intended to constrain the institutions so that a space was created within which the rights of individuals could be exercised in security. The difficulty was that this created a selfish individual, the bourgeois, rather than an engaged person, a citizen who was interested in promoting the interests of the community. It was this which Rousseau took as central to his thought, and which would have a persistent influence on and then through Kant down to Rawls, as well as down through republican thought to Pettit: the right of the State to positively intervene into the lives of men. From a mythological perspective, this is the identification of a central weakness in the ‘Hobbesian’ conception of the mythological magnitude. If the purpose of mythological arrangements were merely to create a space to protect but not interfere with individual, selfish freedom, this would remain a weakness at the heart of the political myth. For the myth was sustained by not only forgoing one’s responsibility for the elimination of fear and the creation of sympathetic conditions of existence to it but also incorporating oneself into its dispersed arrangements as a personal commitment to its sustenance. That is, being a citizen in the Rousseauian sense. In addressing this matter, Rousseau converted the liberal myth into the republican myth.
Chapter 5 – The Conversion of the Political Myth: Rousseau

Rousseau

Hobbes was clearly an important foil for Rousseau, who both admired and attacked him on a range of such issues as the two swords¹; the state of nature², where he takes a contrary position³; and the nature of man⁴. Regarding the latter, he also comments on the ‘dangerous reveries’ which Hobbes has left among the ‘extravagances of the human mind’⁵. These extravagances surely referred to the nature of man: ‘Above all, let us not conclude with Hobbes that because he has no idea of goodness man is naturally wicked, that he is vicious because he does not know virtue, that he always refuses to those of his kind services which he does not believe he owes them’⁶. Of equal importance, he rejects Hobbes’ analysis of sovereignty⁷. Hobbes was undoubtedly an important reference point for Rousseau.

---

¹ ‘Of all Christian writers, the philosopher Hobbes is the only one who clearly saw the evil and the remedy, who dared to propose reuniting the two heads of the eagle, and to return everything to political unity, without which no State or Government will ever be well constituted’, Jean-Jacques Rousseau The Social Contract in The Social Contract and other later Political Writings p.146

² ‘Hobbes contends that man is naturally intrepid, and seeks only to attack, and to fight’, J.J. Rousseau A Discourse on the Origin of Inequality in The Discourses and other early political writings p.135

³ ‘Hobbes very clearly saw the defect of all modern definitions of Natural right: but the conclusions he draws from his own definition show that he understands it in a sense that is no less false. By reasoning on the basis of the principles he establishes, this Author should have said that, since the state of Nature is the state in which the care for our own preservation is least prejudicial to the self-preservation of others, it follows that this state was the most conducive to Peace and the best suited to Mankind’, ibid p.151

⁴ ‘There is, besides, another Principle which Hobbes did not notice and which, having been given to man in order under certain circumstances to soften the ferociousness of his amour propre or of the desire for self-preservation prior to the birth of amour propre, tempers his ardor for well-being with an innate repugnance to see his kind suffer’, ibid p.152

⁵ J.J. Rousseau Discourse on the Sciences and Arts in The Discourses and other early political writings pp.25-26

⁶ op cit p.151

⁷ ‘For the same reason that sovereignty is inalienable, it is indivisible. For either the will is general or it is not; it is either the will of the body of the people, or that of only a part. In the first case, the declaration of this will is an act of sovereignty and constitutes law; in the second case, it is merely a particular will, or an act of magistracy; at most it is a decree. But our politicians, unable to divide sovereignty in its principle, divide it in its object; they divide it into force and will, into legislative and executive power, into rights of taxation, justice, and war, into domestic internal administration and the power to conduct foreign: sometimes they mix up all these parts and sometimes they separate them; they turn the Sovereign into a being that is fantastical and formed of disparate pieces; it is as if they were putting together man out of several bodies one of which had eyes, another arms, another feet, and nothing else’, Social Contract p.58. The editors observe that ‘politicians’ is now commonly translated ‘political theorists’. The editors of the Everyman edition state that ‘Rousseau is referring to those seventeenth century political theorists, Hobbes
Broadly, and in the context of these references by Rousseau to Hobbes, the position adopted in this thesis is that the political philosophy of the *Social Contract* may legitimately be interpreted as the search for a theoretical alternative to the order propounded in *Leviathan*. In this search, there is much that is not only uncontroversial but easily regarded also as admirable, even if unrealistic and unable finally to be realised. Rousseau sets out to argue for social arrangements the key feature of which is justice through order. He wants a society which is orderly in that men’s passions are tempered by law and custom, where harmony and restraint take the place of generalised conflict, the justice of which is demonstrated by the highest places being occupied by the most virtuous, and where everyone can control his passions and act with moderation.

Rousseau sees this as possible only through an artifice the masters of which are the great lawgivers who found the harmonious community. That is, this is not a politics born of the natural state, since it relies on close community bonds not possible in the wild, given the isolation and therefore self-interest of individuals in that state. Disorder is characterised by inequality, which in turn is a reflection of the capriciousness which produces wrong opinions about individuals and leads to a flawed sense of personal identity. What must be emphasised is virtue, humanity, courage and moderation, not personal wealth. Wealth, and Pufendorf in particular (but not Locke), who had thought of sovereignty as consisting in a number of distinct rights, which must, if they are to be effective, be in the hands of the same person or body (or else, in the view of some others, need not be so). This view in turn reflects the various prerogatives attributed to the monarch under feudal law. See especially Hobbes: *Leviathan*, ch.18 and see *The Social Contract and Discourses* (Everyman) p.350

8 Manent makes the point, interesting at least for the broad argument in this thesis that Locke and Rousseau should be seen in the context of the Hobbesian enterprise, that Locke and Rousseau turned against Hobbes only to carry out his intention more effectively. For Manent, it is through absolutism, and the arguments that Hobbes gave for that, that religion actually retained, rather than lost, its power. For him, Locke and Rousseau merely wished to carry out Hobbes’ doctrine more effectively: ‘The fact that they criticise Hobbes for having given arguments to absolutism does not mean that they do not share the intention that led Hobbes to construct his Leviathan’ P. Manent *An Intellectual History of Liberalism* p.37

9 Although not too much should be made of the psychology of it, Rousseau, like Hobbes and Locke, seems to have had personal reason to have undertaken his political search. Like the other two, he was forced into exile at a critical point in his life. At the end of it, he felt not only a stranger amongst men, but alone and persecuted. See Introduction to *The Social Contract and other political writings* pp.xxxiii-xxxiv

10 Regarding the need for legislators, see *Social Contract* p.68; regarding the disorder in the natural state, ‘I assume men having reached the point where the obstacles that interfere with their preservation in the state of nature prevail by their resistance over the forces which each individual can muster to maintain himself in that state’, ibid p.49
especially in the form of personal property\textsuperscript{11}, should not be disallowed but it must be a matter of moderation.

For Rousseau, the means to achieving all this is the establishment of a rational general will through social contract, which is manifest in universal laws and which grounds the authority of the Republican State\textsuperscript{12}. Such laws will prevent the individual from being subject to the will of others, since all will obey the laws.

For him, political and moral philosophy are inextricably linked. Man is not just a natural and passive being, but is also active. The idea of relations and order are not merely imposed upon him, he constructs them himself. In fact, he has ‘a natural love of order’\textsuperscript{13}. But the problem of morality is only real for artificial or civilised man, who can compare and make judgements and so knows what order is. Established by God and therefore acquired through his conscience rather than his reason, man has ‘a love of order in general’, a concept at the heart of Rousseauian moral and political theory\textsuperscript{14}.

Rousseau’s man moved from the natural state to the artifice of the social state not as the result of the activity of a conscious will but due to a chance combination of causes\textsuperscript{15}. The natural state he has left evinces order and harmony, the product of an intelligent and beneficent Lawgiver and is a place where each part is assigned its own place. For Rousseau, order means the mutual harmony of parts, concord, an absence of conflict, obedience to universal laws\textsuperscript{16}. But this order doesn’t extend to individuals, who must

\textsuperscript{11} ‘Every man naturally has the right to everything he needs; but the positive act that makes him the proprietor of some good excludes him from all the rest. Having received his share, he must be bound by it, and he has no further right to the community (of goods)’, ibid pp.54-55

\textsuperscript{12} Rousseau was incontrovertibly a republican, seen by him as any government guided by the general will, ‘which is the law’, see ibid p.67

\textsuperscript{13} ibid \textit{Letter to D’Offreville} in \textit{The Social Contract and other later political writings} p.262

\textsuperscript{14} \textit{Discourse on the Origin of Inequality} p.144

\textsuperscript{15} ‘Despite all the labours of the wisest Lawgivers, the Political state always remained imperfect because it was almost a product of chance and because, having begun badly, time revealed its flaws’, ibid p.175; and \textit{Social Contract} p.41, where Rousseau explains that the right to the social order, and which is the basis of all other rights, is sacred but comes not from nature but is founded on conventions

\textsuperscript{16} ‘The universe subsists, order prevails and endures in it; everything in it successively perishes, because such is the law of material and moved beings; but everything in it renews itself and nothing in it degenerates, because such is the order of its author, and this order cannot be denied’, \textit{Letter to Franquieres} in \textit{The Social Contract and other later political writings} p.279
themselves establish order in their relations. And this is a problem, for man cannot find harmony in disorder but neither is order and peace easy to attain. In fact, Rousseau’s language in describing this seems more like the descriptions by Hobbes of nature being in a state of warfare. This is due to the individual’s desire for profit, often against the general interest\textsuperscript{17}. Unlike primitive man, who is self-reliant but not cooperative as he strives for his own survival within the harmonious state of nature, civilised man within the artificial social order constantly strives to attain superiority over his fellow man and is therefore in continuous conflict. Man is therefore morally responsible for disorder\textsuperscript{18}. Hence, the challenge posed by Rousseau is not the question of how to impose order upon the disorder of nature. On the contrary, it is a matter of creating order from artificial disorder\textsuperscript{19}.

The new entity to be created is the just, ordered society, completely rational and consciously willed. Although this entity is an artifice, Rousseau borrows the image of the natural order in his description of it. In it, each individual finds himself a part of the whole on which he is dependent for his life and his very being. That is, individuals do not exist as separate entities but the State and individual exist for each other\textsuperscript{20}. Even though the pursuit of the common good is weaker because it is artificial, a just social order

\textsuperscript{17} ‘we will find that the progress of society stifles humanity in men’s hearts by arousing personal interest’, \textit{Geneva Manuscript} of the \textit{Social Contract} p.155; and ‘Men can be moved to act only by their interest, I know; but pecuniary interest is the worst of all, the vilest’, \textit{Government of Poland} in \textit{The Social Contract and other late political works} p.226

\textsuperscript{18} ‘sociable man, always outside himself, is capable of living only in the opinion of others and, so to speak, derives the sentiment of his own existence solely from their judgment. It is not part of my subject to show how such a disposition engenders so much indifference to good and evil together with such fine discourses on morality; how everything being reduced to appearances, everything becomes factitious and play-acting: honour, friendship, virtue, and often even vices in which one at length discovers the secret of glorying…It is enough for me to have proved that this is not man’s original state, and that it is only the spirit of Society, together with the inequality society engenders, that changes and corrupts all our natural inclinations this way’, \textit{Discourse on the Origin of Inequality} pp.187-188

\textsuperscript{19} ‘The first and the most important maxim of legitimate or popular government, that is to say of government that has the good of the people as its object, is then, as I have said, in all things to follow the general will’ and, in an observation that shows Rousseau’s understanding of the violence that accompanies the establishment of order, ‘The tyrants, having become the enemies of the peoples they had assumed responsibility of making happy, established standing armies, in appearance to contain foreigners, and in fact to oppress the local population’, \textit{Political Economy} in \textit{The Social Contract and other late political writings} pp.9, 29 respectively

\textsuperscript{20} ‘If the State or the City is only a moral person whose life consists in the union of its members, and if the most important of its cares is the care for its self-preservation, then it has to have some universal and coercive force to move and arrange each part in the manner most conformable to the whole’, \textit{Social Contract} p.61
demands that, through the promotion of the general rather than the individual will, this must be developed and prevail. So, the natural order with independent individuals needs to be replaced with an artificial order in which individuals have submitted themselves to the political state in accepting the supremacy of the general will. They are, therefore, no longer those same isolated and independent individuals that they were in the natural state. Mankind thus passes from the natural state to the enjoyment of civil liberty and subjection to the sovereign authority whose cornerstone is the social contract. This is not emergent society, the state into which men emerge from the natural state and in which long term relationships begin to form and generate rivalries. This is a state which comprises civil, political society and its organising principle is the concept of order. The ordered society cannot come into being by relying on man’s natural impulses and on natural law. His instincts for self-preservation, such as fear of pain and death, are moral and conscience is the arbiter. In fact, it is the capacity for pity towards the weak, the guilty and humanity generally which suits man to live in society. However, this becomes a faint echo by the time recognisable social arrangements are established. So another power than nature is required if man is not to live in isolation or disorder, hence the creation of an artifice which will maintain order against man’s natural instincts. Such an artifice is neither a continuation nor the restoration of natural order.

Although acknowledging the independence of the concept of order, Rousseau sees its realisation as possible only through the establishment of law: ‘By the social compact we have given the body politic existence and life: the task now is to give it motion and will by legislation…What is good and conformable to order is so by the nature of things and independently of human conventions. All justice comes from God, he alone is its source; but if we were capable of receiving it from so high, we would need neither government nor laws…Conventions and laws are therefore necessary to combine rights with duties and to bring justice back to its object…Then the matter with regard to which the statute is being enacted is general, as is the enacting will. It is this act which I call law’, Social Contract pp.66-67.

‘I believe I perceive in it two principles prior to reason, of which one interests us intensely in our well-being and our self-preservation’, Discourse on Inequality p.127 and ‘O virtue…Are not your principles engraved in all our hearts, and is it not enough in order to learn your Laws to return into oneself and to listen to the voice of one’s conscience in the silence of the passions?’, Discourse on the Sciences and Arts p.28.

‘In thus discovering and retracing the forgotten and lost paths that must have led man from the Natural state to the Civil state…any attentive Reader cannot but be struck by the immense distance that separates these two states…In a word, he will explain how the human soul and passions, by imperceptible adulterations, so to speak change in Nature; why in the long run the objects of our needs and of our pleasures change; why, as original man gradually vanishes…’, Discourse on Inequality p.186.
It is disorder which Rousseau regards as the primary source of inequality. Disorder is not merely the absence of harmony but the lack of hierarchy or rank, or the wrong assignment of individual elements within the whole. Seeking an unassigned rank is the result of pride or ambition and is the source of disorder. Such feelings begin in comparison with other species, to whom man is superior, and are then transferred into social experience in a manner that denies his conscience or sense of virtue\textsuperscript{24}. Like Hobbes, Rousseau not only saw the differences between men but also saw that there was a distinction between natural and artificial inequalities. However, for Rousseau, natural inequalities should not be allowed to develop into inequalities of the moral or legal kind. Law should bring about equality. The differences in the natural state are just that, they are not inequalities because there is no basis of comparison there. But without a basis for comparison, that is outside society, neither is any sense of personal identity possible. Identity comes with the move into society but through the competition born of comparing oneself with others and the consequential ascription of value and utility\textsuperscript{25}. Thereby comes disorder\textsuperscript{26}.

But comparison can also establish the tyranny of opinion and, with that, the gap between reality and appearance\textsuperscript{27}. It establishes the basis of status hierarchy and creates the identity of the individual, especially of the moral individual, within the context of the whole. Through this is disorder generated: disorder as wrongful assignment of individuals within the social hierarchy, thus as inequality; disorder as ambition, thus as the conflict caused by seeking one’s own ends and not the common good; and disorder as immoderation or the expression of uncontrolled passion. Behind much of the various criteria of success, such as riches, honour, and command, stands the thirst for pre-

\textsuperscript{24} ‘Here, then, are all our faculties developed, memory and imagination brought into play, \textit{amour propre} interested, reason become active, and the mind almost at the limit of the perfection of which it is capable...To be and to appear became two entirely different things, and from this distinction arose ostentatious display, deceitful cunning, and all the vices that follow in their wake’, ibid p.170

\textsuperscript{25} ‘even without the Government’s intervention, inequality of prestige and authority becomes inevitable among Private Individuals as soon as, united in one Society, they are forced to compare themselves one with the other and, in the continual use they have to make of one another, to take account of the differences they find’, ibid p.183

\textsuperscript{26} ‘These differences are of different kinds; but since wealth, nobility or rank, Power and personal merit are generally the principal distinctions by which one is measured in Society. I would prove that the concord or conflict between these various forces is the surest indication of a well or badly constituted State’, ibid p.183

\textsuperscript{27} \textit{Discourse on Inequality} p.170
eminence. This was an understanding Rousseau shared with Hobbes\textsuperscript{28}. For Rousseau, wealth beyond moderate levels cannot be justified, as it is always at the expense of others.

So there must be a transformation of the customs and criteria used by the community to assess relative worth, for the fundamental cause of conflict is not the pursuit of real economic goods to satisfy physical needs, although that happens, but the tireless pursuit of status so men can command such prizes. With such status comes the desired personal identity\textsuperscript{29}. It is in this context that Rousseau makes his important distinction between \textit{amour de soi}, the self-love which is the basis of preservation of the individual and which is therefore in conformity with order, and \textit{amour propre}, the ambitious egotism which produces enmity, hatred and jealousy and therefore disorder\textsuperscript{30}.

In this context, Rousseau makes an important distinction between two sensibilities, physical and moral, the latter capable of both negative and positive effects. It is negative when it attempts to constrict the circle of the lived experience of others. It is positive when it leads us to expand and strengthen our innermost self, being a fruit of self-respect rather than egotism. A person with such sensibility looks simply to his own well-being without concerning himself with that of others. But the man ruled by egotism directs his attention exclusively to others and only judges himself in comparison with them. Further, he explores the results in his own life of reversing the usual degeneration from self-love to egotism, a process in which he leaves society and frees himself from the tyranny of opinion. When a man leaves society behind, it is possible to rediscover independence of mind and with this comes also the rediscovery of the natural order. Rousseau suggests it is possible to develop a personal identity which is independent of social interaction. If one places oneself outside the social order, inequality and disorder can cease to become a problem. Alternatively, a wise man, seeing with his own eyes and feeling with his own heart and recognising no authority other than reason, may lose the urge to dominate

\textsuperscript{28} \textit{Leviathan} pp.71, 119
\textsuperscript{29} ‘The object of public admiration will invariably be the object of the wishes of individuals, and if one has to be rich in order to shine then being rich will always be the dominant passion’, \textit{Government of Poland} in \textit{Social Contract and other later political writings} p.188
\textsuperscript{30} \textit{Discourse on Inequality} p.218
others or take pleasure from their misfortunes or be wealthy\textsuperscript{31}. These are features which would not be out of place in the life of someone who has accepted responsibility to and for himself.

From all this, Rousseau faces the challenge of how to go about transforming passionate disorder into virtuous order, to discover the order within him and make this a political order. This is the place of the social contract in his thinking. In the universal society of mankind, a condition distinct from the natural state but without political authority, Rousseau sees individual need that has grown to the point that it can’t be fulfilled without the assistance of others. This circumstance produces the strong and the weak but it is unstable, regarding both survival and personal identity. There must be political authority.

Not any such authority will do, as some would be worse than anarchy\textsuperscript{32}. Such polities would fail to protect all their citizens equally because they would favour special rather than the common interest, that is they would be tyrannous. Rousseau thus rejects what he sees as the Hobbesian argument that arbitrary power is better than no authority at all. Rousseau takes the view that tyranny is always unacceptable. The concord that is necessary to eliminate the anxiety of the natural state and the concern about the activities of a tyrant can only come from a sovereign authority that can create laws and who is guided in this by a social contract. This is the rule to inspire the just constitution. His challenge is to conceive a circumstance where independent, rational, fearful but ambitious individuals will opt for the common good. That is, an arrangement that will not only eliminate fear but will induce the majority of self-interested individuals to agree to it\textsuperscript{33}. This is not simply the conversion of natural man to a civilised state, as the natural state itself is an artifice constructed by Rousseau and it is almost impossible to say with confidence what is artificial and what is natural in man. The very notion of the natural state is not something that can be thought of as having actually existed in the past, nor

\textsuperscript{31} Rousseau outlines the kind of life this could be, although man misused the opportunity, in his description of the evolution into society ‘In this new state, with a simple and solitary life, very limited needs, and the implements they had invented to provide for them, men enjoyed a great deal of leisure’, ibid p.164

\textsuperscript{32} \textit{Social Contract} p.83

\textsuperscript{33} ‘The first and the most important consequence of the principles established so far is that the general will alone can direct the forces of the State according to the end of its constitution, which is the common good’, \textit{Social Contract} p.57
will it in the future. It is a hypothetical construction which has a role to play in the context of a study of what are in effect normative principles. The hypothesis of the natural state helps to form a clearer judgement concerning the present condition of mankind\textsuperscript{34}.

In this process of construction, although excessive passion must be tempered, there must also be justice. Rousseau’s solution is that each individual must subject himself to the authority of the general will, comprising every individual, and he will be received as an indivisible part of the whole, that is as a citizen, whose interest is the common good. This is a rational choice, as it ensures the interest of each. The sovereign, or general will, has the interest only of its members.

It is important for Rousseau that this contractual arrangement binding the individual to the sovereign general will is reciprocal. By this, each will accept the authority of this sovereign on the condition that the same is true of all others, making all equal before the law and ensuring that each must seek the common interest to advance his own. Further, the sovereign cannot impose any prescription that is useless to the community\textsuperscript{35}. Because each is an equal member of the sovereign general will, all have equal expectations of each other. Further, it is the sovereignty and universality of the law that also delivers justice and liberty. It is the only means by which the sovereign can express itself and constitutes its legitimacy. Its universality rationally excludes sectional interest but promotes private interest in the sense that justice is equity\textsuperscript{36}.

This notion of justice based on a conception of law is not available to natural man. His state has to do with natural feelings of self-respect and pity as a means of preserving the

\textsuperscript{34} “In one respect his calling (his account of the state of nature) ‘conjectural’ is a transparent rhetorical feint”, that is it has the status of hypothesis the purpose of which is to act as a mirror against which he can argue the nature of civil society, see Introduction by Victor Gourevitch to the Discourses and other early political writings p.xviii

\textsuperscript{35} ‘Now it is solely in terms of this common interest that society ought to be governed’, op cit p.57

\textsuperscript{36} ‘One also sees that since the law combines the universality of the will and that of the object, what any man, regardless of who he may be, orders on his own authority is not a law’, Social Contract p. 67
species\textsuperscript{37}. This is a form of order but not one which established individuals as part of a social whole, so as order it is unstable. The other form of order would come from the social contract and a law based on reason in which it would be self-evident that harmony was more in the interests of the individual than the conflict that derives from the simple pursuit of individual interest. It can only be established, as civil law, by being grounded in the legitimate political authority which must, through the fundamental social compact, seek the greatest good for all. Men have a moral obligation towards the natural law while citizens have a juridical and political obligation towards the civil law. The natural law is the supreme authority but its jurisdiction does not reach beyond the inner life of man. Further, the social contract is the base for all individual rights for these liberties are born with the advent of the political constitution\textsuperscript{38}.

It can fairly be said that the whole theory of the social contract is, ultimately, no more than a rational justification of a law-governed society. It is not in the true interest of men to live in a condition of complete independence or under a political constitution where the sovereign will resides in one person alone and where equality under the law is not respected. The sovereignty of law and equality under the law are central to Rousseau’s response to the problem of the relation between justice and utility, so the principal point of his political doctrine is the relation between the sovereignty of law and liberty. As law is identified with the general will, liberty is possible only through obedience to the general will\textsuperscript{39}. For Rousseau, liberty is not the same as being independent. The citizen who is subject to the general will is not independent since he is subject to the sovereign authority, but he is free because he is not forced to obey the will of any other individual.

\textsuperscript{37} ‘Savage Peoples…(are)…placed by Nature at equal distance from the stupidity of the brutes and the fatal enlightenment of civil man, and restricted by instinct and by reason alike to protecting himself against the harm that threatens him, he is restrained by Natural pity from doing anyone harm’, \textit{Discourse on Inequality} p.166

\textsuperscript{38} ‘It is therefore important to distinguish clearly between the respective rights of the Citizens and of the Sovereign, as well as between duties which the former have to fulfill as subjects’, \textit{Social Contract} p.61

\textsuperscript{39} ‘The constant will of all the members of the State is the general will; it is through it that they are citizens and free’, ibid p.124
Liberty is the right to do everything which the law allows. In all this, Rousseau establishes his republican credentials.

Here lies the difference with Hobbes. For Hobbes, the liberty of the subject is dependent on the obligation that each one accepted when he submitted to the sovereign authority. It consists of the right of self-defence and the right enjoyed by each citizen that he should not be forced to do anything that might be for his harm. But, above all, the liberty of the subject is expressed in those things not mentioned by the sovereign, that is, where the law is silent. Hobbes lists such things as the freedom to buy and sell, the choice where to live and to give one’s children the education considered appropriate. Rousseau is concerned that this leaves open the possibility of the imposition of one individual will on another. This is the difference between negative and positive freedom. The liberty of the citizen does not consist only in the exercise of the right of sovereignty. It also implies protection from all wrongs and injustices. The limits of the liberty of each individual also mark the point at which the liberty of his neighbour begins. The guarantee of these reciprocal limits is provided by the finality of law. The sovereignty of law provides encouragement for each citizen to respect his neighbour’s rights because law ensures that no-one can enlarge the sphere of his freedom at the expense of others. When the liberty of one person is infringed by another, the latter imposes his will on the former. Consequently, the will of one has become subject to another, which is for Rousseau the very opposite of liberty.

Rousseau’s social contract has generalised the notion of sovereignty, as the direct source of final authority, from an elite institution to the entire society, thereby engaging all citizens in a regime of mutual constraint in a manner that Hobbes’ political arrangement, or the amendments to it of Locke and Montesquieu, could not. For Rousseau, the

---

40 ‘If one enquires into precisely what the greatest good of all consists in, which ought to be the end of every system of legislation, one will find that it comes down to these two principal objects: freedom and equality’, ibid p.78
41 _Leviathan_ pp.145-148
42 ‘What man loses by the social contract is his natural freedom and an unlimited right to everything that tempts him and he can reach; what he gains is civil freedom and property in everything he possesses…one has to distinguish clearly between natural freedom which has no other bounds than the individual’s forces, and civil freedom which is limited by the general will’, op cit pp.53-54
legitimate State guarantees security, which is its superiority over the natural state. Moreover, men accept the social compact precisely because they prefer a more secure life over one which is precarious. Such an arrangement ensures the control of the individual’s inner passions so that he lives in harmony with a law which he has imposed on himself, which is an inner law that, once acquired, reflects a love of justice and moderation. From this comes order and the common good, for the purpose of law should be the well-being and security of each individual as well as the good and security of the republic.

This characteristic of a self-imposed law which included respect for others, like those referred to above, would also not be out of place within the notion of responsibility to and for oneself, although not within the context of the broader Rousseauian political theory. This theory is founded on enforced conformity to any matter adopted by the general will, but is in effect a majority will. Instead, if this were couched in a context of individual citizens being allowed to develop self-reliance and respect for others, even slow learners over time could be accommodated. Due to such respectful self-reliance they would not be interfered with by others who are self-responsible. As has already been explained, the State would intervene where intrusion occurred but only to engage the intruding individual and promote self-responsible behaviour. Such an arrangement would not require submission to any matter adopted by a majority but only those matters that promoted respect and self-reliance. As was argued in Chapter 1, this is responsibility to and for oneself.

---

43 ‘obedience to the law one has prescribed to oneself is freedom’, Social Contract p.54; ‘Do you wish the general will carried out? See to it that all particular wills take their bearings by it; and since virtue is nothing but this conformity of the particular will to the general will, to say the same thing in a word, make virtue reign’, Political Economy in The Social Contract and other late political writings p.13
44 ‘I therefore call Republic any State ruled by laws, whatever may be the form of the administration: for then the public interest alone governs’, Social Contract p.67
45 Social Contract p.124
46 It might be thought that this is the argument of Mill. It is not, since there are differences, important ones, between the argument here and Mill’s attitudes to intervention in the lives of individuals. For Mill, a person who demonstrates what others regard as ‘depravation of taste’, that is if he is considered by others to be grossly deficient in qualities that conduce to his own good and so is far from the ideal perfection of human behaviour, it ‘renders him necessarily and properly a subject of distaste, or, in extreme cases, even of contempt’. Further, we may ‘give others a preference over him in optional good offices, except those that tend to his improvement’. Further, ‘if grown persons are to be punished for not taking proper care of themselves, I would rather it were for their own sake’. This is not the respect that self-responsibility includes. In fact, it has overtones of the tyranny of opinion that Rousseau claimed concerned him. J.S. Mill On Liberty Penguin Classics 1974 pp.143, 144, 149. Further, it can be argued that the opinion intended here
The principal threat to the success of Rousseau’s arrangement is the constant threat of sectional interest, which may get the assembly to agree to their wishes and thus allow merely private interests to prevail. Then the State is despotical, an argument Rousseau appears to share with Montesquieu. Rousseau prescribes only collective decisions. That all participate in defining and are equal before the law, that is are submissive to the general will, is another correction of Hobbes, for whom the sovereign cannot be restricted by the laws he has created. In these arguments, Rousseau follows the republicanism of Machiavelli. His republicanism means not only the pre-eminence of a constitution where law is sovereign over men and the common good takes precedence over individual self-interest, but a government by a small elite of wise and virtuous magistrates, that is an aristocracy, though sovereignty resides in the people. Force will be used when required by the general will to impose equality under the law. In a manner that shares some features, again, with self-responsibility, Rousseau emphasises that the republican concept of liberty is the freedom of men who have no desire to serve or dominate others. It is typified by civic virtue, which is born of love of one’s country and inspires courage, firmness of purpose and sometimes even heroism. It is not the gentleness, moderation, charity, fairness and tolerance called into the service of Christianity as the love of humanity: ‘Christianity preaches nothing but servitude and dependence. Its spirit is too favourable to tyranny for tyranny not always to profit from it’. This is not to say that

by Mill is that of the educated and elevated rather than of the common mind. Mill’s State may not intervene easily but society may do so to ensure not only rational actions but to maximise utility, not just for the individual but for society as a whole. In this context, Mill can be seen as being not interested in diversity as such but in diversity informed by an authority of reason which emerges from such education and elevation. This manifests his Religion of Humanity. Maurice Cowling Mill and Liberalism in Mill – A Collection of Critical Essays MacMillan 1969 pp.332, 335, 337, 338. Respectful self-responsibility would give society no authorisation to intrude into the lives of others so long as those persons were themselves not intruders and in that were also sustaining themselves. This would not preclude the offer of resources to assist in the development of skills for such respect and sustenance. Should there be actual intrusion, the State may intervene and establish programmes that encourage the development of respect and sustenance. This has profound significance for current regimes of punishment of criminal offenders.

47 cf Social Contract p.108 and Spirit of the Laws 11.4 p.156
48 Leviathan pp.184, 224
49 Political Economy pp.8-9 and Social Contract p.95
50 ‘I therefore call Republic any State ruled by laws’, Social Contract p.67 and ‘How can it be that they obey and no one commands...no one loses any more of his own freedom than might harm someone else’s?’, Political Economy p.10
51 Social Contract p.149
Rousseau was offended by the human virtues as such. The supreme achievement in politics is working towards the elimination of the use of force altogether: a statesman’s skill is to be judged by his ability to govern in such a way that it seems that there is no need for a government at all. For him, true politics was inseparably linked with the great legislators who knew how to transform a mass into a people by changing human nature. Equally, there should not be excessive wealth, for this induces subjection to the will of the wealthy and the great and this is the death of liberty. The people feels secure when it sees that no-one is allowed to flout the law and that even kings themselves cannot govern in a way which is contrary to law.

To make all this work, the people must take the trouble to attend the public assemblies, to take up arms against all enemies, to keep watch over the activities of its magistrates. Only then will the polity be secure against enemies within and without. Rousseau was specially hard on the institution of representatives as those who would sap civic virtues and make the loss of liberties more likely.

For Rousseau, the political arrangements he prescribes will bring order and justice. No-one will impose his will on another, there will not be a state of generalised hostility and individuals will be allocated status levels in a manner that would not be unjust. This is achieved through the construction of an order which is quintessentially artificial, a construct founded on the will of the sovereign authority. Where society exists without political authority there is disorder; where there is natural order there is no society.

---

52 This is the complement to the obedience of the individual to a law he gives himself, see ibid p.50
53 ‘Anyone who dares to institute a people must feel capable of, so to speak, changing human nature; of transforming each individual who by himself is a perfect and solitary whole into a part of a larger whole from which that individual would as it were receive his life and his being; of weakening man’s constitutions in order to strengthen it’, ibid p.69
54 ‘These differences (found by comparisons) are of several kinds; but since wealth, nobility or rank, Power and personal merit are generally the principal distinctions by which one is measured in Society, I would prove that the concord or conflict between these various forces is the surest indication of a well or badly constituted State. I would show that of these four sorts of inequality, as personal qualities are the origin of all the others, riches is the last to which they are finally reduced, because...it can buy all the rest’, *Discourse on Inequality* p.183-184
55 ‘The dissolution of the State may come about in two ways. First when the Prince no longer administers the State according to the laws, and usurps the sovereign power’, op cit p.107
56 ‘However, although the artificial body of the Government is the work of another artificial body, and has, as it were, only a borrowed and subordinate life, this does not keep it from being able to act more or less vigourously’, ibid p.86
Moreover, the fact that political authority exists is not, in itself, enough to ensure that there will be order in human affairs. There must be a sovereign, but it is also essential that the sovereign should give the general will and the law the first place. It is the legislator who discovers which are the best and most suitable laws for all the different peoples and must be able to transform each individual, who is himself a perfect and separate entity, into a part of the greater whole. The legislator is compared by Rousseau to God because, in an analogous manner, he is the author of the political order and wise in that. Republican order is an artificial order. It owes its inception to the artifice of the social compact and the art of the legislator, who, like a skilled engineer, is able to arrange all the parts of the machine so that they work in a harmonious way to achieve the purpose the machine was made for.

All this does not translate into extreme democracy, where each is everything, that is debater, executive and judge. Although sovereignty resides with the people, there must be delegated roles. This is democracy modified with wisdom, residing in an aristocracy. As with Montesquieu, equality comes only through the institution of law and the creation of citizens. It is an hierarchical arrangement from the sovereign, which is all individuals comprising the general will, down through magistrates as executive to the people as subjects. The magistrates, who are to be the most wise and virtuous and will pursue the common good, must be elected by all the people. They will enjoy no privilege, as the republic is generally to be a place of moderation. Since the primary and ineradicable motivator of men is admiration and preferment, they must be brought to better

---

57 ‘It would require gods to give men laws’ and ‘The Lawgiver is in every respect an extraordinary man in the State. While he must be so by his genius, he is no less so by his office’, ibid p.69 and ‘This sublime reason which rises beyond the reach of vulgar men it is whose decisions the Lawgiver places in the mouth of the immortals, in order to rally by divine authority those whom human prudence could not move. But it is not up to just anyone to make the Gods speak…’, ibid p. 71

58 ‘The (Prince) need only follow the model which the (Lawgiver) must propose. He is the mechanic who invents the machine, the first is nothing but the workman who assembles and operates it’, ibid p.69

59 ‘As far as the sky is from the earth, so far is the true spirit of equality from the spirit of extreme equality. The former consists neither in making everyone command nor in making no one command, but in obeying and commanding one’s equals…In the state of nature, men are born in equality, but they cannot remain so…The difference between the democracy that is regulated and the one that is not that, in the former, one is equal only as a citizen, and, in the latter, one is also equal as a magistrate, senator, judge, father, husband or master’, Spirit of the Laws p.114
judgement. Opinions which develop naturally as a product of social relationships must, in effect, be transformed artificially. It is, therefore, the same engineer who has constructed the political machine who must, through his art, modify social attitudes. To be able to transform men’s tastes and values in this way is the greatest proof of the Lawgiver’s skill. The wise Lawgiver can and should institute laws which convey the approval or disapproval of the public in the form of reward or punishment. In Rousseau’s view, laws should not only have a negative function, discouraging wrong-doing through the threat of punishment, but should also exercise a positive influence, urging men to do good by holding out the possibility of a reward.

Rousseau’s project is ostensibly to provide a theoretical definition of the most suitable ways in which men’s views can be altered to make them moderate but without forsaking the principle that the individual acts only in accord with what he judges to be his interest. He does not say that men have forsaken the desire to obtain great wealth because they have become altruistic, but rather because it is not in their interest to pursue wealth, that is because wealth is no longer esteemed.

A just Rousseauean political order would also have rules which govern the way individuals are channeled to the various forms of employment available. Its aim should be to provide the conditions which make happiness possible and which encourage the individual to lead a moral life but, in that context, it also has the responsibility to see that each person has the opportunity to gain personal fulfillment irrespective of the caprices of fortune, such as which family one is born into. People should be engaged in the work most suited to their talents. For Rousseau the ultimate effect of such arrangements is not the good of the whole but of the individuals, that is individual happiness, good customs and civic virtue. Idiosyncratically, for Rousseau the best social order is one which attaches men most closely to the land and is least vulnerable to change. There should be

60 ‘One always loves what is fine or what one finds to be so, but it is in this judgment that one is mistaken; hence it is this judgment that has to be regulated’, op cit p.141
61 ‘Hence the more you perfect your Government, the more you increase your people without even thinking about it. This way you will have neither beggars nor millionaires. Luxury and indigence will insensibly disappear together, and the Citizens, cured of the frivolous tastes opulence fosters, and of the vices associated with poverty, will place their cares and glory in serving the fatherland well, and find happiness in their duties’, Government of Poland p.229
discouragement of social mobility: happiness does not come from change and the struggle to get on but from stability of character and inner balance between desires and qualities. Further, the republic should be small so that, when all the citizens know each other and can closely observe each other’s behaviour, those who resort to intrigue to get on have less chance of success.

Rousseau’s next move introduces uncertainty, even contradiction, into his wider argument. The problem emerges with a key statement, which follows from what has already been said, that is that unless law reigns in the hearts of men there can be no republic as he prescribes it. One may take an uncritical or even generous interpretation of this, although there is a less generous interpretation that can be made from within Rousseau’s own text which will be explored below. For the moment, taking generosity as the mark, the interpretation is that Rousseau was intending that a just republic can be preserved only if its customs are admirable – good laws themselves are not enough. Taking the lead from Montesquieu, who was cautious in this regard, and Machiavelli, Rousseau argued that patterns of behaviour can be changed without recourse to the force of law. In fact, good customs are essential. The preservation of the order of the republic cannot be achieved unless the men are sober, hard-working and temperate, and the women chaste, demure and devoted to the running of household affairs. Even their private lives should be open to public scrutiny. In the latter regard, a special office should be created within the magistracy with the appointment of censors, whose task it would be

---

62 ‘Socrates had begun in Athens, the elder Cato continued in Rome to inveigh against those artful and subtle Greeks who seduced virtue...But the Sciences, the Arts, and dialectics once again prevailed...military discipline came to be neglected, agriculture despised: Sects joined, and the Fatherland forgotten’ and ‘I said that Nature sought to preserve us from Science as a mother snatches a dangerous weapon from her child’s hands...with a little work one is certain to make bread; but that with much study it is very doubtful that one succeeds in making a reasonable man’, *Discourse on the Sciences and Arts* pp.13 and 56 respectively; ‘In this new state (of living communally)...men enjoyed a great deal of leisure which they used to acquire several sorts of conveniences unknown to their Fathers; and this was the first yoke which, without thinking of it, they imposed on themselves, and the first source of evils they prepared for their Descendants’, *Discourse on Inequality* p.164

63 ‘Almost all small States, republics as well as monarchies, prosper simply because they are small, because all their citizens know and watch one another, because the chiefs can see for themselves the evils being done, the good they have to do’, *Government of Poland* p.193

64 Viroli adopts such a generous interpretation in *Jean-Jacques Rousseau and the ‘Well-ordered Society’* (Cambridge 1988) pp.205-206

65 *Spirit of the Laws* Bk.19 Ch.12 p.314
to see that the general behaviour within society did not become too lax\textsuperscript{66}. Further, Rousseau advocates the establishment of a civil religion as a tool for ensuring compliance with the law and the standards of behaviour it requires. For those who do not assume the beliefs of this religion, the consequences include banishment and even death\textsuperscript{67}.

We shall return to this point. But it should at least be said here that what emerges from all this is a vast difference, even a fundamental contradiction, between, on the one hand, the establishment of a polity through the rational belief that it is in the interests of each individual to comply with the standards of behaviour on which it is founded and, on the other, social arrangements that require the use of surveillance, fear of banishment and death as means of ensuring compliance with those standards.

**Implications of Rousseauian Thought**

Before commenting on the mythological significance of Rousseauian political thought, it will be helpful to make some observations concerning some of its more immediate implications. Behind Rousseau’s aspirations for harmony, virtue, well-being and order stands a desire to construct a universal sense of the common good so that fear among men in society will be eliminated, especially as that is caused by the unbounded pursuit of individual and sectional interests. If the law is sovereign, then common interest governs and the sovereignty of the law guarantees liberty and equality under the law. This is the greatest good of all\textsuperscript{68}. The purpose of law should be the well-being and security of each individual as well as the good and security of the republic. But this does not mean that, in a just State, the public good requires the full sacrifice of the individual’s private interests. For Rousseau, in a State made just by just laws, the public good might be incompatible with the extravagant desire for wealth or power but it does not militate against the

\textsuperscript{66} *Social Contract* pp.141-142
\textsuperscript{67} ‘There is therefore a purely civil profession of faith the articles of which it is up to the Sovereign to fix…the Sovereign may banish from the State anyone who does not believe them…If anyone, after having publicly acknowledged these same dogmas, behaves as if he did not believe them, let him be punished with death’, ibid p.150
\textsuperscript{68} ‘If one inquires into precisely what the greatest good of all consists in, which ought to be the end of every system of legislation, one will find that it comes down to these two principal objects, freedom and equality’, ibid p.78
citizens’ well-being and security\textsuperscript{69}. That is, it is this elimination of fear which lies behind the social and political strategies and tactics that he elaborates and, ultimately, behind his desire to establish the just, ordered society. His aim is to find a way to allow men to fulfill their innermost desire, that is to live in harmony\textsuperscript{70}.

His principal strategy to deliver justice and harmony is this conception of the general will, a fully empowered sovereign entity to which all individuals must make themselves totally subject. The first cleverness of Rousseau is that he seems to make such total subjection easy, since the general will is comprised of all individuals in the first place and they have equal influence on its deliberations. The next cleverness is that he makes this first membership apparently easy because the reasonableness of all individuals will have them understand that it is in their individual interests to comply with the prescriptions of the general will: the relationship between them all and with the general will is reciprocal\textsuperscript{71}. This is therefore not only the law but, because of our compliance, it is the law we give ourselves.

But this is where the difficulties begin. Rousseau is forced to acknowledge that most men are more likely to use the reason that brought them to the social contract to justify the pursuit of what they see as their own interests, rather than those of others. This forces Rousseau to engage a series of tactics which ultimately undermine the premises of his argument. Men have to be brought to understand that their real nature is the pursuit of harmony and justice, that is a sense of the common good, the pursuit of which is the general will and which becomes this law we give ourselves. Each individual must forgo

\textsuperscript{69} ‘If one wants to find examples of the protection the state owes its members, and of the respect it owes their persons, one should look for them exclusively among the most illustrious and the most courageous nations on earth’, \textit{Political Economy} p.18 and ‘The first and the most important consequence of the principles established so far s that the general will alone can direct the forces of the State according to the end of its institution, which is the common good: for while the opposition of particular interests made the establishment of societies necessary, it is the agreement of these same interests which made it possible’, \textit{Social Contract} p.57

\textsuperscript{70} ‘I do not believe I need fear any contradiction in granting to man the only Natural virtue which the most extreme Detractor of human virtues was forced to acknowledge. I speak of Pity, a disposition suited to beings as weak and as subject to so many ills as we are...To say nothing of the tenderness Mothers feel for their young and of the dangers they brave in order to protect them’, \textit{Discourse on Inequality} p.152

\textsuperscript{71} ‘The constant will of all the members of the State is the general will; it is through it that they are citizens and free’, \textit{Social Contract} p.124
the range of characteristics and thereby the interests that make him an individual\textsuperscript{72} and adopt those that are for the common good, not only those of justice and order, which he will come to appreciate are really in his interest. That is, in the republic instituted by the social contract, if one is a citizen all are. The compact moves every single person towards a common identity, which precedes all the other aspects of the personal identity of the individual. He may be strong or weak, rich or poor, be more or less intelligent, be of one class or another. In the republic all these qualities which go to make up the uniqueness of the individual recede into the background.

Even when he is exercising his equal rights as a member of the sovereign general will, his personal preferences must be put to one side: ‘When a law is proposed in the People’s assembly, what they are being asked is not exactly whether they approve the proposal or reject it, but whether it does or does not conform to the general will, which is theirs…Therefore when the opinion contrary to my own prevails, it proves nothing more than that I made a mistake and that what I took to be the general will was not\textsuperscript{73}. Only by undergoing such a radical transformation at the hands of the general will is an individual not subject to the will of any other individual, the republican ideal. This forgoing of his own interests is crucial because it is at the heart of Rousseau’s argument against groups of individuals as factions or cliques, whose presence is the source of disorder\textsuperscript{74}.

\textsuperscript{72} ‘In a word, (the Lawgiver) must take from man his own forces in order to give him forces which are foreign to him and of which he cannot make use without the help of others. The more these natural forces are dead and destroyed, the greater and more lasting are the acquired ones, and the more solid and lasting also is the institution’. He continues: ‘So that when each Citizen is nothing and can do nothing except with all the others, and the force acquired by the whole is equal or superior to the sum of the natural forces of all the individuals, the legislation (of the Lawgiver) may be said to be at the highest pitch of perfection it can reach’, ibid p.69

\textsuperscript{73} \textit{Social Contract} p.124

\textsuperscript{74} ‘It is in vain…that I would endeavour to reconcile my own interest with that of others; everything you tell me about the advantages of social law might be fine, if while I scrupulously observed it towards the rest, I were sure that they would all observe it toward me;…Either give me guarantees against every unjust undertaking, or give up hope of my refraining from them in turn’, \textit{Geneva Manuscript} p.156
This is the making not just a change but of a fundamental change to human nature. The republican individual may not be subject to any other individual will but he is completely subject to the general will. He must be transformed into the kind of being that would fit the expectations of the general will. Rousseau is clear on this. And force may be used to achieve this, the full force of the general will. Rousseau is clear about the awesome power of the general will, the creation of which is the justification for changing of human nature, the annihilation of the individual’s natural resources, the complete absorption of the individual. He emphasises this point. It is this fully intrusive power of the sovereign general will which is the source of his proposal for the surveillance of private lives and for his institution of civil religion, with the extreme measures of banishment or death that it can impose for non-belief.

This power led Berlin to observe that “Rousseau does not mean by liberty the ‘negative’ freedom of the individual not to be interfered with within a defined area, but the possession by all, and not merely by some, of the fully qualified members of society of a share in the public power which is entitled to interfere with every aspect of every citizen’s life.” Rousseau was himself concerned about this level of power, as Constant indicated. This is not a contradiction of Rousseau’s statement that, although the people

---

75 ‘Anyone who dares to institute a people must feel capable of, so to speak, changing human nature’, Social Contract p.69; ‘On the one hand, society is essentially contrary to nature; on the other, it comes near to conforming to nature only insofar as it imposes the greatest unity possible on its members, identifying each person with everyone and the whole – in short, only insofar as it changes man’s nature’, P. Manent An Intellectual History of Liberalism p.77

76 ‘Let us assume that the State is composed of ten thousand Citizens. The Sovereign can only be considered collectively and in a body: But every particular person in his capacity as a subject is considered individually: Thus the Sovereign is to the subject as ten thousand is to one: That is to say that each member of the State has but a ten-thousandth of the Sovereign authority as his own share, although all of him is subject to it’, Social Contract p.84

77 ibid p.69

78 ‘If the State or the City is only a moral person whose life consists in the union of its members, and if the most important of its cares is the care for its self-preservation, then it has to have some universal and coercive force to move and arrange each part in a manner most conformable to the whole. Just as nature gives each man absolute power over his members, the social pact gives the body politic absolute power over all of its members, and it is this same power which, directed by the general will, bears, as I have said, the name of sovereignty’, ibid p.61

79 Social Contract p.150


81 He said Rousseau ‘was appalled…by the immense social power which he had thus created, he did not know into whose hands to commit such monstrous force…He declared that sovereignty could not be alienated, delegated or represented. This was equivalent to declaring, in other words, that it could not be
cannot be represented in its legislative power, ‘it can and must be represented in its executive power, which is nothing but force applied to Law’\textsuperscript{82}.

It is clear that, for Rousseau, it is the whole that matters first. Despite his arguments that individual interest is important, he requires such a shift in individual interests to conform to the general will that any comprehensive sense of individuality is to be forgone. This means that individuals do not exist as separate entities. The individual may be sacrificed for the preservation and the good of the greater whole. The body politic should be able to exercise the same kind of absolute control over its subordinate parts as in the physical realm the individual is able to do with regard to his or her own limbs. Rousseau does attempt to qualify this by insisting that, as much as the individual exists for the State, the reverse is also true otherwise there would be tyranny\textsuperscript{83}. It might be argued by a Rousseauenean simply that the two are equally important to each other but the problem with such an argument is that, as Rousseau himself acknowledges, the State may go to extraordinary lengths to change human nature, including annihilation of natural individual resources, so that an individual understands that his interests are best served by complying with the prescriptions of the general will.

Rousseau’s argument allows a better understanding of his commitment to hierarchical social and political arrangements and to the need for each individual being happy with his place within it or being brought to such happy acceptance. The idea that order consists in everything being in its right place did not, of course, originate with Rousseau. The idea has a long history, going back at least to Cicero. And Rousseau himself states that it is exercised. It meant in practice destroying the principle he had just proclaimed’, Constant quoted in P. Manent \textit{An Intellectual History of Liberalism} p.87. The issue of the non-representability of the general will should be seen in the context of Rousseau’s concern that particular interests might take control, leading to inequality and injustice and, most importantly, disorder. This points to the artificiality of the general will, that it cannot be contaminated by individual interests that are not a tight fit with its sense of justice and order. It is the nature of this artificiality that would bring the Rousseauenean edifice down, by his own admission.

\textsuperscript{82} \textit{Social Contract} p.115
\textsuperscript{83} ‘This formula shows that the act of association involves a reciprocal engagement between the public and private individuals, and that each individual, by contracting, so to speak, with himself, finds himself engaged in a two-fold relation: namely, as member of the Sovereign towards private individuals, and as a member of the State towards the Sovereign’, ibid p.51; ‘As soon as this multitude is thus united in one body, one cannot injure on of its members without attacking the body, and still can one injure the body without the members being affected’, ibid p.52
better for men to accept the place where they are rather than to seek to escape from it, this no doubt because personal ambition is a source of political disorder\textsuperscript{84}.

This in turn explains Rousseau’s approach to the division of labour. The problem of social order, which derives from the inability of individuals to preserve themselves against obstacles in the state of nature\textsuperscript{85}, is connected with the definition of the rules which govern the way individuals are channeled to the various forms of employment available. In the just society each person would find it possible to be happy whatever his lot might be as a result of the division of labour. If employment and honest labour provide those who work with the same degree of dignity and respect and almost the same economic rewards, everyone will be content with his situation. From this it can be said that, for Rousseau, the construction of individual identity requires society. Without society there is no such thing as the individual and individual identity emerges as a result of mutual comparison. Further, the price of individual identity is disorder. Each must find his place within this and be, or he will be brought to be, content.

It is a key reinforcement of Rousseau’s artificial sovereign authority, that is the general will, that it cannot be represented. This may be because of Rousseau’s concern that special interests may attain a dominance in the legislative process or it may be because, as Constant saw, this ‘monstrous force’ that Rousseau had created made him fearful of handing it to any representative to use. Only the entire body of the people can approve laws. Rousseau relied for the selection of the laws on the wisest of the wise, the elected legislator, who discovers which are the best and most suitable laws for all the different peoples and must be able to transform each individual, who is himself a perfect and

\textsuperscript{84} ‘What is more, none of these three terms could be altered without immediately destroying the proportion. If the Sovereign wants to govern, or the magistrate to give laws, or the subjects refuse to obey, disorder replaces rule, force and will no longer act in concert, and the dissolved State thus falls into despotism or anarchy’ and this is so although ‘the more the State expands, the more freedom is diminished’, ibid pp.83 and 84 respectively.

\textsuperscript{85} ‘I assume that men having reached the point where the obstacles that interfere with their preservation in the state of nature prevail by their resistance over the forces which each individual can muster to maintain himself in that state...Now, since men cannot engender new forces, they are left with no other means of self-preservation than to form, by aggregation, a sum of forces that might prevail over those obstacles’ resistance, to set them in motion by a single impetus, and make them act in concert’, ibid p.49 but regarding the proliferation of particular skills and therefore roles, see 	extit{Discourse on Inequality} pp.167-170
separate entity, into a part of a greater whole. As we have seen, Rousseau specifically compares the legislator with the Deity regarding the characteristics necessary to properly carry out this role. There are echoes of Montesquieu in this.

The picture that is emerging is one of a ‘monstrously empowered’ entity, the role of which is to create a single social organism which individuals understand, or are brought to understand, represents their individual interests, that is their self-interest, properly understood. But to be clear about his interests, the individual must undergo radical change to his nature, ‘annihilating’ his natural resources and significantly devaluing, if not forgoing, any interest that does not promote what the social totality regards as the common good. The test for him in this is whether, in his voting on legislation, he is revealed to have the same view as the majority.

Even if Rousseau’s premise were sustainable, that all this is an induction from the reason that causes man to leave the natural state and enter civil society, this political arrangement would be difficult enough to justify. But that very use of reason is unsustainable, and Rousseau, as we shall see, himself is brought to acknowledge it. More fundamentally, there is the problem of where the general will comes from in the first instance, since there is not the level of reason in the natural state that is required to institute it and there is not sufficient reason in the civil state to sustain it. Put simply, how can men who only obey the dictates of their egoistic nature conceive a political order in which sovereign authority is directed by the general will and seeks only the common good?

86 Social Contract p.71
87 The legislator must be intuitively wise: ‘Many things govern men: climate, religion, laws. The maxims of the government, examples of past things, more, and manners; a general spirit is formed as a result…The legislator is to follow the spirit of the nation when doing so is not contrary to the principles of the government, for we do nothing better than what we do freely and by following our natural genius’, Spirit of the Laws p.310; and, in explicating the structural importance of the separation of powers, he must display an unparalleled strategic sense: ‘the masterwork of legislation is to know where properly to place the power of judging. But it could not be placed worse than in the hands of the one who has executive power. The monarch became terrible immediately’, ibid p.169
88 That is, where the individual comes, or is brought, to understand that his personal interests are the common interests of the general will.
89 In effect, so that ‘the reason which led him astray will bring him back to humanity, that he will learn to prefer to his apparent interest his interest rightly understood’, Social Contract p.159
This raises questions about the social contract and the morally valid rule on which it is based. For Rousseau, when each citizen pledges his loyalty to the sovereign authority formed by themselves, which in turn is pledged to work for the common good, they have made a completely rational choice\textsuperscript{90}. The problem is that in a situation where there are no moral relations, and in which men follow their instincts or their inner feelings, it is a contradiction to suppose that a law exists, and even more so a law of reason\textsuperscript{91}. In the absence of moral relationships and prior to the development of reason, it is impossible to conceive any rational principle which could direct men along the path of true morality. That is, there is no reason in the state of nature which might be the basis of forming the social contract as a rational basis for entering civil society. It is difficult to imagine that people living in isolation, without needing each other’s help and who have no enduring social bonds, could formulate the idea of a common good or of universal obedience to a single set of principles. Even if it is allowed that man is capable of forming by highly abstract chains of reasoning, maxims of reason and justice, deduced from the love of order in general or the known will of his Creator, these maxims would not be of any use to him since it is the instincts and inner feelings that drive his behaviour.

Regarding the ‘enlightened’ man living in society, he is equally unlikely to be guided by the natural law, since his own interests are still paramount. The passions, opposed to the prescriptions of natural law, have developed and act with far greater force than reason itself\textsuperscript{92}. For this man knows that his behaviour runs contrary to the precepts of natural law, but he still believes that he has more to gain from wrongdoing than he can hope for by plain dealing\textsuperscript{93}.

\textsuperscript{90} Because ‘It is therefore in the fundamental and universal Law of the greatest good of all and not in the particular relations of man to man that one has to look for the true principles of the just and the unjust, and there is not a single particular rule of justice which cannot easily be deduced from this first law’, ibid p.161
\textsuperscript{91} ‘all those (definitions of natural Law) that are found in Books…suffer from the further defect of being derived from a range of Knowledge which men do not naturally have, and from advantages the idea of which they can conceive of only once they have left the state of Nature’, Discourse on Inequality p.126-127
\textsuperscript{92} ‘Gentlemen, allow me to say it to you; you attribute too much force to your calculations, and not enough to the inclinations of the human heart and the play of the passions’, Letter to Mirabeau in The Social Contract and other late political writings p.270
\textsuperscript{93} ‘we will find that the progress of society stifles humanity in men’s hearts by arousing personal interest, and that the notions of natural Law, which should rather be called the law of reason, begin to develop only
It is this natural law which Rousseau aims to transcend in the social contract. While rational, that is natural, justice is grounded in reason and conscience, civil law is grounded in the legitimate political authority which must, through the fundamental social contract, seek the greatest good for all. In the just society instituted by the social contract, the supreme judge is the general will. The natural law is still the supreme authority, but its jurisdiction is primarily within the inner life of man\textsuperscript{94}. Further, since it is on the social contract that all inviolable individual right is based, citizens do not enjoy these rights to liberty before the political society is instituted.

But the rational, universal, just civil law by itself won’t do the trick, even for Rousseau. He says as much to Mirabeau: ‘Here, according to my old ideas, is the great problem of Politics, which I compare to that of squaring the circle in Geometry, and of longitudes in Astronomy: To find a form of Government that might place the law above man. If unfortunately this form cannot be found, and I frankly admit that I believe that it cannot be then I am of the opinion that one has to go to the other extreme and all at once place man as much above the law as he can be, consequently to establish a despotism that is arbitrary and indeed the most arbitrary possible: I would wish the despot could be God. In a word, I see no tolerable mean between the most austere Democracy and the most perfect Hobbesism: for the conflict between men and the laws, which makes for a perpetual intestine war in the State, is the worst of all political States’\textsuperscript{95}. That is, until that day when law is stamped in men’s hearts, it will not be law but men who rule. The only just and sound constitution possible is that where law reigns in the hearts of the citizens. So long as the influence of the law is excluded from this sphere, the law will never be universally obeyed.

\textsuperscript{94} ‘If natural law were inscribed only in human reason, it would have little capacity to guide most of our actions, but it is also engraved in the human heart in indelible characters, and it is from the heart that it speaks to him more forcefully than do all the precepts of the Philosophers’, \textit{The State of War} in \textit{The Social Contract and later political writings} p.166

\textsuperscript{95} \textit{Letter to Mirabeau} in \textit{The Social Contract and other political writings} (his emphasis) p.270
From this it can be read that for Rousseau a just republic can be preserved only if its customs are admirable. Good laws by themselves are not enough. He is clear about the difference between law and custom. Law operates only in an external way and its influence goes no further than men’s actions; customs alone reach the inner man and direct men’s wills\(^\text{96}\). This is the road that ultimately leads Rousseau into the difficulties that cause him to radically question the rational social contract as the basis of civil society. The foundation of his conceptual edifice fades away. Men don’t enter a civil state because of the good reasons for doing so, but because they have absorbed ‘lawful’ practices from the cultural context into which they were embedded from childhood. Worse, why in any case would those cultural practices have been disposed to the production of a general will devoted to the common good, of the kind which Rousseau’s social contract requires? Given the acknowledged selfish nature of man, it is far more likely to have generated arrangements that recognise such a nature. Rousseau recognises this, for it is the justification for his requirement that a censor be appointed to scrutinize private lives and, more generally, for the importance of the civil religion in his political theory. This is the religion which would lead to banishment for failure to believe and being put to death for failing to act accordingly\(^\text{97}\).

All this is the creation of an ordered society but not through the enhancement of the honoured sense of the common good that is the *raison d’etre* of a general will, realised through a social contract entered into rationally and willingly, and realised through just laws. On the contrary, it is the production of order through life-long training in civil religious belief and by the extensive intrusion by any member of the sovereign body, which in turn uses as much force as is required to ensure compliance. Should these foundations be in place, then civil law may have the desired effect. But Constant warned about the dangers of the impact of this combination of custom and law, in which each

\(^\text{96}\) He states ‘The slightest change in customs, even if it is in some respects for the better, invariably proves prejudicial to morals. For customs are the morality of the people, and as soon as the people ceases to respect them, it is left with no rule but its passions, and no curb but the laws, which can sometimes keep the wicked in check, but can never make them good. Besides, once philosophy has taught the people to despise its customs, it soon learns the secret of eluding its laws. I therefore say that a people’s morals are like a man’s honor; they are a treasure to be preserved, but which cannot be recovered once lost’, *Discourse on the Sciences and Arts* pp.102-103

\(^\text{97}\) *Social Contract* p.150
citizen’s life was tightly controlled by the group, and any form of private life free from the interference of the society at large was out of the question. These are the features of Rousseau’s republic. It is because of them that this republic is incompatible with the modern conception of freedom. Ultimately, if Rousseau’s own reliance on custom and punishment before reason places a thunderous cloud over his efforts, it is the acknowledgement of the intractability of individual interest that brings the downpour. Rousseau acknowledges that each individual, as a man, may have a particular will contrary or dissimilar to the general will which he has as a citizen. His particular interest may speak to him quite differently from the common interest and he may wish to enjoy the rights of citizenship without being ready to fulfill the duties of a subject. The continuance of such an injustice could not but prove the undoing of the body politic.

As a consequence, there is inevitable and continuous tension between the violent passions formed spontaneously and repeatedly within society and the artificial political order intended to eliminate it. The republic must be seen as no more than a short-lived and unexpected victory over the forces of violent spontaneity at work within society, forces

---

98 Constant states ‘When you establish that the sovereignty of the people is unlimited, you create and toss at random into human society a degree of power which is too large in itself, and which is bound to constitute an evil, in whatever hands it is placed. Entrust it to one man, to several, to all, you will still find that it is equally an evil’ and ‘There is, on the contrary, a part of human existence which by necessity remains individual and independent, and which is, by right, outside any social competence. Sovereignty has only a limited and relative existence. At the point where independence and individual existence begin, the jurisdiction of sovereignty ends. If society oversteps this line, it is as guilty as the despot who has, as his only title, his exterminating sword’, B. Constant Principles of Politics in Benjamin Constant: Political Writings (Cambridge 1988) pp.175, 177

99 For Rousseau the individual who doubts there is any alliance between particular interest and the general good might well say ‘Either give me guarantees against every unjust undertaking, or give up hope of my refraining from them in turn. It makes no difference that you tell me that by repudiating the duties which natural law imposes upon me, I simultaneously deprive myself of its rights, and that my acts of violence will authorise all those which others might choose to commit against me. I accept it all the more readily as I do not see how my moderation might guarantee me against them. Besides it will be up to me to get the strong to side with my interests by sharing with them the spoils of the weak; that will do more for my advantage and my security than will justice’. His first suggested reply to such a selfish attitude is, as we have seen, that the individual will see the sense in pursuing the greatest good of all, as ‘the general will is in each individual a pure act of understanding reasoning in the silence of the passions about hat man may demand of his fellow man, and about what his fellow man may rightfully demand of him’. We have seen also, however, that Rousseau finally acknowledges that reason will not do it, so he proposes the establishment of the position of surveilling censor and the establishment of a civil religion, with a full range of intrusive and punitive powers. Geneva Manuscript p.156, 157 and Social Contract p.150
whose final triumph is assured. The republic can never free itself from the threat of dissolution since it represents what is for the common good and men are more concerned for what is to their immediate advantage. Rousseau himself says: ‘If Sparta and Rome perished, what State can hope to last forever? If we want to form a lasting establishment, let us not therefore dream of making it eternal. To succeed one must not attempt the impossible, nor flatter oneself that the work of men can be endowed with a solidity human beings do not allow for’. For Rousseau, this is the descent into despotism: ‘Just as the particular will incessantly acts against the general will, so the Government makes a constant effort against Sovereignty. The greater this effort grows, the more adulterated does the constitution get, and since there is here no other corporate will to resist the will of the Prince and so to balance it, it must sooner or later come to pass that the Prince ends up oppressing the Sovereign and breaking the Social treaty. This is the inherent and inevitable vice which relentlessly tends to destroy the body politic from the moment of its birth, just as old age and death destroy a man’s body’. As to the cause of this, he states that ‘Dissolution of the State also comes about when the members of the Government severally usurp the power they ought to exercise only as a body; which is no less serious an infraction of the laws, and produces even greater disorder’. This is the opening of the door to universal self-seeking and the rule of the strong. It is the ruin of his idea of the republic, because it is always prey to injustice, inequality and therefore disorder. It is a sign of the idealism of the nature of his republic that there is no room for compromise in the nature of sovereignty. Rousseau’s is a black and white view of its universal validity and viability, that is that it cannot be compromised by the intrusion of personal, irrespective of dominant, interests. As a consequence of this frailty, it is doomed to the dissolution he predicts for it100.

Rousseau and Mythology

There is a delightful passage in the Essay on the Origin of Languages which points to the conception and construction of myth, although Rousseau did not see his own Sovereign as such. It identifies the relationship between fear and the creation of mythological figure

100 Social Contract pp.109, 106 and 108
by which we deal with the experience\textsuperscript{101}. Such may have well been said finally about Rousseau’s own attitude towards the notion of the general will.

Rousseau was not only fully aware of the work of Hobbes, Locke and Montesquieu, the ‘Hobbesians’, but his work can properly be seen as resulting from a concern to address issues that for him were problematic in the broad continuity of their work. It is argued in this thesis that the context for this concern was not only that the Hobbesians and Rousseau all shared a commitment to the presumptions of the political theoretical tradition but also that this tradition was, and has continued to be, infused with a concern to answer pre-Enlightenment questions. That is, its protagonists display a considerable mythological disposition in addressing the theoretical questions within that tradition and, further, that certain issues which are of primary concern within that tradition, such as how to construct the kind of State that assumes responsibility for individuals, are themselves mythological in nature.

In this context, Rousseau wanted to address the issue of the construction of an orderly society. Hobbes’ solution to the problem of conflict between individuals, that is a society that was not ordered, was the establishment of an absolute sovereign, monarch or parliament, who would retain that status so long as it could claim to be protecting individuals from fear. Locke checked the dangers of that absolutism by replacing the absolute sovereign with a legislative arrangement that was supreme and effectively immune from challenge, with a constituency that was representative but of dominant interests, and the sculpting out a space within which the individual had certain freedoms from interference by that legislature. Montesquieu’s idea in turn was to check the power of the supreme legislature by a separation and balancing of powers the effect of which was to constrain each arm from excessive interference in the lives of men, that is into the

\textsuperscript{101} ‘A savage meeting others will at first have been frightened. His fright will have made him see these men as larger and stronger than himself; he will have called them Giants. After much experience he will have recognised that since these supposed Giants are neither bigger nor stronger than he, their stature did not fit the idea he had initially attached to the word Giant. He will therefore invent another name common both to them and to himself, for example the name man, and he will restrict the name Giant to the false object that had struck him during his illusion. This is how the figurative word arises before the proper (or literal) word does, when passion holds our eyes spellbound and the first idea which it presents to us is not that of the truth’, Essay on the Origin of Languages in The Discourses and other early political writings p.254
spaces in which individual freedoms could thrive but without weakening its fearsomeness.

For Rousseau, none of these conceptions of the State went to the heart of the matter, for the sovereign authority of Prince or Parliament stood separate from the body of the people and so could not prevent intrusion into the lives of men, both arbitrarily by Prince or Parliament and by other individuals. This was due to the lack of engagement of all individuals in the political process. Rousseau therefore created the body of the people itself as the sovereign authority, in the form of the general will which realised the common good by the establishment of just and universal law. This was not just an aggregate but a unified whole, an entity. His Sovereign was an attempt to preclude arbitrary intrusion from both the Prince or Parliament and from other individuals, in one move.

The Rousseauean general will carries all the features of a mythological magnitude but it is one which, because his work addresses a flaw in the mythological features of the respective entities of the Hobbesians, is a strengthening of the realised idea of that magnitude. It was not the Hobbesian myth amended but an alternative myth of his own making. None of this is to claim that Rousseau was a conscious myth maker, as I have said. Like the Hobbesians, he would have strongly rejected this accusation. However, working within the political theoretical tradition that continued to focus first on pre-Enlightenment, mythological questions, the effect of his work on that of his predecessors is the firmer establishment of the political myth.

The mythological features of the sovereign general will are clear. Rousseau’s artificial polity is primarily concerned with the dual problems of individual fear and individual well-being. It is for the purpose of eliminating fear and creating what the general will

\[102\] ‘In the first times men scattered over the face of the earth had no society other than that of the family...Knowing nothing they feared everything, they attacked in order to defend themselves’ and ‘Hence disregarding all the scientific books that only teach us to see men as they have made themselves, and meditating on the first and simplest operations of the human Soul, I believe I perceive in it two principles prior to reason, of which one interests us intensely in our well-being and our self-preservation, and the
would regard as well-being that Rousseau embarked on the conception of an entity whose principal feature is order. Further, it sets out to eliminate that fear by itself being fearsome, as its powers of enforced change to human nature, including through such methods as universal surveillance, punishment and the putting to death of its unbelievers show. Although Rousseau rightly points out that the fundamental change to human nature that his arrangement requires will be accepted willingly, even sought, by many who see advantages to them in doing so, others will no doubt become the new Rousseaulean person only through the application of the force which carries the general will. This fearsomeness is emphasised by the absence of any balancing force. There is no separation of powers here as Montesquieu provides. Here it is the legislature, acting on behalf of the sovereign general will, and its fully compliant executive which is supreme, also much more than with Locke.

The Rousseaulean magnitude is certainly sympathetic to what it sees as the interests of its constituents, especially through the notions of equality and the common good. Further, unlike the ‘Hobbesian’ myth, Rousseau’s magnitude is fully dispersed across the social space by its binding of all its subjects into an entity with a frame of common concern and cooperation. It is this binding which for Rousseau is the optimal means of creating order, by eliminating the fear between individuals. Rousseau claims that it achieves this without causing them to forgo some space for individual freedom and the protection of property rights, that is by retaining the essence of the Lockean liberal framework. But it goes beyond this through a ‘positive’ sense of freedom, realised through the general will and its manifestation, the law we give ourselves\(^\text{103}\) and to which our sense of reason and justice causes and requires us to subject ourselves. It is this general will, through which fear is claimed to be eliminated and well-being promoted, which constitutes the archetypal dispersal of the myth fully across social space. Since there is no external

\(^{103}\) ‘When a law is proposed in the People’s assembly, what they are being asked is not exactly whether they approve the proposal or reject it, but whether it does or does not conform to the general will, which is theirs…Therefore when the opinion contrary to my own prevails, it proves nothing more than that I made a mistake and that what I took to be the general will was not. If my particular opinion had prevailed, I would have done something other than what I has willed, and it is then that I would not have been free’, \textit{Social Contract} p.124

other inspires in us a natural repugnance to seeing any sentient Being, and especially any being like ourselves, perish or suffer’, \textit{Essay on the Origin of Languages} p.267 and \textit{Discourse on Inequality} p.127
sovereign authority to cause the change of behaviour which will eliminate fear, this same result is achieved by Rousseau through this imposition on oneself of the ‘generally’ accepted prescriptions regarding acceptable behaviour. Man has created the artifice of the general will through the social contract between all the people and, in doing so, has created himself as an individual artifice, since every person will submit to the contract and in doing so radically changes his nature for what is promoted as the common good and his own. Thus is there the claim of the elimination of fear and the creation of sympathetic conditions of existence. Further, by this binding and by the unrepresented nature of the Sovereign general will, it has come fully into man’s hands. If it were not for its own internal flaws, this would be the realisation of the archetypal myth.

Finally, the mark of a true myth is that it assumes responsibility for individuals. That is, they are not responsible to or for themselves. The notion of the general will as Rousseau conceives it certainly makes that mark. In particular, one must not only submit oneself as subject to its prescription but must assume a mental perspective such that we adopt for ourselves what will be for the common good and must do so with every piece of legislation that comes before the general assembly. That is, this is not a general agreement on some basic sensible arrangement such as that we should not injure or in other ways disadvantage each other. It is the prescription that we are required to think adopt the position of the majority on every matter before the legislature and will be subject to surveillance, banishment and death if we do not. We must pledge obedience to all others. That is, we have completely forgone self-responsibility, since the majority of others will determine what is in my interests.

However, although Rousseau’s work has in effect dealt with the problems of dispersal of the myth and its ownership by man, both of which were severe shortcomings in the work of the Hobbesians, and claims to have done so without forgoing the individual space of individual freedom and property which they provided, the political myth of the

104 “The first and the most important maxim of legitimate or popular government, that is to say of government that has the good of the people as its object, is then, as I have said, in all things to follow the general will; but in order to follow it, one has to know it, and above all clearly to distinguish it from the particular will beginning with oneself”, Political Economy p.9
Rousseauian State now has new problems due to his solutions to these shortcomings. In the end, these solutions make the Rousseauian republic unsustainable. They include that the sovereign authority has become itself a principal source of fear since not only is there no distance between the sovereign and each subject but each other person may act as its agent, and its powers are those of ‘annihilation’ of the personal resources of the individual. Unlike the absolutism of the Leviathan, let alone the constrained Lockean and Montesquieuian State, which is located at some distance from each individual, the Rousseauian prescriptive sovereign is one’s neighbour, he watches everything one does and he can invoke the terrifying power of this annihilation. This is the point made by Berlin.

It can do this as there is no distance between Sovereign and the individual and no balancing power to constrain it. This flaw derives from the rejection by Rousseau of the general will being represented, whether this be because of his concern that there is no institution which could be trusted with its power or due to a concern that it would be overtaken by dominant interests and therefore inequality. Ironically, the general will is the most dominant interest conceivable. Strategically, Rousseau could have opted for representation, despite the inevitability of the emergence of dominant interest, since citizens are more likely to accept the presence of other interests, that is they would not expect only ‘common interests’, so long as the ‘fear and sympathy’ nexus was satisfactorily provided for in regard to themselves. This would have been a compromise for Rousseau, for example the amending of the social contract to allow a competition of individual interests, but one which might have made his polity – his mythological magnitude – sustainable. In the form in which he conceived it, he acknowledged that it was not. Further, his arrangements consequently do not allow any real sense of personal freedom, as Constant pointed out. The intimacy of the threat of the empowered sovereign will allows insufficient personal space, despite his assertions to the contrary. This contradicts the rationale for the social contract and undermines his enterprise. This is a magnitude in which there is full forgoing of individual self-responsibility, justified by the claim of the elimination of fear and the delivery of sympathy which it itself determines.
Finally, even without this particular blow to the social contract, Rousseau’s polity is a failure on its own terms because, by his own acknowledgement, personal interest will always ultimately intervene and irreparably tear the delicate fabric of the rationally constructed social contract. Neither the social contract, and therefore the general will for the common good, nor the republic itself as he conceives it can be sustained.

**The Significance of Rousseau**

So with Rousseau we have all the features of the Hobbesian myth but with the full dispersal across social space and its coming into man’s hands. The effect of his work is that we have an entity sufficiently fearsome to eliminate fear and which determines the sympathetic conditions of its subjects through the notion of the common good which stands behind his social contract, as the general will and ‘law we give ourselves’. In this mix, individuals must forgo to the general will their responsibility to and for themselves. Rousseau would argue that the space of individual freedom imagined by Locke survives, although that claim is strongly contested by this analysis as precluded by Rousseau’s determination to eliminate personal interest through radical, not minimal, change to man’s nature, rather than to accommodate it.

The Rousseauean form of the political myth assumes responsibility for individuals, not because all have a concern for the common good, but because they may only devote themselves to and must answer only to others and must radically change their nature to do so. In this, their own interests in justice and equality will be promoted, he says. This is the very narrow sense in which individual freedom is conceived by Rousseau. There are those who willingly accept this to eliminate their fear by submission to the magnitude of the sovereign general will. These are the ones whom Rousseau would claim demonstrate the viability of his social contract. But there may be many more whose nature will be unwillingly annihilated by this fearsome entity, if not by custom of civil religion then by surveillance, banishment and death. They demonstrate there is no universal, rationally chosen contract. In the end, Rousseau acknowledged that this is so.
Rousseau’s premise is that the Hobbesian paradigm is flawed because it is the worst source of fear and because it fails to foster the engagement of the subjects of the entity with each other regarding those issues that go to its viability. In the terms of the argument of this thesis, for Rousseau, the failure in Hobbes and Locke of the sovereign entity to engage its citizens in governing themselves is the failure of the magnitude to thoroughly disperse itself across social space. Without this dispersal or mutual engagement of its subjects, there remains the risk of antagonism, and therefore fear, between them and thereby of continuing instability or even disintegration of the mythological political arrangements. In addressing this, Rousseau remains within the tradition of political mythology but continues to work on its substance in an attempt to make the political myth more robust.

In particular, his notion of the general will, or sovereign, is not only universal but its prescriptions are fully enforceable, even to the point of man’s natural resources being ‘annihilated’ so that ‘each citizen is nothing and can do nothing without the rest’. That is, it is a fearsome entity, more so than the Leviathan. Further, the primary aspiration of this entity is to eliminate the fear of its constituents, achieved through the establishment of a fully ordered society in which no individual or group can dominate any other individual. To achieve this, he prescribes and enforces the radical change to human nature such that all individuals act only through reason and not personal interest. Further again, the sovereign general will is sympathetic to the interests of its subjects in that it largely eliminates inequality and creates opportunity for the fulfillment of individual interests, but by requiring the realignment of those interests with the general will. Finally, as we have seen, he sets out to maximise the dispersal of the magnitude across social space, thereby strengthening it and bringing the myth fully into man’s hands. Without its intractable flaws, the effect of Rousseauean theory would be the fulfillment of the concept of the political myth. Further, in bringing it fully into man’s hands, the Rousseauean mythological model strains to disallow the magnitude being colonised by competing, dominant interests. In fact, when such dominance finally and inevitably occurs, it is for Rousseau the dissolution of the republic.
This does raise a question about the model of the political myth used in this thesis, which argues that the inevitability of the emergence of dominant interests is a typical feature of the mythological magnitude rather than a dissolution of it, as Rousseau argues regarding the republic. That is, how can the republic be mythological if it cannot share this typical feature? The answer from this examination of Rousseau is that it cannot. Rousseau attempted to create an alternative to what was in effect the mythological entity of Hobbes but failed. Personal interest is irrepressibly a part of human activity, this being inseparable from the desire to eliminate fear and to enjoy sympathetic conditions of existence. There can be no credible, and therefore sustainable, political myth without it. No amount of effort to change human nature to deny this personal interest will be successful, that is no amount of reason, surveillance, civil religious belief, custom, banishment or threat of death will eliminate it. And attempting these tactics is self-defeating as it creates an absolutism far worse than that of the Leviathan. The Hobbesian myth cannot be improved by the Rousseau route. His turns out to be a side-road in the progressive refinement of the Hobbesian political myth but one that identifies key flaws in the work on it up to that point and one that is very suggestive of the way forward.

This is not to say that influencing human nature *per se* is wrong, only that linking it to the elimination of personal interest is doomed. ‘The law we give ourselves’ is a good notion if applied in a non-mythological manner, that is if is not the instrument for assuming responsibility for the individual, as Rousseau uses it. The creation of an entity so fearsome as to eliminate fear of others but by fearsomely empowering those others, reveals the self-defeating notion of any dominant mythology. Rousseau has addressed the problem of the Hobbesian myth in a way that has replaced the flaws of that myth with flaws that are worse. He identified the Hobbesian flaw and his solution may have succeeded, at least as myth, had it not attempted to eliminate personal interest. Because he did that, it is the argument of this thesis that it caused his work, and therefore his work on myth, to fail.

What Rousseau did not recognise is that, no doubt unfortunately, individuals would accept the existence of dominant interests, so long as they themselves were also protected
against those interests. That is, they would accept the compromise to the archetypal model of the polity because it was archetypal and might be realised one day. It is this tolerance which the political ideas of Hobbes and Locke allowed. Putting Rousseau’s failed attempt to eliminate domination to one side, we are left with a polity which has all the features of the mythological magnitude. Rousseau’s republic is unrealisable because of his attempt to eliminate personal interest\(^{105}\) but his political legacy retains all the essential features of the political myth, including ultimate dominance by others. This includes, in particular, his notion of the general will, a legacy which flows down from him to contemporary analysis through Kant to Rawls and through republican theory to Pettit. His failed attempt to solve the flaw in Hobbes and Locke left a legacy of a strengthened but still flawed myth, yet one suggestive of the road forward.

We shall now look at the impact of that legacy on Kant, who assumes all the strengths of Rousseau’s improvement of Hobbes and Locke, such as a fully empowered entity, the general will, the law we give ourselves, the universal application of reason and the dispersal of the myth, and addresses himself to the residual weaknesses, including the issue of representation, special interests and a sovereign which is the State not the people. The effect of the work of Rousseau on the thought of Kant\(^{106}\) will be seen to be a further strengthening of the political myth but, in that, the further highlighting of its irremediable flaws.

---

\(^{105}\) Social Contract pp.60, 121, 155

\(^{106}\) see M. Viroli Jean-Jacques Rousseau and the Well-ordered Society p.227
Chapter 6 - The Consolidation of the Political Myth: Kant

Kant is not an obvious protagonist in the consideration of the emergence of the State as a mythological entity. For a long period ignored as a political philosopher, but now firmly set in the ranks, his primary credentials are usually seen to be his emphasis on principles of right, law, justice, freedom, equality, individual independence, social contract and a constitutional State which is to assure these principles1. Nonetheless, as with his predecessors in this account and irrespective of what might have been his intentions, he has a firm place in the emergence and consolidation of the mythological State.

The political mythology in Kant comes at least from the influence on him of Rousseau. Working within a political tradition significantly impressed with mythological thinking, the effect of the work of Rousseau was the apparent correction of the flaws that prevented the realisation of the archetypal myth, the foundation of which had been established by Hobbes and which had then been worked on by Locke and Montesquieu. Up to that point, a set of institutional arrangements had been argued for that were fearsome but which were constrained by the separation and theoretical contest of its key elements and by processes of participation by those subjects who were in a position to negotiate the elimination of their fear as well as increasingly sympathetic conditions of existence. For the majority, the only rights established were those that allowed them to pursue limited private interests, especially those that related to their religious activity and labour.

Rousseau saw that in this pursuit of individual interest there was no active commitment on the part of the majority to the persistence of the arrangements or to their strengthening by the involvement of every individual. For him, they were self-possessed rather than engaged in the government of the society. They were bourgeois. As Manent says: ‘But for him, the rich man is not an economic category: he epitomises a society founded on comparison, that is, on inequality among men who no longer govern themselves. In Rousseau’s eyes, this inequality, and the behaviour of which it is both cause and effect, are not only to be found in the French society of his time…But fundamentally, the behaviour was that of modern man in modern society: it was the same in Paris and London, Edinburgh and Naples. Modern man had

---

1 H. S. Reiss Introduction to I. Kant Political Writings (Cambridge 2002) pp.21, 22, 24, 26, 27, 28.
become a *bourgeois*; he had ceased to be a *citizen*. The effect of this was the revelation of a major flaw in the conception of the archetypal myth.

Rousseau did not see that correcting this flaw would strengthen the political myth, a myth which had been developed into a form that protected the selfish individual through a set of structural arrangements. But his interest was in different political arrangements, which would come from having each individual govern himself through membership of the sovereign general will, such that none were fearsome and all existed in equivalent sympathetic conditions. Whilst in Hobbes and Locke there was only engagement to protect or pursue one’s own interests, especially through exploitative behaviour by those who had come to dominate, effectively those with money as Rousseau recognised, the archetypal myth had not been realised. This induced the search for a means whereby there was universal participation and primary commitment to the whole, which in turn meant limiting exploitation, otherwise there would be continuing insecurity. This commitment, promoted by Rousseau as more fundamental than the institutional arrangements themselves, is the universal membership of the sovereign general will for the promotion of the common good. As we have seen, however, this attempt to eliminate individual interest was doomed, as Rousseau himself acknowledged, due to its intractability. A flaw remained in the practical idea of the mythological State regarding how individual interest might have its way but in such a manner that all interests were addressed, rather than especially those which were dominant, and so that sustainable government was its emanation. The work of Kant addressed this issue. He would take the Hobbesian and Rousseauean frameworks and amend them to deal with this flaw. In doing so, Kant’s work would have the effect of using Rousseauean tools to strengthen the political myth in a manner that Rousseau himself, because of his particular theoretical aspirations, could not.

The significance of the Rousseauean analysis therefore lies not only in the identification of the characteristic limitations of the sequential mythological forms which Hobbes, Locke and Montesquieu had constructed but also in the influence it had on Kant and thereby on the continued development of mythological thought within the mythological political tradition. This Kantian connection is the next in a series of moments through which the original Hobbesian myth is received, transformed and fulfilled but remains mythological. As we shall

---

2 P. Manent *An Intellectual History of Liberalism* pp.66-67 (his italics)
see in considering the work of Elias, Foucault and Wittgenstein, these serial conceptual transformations were not unrelated to the various material political and intellectual circumstances which invigorated the myth in each post-Hobbesian reception. Such circumstances, the mythologising of people’s material practices if you like, can be argued also to have informed the manner of continuation and variation of this myth. The multiplicity of these variations is an indication of the inexhaustibility of the myth.

Yet such variations do not effect fundamental change in the constituent elements of the myth. Its original state remains a significant reference point. Through its reception in the Prussia of the eighteenth century, the Hobbesian-Lockean-Montesquieuean political myth, particularly with Rousseau’s critique of it, provided Kant with just such a range of ‘jumping-off points’ suited to the moral-systematic rationalising and development which he championed. In this context, the next section of this chapter will raise a series of inter-related concepts. This will include looking at the significance of Rousseauean anti-naturalism and the general will; how these relate to Kant’s account of the social contract, his views about the necessary move from the state of nature; his account of the constitutional tri-partite State, the nature of freedom and citizenship; the issue of tacit consent and his rejection of resistance to the State; and the important issues of the role of the State in the distribution of offices and of punishment. In broad terms, what will be argued now is that in developing his political philosophy, Kant drew on fundamental ideas of Rousseau, such as his anti-naturalism, general will and the consequential notion of freedom, but converted these into institutional arrangements which were very different from those imagined by Rousseau. It will be for the following section to draw out the implications of their similar and varying views, in preparation for an analysis of the mythological significance of this in the final section of this chapter.

3 As Blumenberg argues: “The inexhaustibility of the mythical image becomes manifest in its reception, but not in the manner of something simply being made visible that may already have reposed, preformed, within it. It is a real epigenesis. But it cannot be thought of as independent of its continual point of departure, which, for a tradition that is dependent on ‘sources’, can no longer be anything but the final stage, gone over into written form, of an unknown oral prehistory. Even enrichment through the process of reception, and accumulation of related materials, indicate jumping-off points for connections, capacities for reference in the inherited and available material” H. Blumenberg Work on Myth pp.275-6. As we shall also see, the evolutionary capacity of myth is directly evocative of the nature of the changes which Wittgensteinian language games undergo: see Philosophical Investigations 18 and 122 in which, respectively, ‘language can be seen as an ancient city: a maze of little streets and squares, of old and new houses, and of houses with additions from various periods; and this surrounded by a multitude of new boroughs with straight regular streets and uniform houses’ and, regarding Weltanschauung, as the context within which language games both attain meaning and undergo change.
Rousseau, the General Will and the Kantian State

It is clear that Kant’s thought was consciously directed against Hobbes in a number of respects. He addresses a significant section of his work specifically ‘Against Hobbes’⁴. It is there that he elaborates his arguments concerning the nature of the social contract as the universal agreement that not only precedes but is a prerequisite to civil society. There he also outlines his concept of right as based in law, from which are derived his notions of freedom, equality and independence of individuals as citizens. He also outlines there the rational, not factual nature of the social contract, and the necessary compliance with the laws that are inferred from that idea of reason, under sufferance of the use of force. From that flows his argument against the right of resistance against the supreme legislative power, therefore coming ironically to that same conclusion along a route very different from that travelled by Hobbes. In finding this, his position is that, unlike with Hobbes, a head of state has clear obligations to the people, so that he finds that Hobbes’ ‘proposition is appalling’⁵.

It is equally clear that his work was subject to the influence of Rousseau, both directly and by direct implication⁶. For him, as for Rousseau, man has at the very least the capacity to make himself, a facility by which he may come to govern himself. But Rousseau’s influence on Kant goes deep. On one view, Kant’s ‘main aim is to deepen and to justify Rousseau’s idea that liberty is acting in accordance with a law we give to ourselves’⁷ and Kant ‘sought to give a philosophical foundation to Rousseau’s idea of the general will’⁸, perceiving it as an

---

⁴ See I. Kant On the Common Saying: That May be Correct in Theory, But it is of no Use in Practice, Section II ‘On the Relation of Theory to Practice in the Right of a State (Against Hobbes)’ pp.290-304. Unless otherwise stated, all quotes from Kant that follow are taken from the Cambridge Edition of the Works of Immanuel Kant - Practical Philosophy 1996
⁵ ibid p.302
⁶ ‘A human being has a duty to himself to cultivate (cultura) his natural powers (powers of spirit, mind and body), as means to all sorts of possible ends...Even supposing that he could be satisfied with the innate scope of his capacities for his natural needs, his reason must first show him, by principles, that this meagre scope of his capacities is satisfactory; for, as being capable of ends (of making objects his ends), he must owe the use of his powers not merely to natural instinct but rather to the freedom by which he determines their scope. Hence the basis on which he should develop his capacities (for all sorts of ends) is not regard for the advantages that their cultivation can provide; for the advantage might (according to Rousseau’s principles) turn out on the side of his crude natural needs. Instead, it is a command of morally practical reason and a duty of a human being to himself to cultivate his capacities’, I. Kant The Metaphysics of Morals in Practical Philosophy p.565
⁷ J. Rawls A Theory of Justice p.256
⁸ ibid p.264
anticipation of his account of the Categorical Imperative\(^9\). Kant draws this link between good volition by an individual, the universality of the Categorical Imperative and individual autonomy made through a self-imposed universal law\(^{10}\). Rational beings impose laws upon themselves because they are rational, that is without requiring any other incentive. These laws are categorically imperative, that is of universal significance, and by this self-imposition they establish their autonomy.

These are key elements of the anti-naturalism which Kant draws from Rousseau, for whom human beings could be conceived either physically or from a metaphysical-moral perspective\(^{11}\). Mankind is capable of resisting the demands of nature\(^{12}\). It is this freedom which enables progress or perfectibility through the exercise of reason as autonomous in relation to nature. The Kantian elaboration of this separation of nature and reason, that is this freedom, is reflected in the distinction between phenomena and noumena, where the former were subject to Newtonian mechanics while the latter responded to moral considerations: the moral ‘ought’ as separate from the natural ‘is’\(^{13}\). But despite the availability of this sense of individualistic freedom, there is a constant struggle within the division by which we are each constituted between our phenomenal and noumenal characters. Yet it is reason by which the individual will is influenced. Kant thereby rejects inclination in constituting the forms of freedom or autonomy. The key is that freedom for Kant is, as with Rousseau, to be seen in the context of the general will and the categorically universal laws which derive from that sovereign will\(^{14}\). He affirms this, in discussing property rights, when he asserts that ‘the

---

\(^9\) Rawls states that, in turn, his own theory of justice was a ‘natural procedural rendering of Kant’s conception of...the notions of autonomy and the categorical imperative’ but one that is non-metaphysical - ibid p.264. On the relationship between the general will and the Categorical Imperative, see W. Kersting ‘Kant’s Concept of the State’ in *Essays on Kant’s Political Philosophy* p.149

\(^10\) ‘An absolutely good will, whose principle must be a categorical imperative, will therefore, indeterminate with respect to all objects, contain merely the form of volition as such and indeed as autonomy; that is, the fitness of the maxims of every good will to make themselves into universal law is itself the sole law that the will of every rational being imposes upon itself, without having to put underneath it some incentive or interest as a basis’, I. Kant *Groundwork of the Metaphysics of Morals* pp.92-93

\(^11\) J-J. Rousseau *A Discourse on the Origin and Foundations of Inequality* p.140

\(^12\) ‘Nature commands every animal, and the Beast obeys. Man experiences the same impression, but he recognises himself free to acquiesce or to resist’, ibid p.141

\(^13\) I. Kant *Groundwork of the Metaphysics of Morals* pp.43, 44

\(^14\) ‘In a patriotic way of thinking everyone in a state (its head not excepted) regards the commonwealth as the maternal womb, or the country as the paternal land, from which and on which he has risen and which he must also leave behind as a cherished pledge, only so as to consider himself authorised to protect its rights by laws of
aforesaid will can justify an external acquisition only insofar as it is included in a will that is united a priori (i.e. only through the union of the choice of all who can come into practical relations with one another) and that commands absolutely. For a unilateral will (and a bilateral but still particular will is also unilateral) cannot put everyone under an obligation that is in itself contingent; this requires a will that is omnilateral, that is united not contingently but a priori and therefore necessarily, and because of this is the only will that is lawgiving. For only in accordance with this principle of the will is it possible for the free choice of each to accord with the freedom of all, and therefore possible for there to be any right, and so too possible for any external object to be mine or yours.\(^{15}\)

These strong influences of Rousseau continue in Kant’s examination of the relationship between the general united will and legislation:

The legislative authority can belong only to the united will of the people. For since all right is to proceed from it, it cannot do anyone wrong by its law. Now when someone makes arrangements about another, it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for \textit{volenti non fit iniuria}). Therefore only the united and concurring will of all, insofar as each decides the same thing for all and all for each, and so only the united general will of the people, can be legislative\(^ {16}\).

Kant is thus using the Rousseauean notion of the universal, sovereign general will, the law we give ourselves, to establish the foundation of his moral polity through a series of inextricable, rational connections between key notions: through his reason, man makes himself rather than being determined by the dictates of nature; this is the beginning of his

\(^{15}\) I. Kant \textit{The Metaphysics of Morals} pp.415-416

\(^{16}\) He goes on to argue that ‘The members of such a society who are united for giving law (\textit{societas civilis}), that is, the members of a state, are called \textit{citizens of a state (cives)}. In terms of rights, the attributes of a citizen, inseparable from his essence (as a citizen), are: lawful \textit{freedom}, the attribute of obeying no other law than that to which he has given his consent; \textit{civil equality}, that of not recognising among the \textit{people} any superior with the moral capacity to bind him as a matter of right in a way that he could not in turn bind the other; and third, the attribute of civil \textit{independence}, of owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among the people. From his independence follows his civil personality, his attribute of not needing to be represented by another where rights are concerned’, ibid pp.457-458
freedom; from this reason also comes his duty and the consequential determination of law that must be moral and universally applicable; this leads to the establishment of the Categorical Imperative as the foundational principle of law imposed on the individual by himself and which thereby is the law of the State; this is the condition for the elaboration of individual, universal freedom since every individual is therefore acting in accordance with reason and the universal law he gives himself; it also constitutes his status as a citizen or member of the polity as free, equal and independent.

This is therefore not only his case for individual freedom but also for that as a prerequisite for the State. For Kant, ‘the civil condition, regarded merely as a rightful condition, is based a priori on the following principles:

The freedom of every member of the society as a human being.  
His equality with every other as subject.  
The independence of every member of a commonwealth as a citizen.

These principles are not so much laws given by a state already established as rather principles in accordance with which alone the establishment of a state is possible in conformity with pure rational principles of external human right’.  

The usual accusation made against principles such as these is that they are the product of arid formalism drawn from the Categorical Imperative and are therefore of little help as a guide to action. Onora O’Neill attempts to defend Kant against such an accusation, pointing to his elaboration of the notion of the sensus communis, understandings and practices of communication that can be shared in any possible community. In this, they are in effect guides to practical, rational thought. They are, to think for oneself, to think from the standpoint of everyone else and always to think consistently. O’Neill draws from this that Kant doesn’t deify reason but sees it as a way of disciplining our thinking. Kant himself

17 I. Kant On the common saying: That may be correct in theory p.291 (his emphases); see also The Metaphysics of Morals s.46 pp.457-459
18 Onora O’Neill Reason and Politics in the Kantian Enterprise in Kant’s Political Philosophy pp.75-77
19 ‘[h]e denies not only that we have access to transcendent metaphysical truths, such as the claims of rational theology, but also that reason has intrinsic or transcendent vindication, or is given to consciousness. He does not deify reason. The only route by which we can vindicate certain ways of thinking and acting, and claim that those ways have authority, is by considering how we must discipline our thinking if we are to think or act at all. This
provides a broader context in which to see these comments in discussing taste: ‘The judgement of taste, therefore, depends on our presupposing the existence of a common sense. (But this is not to be taken to mean some external sense, but the effect arising from the free play of our powers of cognition.) Only under the presupposition, I repeat, of such a common sense, are we able to lay down a judgement of taste’\textsuperscript{20}.

There are two points to be made from this. The first is that the Categorical Imperative, fully grown child of the Rousseauean sovereign general will, requires that one must try to think from the standpoint of everyone else and ‘to avoid maxims to which others cannot agree’\textsuperscript{21}. The second is that, for Kant, even if a judgement of taste were a natural and original faculty rather than one formed for us as a regulative principle by a still higher principle of reason, the common sense of what is good taste is an ideal norm which could ‘demand universal assent like an objective principle’\textsuperscript{22}. In other words, even if one accepts that Kant is not a deifier of reason but sees reason as the product of an agonistic communal process, an assertion about him that is not incontestable, the centre of gravity in the Kantian argument for freedom drawn from the Categorical Imperative is still the objectified common sense to which one must align oneself as the imposition of the universal rule or judgement on oneself.

From his Rousseauean political fundamentals, Kant projects both backwards in time and forward to the grounds for the establishment of the legitimate State. Looking back, he does allow a range of rights in his state of nature, albeit insecure as they are. For example, property acquisition there is sanctioned by the community in expectation of the formation of the civil state: ‘From private right in the state of nature there proceeds the postulate of public right: when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice\textsuperscript{23}. This rational and necessary move to enter civil society and the constitutional State, which emerges as an obligation or duty to the State, draws its imperative force from the disciplining leads us not to algorithms of reason, but to certain constraints on all thinking, communication and interaction among any plurality. In particular we are led to the principle of rejecting thought, action or communication that is guided by principles that others cannot adopt, and so to a fully general version of the Categorical Imperative’, ibid p.78

\textsuperscript{20} I. Kant \textit{Critique of Judgement} in \textit{The German Library – Kant's Philosophical Writings} Continuum 1993 p.194
\textsuperscript{21} op cit p.77
\textsuperscript{22} op cit p.196
\textsuperscript{23} \textit{Metaphysics of Morals} pp.451-452
anxiety generated by the natural state: ‘before a public lawful condition is established, individual human beings, peoples and states can never be secure against violence from one another, since each has its own right to do what seems right and good to it and not to be dependent upon another’s opinion about this. So, unless it wants to renounce any concepts of right, the first thing it has to resolve upon is the principle that it must leave the state of nature’. Looking forward, Kant draws from this Rousseauian foundation in constructing his account of the nature of the State:

Public right is therefore a system of laws for a people…which, because they affect one another, need a rightful condition under a will uniting them, a constitution (constitutio), so that they may enjoy what is laid down as right. – This condition of the individuals within a people in relation to one another is called a civil condition (status civilis), and the whole of individuals in a rightful condition, in relation to its own members is called a state (civitas). Because of its form, by which all are united through their common interest in being in a rightful condition, a state is called a commonwealth…if the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse.

He continues, in elaborating the institutional features of the State:

A state (civitas) is a union of a multitude of human beings under laws of right. Insofar as these are a priori necessary as laws, that is, insofar as they follow of themselves from concepts of external right as such (are not statutory), its form is the form of a state as such, that is, as it ought to be in accordance with pure principles of right. This idea serves as a norm (norma) for every actual union into a commonwealth (hence serves as a norm for its internal constitution).…Every state contains three authorities within it, that is, the general united will consists of three persons (trias politica): the sovereign authority (sovereignty) in the person of the legislator; the executive authority in the person of the
ruler (in conformity to law); and the _judicial authority_ (to award to each what is his in accordance with the law)\textsuperscript{26}.

Consistent with Rousseau except for the priority of these institutional arrangements, the members of the Kantian State are citizens, who enjoy the conditions of freedom, equality and independence. Then he parts company with Rousseau: ‘The only qualification for being a citizen is being fit to vote’ but this ‘requires a distinction between active and passive citizens’. His examples of the latter, which are not reflective of Rousseauean universality and which are examined more fully below, are employees and women, that is the majority, who are ‘mere underlings of the commonwealth because they have to be under the direction or protection of other individuals, and so do not possess civil independence’. For Kant, this lack of independence does not deny them their freedom or equality. They simply cannot vote or manage the State, although such a person ‘can work his way up from this passive condition to an active one’\textsuperscript{27}. To do so requires features of both nature and capacity\textsuperscript{28}.

Neither does his consideration of the tri-partite State and its superior relationship by contract to its citizens reflect Rousseau. He converts Rousseauean ideas to his own, in that for him the general will, drawn from an original contract, not only supercedes the interests of individual citizens but becomes the politically dominant tripartite arrangements of the State, a step Rousseau did not take. For Kant, the legislature may indeed belong to the general will. But for him this means several things that are not Rousseauean: although this will comprises all citizens, only the judgement of minority, dominant interests as to what constitutes a universally applicable law will determine its prescriptions, since only they can vote (because women and most workers are excluded); the legislature, as part of the tri-partite State, is not only superior to all citizens as subjects but is in a command position over them; and, reinforced by the application of the principle of tacit consent, it cannot be resisted. Rousseau’s position had been that the general will comprises all citizens as voters, and not only can the general will not be represented by its legislative deputies but the jurisdiction of

\textsuperscript{26} ibid pp.456-457
\textsuperscript{27} ibid pp.458-459
\textsuperscript{28} ‘The quality requisite to this, apart from the natural one (of not being a child or a woman), is only that of being one’s own master (sui iuris), hence having some property (and any art, craft, fine art, or science can be counted as property) that supports him’, I. Kant _On the Common Saying: That May be Correct in Theory_ ibid p.295
government ceases immediately upon the citizens merely assembling\textsuperscript{29}. In contrast, Kant states that the three authorities of the State ‘comprise the relation of a \textit{superior} over all (which, from the viewpoint of laws of freedom, can be none other than the united people itself) to the multitude of that people severally as \textit{subjects}, that is, the relation of a \textit{commander} (\textit{imperans}) to \textit{those who obey} (\textit{subditus}). – The act by which a people forms itself into a state is the \textit{original contract}. Properly speaking, the original contract is only the idea of this act, in terms of which alone we can think of the legitimacy of a state\textsuperscript{30}. The general will has become the widely empowered State.

He continues, explaining how this circumstance comes about: ‘In accordance with the original contract, everyone (\textit{omnes et singuli}) within a \textit{people} gives up his external freedom in order to take it up again immediately as a member of a commonwealth, that is, of a people considered as a state (\textit{universi}). And one cannot say: the human being in a state has sacrificed a \textit{part} of his innate outer freedom for the sake of an end, but rather, he has relinquished entirely his wild, lawless freedom to find his freedom as such undiminished, in a dependence upon laws, that is, in a rightful condition, since this dependence arises from his own lawgiving will\textsuperscript{31}. That is, this superiority of the general will, which derives from the contract, determines both the nature of Kantian freedom, a notion he does share with Rousseau, and the commanding authority of the tri-partite State, a notion they don’t share. In short, they share the idea of the origin and nature of freedom but seriously part company in Kant’s adaptation of that in establishing the status and nature of the institutions of the State.

This framework of ideas produced a further range of proscriptions and arguments which, although based on the notion of the general will, sees Kant part company further with Rousseau. These follow from the representation of the general will in the fully empowered legislative State, the move Rousseau doesn’t make. First among these was that citizens may not question the authority of the State\textsuperscript{32}. In a manner that has echoes of Hobbes, Kant then

\textsuperscript{29} see respectively \textit{Metaphysics of Morals} pp.457-458, 459, 462; \textit{Of the Social Contract} pp.110, 112, 114 and 115

\textsuperscript{30} \textit{Metaphysics of Morals} p.459

\textsuperscript{31} ibid p.459

\textsuperscript{32} A people should not inquire with any practical aim in view into the origin of the supreme authority to which it is subject...For, since a people must be regarded as already united under a general legislative will in order to judge with rightful force about the supreme authority (\textit{summum imperium}), it cannot and may not judge otherwise than as the present head of state (\textit{summus imperans}) wills it to. – Whether a state began as an actual contract of submission (\textit{pactum subiectionis civilis}) as a fact, or whether power came first and law arrived only
draws out that “that is what the saying ‘All authority is from God’ means. This saying is not an assertion about the historical basis of the civil constitution; it instead sets forth an idea as a practical principle of reason: the principle that the presently existing legislative authority ought to be obeyed, whatever its origin”. He goes on to make it clear that there can be no resistance against the State, even if the sovereign breaches the law, even if he allows a ‘questioning’ of State authority through complaint. Resistance would be a denial of right, due to the incontrovertible status of Kantian law, and would effectively abolish the constitution. This view of the State is not Rousseau, for whom all jurisdiction ceases and the executive is suspended ‘the instant the People is legitimately assembled’, but it is his institutional realisation of the Rousseauean idea of the nature of the general will.

Kant complements this hard line with other prescriptions, a number of which have special relevance for a mythological analysis. First, again putting his strong Rousseauean roots on display, he emphasises the rational rather than empirical basis of the social contract and how it binds the legislature to reflect the general will. Problems associated with this will be examined more thoroughly below. Second, the State has the right of taxation for the purpose of creating minimum conditions of existence for its citizens. In this he is acknowledging the afterwards, or even whether they should have followed in this order: for a people already subject to civil law these subtle reasonings are altogether pointless and, moreover, threaten a state with danger’, ibid pp.461-462

33 ‘Now, from this principle follows the proposition: the sovereign has only rights against his subjects and no duties (that he can be coerced to fulfill). – Moreover, even if the organ of the sovereign, the ruler, proceeds contrary to law, for example, if he goes against the law of equality in assigning the burdens of the state in matters of taxation, recruiting and so forth, subjects may indeed oppose this injustice by complaints (gravamina) but not by resistance’, ibid p.462

34 Therefore ‘a people cannot offer any resistance to the legislative head of a state which would be consistent with right, since a rightful condition is possible only by submission to its general legislative will. There is, therefore, no right to sedition (seditio), still less to rebellion (rebellio)…The reason a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority is that its resistance to the highest legislation can never be regarded as other than contrary to law, and indeed as abolishing the entire legal constitution’, ibid p.463

35 Social Contract p.112

36 ‘it is by no means necessary that this (original) contract (called contractus originarius or pactum sociale), as a coalition of every particular and private will within a people into a common and public will (for the sake of a merely rightful legislation), be presupposed as a fact (as a fact it is indeed not possible).…It is instead only an idea of reason, which, however, has its undoubted practical reality, namely to bind every legislator to give his laws in such a way that they could have risen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will. For this is the touchstone of any public law’s conformity with right. In other words, if a public law is so constituted that a whole people could not possibly give its consent to it,…it is unjust; but if it is only possible that a people could agree to it, it is a duty to consider the law just, even if the people is at present in such a situation or frame of mind that, if consulted about it, it would probably refuse its consent’, I. Kant On the Common Saying: That May be Correct in Theory pp.296-297

37 It has ‘the right to impose taxes on the people for its own preservation, such as taxes to support organisations providing for the poor, foundling homes and church organisations, usually called charitable or pious
responsibility of the state to ensure that all of its subjects are provided conditions to the minimum extent sufficient to sustain the society as a coherent whole. This is certainly not a welfarist position but neither does it reflect a consistent attitude towards equality, as we shall see. It does display an integrative role for the State, thereby minimising forces of dissatisfaction and disorder, achieved by ensuring that all members enjoy at least minimum conditions of existence but without allowing poverty to become ‘a means of acquisition for the lazy (as is to be feared of religious institutions) and so does not become an unjust burdening of the people by government’\(^38\). In this context, Kant refers to the complex relationship between Church and State, on the one hand recognising the need of the Church by the State and on the other stating that the Church cannot be allowed to challenge the State’s authority and create civil disharmony. The accumulation of assets by the Church is potentially against the interests of citizens and the society generally. But he is quite clear about their separation\(^39\).

Further, he states ‘The rights of the supreme commander of a state also include: 1) the distribution of offices, which are salaried administrative positions; 2) the distribution of dignities, which are eminent estates without pay, based on honour alone, that is, a division of rank into the higher (destined to command) and the lower (which, though free and bound only by public law, is still destined to obey the former); and 3) besides these (relatively beneficent) rights, the right to punish as well’. He proceeds to comment on each of these prescriptions, the first two wherein the State has limits to its power but which indicates the strategy of dispersal, the other whereby the offender is presumed complicit in his punishment by the State, but each of which has a consolidatory effect regarding the State. Regarding civil organisation. The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves. For reasons of state the government is therefore authorised to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs’, Metaphysics of Morals p.468

\(^38\) He states ‘As for churches, they must be carefully distinguished from religion, which is an inner disposition lying wholly beyond the civil power’s sphere of influence. (As institutions for public divine worship on the part of the people, to whose opinion or conviction they owe their origin) churches become a true need of a state, the need for a people to regard themselves as subjects of a supreme invisible power to which they must pay homage and which can often come into very unequal conflict with the civil power. So a state has only a negative right to prevent public teachers from exercising an influence on the visible political commonwealth that might be prejudicial to public peace’, ibid p.469

\(^39\) ibid p.469
offices, the commander may appoint but not freely dismiss\footnote{‘With regard to civil offices, the question arises whether the sovereign, once having given someone an office, has a right to take it away as he pleases (if the official has not committed a crime). I say, no. For the head of state can never make a decision about a civil official which the united will of the people would not make. Now the people (which has to bear the costs incurred from appointing an official) undoubtedly wants him to be competent for the position he is assigned to; and this he can only be after he has spent sufficiently long time in preparation and training’, ibid p.470}. Regarding punishment, there are significant principles inherent in the Kantian position. These include that punishment by a court can never be inflicted merely as a means to promote some other good for the criminal himself or for civil society but only because he has committed a crime\footnote{‘He must previously have been found punishable before any thought can be given to drawing from his punishment something of use for himself or his fellow citizens. The law of punishment is a categorical imperative’. Further, that ‘only the law of retribution (ius talionis) – it being understood, of course, that this is applied by a court (not by your private judgment) – can specify definitely the quality and the quantity of punishment’ and “But what does it mean to say, ‘If you steal from someone, you steal from yourself”? Whoever steals makes the property of everyone else insecure and therefore deprives himself by the principle of retribution of security in any possible property’. Further, ‘No one suffers punishment because he has willed it but because he has willed a punishable action; for it is no punishment if what is done to someone is what he wills, and it is impossible to will to be punished’, but ‘As a colegislator in dictating penal law, I cannot possibly be the same person who, as a subject, is punished in accordance with the law; for as one who is punished, namely as a criminal, I cannot possibly have a voice in legislation (the legislator is holy). Consequently, when I draw up a penal law against myself as a criminal, it is pure reason in me (homo noumenon), legislating with regard to rights, which subjects me, as someone capable of crime and so as another person (homo phaenomenon), to the penalty of law, together with all others in a civil union…The chief point of error in this sophistry consists in its confusing the criminal’s own judgment (which must necessarily be ascribed to his reason) that he has to forfeit his life with a resolve on the part of his will to take his own life, and so in representing as united in one and the same person the judgment upon a right and the realisation of that right’, ibid pp.473, 474, 476}. More will be said about this issue.

There is a range of direct implications that follow from these Kantian elaborations and mutations of Rousseauian ideas and we come to these now, before examining their mythological significance.

**The Implications of Kantian Political Thought**

What is clear from this exegesis is that there are many features of the Kantian system, some of them foundational, that are drawn from Rousseau, either directly or by implication. On the other hand, Kant has also amended or even rejected key elements of Rousseau’s work. It will be for the final section of this chapter to argue why this is so, but first we will clarify the effect of these commonalities and differences.
There is fundamental common ground between Rousseau and Kant, especially in that the Rousseauean general will is the frame which Kant fills out as the politics of the Categorical Imperative and which becomes the basis of freedom and the substance of the State. This ground is a compelling framework for action in that it defines the obligatory nature of all behaviour, obligation which for reasons of personal interest or the fulfillment of moral duty, respectively, has the full commitment of each individual. A prerequisite of such commitment is the emergence of a reconstructed human nature, which for Rousseau means the ‘annihilation’ of personal resources and the reconfiguration of personal interest as a concern for the common good as it takes the form of the general will. The means of this transformation is a law that each man gives himself. For Kant, it comprises a rational metaphysics of morals separate from man’s anthropology except for its application and certainly not as a concern for individual happiness. The consequences of not acting in a manner consistent with the universal morality of the Categorical Imperative bring down on the individual all the force of retributive justice, Kant’s own version of Rousseauean ‘annihilation’. For both, acting out human nature understood in this way is what constitutes freedom.

However, Kant ignores what is in the end the serious warning by Rousseau regarding the nature of what Kant will make into this fundamental common ground. That is, a sense of the general will can only emerge if there is a long preparation for it in custom. Individuals are not independently and immediately rational in the Kantian sense. This is a point the communitarians will make in response to Rawls’ early, Kantian work. The consequence is that the rational decisions and actions by individuals that Kant argues will materialise in a manner consistent with the Categorical Imperative will either be empty of content and so be unhelpful in determining principles of behaviour or will not likely be consistent with the Categorical Imperative, that is they will instead be relative to the customary presumptions of the particular community. As such they are unlikely to be decisions and actions which could be the basis of universal laws. Hegel and Nietzsche saw this.

43 J.J. Rousseau’s Of the Social Contract p.60 and I. Kant On the Common Saying: That May be Correct in Theory pp.294-295
44 I. Kant Groundwork of the Metaphysics of Morals pp.64, 65, 76, 90, 372 and p.582 where he interestingly rejects the ‘mania for spying on the morals of others’, the practice recommended by Rousseau
45 I. Kant Groundwork of the Metaphysics of Morals pp.95, 166, where he states that ‘lawgiving of its own is freedom in the positive sense’.
For Hegel, ‘It at once becomes clear that, since pure unity constitutes the essence of practical reason, a system of morality (Sittlichkeit) is so much out of the question that not even a plurality of laws is possible…practical reason is completely lacking in any content of the (moral) law…In truth, the sublime capacity of pure practical reason to legislate autonomously consists in the production of tautologies’\textsuperscript{46}. Nietzsche was equally unconvinced: ‘To be moral, to act in accordance with custom, to be ethical means to practise obedience towards a law or tradition established from of old’\textsuperscript{47}.

The point is that the Categorical Imperative is, as a principle to guide the development of standards of behaviour, devoid of content and so will be unhelpful in that development. But even if this were not so, beyond the obvious resonance that this notion of custom has with mythology, the much higher likelihood is that such standards are likely to emerge in a customary fashion within a community over time rather than be the subject of processes of independent, individual rational thought. Further, it is more likely that custom will have at its heart the protection of personal interest rather than a general will solely for the common good. Rousseau acknowledged that. Kant did not, except by qualification.

It might also be added that there appears to be a flaw at the heart of the Categorical Imperative, read as a specification of what can be done rather than as ruling out certain things that cannot be done, in that its universality denies that there can be actions for which universal application is irrelevant. That is, it denies that there can be a range of actions which the individual may prefer for himself which will have no impact on and so no properly arguable significance for others, so universal applicability cannot be a criterion justifiably

\textsuperscript{46} G. Hegel \textit{On the Scientific Ways of Treating Natural Law} pp.122-123 in \textit{Political Writings} (Cambridge 1999)

\textsuperscript{47} He continues ‘Whether one subjects oneself with effort or gladly and willingly makes no difference, it is enough that one does it. He is called ‘good’ who does what is customary by nature…and this is so whatever what is customary may be…To be evil is ‘not to act in accordance with custom’, to practise things not sanctioned by custom, to resist tradition, however rational or stupid that tradition may be: in all the laws of customs of all time, however, doing injury to one’s neighbour has been seen as injurious above all else…How the tradition has arisen is here a matter of indifference, and has in any event nothing to do with good and evil or with any kind of \textit{immanent categorical imperative (my emphasis)}; it is above all directed at the preservation of a community, a people; every superstitious usage which has arisen on the basis of some chance event mistakenly interpreted enforces a tradition which it is in accordance with custom to follow; for to sever oneself from it is dangerous, and even more injurious to the community than to the individual…Every tradition now continually grows more venerable the farther away its origin lies and the more the origin is forgotten; the respect paid to it increases from generation to generation, the tradition at last becomes holy and evokes awe and reverence’, F. Nietzsche \textit{Human, All Too Human} in \textit{On the Genealogy of Morality} (Cambridge 2003), pp.133-134
applied to them. This is not to assert that the Categorical Imperative is a consequentialist test. It is a moral test. However, what is claimed here is that this moral criterion of universality, that is that one should act as if one’s action are fit to be universal laws, is inappropriate. Various decisions may be made by respectful, self-interested self-responsible individuals without consideration of what criteria others might apply as they decide similar matters. This will be so, for example, regarding consensual sexual practices, the timing of one’s own death and regarding the quiet use of intoxicants. These are matters in which it is not relevant to act only on the maxim through which one can at the same time will that it becomes a general law\textsuperscript{48}. In essence, the Kantian position is a flawed application of universality in its reflection of his meta-ethical or metaphysical approach. For Kant, every personal decision is to be made in the context of universal law-making, so there can be no strictly personal choice and freedom is controversially constrained by universal-rational necessity. This is an unjustifiable constraint. Saying this should not be seen to deny a debate about the viability of the postulates of Kantian practical reason. It is Kantian metaphysics which is most, in fact, severely problematic, as Blumenberg sees\textsuperscript{49}.

Yet there is not only common ground between Rousseau and Kant, however unsteady that ground may sometimes be. At a number of significant points, Kant either departs from or actively rejects the arguments of Rousseau. The first such point is their separate views about the nature of the social contract and the conditions of the entry into civil society. They do appear to have a similar view about the nature of the social contract. That is, as Rousseau puts it: ‘Each of us puts his person and his full power in common under the supreme direction of the sovereign will; and in a body we receive each member as an indivisible part of the whole’. This is necessary because ‘men having reached the point where the obstacles that interfere with their preservation in the state of nature prevail by their resistance over the forces which each individual can muster to maintain himself in that state’ and ‘since men

---

\textsuperscript{48} I. Kant \textit{Groundwork of the Metaphysics of Morals} p.82, \textit{Metaphysics of Morals} p.380
\textsuperscript{49} “in the doctrine of the ‘postulates’, in his \textit{Critique of Practical Reason}, he assumed the independence of moral postings from theoretical proofs. For Kant it is the classical chief principles of all metaphysics - man’s freedom, the existence of God, immortality - that, in the form of postulates, ‘are inseparably attached’ to the practical law. The logic of this inseparability becomes clearer when one sees that only someone who disregards the law has an interest in citing his unfreedom and the futility of law-abiding behaviour as far as well-being is concerned. We would count the postulates, \textit{entirely apart from metaphysics} (my emphasis), as part of the rhetoric of ethics: they sum up what makes up the consensus of practical axioms, through persuasion and self-persuasion - what produces assent to public and private efforts and gives meaning to improving the conditions for a life that is free of crime and conflict and to trusting in the possibility of repairing backward or misguided lives”, H. Blumenberg \textit{An Anthropological Approach to Rhetoric in After Philosophy – End or Transformation} p.450
cannot engender new forces, but only unite and direct those that exist, they are left with no
other means of self-preservation than to form, by aggregation, a sum of forces that might
prevail over those obstacles’ resistance…This sum of forces can only arise from the
cooperation of many’. The problem which the social contract appears to solve is how to form
an association to protect each person while at the same time allowing him to obey only
himself so that he will ‘remain as free as before’. This requires ‘the total alienation of each
associate with all of his rights to the whole community’, which makes everyone so perfectly
equal that there is no associate over whom one does not acquire the same right as one grants
him over oneself and leaves everyone with nothing further to claim50.

Kant’s account of the original contract strongly echoes Rousseau, as we have seen: ‘The act
by which a people forms itself into a state is the original contract…In accordance with the
original contract, everyone (omnes et singuli) within a people gives up his external freedom
in order to take it up again immediately as a member of the commonwealth, that is, of a
people considered as a state (universi). And one cannot say: the human being in a state has
sacrificed a part of his innate outer freedom for the sake of an end, but rather, he has
relinquished entirely his wild, lawless freedom in order to find his freedom as such
undiminished, in a dependence upon laws, that is, in a rightful condition, since this
dependence arises from his own lawgiving will51. This is not the voluntary forming of
association that we find in Hobbes or Locke, for in Rousseau and, even more strongly in
Kant, this move into civil society in the form of a state is presented as a rational obligation52.

However, what follows is a significant variation that Kant introduces to Rousseauean
thought. Rousseau makes it clear that everyone is included in the social contract53 and is
therefore an equal part of the general will54, so that he is therefore a citizen with the right and

50 J.J. Rousseau Of the Social Contract pp.49-50
51 I. Kant The Metaphysics of Morals p.459
52 ‘There are thus three distinct authorities (potestas legislatoria, executorial, iudiciaria) by which a state
(civitas) has its autonomy, that is, by which it forms and preserves itself in accordance with laws of freedom. –
A state’s well-being consists in their being united (salus rei publicae suprema lex est). But the well-being of a
state must not be understood as the welfare of its citizens and their happiness…By the well-being of a state is
understood, instead, that condition in which its constitution conforms most fully to principles of right; it is that
condition which reason, by a categorical imperative, makes it obligatory for us to strive after’, ibid p.461
53 J.J. Rousseau ‘Each of us puts his person and his full power in common under the supreme direction of the
general will; and in a body we receive each member as an indivisible part of the whole’ (his emphasis) Social
Contract p.50; ‘I could offer quite a few reflections here on the simple right to vote in every act of sovereignty;
a right of which nothing can deprive citizens’ ibid p.122, see also pp. 58, 123;
54 ibid p.56
responsibility to vote in a general popular assembly. For Kant there is inclusion but not universal equality. Certainly he includes equality as one of the three principles of the civil condition, but we shall see that he heavily qualifies that in regard to material equality. Perhaps more profoundly, he introduces the distinction between active and passive citizens and only the active can vote. The passive, who are thereby excluded, include apprentices, domestic servants, all women and any employee bar those who work for the State. They are the majority. He does allow that ‘anyone can work his way up from this passive condition to an active one’, although Susan Mendus argues coherently that this possibility is denied to women, thereby denying them equality.

Kant provides arguments which fill out the reasons for the exclusion of these passive groups, that is he gives reasons why they have no capacity for independent existence and in doing so reveals why independence is a fundamental criterion for citizenship. In the case of apprentices, servants and those ‘whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state)’, their exclusion is clearly on the basis that they ‘have to be under the direction or protection of other individuals’ and their status is one of ‘dependence on the will of others’. That is, they each cannot be relied upon to ‘act from his own choice in community with others’, which is to say that they cannot be relied upon to act on the maxim that it becomes a general law. They are thereby morally and politically immature and thereby would introduce moral and political instability into social affairs and so can be given no active role as citizens.

Mendus argues that Kant regards women as politically destabilising but on different grounds. This is the basis for her argument that Kant does not allow women the opportunity to work their way up to active citizenship. She does not argue that Kant sees women as immature but,

---

55 ‘He who has the right to vote in this legislation is called a citizen (citoyen, i.e., citizen of a state, not of a town, bourgeois). The quality requisite to this, apart from the natural one (of not being a child or a woman), is only that of being one’s own master (sui iuris), hence having some property (and any art, craft, fine art, or science can be counted as property) that supports him – that is, if he must acquire from others in order to live, he does so only by alienating what is his and not by giving others permission to make use of his powers – and hence (the requisite quality is) that, in the strict sense of the word, he serves no one other than the commonwealth’, On the Common Saying: That it May Be Correct in Theory p.295, and ‘This quality of being independent, however, requires a distinction between active and passive citizens…not all persons qualify with equal right to vote within this constitution’, Metaphysics of Morals p.458

56 ibid p.458

57 ibid p.459

58 S. Mendus An Honest But Narrow-Minded Bourgeois? in Essays on Kant’s Political Philosophy p.174ff
more profoundly, as having a nature which is incompatible with citizenship. This nature is morally and politically destabilising. In the *Anthropology from a Pragmatic Point of View*, Kant’s mind, almost wholly uncluttered by any actual experience, is laid bare and the prejudice and bigotry are revealed. She dismisses any claim that his prejudice against women was unthinking: ‘What is wrong with Kant’s political philosophy in so far as it concerns the status of women is not simply that it expresses a cautious conservatism and eagerness to defend the status quo. Rather, the elevation of contingent practices to the status of requirements of reason represents a categorical denial on Kant’s part that anything other than the status quo might either be feasible or permissible, and that it is justified by appeal to pure reason’. Further, she states that ‘The language of domination and subordination is central to individualism and cannot be dispensed with except by abandoning individualism itself’, that is ‘someone must dominate, someone must give way’. In Kant, women must give way because it is their nature that they are driven by inclination not reason, and inclination without reason is not the quality which will produce behaviour consistent with universal laws. They must be and remain passive citizens.

Kant does introduce two arguments in qualification, which may for some seem to soften the effect of these exclusions. The first is that ‘This dependence upon the will of others and this inequality is, however, in no way opposed to their freedom and equality as human beings, who together make up a people; on the contrary, it is only in conformity with the conditions of freedom and equality that this people can become a state and enter into a civil

---

59 ibid p.177, Mendus refers in her arguments to the translation of this work by T. McGregor (The Hague, 1974) at p.167 (Prussian Academy Edition of *Kant’s Collected Works* Berlin 1902, VII, 304)

60 She continues ‘A great deal of what he has to say about the inherent nature of woman is merely ludicrous…What is important, I believe, is the assertion in this same chapter that woman is to be identified with inclination and man with reason’ and ‘Kant seems to believe that the obedience of wife to husband is a requirement of natural law’, *An Honest but Narrow-Minded Bourgeois?* pp.178-179. In the latter quote, Mendus attributes this argument, which she endorses, to Morris Cohen in ‘A Critique of Kant’s Philosophy of Law’ in *The Heritage of Kant* Whitney and Bowers (eds) New York 1962 p.285

61 Further than this, for Kant is ‘defending his own individualism in *Groundwork*…All individualist theories share this difficulty: in construing persons as essentially independent, free and equal, they support an atomistic model which cannot readily accommodate those social units, such as the family, which transcend mere atomism. The choice is then between abandoning individualism and construing the family as itself a single unit, with the husband as the head and decision-maker’, ibid pp.182, 183. In fact, Kant could accommodate the concept of the family without forgoing his individualism by acknowledging the independent and rational nature of women, although this would cause him to abandon his prejudice and would merely defer the problem of his individualism, a problem that Rawls was forced to face in relation to Kant, as we shall see.

62 Mendus extends this argument regarding Kant’s belief in the politically inappropriate nature of women by arguing that, for Kant, a woman ‘gains her true freedom by entering into marriage. It is a woman’s nature that her freedom should best be obtained by marrying’, ibid p.178
constitution. The second is that, even though these groups are excluded from citizenship and therefore from voting, the original contract is ‘only an idea of reason, which, however, has its undoubted practical reality, namely to bind every legislator to give his laws in such a way that they could have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will’.

That is, even if these groups cannot vote, they may rest assured that no law would be passed with which they would not agree, although it may take time for them to see the wisdom of such legislation. The problem with this latter argument is that it has also the reverse effect. That is, it emphasises the exclusion, since not only can the excluded not vote but a presumption is made that they would eventually consent or that such laws are in themselves just and must be obeyed before consent.

Now, we can make the easy argument that Kant was wrong about women and servants, that this undermined his basic principle of equality in the conception of the Constitution that realised the general will and therefore his conception of the republican State was flawed. We shall come to that argument. The more interesting question in the first instance is what was the purpose and effect of his distinction between active and passive citizens. Kant was undoubtedly prejudiced and he may also have been protecting his notion of individualism, but his purpose was to convert the essence of the Rousseauian concept of the general will into a sustainable idea of the State, which in the end Rousseau could not do. To achieve this, he had to amend Rousseau. This involved him accepting what Rousseau saw as the flaws in the Hobbesian-Lockean idea of the State, in which individuals did not govern themselves. Separating active from passive citizens, that is those who he believed, if wrongly, were capable of independent rational behaviour from those who he believed were not, was a key part of doing this. Allowing only independently rational individuals to be active in civil society was a key part of realising his rationalist conception of the State. As to the effect of doing so, I will argue that this had particular mythological significance.

63 I. Kant The Metaphysics of Morals p.458
64 He continues ‘For this is the touchstone of any public law’s conformity with right. In other words, if a public law is so constituted that a whole people could not possibly give its consent to it (as, e.g., that a certain class of subjects should have the hereditary privilege of ruling rank), it is unjust; but if it is only possible that a people could agree to it, it is a duty to consider the law just, even if the people is at present in such a situation or frame of mind that, if consulted about it, it would probably refuse its consent’, I. Kant On the Common Saying: That May be Correct in Theory pp.296-297 (his italics)
There is another sense in which Kant allows inequality, that is in relation to material existence. This was something which Rousseau was concerned to minimise. For Kant, on the other hand, ‘this thoroughgoing equality of individuals within a state, as its subjects, is quite consistent with the greatest degree of inequality in terms of the quantity and degree of their possessions, whether in physical or mental superiority over others or in external goods and in rights generally (of which there can be many) relatively to others’. Unlike Rousseau, Kant strongly reintroduces and sustains the notion of personal interest, another mutation of Rousseau necessary to underwrite the sustainability of his idea of the State.

The apparatus upon which Kant hung these concepts was that of the Constitutional Republic. There were similarities here with Rousseau, a solid republican, but it is worth reflecting on this because Kant consolidated his ideas in a manner which does clearly distinguish his idea from that of Montesquieu, also claimed as a republican. What this shows is how he had effectively adopted the Hobbesian-Lockean-Montesquieuean apparatus of government but strengthened it, just as he had done with key ideas of practical government of Rousseau. For Kant the available options for the possession of the sovereign power were autocracy, aristocracy or democracy and the available options for the form of government or how a state ‘on the basis of its civil constitutions (the act of the general will by which a multitude becomes a people)’ are republican or despotic. For him, ‘democracy in the strict sense of the word is necessarily a despotism because it establishes an executive power in which all decide for and, if need be, against one (who thus does not agree), so that all, who are nevertheless not all, decide; and this is a contradiction of the general will with itself and with freedom’. Against this, ‘Republicanism is the political principle of separation of the executive power (the government) from the legislative power’.

---

65 ‘It is, therefore, one of the most important tasks of government to prevent extreme inequality of fortunes…the arts of pleasure and of pure skill favoured at the expense of the useful and the arduous trades; agriculture sacrificed to commerce;…venality pushed to such excess that reputation is reckoned in cash, and the virtues themselves are sold for money: such are the most perceptible causes of opulence and misery, of private interest replacing the public interest, of the citizens’ hatred of one another, of their indifference to the common cause, of the corruption of the people…These are therefore evils difficult to cure by the time they make themselves felt, but which a wise administration must prevent in order to maintain, by means of good morals, respect for the laws, love of fatherland, and the vigor of the general will’, J.J. Rousseau Political Economy pp.19-20

66 He continues ‘thus the welfare of one is very much dependent upon the will of another (that of the poor on the rich); thus one must obey (as a child its elders or a wife her husband) and the other directs; thus one serves (a day labourer) and the other pays him, and so forth’, I. Kant On the Common Saying: That May be Correct in Theory p.292 (my emphasis)

67 P. Pettit Republicanism p.19

68 I. Kant Towards Perpetual Peace in Philosophical Writings p.324
The apparatus he chose for his republicanism was not merely the legislature and executive but was the tripartite arrangement of powers preferred by Montesquieu: ‘Every state contains three authorities within it, that is, the general united will consists of three persons (*trias politica*): the sovereign authority (*sovereignty*) in the person of the legislator; the executive authority in the person of the ruler (*in conformity to law*); and the judicial authority (to award to each what is his in accordance with the law) in the person of the judge (*potestas legislatoria, rectoria et iudiciaria*).’ However, even though these are three separate powers, as with Montesquieu, it is not Montesquieu’s arrangement. Whereas Montesquieu’s was an empirical wisdom of systemic checks and balances under the control of citizens and therefore in principle in contest, for Kant this arrangement had the necessity of Reason. As Kersting argues, Montesquieu was a political thinker and therefore an empiric, interested in a cleverly thought-out system of checks and balances ‘and interlinked authorities covering each other’. His objective was to enable all important social forces to participate in rule and in doing so to compel these groups to balance their interests and look for political compromise. Kant’s theory, on the other hand, is deduced from the functioning of distributive justice and is a rationalist contrast to those pragmatic politics. His ‘syllogistic trias politica…chains up the necessary structural elements of the state process of the realisation of justice’. Its core is logic, not cunning.

Further, this was a State which could not be overthrown. This is not consistent with the Rousseauian position. For Kant the conversion of the general will into right produces very different conclusions, since there can be no revolution. Further, ‘Therefore a people cannot

---

69 ‘These are like the three propositions in a practical syllogism: the major premise, which contains the law of that will; the minor premise, which contains the command to behave in accordance with the law, that is, the principle of subsumption under the law; and the conclusion, which contains the verdict (sentence), which is laid down as right in the case at hand’, I. Kant *Metaphysics of Morals* p.457

70 W. Kersting ‘Kant’s Concept of the State’ in *Essays on Kant’s Political Philosophy* p.156

71 ‘I assume here what I believe I have demonstrated, namely that in the State there is no fundamental law which could not be revoked, not even the social pact; for if all the Citizens were to assemble to break this pact by a common accord, there can be no doubt that it would be most legitimately broken. Grotius even thinks that everyone can renounce the State of which he is a member, and recover his natural freedom and his goods on leaving the country. Now it would be absurd if all the Citizens united could not do what each of them separately can do’, *Social Contract* p.120

72 ‘A change in a (defective) constitution, which may certainly be necessary at times, can therefore be carried out only through reform by the sovereign itself, but not by the people, and therefore not by revolution; and when such a change takes place this reform can affect only the executive authority, not the legislative. – In what is called a limited constitution, the constitution contains a provision that the people can legally resist the executive authority and its representatives (the minister) by means of its representatives (in parliament). Nevertheless, no
offer any resistance to the legislative head of a state which would be consistent with right, since a rightful condition is possible only by submission to its general legislative will. There is, therefore, no right to sedition (seditio), still less to rebellion (rebellio).\(^73\)

That is, the nature of the Kantian State is not only an irresistible object of reason but even the worst behaviour of its representatives and officials gives grounds for nothing more than gradual reform. Kersting again: ‘it must not be concealed that in the case of an autocrat who is reluctant to reform his rule according to the principles of legal Reason, Kant’s political philosophy shows itself to be completely helpless. It is the helplessness of a reformer who is paralysed for fear of revolution. The reverse of Kantian revolution-condemning reformism is inevitably conservatism. Despite all radicalism of legal Reason, under historical conditions of conflict, Kant gives preference to order over justice and preference to the authority of the state over the authority of human and civil rights.\(^74\) The important question is why he does this and we shall discuss this issue.

Complementing this rejection of political insurrection are Kant’s arguments regarding individual criminality and punishment, wherein reason is the basis on which he imputes unmitigated intention in the criminal act.\(^75\) He then applies the test of the Categorical Imperative as the means by which this all works: ‘The categorical imperative, which as such only affirms what obligation is, is: act upon a maxim that can also hold as a universal law. – You must therefore consider your actions in terms of their subjective principles; but you can know whether this principle also holds objectively only in this way: that when your reason subjects it to the test of conceiving yourself as also giving universal law through it, it active resistance (by the people combining at will; to coerce the government to take a certain course of action, and so itself performing an act of executive authority) is permitted, but only negative resistance, that is, a refusal of the people (in parliament) to accede to every demand the government puts forth as necessary for administering the state. Indeed, if these demands were always complied with, this would be a sure sign that the people is corrupt, that its representatives can be bought, that the head of the government is ruling despotically through his minister, and that the minister himself is betraying the people’, *Metaphysics of Morals* p.465

\(^73\) ibid p.463
\(^74\) W. Kersting ‘Kant’s Concept of the State’ in *Essays on Kant’s Political Philosophy* p.163
\(^75\) He states: ‘A person is a subject whose actions can be imputed to him. Moral personality is therefore nothing other than the freedom of a rational being under moral laws…From this it follows that a person is subject to no other laws than those he gives himself (either alone or at least along with others)…A thing is that to which nothing can be imputed. Any object of free choice which itself lacks freedom is therefore called a thing (res corporalis)…A deed is right or wrong (rectum aut minus rectum) in general insofar as it conforms with duty or is contrary to it (factum licitum aut illicitum); the duty itself, in terms of its content or origin, may be of any kind. A deed contrary to duty is called a transgression (reatus)…An intentional transgression (i.e. one accompanied by a consciousness of its being a transgression) is called a crime (dolorus)’, op cit p.378
qualifies for such a giving of universal law. The all-pervasive rationality of his concept of right leads him down a path which is alien to the real world of criminal activity, as his attitude towards the criminal act and its punishment shows. His position is one which sees the crime and the response to it as a display of wickedness, criminal will and retribution: equality requires retribution, wickedness justifies retribution and the criminal has willed a punishable action, thereby placing himself outside reason, although the punishment is rational.

In presenting this argument, Kant makes some telling comments about the justification for this form of justice. “But what does it mean to say, ‘If you steal from someone, you steal from yourself’? Whoever steals makes the property of everyone insecure and therefore deprives himself (by the principle of retribution) of security in any possible property. He has nothing and can acquire nothing.” The concern for order and security, in defence against fear, is a matter of primary concern here, not the promotion of respectful self-responsibility of the individual offender.

Broadly, however, his account of crime and punishment faces insurmountable difficulties. First, it requires him to argue the impossible, that is, to split the criminal into two incommensurable parts, one a colegislator who is a different person from the one who decides to offend. No doubt for him this avoids the contamination of his law but at the price of arguing that the real world practice of legislation takes place out of the real world. Second, the judge can only consider the rationality of the criminal act, that is, whether it complies with the law, not the motivation behind it.

---

76 ibid p.379
77 ‘The right to punish is the right a ruler has against a subject to inflict pain upon him because of his having committed a crime…But what kind and what amount of punishment is it that public justice makes its principal and measure? None other than the principle of equality…only the law of retribution (ius talionis)’. Kant isn’t fully committed to the principle of equality, as he makes special concessions for the ‘sensibilities of the upper classes’, giving extra weight to the hurt to their pride if one has to kiss the hand of one from a lower class or regarding the painful effect on the vanity of one such person, ibid p.473-474
78 ‘This fitting of punishment to the crime, which can occur only by a judge imposing the death sentence in accordance with the strict law of retribution, is shown by the fact that only by this is a sentence of death pronounced on every criminal in proportion to his inner wickedness’, ibid pp.474
79 He adds ‘No one suffers punishment because he has willed it but because he has willed a punishable action; for it is no punishment if what is done to someone is what he wills, and it is impossible to will to be punished…As a colegislator in dictating the penal law, I cannot possibly be the same person who, as a subject, is punished in accordance with the law; for as one who is punished, namely as a criminal, I cannot possibly have a voice in legislation (the legislator is holy). Consequently, when I draw up a penal law against myself as a criminal, it is pure reason in me (homo noumenon), legislating with regard to rights, which subjects me, as someone capable of crime and so as another person (homo phaenomenon), to the penal law, together with all others in a civil union’, ibid p.476
80 ibid p.474
with the standard of a universal law. In determining punishment in this retributive world, there can be no consideration of personal motive or maxim, which is ‘a rule that the agent himself makes his principle on subjective grounds’. ‘Laws proceed from the will, maxims from choice’ and ‘Only choice can...be called free. But freedom of choice cannot be defined – as some have tried to define it – as the ability to make a choice for or against the law’\textsuperscript{81}. Again, Kant makes rational what is empirical but thereby strengthens the concept of the State and its laws, although at the cost of humanity. It is a disembodied justice. It is also administered by a State which by the very nature of its retributive approach to justice is a fearsome entity.

What we are left with in the Kantian idea of the State is an entity founded on the absorption of the Rousseauean idea of the general will but converted as the Categorical Imperative and fully elaborated. To this common foundation there are added key differences between them, constituted principally by those arguments in which Kant either varies or rejects secondary arguments of Rousseau or by which it might be said that Kant amends Rousseau. These amendments include a rejection of the ground that rational behaviour must find in custom. Even if one accepts that Kant was not claiming that individuals had access to some pure objective Reason, there is still an argument against his claim that each individual can imagine laws that should apply universally. This challenge to the Categorical Imperative as a meta-ethical position is reinforced by the arguments about behaviour that affect only the actor, regarding which there is no case for that behaviour to be a universal law. Further, he seriously amends Rousseau to introduce a strong strain of inequality into the status of individuals, both in relation to their status as citizens and regarding the accumulation of material possessions.

Regarding the institutional arrangements of State, Kant accepts the framework of the tripartite separation of powers but, again, amends this so that it reflects his meta-ethical Reason rather than the empirical and pragmatic approach of Locke and Montesquieu, the principal advocates of such an arrangement. The compelling rationality which grounds this arrangement for Kant, and the sense of right that it reflects, makes it unchallengeable in any direct sense and the individual who breaches that right will be punished retributively, that is without any credit for the personal reasons that led to his offence. When these augmentations are added to his own strong arguments regarding the necessary exit from the state of nature

\textsuperscript{81} ibid pp.379, 380
into civil society and the Constitutional State, and the notion of non-popular tacit consent to legislation, we get a strong sense of the involuntarism that is the condition of existence of all individuals and of the creation of the irresistible strength of the Kantian law and State.

Kant would claim that such self-coercive laws and such a fearsome State are needed to pass the test of being able to prevent the invasions of freedom of which the state of nature is constituted, that is to surely protect individual freedom as he conceives it. Kantian freedom is not the private, State-limiting individual rights of Locke, but a public, community-constituting engagement of individuals whose interests are realised in the right of the State. But such a claim would be wrong. The flaws in the Categorical Imperative show this. Essentially, Kant goes too far. Individuals, having surrendered all their natural freedom in entering civil society do not receive it all back, as he claims. They do not receive back the right to choose what only affects them as individuals, only those behavioural choices that every other person agrees to make.

It is worth noting here that, for Kant, not only should there be no conflict between individuals as a result of the nature of freedom, since everyone agrees through a process of self-mastery and self-rule under a universal law what is allowed, but neither can there be conflict in relation to duty. Hegel points out the implausibility of such a claim, by arguing that the determination of which duty should prevail would require an endless series of further rules of justification, which would only lead finally to a clash of wills and therefore the very disorder that Kant was attempting to avoid.

---

82 As Gierke puts it, realising the general will in this sense delivers infallibility and sovereignty to the constitutionally-founded legislature or sovereign but it is achieved at the cost of depersonalising the individual ‘in his capacity of joint sovereign, into an abstract rational being; he depersonalises the Group-will into an objective content of will issuing from abstract reason. He loses any conception of a living ‘Subject’ of the common sphere (of social authority); he substitutes in its place the idea of an impersonal will of law - a will remote from actual concrete wills; a will of which individuals are instruments; a will in whose service these instruments have to work, under a system of strict dependence, at a task which is common to them all’ and ‘Kant sketches...an ideal constitutional State in which popular sovereignty is nominally present; but no living ‘Subject’ of supreme authority is anywhere really to be found in this State. The ‘bearers’ of the different powers (legislative, executive and judicial) are supposed to govern, but each is subject to a strict legal obligation appropriate to his own sphere; and over them all, as the Sovereign proper, the abstract Law of Reason is finally enthroned’. O. Gierke Natural Law and the Theory of Society 1500 to 1800 p.135, 153

83 Metaphysics of Morals p. 378-379

84 G. Hegel Philosophy of Mind para. 508, p. 251
Kant was undoubtedly optimistic regarding the progress that was likely in human society, in particular regarding the establishment of political arrangements which would eliminate violence within and between nations, and relied upon the virtues of reason as the foundation of his prescription for the promotion of such arrangements. However, these arrangements and this progress are achieved only at the price of significant proscription, exclusion and coercion. There is no room here for the principle of insufficient reason, in which there may be justification for a decision based on the benefit derived from the balance of probabilities rather than on a requirement for an indefinitely exhaustive and compelling basis in reason, and the reliance on the respectful intentions of self-reliant individuals which that allows. Kant, like his predecessors, does not trust the individual unhobbled from the rigours of his moral and practical reason because of the indeterminacy of his intention. For Kant the prescriptions of the Categorical Imperative, the involuntary move to civil society, the obligatory nature of the original contract, the moral formality of the operation of the institutions of the constitutional State and the Rule of Law, the retributive conception of punishment for breaches of law which need not have immediate popular assent, the rejection of any form of political revolution or resistance, the intolerance of lying, the denial of equal rights to women because of their submission to inclination and the highly restrictive concept of individual freedom – all these are prescribed to ensure the establishment of a fully ordered society without the threats of the state of nature, through the rational-moral construction of fully obligatory, coercive and constructive political arrangements.

So the interesting question is about the value of all this. Why reject Rousseau’s warnings about the necessity of custom and practice, which are unlikely to produce a community that will conceive universal laws to act in a manner consistent with such custom and practice? Why ignore Rousseau’s warnings about the necessity for equality, both regarding civil status and material possessions, given that the absence of equality is destructive of the civil state that realises the general will? Why go so far as to deny the choice of individuals to behave in any manner they choose so long as that does not affect others, even if others may not wish to

85 On the Common Saying: That May be Correct in Theory p.306ff
86 See H. Blumenberg An Anthropological Approach to Rhetoric in Philosophy – End or Transition p.449, where he states that ‘In the realm in which the principle of insufficient reason holds, there are rational decision rules that do not resemble science in their form. Pascal provided a model…that remains valid in that man has to wager the whole stake of his practice, at whatever risk of error, on the particular prospect, as between two theoretical alternatives, that is favourable to his self-assertion and self-development’. That is, one may make decisions based on a reasonable bet, without having to justify it as indefinitely, extensively grounded in reason.
behave in that manner themselves? Why deny any right to overthrow the ruler, even if there is serious abuse of the authority? In determining punishment, why refuse to acknowledge in any way the personal circumstances motivating an offender?

One could simply say that this is the kind of political theory one gets within Kantian philosophy, where Reason is compelling. Another answer would be that Kant was merely working through and fully elaborating what was for him the implications of the Rousseauean concept of the general will into a set of political arrangements that were sustainable and to do so required amendments to Rousseau’s arguments. Yet another answer, that preferred here, would be that Kant was working within a political theoretical tradition, the presumption of which was that mankind needs an all-powerful State, that is one which must by its nature be fearsome, as the preferred means of eliminating fear, and that its power comes from the transfer of sovereignty from each individual, each of whom thereby loses responsibility to and for himself in compliance with a general will.

A Kantian would probably object to this and argue that Kant of all people was committed to the notion of individual responsibility, whereby each person is responsible for ruling himself. In response to such an objection it can be said that Kantian responsibility is still responsibility to others in the form of the general will, not to and for oneself. Because of the dictates of the Categorical Imperative, the behaviour of each person is completely determined by what all others agree is acceptable behaviour. Further, in establishing his grounds for his sense of responsibility, Kant, following Rousseau, denies a good deal of what is human nature. That is, their anti-naturalism causes them to reject any argument that reason and nature can together be an integrated basis for moral judgments. It was a fundamental argument of Rousseau that it was only by the separability in man of his physical or natural features from his metaphysical or moral nature, and by the exercise of the latter, that he was free. Kant deepened this argument of Rousseau, proposing his distinction of phenomena and noumena and arguing that the rational moral law came only from the latter. The point is that the responsible individual Kantian self, unlike that proposed by the philosophical naturalists like

---

87 Discourse on the Origin and the Foundations of Inequality Among Men in The Discourses and other early political writings pp.140, 141
88 Groundwork of the Metaphysics of Morals p.98
89 ‘To attempt to find a basis for morality in nature would be tantamount to collapsing human beings back into the determined order of natural necessity’ and man ‘must be able to deduce a purely a priori morality’, S. Smith Defending Hegel from Kant in Essays on Kant’s Political Philosophy p.273
Hobbes and Nietzsche, is one which asserts that an independent faculty of reason can serve as a cause for action. For the naturalists, ‘Reason is rather seen as dependent upon certain desires, drives or impulses of a more fundamental kind’\(^{90}\). The individual that Kant wants to claim is responsible for himself is not the full individual with all his human features, only that part which reasons and which reasons in universal terms. It is not the individual driven in part by his desires and impulses and therefore an individual wrestling with his own fearsomeness as he tries to act respectfully. Kant is bracketing that part of human nature. The best that Kant can say about this is that, in arguing for one’s duty to oneself, ‘disposing of oneself as a mere means to some discretionary end is debasing humanity in one’s person (\textit{homo nomonem})\(^\text{91}\), to which the human being (\textit{homo phaenomenon}) was nevertheless entrusted for preservation\(^\text{91}\).

So, not only does the Kantian political individual forgo responsibility to the general will but, in doing so, loses all the features, other than rationality, that make him human. We are to be ruled by Reason not guided by the Principle of Insufficient Reason.

There is one further implication of Kantian thought that should be mentioned, as it has implications for the consideration of the manner in which this mythological account of the State is used, in the penultimate chapter, to illuminate the destruction of traditional Aboriginal society. This is of particular relevance to the notion of the dispersal of the mythological magnitude, not within but in this case beyond national borders, say of the British political myth into colonial Australia. Such dispersal is the strategy adopted by particular instances of the myth, that is particular governments in particular nations, to improve the conditions of existence of their own subjects, especially those of dominant interests, by gathering wealth from other places and in so doing strengthen their own position with regard to their local or regional competitors, thereby reducing the relative fearsomeness of those competitors. This is the significance of mythology for colonial strategy. The implication raised here is that, from his account of the state of nature and the necessary move into civil society and the constitutional State, a move he ultimately attributes to the unfolding of Nature\(^\text{92}\), Kant also clearly has a view the effect of which is a judgement of the inferiority

\(^{90}\text{ibid p.274}\)

\(^{91}\text{The Metaphysics of Morals p.547}\)

\(^{92}\text{‘...a consoling view of the future (which could not reasonably be hoped for without the presupposition of a natural plan) in which there will be exhibited in the distance how the human race finally achieves the condition in which all the seeds planted in it by Nature can fully develop and in which the destiny of the race can be fulfilled here on earth’, Idea for a Universal History from a Cosmopolitan Point of View in Philosophical Writings p.261}\)
of indigenous cultures and a perceived obligation on European states, through the dispersal of their mythological magnitude, to impose change on them. By implication such cultures are yet in the state of nature and have not found the preferred way to constrain the ‘selfish animal impulses’ and promote enlightenment. This way is the universal dispersal of the constitutional State\textsuperscript{93}, the form of the mythological magnitude which Kant had helped significantly to refine from the work of Hobbes, Locke, Montesquieu and Rousseau. Establishing such States in other places has the mythological advantage of ensuring an ally complicit in the delivery of its aspirations regarding fear and sympathy, in that it makes indigenous cultures enlightened, the by-products of which are that they are not only no longer fearsome but also become contributors to conditions sympathetic to, especially but not merely, the dominant interests of such States.

These comments allow that, despite claims by him to the contrary, Kant is working within the political theoretical tradition, with its mythological premises. In that context, Rousseau’s thought can be seen to have provided him with a political theoretical foundation from which he could establish the idea of what was in effect a mythological State in its near-optimal form. Even though this was not his conscious intent, it is argued here to have been the effect of his work, that is, it was the result of his mythological disposition because he worked within such a tradition, following on from and dealing with the issues with which Hobbes, Locke, Montesquieu and Rousseau grappled. This answer would be demonstrable if the effect of his amendments to Rousseau strengthened the form and nature of the political myth and did establish a near-optimal form of the magnitude. I argue that it does.

**Kant and Mythology**

Kant should be seen as having worked within and as having contributed significantly to the dominant political theoretical tradition, with its mythological implications. Certainly, like each of the theorists examined here, he was working at the level of political theory and because they were each grappling with theoretical problems presented to them by their predecessors within the tradition, they were actually unaware of the mythological significance of their work. However, because the premises of the tradition are identifiably

\textsuperscript{93} ibid p.255 and pp.258-9
mythological, it can and should be argued that Kant’s work, like theirs, has mythological significance.

Hobbes had realised, in his concept of the absolutist State, the mythological idea that fear, principally of other citizens, might be eliminated by the creation of a fully empowered magnitude which is responsible for that elimination, through the forgoing by all citizens of their self-responsibility to that magnitude. The realisation that this absolutist entity thereby itself became a likely source of fear, rather than the means of its elimination, was Locke’s contribution, especially through the consequential argument that there were rights, especially regarding the calling and property in its broad definition, that should be regarded as inalienable to the individual. He did not assert that sovereign power should be removed from the magnitude. On the contrary, on the condition that control over the exercise of its power was in the hands of the represented, dominant interests of the society, it must remain supreme. But this was only the beginning of the coming into man’s hands of the fate of the magnitude. Montesquieu was aware that this supreme authority of the parliament remained a source of fear, so extended the idea of the separation of powers, without weakening them, into a pragmatic tripartite balance. The effect of all this was the creation of a space within which each citizen could exercise a range of inalienable rights under the protection of the separated, empowered State.

Rousseau saw this as an arrangement driven by individual interest, which therefore ensured that the community of men did not govern themselves: they were not even a community. Concerned only for their selfish interests, they were not subject to the law they give to themselves but to the law of dominant others except for a small space protected by rights. Despite certain constraints on the State, the ‘Hobbesian’ arrangement was still fearsome, that is, it did not effectively eliminate the fear experienced by citizens of other individual subjects. By reconsidering human nature and seeing man as the creature who can be free of nature through the exercise of his reason and who will seek the common good, he identified the realisation of the general will as the foundation of law and civil society, a will which featured full equality and which had priority over government. In effect, Rousseau moved to within man, to his reason, the constraints on fearsome behaviour that in Hobbes rested solely with the Sovereign’s capacity to generate fear. He was, however, pessimistic about the longevity of such arrangements, due to the need for long preparation in custom for individuals to pursue
this common good, to the intractability of personal interest and the inevitability of its rending of the fabric of the general will. Rousseau saw the weakness in the arrangements of Hobbes, Locke and Montesquieu but could not convert his solutions into a sustainable form of government.

Kant took hold of Rousseau’s theory and argued that, appropriately amended, it could form the basis of a form of government which drew on his key ideas but was sustainable. Men were capable of governing themselves, individually and thereby collectively. In fact, by retaining but logically reworking the concept of empowered but complementary tri-partite institutions developed through Locke and Montesquieu and by further complementing these with Rousseauean reason as the general will which as a categorical imperative was the foundation of the State, he appeared to have captured the key elements of both the Hobbesian and Rousseauean contributions to the tradition. He had effectively worked on myth to strengthen it, accepting Rousseau’s arguments where they aided this but rejecting or amending those arguments where they did not do so. For him the former included the commitment of all citizens to its sustenance, the latter such elements as the right of dissent and resistance, the nature of women and the dependence of most workers. The effect was that he appeared closer than any of his predecessors to realising the aspiration of the creation of the fearsome mythological magnitude that can effectively eliminate existential fear through the forgoing of individual self-responsibility and the consequential dispersal of the myth across social space. Not only that, he provided for the essential alliance between the State and the Church and also outlined the means by which the State disperses through the appointment of office holders as its agents. This is the myth of the magnitude in apparently full bloom, that is, supported by a rational reconception of human nature, the Kantian State epitomised the forgoing of individual self-responsibility in the service of the fear-sympathy nexus. Having said that, this bloom was not so full that it could not be reworked by Rawls, who has brought Kant into the contemporary world, and Pettit, who sees the contemporary State in republican terms. This ongoing work was inspired in part by the flaws that remained within Kantian political thought.

And there were flaws. A majority of citizens were denied active participation in the political process, with the result that laws could be passed without popular support, inadequate concern for the creation of sympathetic conditions meant that wide material inequality was
allowed, there could be no active resistance against the State, non-rational human nature was relegated to the status of an unfortunate embarrassment to be dealt with retributively behind prison walls and there was a claim that the general will can emerge spontaneously rather than only through long custom and practice. In fact, these flaws are so profound that they should have lead to the asking of the question, especially given that they follow serial attempts to realise an effective State, whether such a State is realisable at all. That is, despite the attentions of some of the most penetrating thinkers over several centuries, it should have been seen that the dominant political tradition has unresolved and unresolvable contradictions in its mythological foundations. Even though there must be significant beneficiaries to cause tolerance of such arrangements, this might lead to the question whether a new theoretical tradition, perhaps based on the idea of individual self-responsibility, could be more fruitful.

What should be kept in mind, despite the refinements that Kant ultimately made to Hobbes, is that what they held in common was more profound than their differences. The distance between Hobbes and Kant was constituted only by the fact of the application of a rigorous rational-moral discipline to the conceptual tools of the former, as modified by Locke and Montesquieu to ensure that it persisted and taking account of the further criticisms and innovations of Rousseau. Hobbesian and Kantian political arrangements are similarly grounded in sovereign power; their respective and differing notions of the state of nature presume it to comprise the violence which results from the absence of systematic law; the Hobbesian view that the pre-civil sovereignty of the individual as the ultimate authority of any civil group was the source of the Kantian view that the right of civil society over its citizens was merely the sum of the rights transferred to it by individuals through contract and consent, and that the resultant State was mechanical rather than organic in nature; their sharing of the argument that those conditions of the operation of the natural state required exit into civil society, although they constituted this requirement differently; that they both rejected the validity of political resistance; that they would both have found any notion of universal representation alien; and that their common view was that even the illegitimate inception of a State (including by revolution) will not exempt citizens from obedience to that new authority.

This connection between Hobbes and Kant is also made by Blumenberg, who sees Hobbes as solving the contradiction that natural law, which is the absence of rights for those unable to
defend themselves in the state of nature where each individual is the unobligated author of laws, gives rise to its antithesis, which is lawlessness: the construction of the political State of law by ‘instantaneous transition to political absolutism in which the conclusion of the capitulation treaty is simultaneously both the assumption and the surrender of the status of legal subject. The chaos of absolute rights...is the argument of reason that enables it to grasp the opportunity of self-assertion...by transferring the many absolute rights to one absolute right - that of the ruler. The doubtfulness of the achieved and justified order and of the resulting concept of order does not matter because it emerges from reason’s desperation’. He adds that ‘the function of philosophy, accordingly, is no longer to be the theory of the world or of the Ideas...but rather to imitate the Creation...to renew the original creation in the face of unformed matter’, that is the state of nature, and ‘the progress of thought at the beginning of the modern age rests essentially on the fact that one began to make assertions about the absence of order and to ascribe to that absence (without the intervention of a transcendent factor) a law of self-regulation. Here the result is not so determined as Hobbes represents it to be: Absolutism and liberalism are based upon the same principle of self-regulation, being distinguished from one another only in their judgements of the murderousness of the initial situation and of the forces at work in it”94. It is in the context of this world from which God is bracketed, after setting his mechanistic creation in motion, that he sees Kant’s comment that ‘without man...the whole Creation would be a mere wilderness, a thing in vain, and have no final end’, that is ‘If matter is...the limit, as it were, of action, then the reduction of nature to pre-materiality and the diffusion of all the world’s characteristics of pregiveness constitute precisely the elementary boundary definition of reality that opens the widest possible range for human activity. It follows from this statement also that human self-assertion does not restrict itself to holding its own and fortifying itself against the late-medieval disappearance of inherent purposes; rather it keeps this process in motion, as a leveling of the pregiven world structure, in order to obtain a ‘ground level’ upon which to proceed with its rational constructions. An impressive example of how the schema of reducing the natural process to the homogenous diffusion of elements...is transferable to the problems of the human world as well is offered by Thomas Hobbes’ political philosophy’95. Hobbesian absolutism and

94 H. Blumenberg The Legitimacy of the Modern Age 218-220; it is noted that ‘self- regulation’ is intended in this context to indicate the absence of a transcendent factor rather than individual self-determination

95 ibid 217-218
Kantianism, with their common principle of self-regulation, are such rational-mythic constructions and both stand as a type which rejects individual self-responsibility due to the belief that this might re-release existential anxiety into social and political arrangements.

For the purpose of eliminating the residual anxiety in the political constructs of his predecessors, Kant took their systemic conceptual tools and fulfilled the logic of the absolutist framework. He optimised the functional elimination of contingency in its social form by the dual strategies by presenting the State and Law as prescribed by Reason and by converting individuality to a form which could pose no threat and thus, in the end, would require no punishment. The price of this was the absence of popular support for legislation, denial of gender equality, lack of interest in real redistribution of resources, lack of commitment to benevolence, proscription of organising for change (political change through new legislation, let alone resistance or revolution), and retributive but also thereby reconstructive punishment. Such a prescription was to create rational universal order in line with a presumptive general will and this was the strict context of Kantian liberty as legalistic delimitation of interference and self-construction of an individuality that reflected common expectations. However, in fulfilling the political logic of the Hobbesian framework, Kant, to the substantial extent to which he was a mythologist, eliminated the fully responsible individual, making him one with the rational-moral State. In doing so, he eliminated existential anxiety but at the cost of, or even for the purpose of, eliminating both the repeating disappointments and the fine aspirations that are at the heart of humanity.

Kant reconstructed the political myth established and developed by Hobbes, Locke, Montesquieu and Rousseau into its most robust form yet. Here was certainly the fearsome magnitude of the State created to stand over and against man. This is the State of the united general will, which no individual could deny since it is the inevitable product of a necessary reason that must eschew the anxiety born of the violence in the hypothetical state of nature. Because the move to civil society emerges as an obligation to the State, this directly implies not only complete obedience to the hypothetically-consented prescriptions of the State and the complementary proscription of dissent and revolution but it also empowers the State to inflict severe corrective retribution on those who breach these prescriptions. It is a fearsome magnitude indeed. But this obedience, produced by the forgoing of responsibility to and for oneself, comes with the claim for the sympathy of the State, at least in that the rights it
claimed from individuals were returned to the individual ‘undiminished’. This ‘undiminishment’ of course cannot be so, given not only the initial forgoing of responsibility for oneself but also that this forgoing is involuntary and given, as we have seen, the Categorical Imperative precludes individual choice about matters that don’t concern others. Nonetheless, this is the political myth taken to a high level of refinement, although its own flaws were to provide the opportunity for successors, especially Rawls, to work further on refining it. One might observe, however, that the inspiration for this continuing work is the ever optimistic but misplaced energy of Sisyphus.
Part 3 - Modernisation

The political mythological tradition that was initiated by Hobbes and refined by his successors from Locke to Kant was brought into the contemporary era by Rawls, who engaged Kant in his own attempts to reinvigorate political theory. Pettit took a different approach, in addressing these issues from a republican perspective, but his approach was no less mythological and has therefore broadened the appeal of political mythology. We shall consider Rawls and Pettit in turn as exemplars of the modernisation of the dominant political mythology.

Chapter 7 – Rawls

A Theory of Justice, Rawls’ first major contribution to the political theoretical tradition, has been characterised as an attempt to resuscitate political theory by bringing back together an elaborated appreciation of what is both feasible and desirable in politics. In doing so he is said to have produced a considered notion of justice with which we are already intuitively in tune, being based on an uncontroversial moral individualism, that is that it will be good for every person. The same work has also been seen differently, as an attempt to promote a view about the universality of liberal concepts generally, about the particular concept of the person, including his asocial and autonomous nature, whether such individuals can be objective about the concept of the good they are claimed to pursue and whether the State can be neutral regarding various notions of the good. This Chapter will explore these perspectives in this and his subsequent work, looking to identify any mythological implications. A principal reference point for this exploration is the influence of the political thought of Kant, whose political philosophy Rawls sought to revive.

Rawls comes at his early work through an apparently abstracted contractarian approach wherein individuals in the Original Position choose preferred political arrangements to

---

1 C. Kukathas and P. Pettit Rawls – A Theory of Justice and its Critics pp.8
2 J. Rawls A Theory of Justice pp.4-5
3 S. Mulhall and A. Swift Liberals and Communitarians pp.3-33, especially p.10ff, p.21ff and p.25ff
minimise the effect of the malevolent opponent when self-knowledge, but not knowledge of general facts about human society, is bracketed⁴, that is when the balancing of competing interests is the primary interest⁵. Through this they define public rules to identify activities that lead men to act together to produce greater benefits and assign fair claims over the proceeds. There is more than a hint of the Rousseauean general will, for the common good, in this. To give the exercise an intergenerational flavour, Rawls says these individuals are those with continuing lines of claims⁶, for example those through families. They are therefore not an assembly of all those alive at one time, although Rawls makes the somewhat extraordinary assertion that this is immaterial since everyone will choose the same option, being equally rational⁷. From the chosen first principles, the basic structure of society is developed, including institutions, rights, property and the economic arrangements⁸. These are arrangements in which all reasonable expectations can be met and claims can be reasonably resolved, that is through a notion of the rule of law⁹ which has wide support¹⁰. The aspirations that drive the choice of the basic structure are not personal but general desires for such primary goods as rights, opportunities, wealth and self-respect¹¹ and they are ranked and then pursued within an individual’s rational life plan¹². In prescribing this personal strategy, Rawls disallows any personal envy.

The outcome he says will be a fair arrangement, justice as fairness¹³. The two principles of justice that he argues are chosen are the guarantee of fundamental individual liberties and of the distribution of resources that favours the disadvantaged while sustaining equality of opportunity¹⁴. He constructs this thought experiment to ensure that these two

⁴ op cit p.137, 138
⁵ ibid p.5
⁶ ibid p.128
⁷ ibid p.139
⁸ J. Rawls Collected Papers pp.257-258
⁹ op cit p.235ff
¹⁰ ibid p.145
¹¹ Collected Papers p.260
¹² op cit p.143
¹³ Collected Papers p.59
¹⁴ A Theory of Justice p.302; Collected Papers p.227
are chosen\textsuperscript{15}, by enforcing universal concurrence and by requiring choice on the basis that
a malevolent opponent may choose the place of the principal in the society\textsuperscript{16}. In doing so,
he utilises the principle of insufficient reason, the gambler’s option wherein risk is taken
about the possible outcome, but only as an accounting technique\textsuperscript{17}. One reason he claims
the two principles would be chosen is the universality of their benefits and therefore the
sustainability of the consequential arrangements\textsuperscript{18}.

For Rawls, such principles can in effect only be delivered through the establishment of a
liberal, constitutional democracy which adopts welfarist economic and social policies\textsuperscript{19}.
The institutions are those of a bicameral legislature, separation of powers and a bill of
rights, all under the rule of law, that is, the full elaboration of the Montesquieuenean
model\textsuperscript{20}. He does not prefer a capitalist to a socialist economy\textsuperscript{21}, so long as there is
equalising distribution of wealth, the equal promotion of opportunity through education,
corporate competition and a minimum income\textsuperscript{22} and saving for future generations\textsuperscript{23}. The
State can give no preference to any majority moral or religious creed but must underwrite
equal liberty in such matters\textsuperscript{24}. In a Kantian vein, he generally denies the right to resist an
unjust law passed within the context of a just constitution\textsuperscript{25}, on the basis that such laws
can be worked on. If this doesn’t produce a fair outcome, and only then, may there be
justified civil disobedience\textsuperscript{26}.

\textsuperscript{15}A Theory of Justice p.122
\textsuperscript{16}ibid p.153
\textsuperscript{17}ibid pp.167, 168, 171. This principle is used otherwise in this thesis, in the sense that there need not be
any exhaustive rational process before decisions are made but that, accepting that reasons are diffuse and
accepting that non-rational factors influence decisions, there is a wager that engaging positively with others
in decision-making processes are more likely to produce mutually acceptable results. For Blumenberg, the
principle of insufficient reason is ‘a correlate of the anthropology of a creature who is deficient…If man’s
world accorded with the optimism of the metaphysics of Leibniz, who thought he could assign a sufficient
reason even for the fact that anything exists at all,…then there would be no rhetoric’ H. Blumenberg An
Anthropological Approach to Rhetoric in After Philosophy – End or Transformation p.447. See also ibid
pp. 448 and 449
\textsuperscript{18}Theory of Justice pp.151, 177
\textsuperscript{19}Collected Papers p.180
\textsuperscript{20}op cit p.224
\textsuperscript{21}Collected Papers p.277
\textsuperscript{22}op cit p.275
\textsuperscript{23}ibid p.298
\textsuperscript{24}ibid p.212
\textsuperscript{25}Collected Papers pp.122, 126
\textsuperscript{26}ibid p.183ff
Rawls’ ultimate justification for endorsing justice as fairness is that it is rooted in our customs\textsuperscript{27} insofar as they have embedded in them our fundamental notion of goodness. He argues this by separating Right from Good: his two principles are to be respected because they are right, that is they represent accepted public rules, before and therefore independent of whether they produce good results. What is Right is what ‘fits into ways of life consistent with principles of right already on hand’\textsuperscript{28}, that is accepted custom, and, true to his later Kantian constructivism, it is prior to the Good\textsuperscript{29} while being consistent with it\textsuperscript{30}. The Good includes such ideas as rationality, primary goods, comprehensive conceptions, political virtues and a well-ordered political society\textsuperscript{31}. Primary goods are those things people want and they include rights, liberties, opportunities, income, wealth and self-respect\textsuperscript{32}. Further, a political society with these features will be stable\textsuperscript{33}. For Rawls, people will understand that acting justly, that is in a manner consistent with the principles of justice, will promote their individual interests\textsuperscript{34}. This brings him back to Rousseau and so to Kant. Further, the desire to act upon these principles is satisfied only to the extent that it is regulative of other desires. Importantly, ‘It is acting from this precedence that expresses our freedom from contingency and happenstance’\textsuperscript{35}. That is, as a context for the basic individual liberties, freedom at least includes freedom from contingency and happenstance.

There have been two main camps of criticism of Rawls, one from the more extreme end of the liberal spectrum within which he has positioned himself and the other from communitarians. \textit{A Theory of Justice} was criticised by libertarians like Nozick for conceiving a State that interferes too much in the lives of individuals and therefore for breaching the fundamental Lockean rights of liberty and property\textsuperscript{36}. Nozick’s claim is for

\begin{itemize}
\item \textsuperscript{27} \textit{A Theory of Justice} p.391
\item \textsuperscript{28} ibid p.396
\item \textsuperscript{29} \textit{Collected Papers} p.319
\item \textsuperscript{30} ibid p.451
\item \textsuperscript{31} ibid p.449
\item \textsuperscript{32} ibid p.241
\item \textsuperscript{33} ibid p.233
\item \textsuperscript{34} \textit{A Theory of Justice} pp.571, 572
\item \textsuperscript{35} ibid p.574
\item \textsuperscript{36} R. Nozick \textit{Anarchy, State and Utopia} p.10
\end{itemize}
a minimal State, the role of which is only to offer protection to all through the monopoly of force, and thereby required only so much taxation as necessary to sustain itself, with only minimal interference in citizens’ lives. He sees two problems with Rawlsian theory, that is that Rawls fails to account for pre-existing ownership of property, which would change the agreement about the two principles\(^{37}\), and that it requires an unacceptable level of intrusion into the people’s lives\(^{38}\). The first objection seems to misrepresent Rawls’ enterprise, which is a hypothetical thought experiment about the application of agreed moral standards rather than the basis for a programme for actual social reform. Pre-existing property ownership can be accommodated within the two principles in an actual programme, since ignoring such ownership would breach the first principle. The second appears to misrepresent him by asserting that Rawls’ taxation law allows capricious intervention, which is not his intent.

The other critique has come from communitarians, from those whose primary concern is for the common good and for whom morality can only be seen in traditional practice rather than derived in abstraction as a tool to redesign communities. This is the shadow of the admission Rousseau was ultimately forced to make concerning the rootedness of preferred principles and practice in custom but which Kant did not acknowledge. Communitarians reject notions of justice realised in institutions that profess to tolerate and protect the rights of a wide variety of conceptions of the good life, because they say we cannot detach ourselves from the kind of persons we are to identify such notions and choose them rather than others\(^{39}\). In essence, this is a rejection of the kind of enterprise which Rawls undertakes in *A Theory of Justice*, that is that it could be of any interest to those in the real world what a political philosopher like Rawls does in imagining a hypothetical Original Position and trying to extract principles of justice from it. Best to examine our immanent traditions and develop principles by addressing the problems inherent in them. One should never impose abstract principles developed outside that context. What is good for the community, notions of the common good, should emerge only from such a process of examination. Any claim for an individual’s rights should

\(^{37}\) ibid p.155

\(^{38}\) ibid p.163

\(^{39}\) M. Sandel *Liberalism and the Limits of Justice* pp.127, 129, 132, 161, 164
never have priority over the common good because individuals are never self-sufficient, independently rational and autonomous, asocial atoms. Individual choice can only be enhanced in the context of institutions that sustain a social context for that enhancement.

For Sandel in particular, Rawls’ disembodied concept of the self forces him to acknowledge that the self must at least be conceived intersubjectively, otherwise there is no basis for agreement under the veil of ignorance about principles of justice and because of Rawls’ own statement that it is a community that owns the asset of individuality that we claim as individuals. Of more interest, for reasons that will bear on the mythological analysis of Rawls, is Sandel’s argument that we cannot determine the right before we allow for the good, because our choices about what is right are fully informed by our individual natures and therefore our changing aspirations and this requires first understanding the community which constitutes our identity. The latter claim is probably too strong, since we are not fully bound by the influence of the community. In any case, Rawls does accept the broader point concerning the primary impact of society on the individual, although he did argue that such common notions should not be mistaken for a conception of the good. Accepting the broad point does bring Rawls close to Sandel’s position.

But Rawls could defend himself regarding this issue of the impact of culture on other grounds. As we have seen, in the Original Position the protagonists have available to them a wide range of general information sufficient to secure social cooperation and in a manner that would generate support for the concept of justice. It is true that ‘the parties do not know the particular circumstances of their own society. That is, they do not know

---

40 M. Walzer *Spheres of Justice* pp.313, 314; and A. MacIntyre *After Virtue – A Study in Moral Theory* pp.244-245, where the context for the Rawlsian project is traced back to the Enlightenment and the claimed secularisation of Christian thought
41 Sandel pp.164, 103
42 ibid p.172
43 “It is not true, then, that on a liberal view citizens have no fundamental common aims. Nor is it true that the aim of political justice is not an important part of their identity (using the term ‘identity’, as is now often done, to include the basic aims and projects by reference to which we characterise the kind of person we very much want to be)”, *Collected Papers* pp.431-432 footnote17
its economic or political situation, or the level of civilisation and culture it has been able to achieve’ or ‘his own conception of the good…or the special features of his psychology’ but ‘they know the general facts about human society’\footnote{He continues ‘They understand political affairs and the principles of economic theory; they know the basis of social organisation and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of the principles of justice’, \textit{A Theory of Justice} p.137}. That is, they are aware of the traditional foundations of every society and the value of building political institutions which will respect foundations which protect them against the malevolent opponent, that is which deliver fairness. As a consequence, their endorsement of the two principles will be on that understanding. Further, from stage two of the four stage process, that is where the constitution is being chosen, ‘the general facts about their society are made available to them’\footnote{ibid p.200}. Here are the intersections between the two principles and the customary practice of any community. Rawls later gives greater emphasis to this when in 1980 he states that he is grappling with parochial problems specifically within the United States, so cannot be easily accused of arguing for abstract theoretical solutions generated by asocial individuals\footnote{\textit{Collected Papers} pp.305-306}. Further, given that the communitarians themselves acknowledge that custom is not the only determinant of behaviour and that the individual can himself participate in that\footnote{Sandel p.152}, Rawls and they are closer than they claim.

But despite this defence of himself, there is a change in emphasis in Rawls, although he continues to operate in a Kantian framework. The approach he outlines in his Dewey Lectures (or \textit{Kantian Constructivism in Moral Theory}) in 1980 is to discover deeper bases of agreement and understanding\footnote{Collected Papers p.306}, that is, as he had outlined in \textit{A Theory of Justice} (1971), of consensus\footnote{\textit{A Theory of Justice} p.581}. That hadn’t changed but what had changed was that his focus was now on his own national community rather than on the discovery of universal principles of justice.

\begin{footnotes}
\item[44] He continues ‘They understand political affairs and the principles of economic theory; they know the basis of social organisation and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of the principles of justice’, \textit{A Theory of Justice} p.137
\item[45] ibid p.200
\item[46] \textit{Collected Papers} pp.305-306
\item[47] Sandel p.152
\item[48] \textit{Collected Papers} p.306
\item[49] \textit{A Theory of Justice} p.581
\end{footnotes}
A key reference point in this is his Kantian, albeit culturally relative, concept of the moral person. In the Lectures, he links (a) the notion of a well-ordered society to (b) the concept of the moral person through (c) the Original Position. The first of these is a society of cooperating, free and equal persons regulated by a public concept of justice and therefore stable; the second is the power to pursue a concept of the good in the context of a sense of justice; and the third is the means of the modeling how moral persons, as citizens of a well-ordered society, select principles of justice\textsuperscript{50}. Actualised in the American context of reason and cooperation, justice as fairness remains the selected concept of justice. However, what is Reasonable, that is the detailed principles of justice agreed in the context of fair terms of cooperation, presupposes the Rational, that is the application of these principles to a view about one’s relations to others and the world: right has priority over the good\textsuperscript{51}. Put another way, what is feasible subordinates what is desirable. Given that this process is still undertaken by autonomous individuals, this is all a refinement of Kantian thought.

But Rawls did find the communitarian critique of his Kantian concept of universal truth and of the autonomous person increasingly compelling. In \textit{Justice as Fairness: Political not Metaphysical} (1985), he admits faults of exposition in \textit{A Theory of Justice} and further that his views had changed\textsuperscript{52}. He now wants to emphasise the political rather than the moral or metaphysical nature of his concept of justice\textsuperscript{53}. Increasing cultural diversity requires a concept of justice that provides an agreed justification for institutions and promotes stability\textsuperscript{54}. This will encourage a tolerant overlapping consensus of opinion. This cannot be based on any single, dominant comprehensive concept of justice\textsuperscript{55}.

Such a shared basis for a political conception of justice in a democratic society cannot be achieved by philosophy in a search for truth about an independent metaphysical and

\textsuperscript{50} Collected Papers p.307-309
\textsuperscript{51} ibid p.319, 331
\textsuperscript{52} ibid p.388-389, including footnote 2
\textsuperscript{53} ibid p.389
\textsuperscript{54} ibid p.421
\textsuperscript{55} ibid p.426-427
moral order\textsuperscript{56}. So Rawls has to reject the Kantian comprehensive moral doctrine, resting as it does on ideals and values that are not generally shared in a democratic society\textsuperscript{57}. He does not abandon Kant or liberalism, just any comprehensive notion of them. His political liberalism does forgo any moral ideal and any notion of individual autonomy, but it promotes tolerance of a wide range of views about the good, including comprehensive doctrines. He claims it is just not a comprehensive doctrine itself. In this way he returns liberalism to the Hobbesian aspiration for peace. He has agreed with the communitarians that the conception and imposition of any notion of the Good, say the Kantian or in fact any which is not implicit in the beliefs and practices of the community in question, cannot be justified. The mythological significance of Rawls’ Hobbesianism will be considered below.

By 1988, he is still seeking some transcendental Kantian truth but by trying to identify the reasonable ideas of fairness within the particular, American culture\textsuperscript{58}. But this is the presumption of a pre-existing idea of fairness which all ideas of the good, including those that are comprehensive, have in common and which allows them to be seen as mutually compatible. In his search for peace and stability, he thus takes the key issue of competing ideas of the Good off the agenda\textsuperscript{59}. Unlike Hobbes, who saw man as so cantankerous that it required the creation of an all-powerful sovereign to enforce peace, Rawls presumes that the capacity for peaceful resolution has been created by the customs of a democratic society and he can just get on with justifying American democratic institutions, which will accommodate wide views about the Good. For the sake of establishing peace, he denies the very arguments that political philosophy is all about. He has presumed the mid point in his beginning. That is, he doesn’t indicate what are the cultural processes that have already created this idea of fairness, which he then uses to justify democratic institutions, except to say that they are cultural and democratic. He is presuming key elements (that is, the processes of agonistic civilising) of what he says he is trying to create (that is, peace) by bracketing what needs to be addressed to achieve this (that is,

\textsuperscript{56} ibid p.395  
\textsuperscript{57} ibid p.427  
\textsuperscript{58} ibid p.306  
\textsuperscript{59} ibid p.494
wide differences of view resolved by imposition rather than cooperation based on a sense of fairness).

Consequently, his notion of overlapping consensus looks decisively pale. What he should have acknowledged is that there is a ‘first order’ Good, the product of some kind of agonistic, even violent customary processes which have embedded a particular notion of justice, so that these processes may be chosen in his Original Position and from which the democratic constitution and institutions could be developed, implicit in which are ‘second order’ goods such as his version of liberties and so on. What this thesis has attempted to argue up to this point is that what Rawls claims as the rational principles of justice of a democratic society are themselves a comprehensive Good because, emerging through political thought at least from Hobbes, they are replete with moral and other presumptions about the fearful nature of the individual, rights, representation, institutional arrangements, consent, resistance and fair distribution: Good does precede the principles upon which Right is founded, which in turn precede particular goods. These principles present themselves as superior to other conceptions of what is Good (and therefore Right), such as theological autocracy or a system which, unlike the dominant form of democracy, promotes self-responsibility and therefore genuine, continuous and widespread participation in the deliberation and implementation of the representative political process. The dominant form of the democratic, constitutional State doesn’t do this. Rawls still has to explain that it was not this gradual emergence of democratic institutions, with all their inherent notions of what is Good, which slowly produced his notion of fairness in the first place. He has constructed a blind alley for himself.

Essentially, the communitarians focused on aspects of Rawls’ theory that highlighted its moral universalist aspirations, the autonomous and asocial character of his individualism and the theory of the Good that is implicit in the State claiming to adopt a position of neutrality between concepts of the good. The bulk of this thesis, although coming from a different theoretical base, supports that criticism. In the face of their criticism, Rawls seems to have withdrawn from his early, metaphysical Kantianism into a political rather
than moral account of justice but one in which he presumes rather than explains much of what he should be arguing, that is the processes which produced the customary sense of reasonableness and cooperation which he uses to justify his two principles and on which he founds the basic, democratic structure which allows varying concepts of the good. Specifically, he regards Right as prior to the Good or the Reasonable as prior to the Rational. For him, the basic structure that finds itself through such a public conception of justice as the institutional arrangements of a constitutional democratic State, or Right, is prior to any comprehensive religious, philosophical or moral doctrine, or Good. However, it is the argument of this thesis that his concept of the Right, emerging as it does in the form of the constitutional democracy, is itself founded on a range of historical conceptions which taken together have come to constitute a comprehensive moral conception. This comprehensive conception is mythological. That is, the mythological precedes Right and the mythological is a comprehensive Good.

Rawls and Mythology

There are three aspects of the mythological effect of Rawls’ work on which I wish to make particular comment. The first is the Kantian mythology within his work, the second is the way that Rawls amended that Kantian content or ‘worked on the myth’ to strengthen it and the third is how, under effective attacks especially from the communitarians, he let his Kantianism go in an unsuccessful attempt to strengthen what

---

60 Rawls distinguishes between right and good by providing five examples of the latter: (1) the idea of goodness as rationality (2) the idea of primary goods, such as rights, liberties, freedom of movement, free choice of occupation, powers of offices of responsibility, income, wealth and social bases of self-respect (3) the idea of permissible comprehensive conceptions of the good (4) the idea of the political virtues, such as tolerance, reasonableness, fairness and meeting others half-way (5) the idea of the good as a well-ordered society, ibid p.449, 454

61 ‘This element of social cooperation I call the Reasonable. The other element corresponds to the Rational: it expresses a conception of each participant’s rational advantage, what, as individuals, they are trying to advance. As we have seen, the rational is interpreted by the original position in reference to the desire of persons to realise and to exercise their moral powers and to secure the advancement of their concept of the good…By the Reasonable…the parties are required to adopt a public conception of justice’ and ‘This illustrates one feature of the unity of reason: the Reasonable and the Rational are unified within scheme of practical reasoning which establishes the strict priority of the Reasonable with respect to the Rational. This priority of the right over the good is characteristic of Kantian constructivism’ ibid pp.316, 319 respectively

62 ibid p.450
was in effect his contribution to the mythological tradition. I will then draw some conclusions about the state of the political myth after Rawls’ work on it.

**Rawls’ early Kantianism**

It is not hard to see why Rawls might have set himself in a Kantian context in his quest to revitalize the political theoretical tradition. As we have seen, Kant can fairly be argued to have consolidated the significant features of both the ‘Hobbesian’ and ‘Rousseauean’ contributions to that tradition. Rawls was attracted by the universality of the moral imperatives of Kantianism and by the kind of rationality that came with the autonomous Kantian individual, whose reason could be relied upon to continue to act to improve those elements of Kant’s own work which in the late twentieth century were simply anachronistic. These elements included the limitations to political participation, particularly based on class and gender, the proscription of any resistance to the State, the lack of interest in the fair distribution of resources, a retributive concept of justice and, beneath it all, the oppressiveness of the notion of a general will. Unaware of the mythological presumptions of the tradition within which he worked, Rawls was presented by that tradition with both a morally robust theoretical arrangement and the opportunity to make his own contribution to it by addressing its inherent shortcomings. In short, although he didn’t understand his work in this way, the tradition in fact presented him with a mythology upon which he could continue to work.

Early Rawlsian theory, up to and including *A Theory of Justice*, can properly be seen to be driven by deep - I have called them tectonic - ideas that have mythological significance traceable back to Hobbes, certainly through Kant but also Rousseau, Montesquieu and Locke. These elements do not all re-appear finally in Rawls in the same variations as in Hobbes, since the persistent Hobbesian framework underwent enough amendment by those other thinkers to apparently improve its functionality as myth. But it has been the peculiar dynamics of Hobbesian mythology within and against which his successors, including Rawls, continued to operate.
I will not belabour the point here concerning the elements of the political mythology that Rawls adopts from those before him in the tradition, except to point them out where they are obvious. Rawls’ Original Position and the arrangements that flow from it contain the voluntary contractarianism that Hobbes employs to relieve fear. They do this by denying the wide application of the principle of insufficient reason\(^63\), demonstrating Rawls’ preference for the elimination of the influence of the ever-present malevolent opponent rather than the risk that accompanies self-responsibility. The Two Principles emphasise this point, given that they are chosen to optimise individual rights and equal distribution of resources and opportunities to ensure that elimination. The structural arrangements that Rawls chooses to deliver on those principles are the standard Western democratic institutions championed by the very thinkers that we have been examining\(^64\). We have examined at length the genealogy of that institutional mythology and in that their creation of a constrained but fearsome entity the purpose of which, as it is in Rawls, is to eliminate fear (his First Principle) and create sympathetic conditions of existence (his Second Principle), by the forgoing of self-responsibility to the Kantian political institutional arrangements, with their dominant interests. The optimisation of these principles, that is their maximum inclusiveness, is their full dispersal across social space. What is interesting is that, by the time we get to Rawls, these ideas about the preferred institutional arrangements have become so embedded in the political tradition that he does not even question their origin, genealogy and status\(^65\). This is despite the fact that they have been gradually and even violently established over a long time and, in the argument of this thesis, on the basis of particular notions of the Good the cost of which

\(^{63}\) Rawls gives extensive consideration to this principle (*A Theory of Justice* pp.161-171) but only in the context of utilitarian principles as a method of computing average utility, whereby the principle is a mechanism for predicting the maximised expectations of individuals. He does not consider its relevance as a method which may allow negotiated outcomes between individuals, for example regarding dispute resolution or the allocations of primary goods.

\(^{64}\) ibid p.224

\(^{65}\) ‘The principles of justice provide a criterion for the laws desired; the problem is to find a set of political procedures that will give this outcome. I shall assume that, at least under the normal conditions of a modern state, the best constitution is some form of democratic regime affirming equal political liberty and using some sort of majority (or other plurality) rule’ *Collected Papers* pp.179-180; see *A Theory of Justice* p.224 regarding his presumption in favour of a bicameral legislature, separation of powers mixed with checks and balances, and a bill of rights with judicial review.
has been the forgoing of self-responsibility and especially for the benefit of dominant interests.

This structural organisation and this inclusiveness, with their Hobbesian overtones, resonate with the medieval notion of the organic conception of society, a notion that Rawls himself must face. It is true that Rawls states that his idea of social union does not invoke ‘a perfectionist or organic conception of society’. However, although he does not claim organic perfection as a goal of his preferred arrangements, the network of core attributes of organic systems are core elements in his arrangements. From these attributes a range of other organic ideas are derived.

The core elements in Rawls’ political system, as the modified successor to those of his eminent predecessors, are properly seen in this organic context: in particular, his view of the State as the association consisting of equal citizens; that political systems are

---

66 T. Hobbes *Leviathan* p.120: ‘For by this Authoritie, given him (the Leviathan) by every particular man in the Common-Wealth, he hath the use of so much Power and Strength conferred on him’; this was no original proposal by Hobbes, given the long medieval tradition of the constitutive principle of the subordination of plurality to a unity which rules over each unit which must ‘in so far as that Part itself is a Whole with a final cause of its own, itself appear as a self-determining Unit’ - see Aquinas and Dante in Gierke *Political Theories of the Middle Age* pp.8-9

67 J. Rawls *A Theory of Justice* p.520

68 These organic attributes include the adjustment of a plurality of parts into an ordered whole in such a way that they communicate to each other and to the whole; and that when union is at its best, the consequence in the State approaches tranquility. He says ‘…an overlapping consensus is not a mere *modus vivendi*. In a society well ordered by the principles mutually recognised in an overlapping consensus, not only do citizens have many final ends in common, but among them is mutual political justice’, *Collected Papers* p.470; ‘when everyone acts justly, all find satisfaction in the very same thing’, *A Theory of Justice* p.527; see also O. Gierke *The Political Theories of the Middle Age* p.26 for the detail of this and at p.27 for reference to the influence that the organic analogy had on Dante, Nicholas de Cusa and others

69 These include the notion of membership, whereby the individual is a part subsidiary to but, together with other parts, comprises the whole; the notion of union, whereby individuals are socially grouped but differentiated from each other; of mediate articulation, whereby smaller groups stand in graduated order between the individual and the whole; the ordering of the parts, whereby each affects the others and the lower are motivated and controlled by the highest force; the function of the whole; and the necessity of a single force, whereby inferior forces are regulated and governed by the superior force and without which each member is lifeless; O. Gierke *The Political Theories of the Middle Age* pp.27-29, where the genesis of the elements of these concepts is to be found *inter alia* in Aquinas and Marsilius of Padua

70 J. Rawls *A Theory of Justice* p.212
disposed to equilibrium and stability\textsuperscript{71}; that the boundaries of these systems ‘are given by
the notion of a self-contained national community\textsuperscript{72}; that the ‘inevitable deviations from
justice are effectively corrected or held within tolerable bounds by forces within the
system’\textsuperscript{73}; that a ‘well-ordered society...will presumably contain countless social unions
of many different kinds’ and that a ‘well-ordered society (corresponding to justice as
fairness) is itself a form of social union. Indeed, it is a social union of social unions\textsuperscript{74};
that ‘the members of a well-ordered society have the common aim of co-operating
together to realize their own and another’s nature in ways allowed by the principles of
justice’ and ‘when everyone acts justly, all find satisfaction in the very same thing\textsuperscript{75}; that
within a ‘just constitutional order…the plan of each person...is adjusted to the plans of
others by mutually acceptable principles’ and, though the larger plan does not establish a
dominant end, ‘everyone’s more private life is so to speak a plan within a plan, this
superordinate plan being realised in the public institutions of society\textsuperscript{76}; and, finally, the
‘collective activity of society, the many associations and the public life of the largest
community that regulates them, sustains our efforts and elicits our contribution\textsuperscript{77}. This is
an arrangement which is premised on co-ordinated, unified and hierarchically integrated
activity. It is the myth of the fully harmonised political society. It hardly allows for the
self-determining edginess of individual self-responsibility promoted by a different kind of
State.

It is in this context of harmonious tranquility that Rawls raises the issue of contingency
and its necessary elimination. In Rawls, contingency is a condition of fear and not of

\textsuperscript{71} ibid p.456
\textsuperscript{72} ibid p.457
\textsuperscript{73} ibid 458
\textsuperscript{74} ibid 527
\textsuperscript{75} ibid 527
\textsuperscript{76} ibid 528
\textsuperscript{77} ibid 529
hope, as it might be, on the contrary in fact. Rawls accepts that the contingency of human existence is both natural and social in form and that it is multiplicitous and personal in nature, but his response to this contingency, crucial as it is to his analysis of justice, is open to challenge. Social contingency, as the sense that we are not only conceived but continue to be significantly determined by factors outside ourselves, invites one of two principal responses. One may adopt the view that it is possible to construct arrangements which will eliminate or neutralise it and that this will be the basis of a certain kind of individual freedom. Alternatively, one may adopt the view that nothing can effect such an elimination, that being encouraged to do so is a seduction but attempt instead to construct arrangements which might moderate its effect, although without preventing its continuing recurrence, by promoting the responsible capacity of the individual in contingent circumstances: that is, contingency might be situationally, provisionally and differentially managed through respectful self-assertion but it cannot be eliminated. In this response to contingency, the promotion of individual capacity would constitute a different sense of freedom. The first view would be seen to be based on a denial of the intractability of contingency and therefore as unable to constitute freedom in this sense. The alternative view produces a stronger sense of freedom but one which requires constant individual attention to the management of contingency.

Rawls’ position on this is clear. He does not conceive that freedom might consist in the recurrent situational and differentially successful attempt to manage contingency. For him, a full sense of justice (as ‘fairness’, in the form of the two principles) will realise our nature as free and rational beings and such ‘freedom (is) from contingency and happenstance’. He claims that we cannot express our nature by following a plan that views the sense of justice as but one desire to be weighed against others: (for) ‘this sentiment (of justice) reveals what the person is, and to compromise it is not to achieve

78 ‘Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in quest for political and economic advantage, we are led to these (two) principles. They express the result of leaving aside those aspects of the social world that seem arbitrary from a moral point of view’, ibid p.15
79 ibid p.574
80 ibid p.575
for the self free reign but to give way to the contingencies and accidents of the world. By being just in the sense he conceives, one eliminates or neutralises the effects of social contingency and so is free. Free, effectively, from fear.

This choice confronting Rawls directly revives that created by the impact of Ockham’s argument that the implication of an all-powerful God is that human existence is fully contingent. The implication is elaborated by Blumenberg’s view regarding the consequential choices for human autonomy, that is atheism or deism. Rawls’ choice in an analogous position is that adopting principles of justice will provide a guarantee against the incursions of contingency, while the alternative position of this thesis recognises the inevitability of this contingency, including in matters of justice, and that there cannot be even conditional guarantees of circumstances in which the self may achieve ‘free reign’ from contingency. Better to recognise this than pursue a quest for the unattainable and at the very high price of forgoing self-responsibility. For Blumenberg, the choice is clear. That is, the most appropriate primary response to contingency is to enable responsible situational assertion by individuals rather than rely first on a search for the establishment, elaboration and administration of principles, goods (for Rawls these

81 ibid p.575

82 H. Blumenberg points to Ockham’s emphasis on the absolutist nature of the creative power of the Deity, *Legitimacy of the Modern Age* p.153. The consequential contingency mirrors what Blumenberg sees in the anthropogenetical dimension of man’s contingency as the ‘absolutism of reality’. This is the external condition which represents the level of risk of loss of control by mankind of the conditions of existence, originally due to the fears which attended the pre-historic transfer from forest to savannah but which is an enduring condition. This is so because ‘Man is always already on this side of the absolutism of reality, but he never attains the certainty that he has reached the turning point in his history at which the relative predominance of reality over his consciousness and his fate has turned into the supremacy of the subject’ (p.9) and ‘the oppressiveness of contingency, which lies behind myth, does not cease’ (p.293)

83 Only two fundamental positions remain open, that is “hypothetical atheism, which poses the question of man’s potential under the condition that the answer should hold ‘even if there is no God’; and rational deism, which employs the ‘most perfect being’ to guarantee this human potential”, H. Blumenberg *The Legitimacy of the Modern Age* p.179. The implications of adopting the former are the possibilities of self-assertion and of the latter, mythology.

84 ‘The double face of the Enlightenment, on the one hand its renewal of a teleological optimism and on the other hand its inclination to atheism, loses its contradictory character if one places it in the context of the unity of the onset of human self- assertion and the rejection of its late-medieval systematic role’, ibid p.179
are rights, opportunities, powers, wealth and self-respect\textsuperscript{85}) and arrangements, the aspiration of which is to eliminate contingency. The better strategy is to enable located individuals to act in a fully self-responsible manner and, on the secondary condition of mutual respect promoted by supporting arrangements, to attempt to construct by negotiation the particular outcomes best suited to dealing with the contingent factors of that situation in a manner satisfactory to all parties. It is in the context of this approach that we will refer below to Aboriginal policy. In a manner which varies radically from the position adopted by Rawls, such arrangements have no specific systematic implications.

The argument of this thesis, consistent with the position of Blumenberg as amended here, is not to deny that there are conditions required to enable individual respectful self-responsibility nor that these would include either arrangements or goods. It is to say that arrangements and goods are only relevant as necessary conditions to the situational, individual, responsible struggle with contingency and the fear it inevitably brings and that their purpose therefore cannot be taken to eliminate contingency. It is also to say that such goods are only relevant as conditions or benchmarks which enable such a negotiative process to deliver agreement in each of a continuous series of contingent situations. They cannot be seen as mere trumps, since it is by negotiated outcomes that contingency is managed: since nothing can eliminate contingency, such trumping certainly would not. However, the presence of a possible trump may assist in the process of negotiation, but that might equally and properly involve both provisional and strategic concession, for example where there are separate, legitimate but conflicting claims of right.

Rawls’ approach to this problem is revealed in the highly conservative nature of his preferred maximin strategy by which he claims the two principles of Justice as Fairness would be chosen\textsuperscript{86}. As we have seen, his view is that the parties deciding the principles of the Original Position behind the veil of ignorance would choose principles as if to

\textsuperscript{85} J. Rawls \textit{A Theory of Justice} p.62

\textsuperscript{86} ibid p.153
protect themselves against the possibility that their place in society would be decided by a malevolent opponent. This assertion intentionally excludes alternative strategies whose adoption would have a different impact on notions of justice and citizenship. For example, he excludes the wide application of the principle of insufficient reason. Under this principle, parties would not forego reason in their deliberations in the Original Position, but they would recognise that in any consideration of practical matters it is reasonable to propose something on insufficient grounds, given that such consideration will always proceed without definitive evidence, that is based on provisional rhetoric. In the context of such a principle, rational decision rules may therefore include those based on the argument of the wager: since individuals are often required or may choose to wager their practice on an alternative favourable to respectful self-assertion and self-development, parties to the experiment Rawls constructs might wager that their position is likely to be decided by their own capacity to secure any position, that is, rather than that it may be determined by a malevolent person: they may fully trust themselves without disrespecting others. Under such conditions, the inevitability of the proposal of the two principles as necessarily optimising justice as fairness disappears. Rawls cannot reject this claim on the basis that there may be some individuals in the Original Position who would wish to adopt this approach of the wager but that most would not, since it is clear that for him there must be unanimity and that ‘Therefore, we can view the choice in the original position from the standpoint of one person selected at random’. The effect of this claim is the demise of Rawls’ unanimity, allowing the introduction of the individually self-assertive, respectful negotiative process which the acknowledgement of the virulence of contingency recognises.

87 ibid p.153

88 See Blumenberg An Anthropological Approach to the Contemporary Significance of Rhetoric pp.447-449

89 ibid pp.435-6

90 ibid p.449

91 A Theory of Justice p.153

92 ibid p.139, where for Rawls the basis of this unanimity is that in the Original Position ‘everyone is equally rational and similarly situated, each is convinced by the same arguments’
This position regarding the elimination of contingency, especially as a source of fear, was not a position held by Rawls only in his early work. Throughout his theoretical work, even in his amendment of and final significant departure from Kantianism, Rawls was clearly concerned to imagine political arrangements in which fear is first eliminated. This is apparent from *A Theory of Justice*, where he constructs the thought experiment in which the conservative maximin strategy will ensure that every malevolent opponent is thwarted\(^{93}\), to *Political Liberalism* and beyond, where his primary aspiration is still the construction of the fully ordered society\(^{94}\).

Rawls’ commitment to the Kantian framework has other implications. Its Hobbesian-Lockean and Rousseauean roots begin with the social contract, which he claims to generalise and to carry ‘to a higher level of abstraction’\(^{95}\). This passes into his notion of ‘justice as fairness’ which he relates to ‘the high point of the contractarian tradition in Kant and Rousseau’\(^{96}\). He adopts the Kantian notion of autonomy as the source of his rational-moral law, that is from the choices which result from the freedom and equality of all individuals as rational beings, and the Rousseauean notion that freedom is acting in accordance with a law which we give to ourselves\(^{97}\). For him, these are the conditions which found the establishment of the Original Position and the two principles of justice which it embeds. He denies that the principles which determine action could be based on social or inherited characteristics, that is rather than through the exercise of rational autonomy, due to the heteronomous implications of that claim\(^{98}\). As we have seen,

\(^{93}\) my emphasis, as it is my interpretation of the role of the malevolent opponent

\(^{94}\) *Collected Papers* p.615. It is worth noting that, in describing here the difference between *A Theory of Justice* and *Political Liberalism*, Rawls says ‘Thus, the well-ordered, constitutional democracy of *Political Liberalism* is one in which the dominant and controlling citizens affirm and act from irreconcilable yet reasonable comprehensive doctrines. These doctrines in turn support reasonable political conceptions – although not necessarily the most reasonable – which specify the basic rights, liberties, and opportunities of citizens in society’s basic structure’ (my emphasis, given what I argue are the mythological implications).

\(^{95}\) *A Theory of Justice* p.11

\(^{96}\) ibid p.252

\(^{97}\) ibid p.256

\(^{98}\) For example, Rawls endorsed Kant’s moral constructivist rejection of both Hume’s psychological naturalism and any form of rational intuitionism as heteronomous, *Collected Papers* p.512
Rawls’ establishment of the Original Position is such that such heteronomy is consciously excluded by the veil of ignorance which constitutes the conditions of choice. Heteronomy, as determination by a law external to oneself, is a profound source of contingency. Rawls also views the necessary adoption of the two principles as categorically imperative in the Kantian sense, that is as necessarily the product of free and equal rational beings and irrespective of particular aims, since such aims are necessarily contingent. The strong implication is that for all this Rawls requires a Kantian notion of the self, that is one which emphasises its unity by the rationality and planned coherence of the individual’s life and which ‘is prior to the ends which are affirmed by it; even a dominant end must be chosen from among numerous possibilities’. For Rawls, there is no way to get beyond deliberative rationality: ‘We should therefore reverse the relation between the right and the good proposed by teleological doctrines and view the right as prior’. This position is also drawn from the notion of Kantian autonomy, since the latter accords with the assumption of mutual disinterest. But we have seen the problem in this assertion, that is that one cannot get beyond Good.

In short, in his search to found a re-invigorated political philosophy, which was in effect a quasi-organic mythology, Rawls relied on such Rousseauean-Kantian notions as the moral imperative and rational autonomy as the basis of his notion of fairness and on the ‘Hobbesian’ institutional arrangements needed to give these effect. As it had been with Kant, this was reason in the service of myth, all the key characteristics of which survive in his work: the fearsome magnitude of the State, its engagement, its fate coming into man’s hands and its wide dispersal through the engagement of all individuals in the belief that fear as contingency can effectively be eliminated and sympathetic conditions of existence created.

99 op cit p.253
100 ibid p.561
101 ibid p.560
102 This ‘is to allow for freedom in the choice of a system of final ends. Liberty in adopting a conception of the good is limited only by principles that are deduced from a doctrine which imposes no prior constraints on these conceptions. Presuming mutual disinterest in the original position carries out this idea’, ibid p.254
Rawls’ Work on the Kantian Myth

The challenge for Rawls in his revival of the political tradition was to show ‘what can be is what should be’ about the way that the magnitude, as it is called here, operates. That is, to show that what is feasible is what is desirable about it. In effect, he had to justify afresh the magnitude, comprised of the customarily established political arrangements, by showing that it could ‘deliver’ for every individual, to engage him. This is the basis for his construction of an argument that started with outflanking the fearsome malevolent opponent. He chose a Kantian framework for this. However, having taken on Kantianism, he was aware of its shortcomings and set out to rectify them. He proceeds to amend Kant to eliminate the flaws, the effect of which is to make the idea of the magnitude still fearsome but sympathetic, while remaining within a Kantian framework.

There were flaws in Kant’s scheme. A majority of the members of society (women and non-government employees) were denied active participation in the political process, with the result that laws could easily be passed without majority support due to the principle of tacit consent; there could be no active resistance against the State; inadequate concern for the creation of sympathetic conditions meant that wide material inequality was allowed; and non-rational human nature was relegated to the status of an unfortunate embarrassment and punished retributively where required. Rawls’ principal strategy for this revision is of course his Two Principles, the first of which optimises individual rights and liberties and the second of which optimises redistribution of resources and individual opportunity. All of which he produces out of a Kantian sense of universal morality and the autonomy of the rational individual. The magnitude is thereby made more sympathetic without limiting the power it requires to give effect to these aspirations, a power still derived from the forgoing by individuals of their self-responsibility.

103 ‘The principles of justice are also categorical imperatives in Kant’s sense. For by a categorical imperative Kant understands a principle of conduct that applies to a person in virtue of his nature as a free and equal rational being’, ibid p.253
However, this revision is not always done in a manner which is consistent with Kant’s arguments. For example, he acknowledges that he uses the Kantian arguments regarding the autonomy of the individual to establish the basic structure of society\textsuperscript{104}, which is ‘the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arise through social co-operation. Thus the political constitution, the legally recognised forms of property, and the organisation of the economy, all belong to the basic structure’\textsuperscript{105}. Rawls claims that ‘this and other additions are natural enough and remain fairly close to Kant’s doctrine, at least when all of his ethical writings are viewed together’\textsuperscript{106}. However, Kantian equality is strictly confined to the legal interrelations of citizens. It does not go beyond legal equality. Kersting makes this point\textsuperscript{107}. In his desire to make the State fairer than Kant, Rawls has gone well beyond Kant so that he may shore up the mythological imperative that the State is the creator of sympathetic conditions of existence.

Further, Rawls claims that the two principles assume that the parties to the Original Position ‘desire certain primary goods. These are things that it is rational to want whatever else one wants’\textsuperscript{108}. For Rawls, such goods include ‘rights and liberties, powers and opportunities, income and wealth’\textsuperscript{109}. Although he states that they are required as parts of rational plans of life\textsuperscript{110}, thereby avoiding the prospect that each such end has value for its own sake, it is clear that for Rawls the rational morality of the life plans

\begin{itemize}
\item \textsuperscript{104} ibid p.252
\item \textsuperscript{105} ibid p.195, 274, 265
\item \textsuperscript{106} ibid p.252
\item \textsuperscript{107} ‘Consequently Kantian equality is totally indifferent towards the economic structure of society and the distribution of goods, means and socio-economic power laid down by it. Kant’s legal and political equality lacks all economic implications and social commitments; it cannot be used to justify the welfare state and to legitimise welfare state programmes of redistribution’, W. Kersting ‘Kant’s Concept of the State’ in \textit{Essays on Kant’s Political Philosophy} p.153
\item \textsuperscript{108} op cit p.253
\item \textsuperscript{109} ibid p.62
\item \textsuperscript{110} ibid p.260
\end{itemize}
involves the application of morality in the distribution of essentially non-moral goods such as wealth. However, this is a prospect that would...have filled Kant with horror\textsuperscript{111}. The Kantian State was indeed less sympathetic than that of Rawls, and, for that, was less robust as myth, even though it was an advance on the conception of it by Hobbes and Locke. Rawls is stretching Kant in working on the myth he inherited from him.

Further again, Rawls claims to solve a difficulty presented by the failure of Kant to explain why ‘the scoundrel does not express in a bad life his characteristic and freely chosen selfhood in the same way that a saint expresses his characteristic and freely chosen selfhood in a good one’\textsuperscript{112}. For Rawls, the conception of the Original Position corrects this defect: the parties as noumenal selves have complete freedom to choose whatever principles they wish ‘but they also have a desire to express their nature as rational and equal members of the intelligent realm’\textsuperscript{113}. This is a confirmation of Rawls’ fated determination to eliminate contingency.

Finally, Rawls acknowledges that he has ‘departed from Kant’s views in several respects’\textsuperscript{114}, specifically in assuming that the choice of the noumenal self is a collective one, that is that the force of the self’s being equal to others is that the principles chosen must be acceptable to other selves and each must have an equal say in adopting the public principles of the ethical commonwealth. This collectivity of the self would be against the grain of Kant. It would also be inconsistent with the principle of self-responsibility, even though that must be informed by respect for others.

\textsuperscript{111} S. Smith ‘Defending Hegel From Kant’ in Essays on Kant’s Political Philosophy p270

\textsuperscript{112} op cit pp.254-5

\textsuperscript{113} He continues ‘They must decide, then, which principles when consciously followed and acted upon in everyday life will best manifest this freedom in their community, most fully reveal their independence from natural contingencies and social accident. Now if the argument of the contract doctrine is correct, these principles are indeed those defining the moral law, or more exactly, the principles of justice for institutions and individuals...Thus men exhibit their freedom, their independence from the contingencies of nature and society, by acting in ways they would acknowledge in the original position’, ibid pp.255-6

\textsuperscript{114} ibid p.256
What these amendments and extensions clarify is that the intention of the early Rawls is, in a manner that evokes the respective sequential attempts of his predecessors, to correct the flaws in the Kantian account of the dominant political mythology. This is so that it may be further strengthened by claiming there is a way to pre-emptively eliminate contingency, thereby fear, and to promote the creation of sympathetic conditions of existence, through the assumption of self-responsibility from individuals. His amendments to Kant’s effective strengthening of the tradition of political mythology are properly seen as evidence that Rawls’ principal concern was such an elimination: his conception of the rationally obligatory nature of the Original Position, as a neo-Hobbesian, neo-Kantian device; the organic disposition of his all-inclusive conception of society; his endorsement of the negative libertarianism of the constraints of the Montesquieuene State form\textsuperscript{115}; his amendment of the Lockean notion of rights through the difference principle; and his support for the Rousseauean sense of ‘the social system (which) shapes the wants and aspirations that its citizens come to have’\textsuperscript{116}. His position is properly seen as the then-latest in a line of theorists who progressively amended the Hobbesian paradigm for the purpose of strengthening it rather than seeing its inherent flaws and radically criticising it. His Kantianism and the changes he made to that should be seen in the context that, like Hobbes, his primary commitment was the adoption of a rational mythology which eliminated contingency by the promotion of a rational morality realised in institutional form. It was surely not the promotion of the responsibility of individuals to and for themselves. His mythology, like the variations of his predecessors, assumed responsibility for an entire society, that is for others rather than oneself, and in that sense at least it was flawed. Rawls assumed too many of the priorities of the Kantian Idealist mythology, designed to overcome the malevolent demon of Cartesian doubt, and in doing so ignored the potential benefits of a non-metaphysical application of the

\textsuperscript{115} ibid p.224; it may be noted that, although Rawls is more tolerant of intermediate groups than was Kant (see A Theory of Justice pp.527-8), he is ultimately required by the rationality of his ‘union of unions’ and ‘plan within a plan’ to subject them to the full and detailed authority of the principles of justice as represented in and by institutional arrangements, irrespective of his assertion as to the absence of any dominant end

\textsuperscript{116} ibid p.259
Categorical Imperative and the Kantian postulate, along with the potential of the principle of insufficient reason. But doing so would have produced a different theory of justice.

**Rawls forgoes Kantian metaphysics but the myth remains**

As has been already noted, the communitarians criticised the metaphysical Kantianism of Rawls’ approach. Although he could defend himself against some of these criticisms, he finally accepted that *A Theory of Justice* had faults of exposition and that his position had changed. These concessions were an effective acknowledgement that finally one must look within a culture for moral principles upon which to build political arrangements and not attempt to construct such principles on an abstract, universal basis. This was the same acknowledgement that Rousseau was finally forced to make, as we have seen. Rawls did look within and saw his principles of fairness embedded in his own American culture. Further, by implication, one cannot rely on any concept of an autonomous rational individual as the means to get to such principles, as the individual is fully embedded in culture. This shift by Rawls was from a comprehensive doctrine to a political one, leading to his argument of the priority of the Reasonable over the Rational or of Right over Good.

Rawls can defend himself against the charge that he ignores the primacy of culture, in fact he accepts that fairness is embedded in our culture and emphasises it more in later work. The real point is that the communitarian criticism was fair, and Rawls accepts that justice is a notion embedded in, he comes to argue in American, culture. Rawls’ reformulation and re-emphasis allows him to respond effectively to key communitarian criticisms. In particular, he claims, against the Kantian concept of the self attributed to him by Sandel\(^\text{117}\), that although the individual as a citizen must be separate from his conception of the good within the political realm, he can acknowledge that they may regard it as simply unthinkable to view themselves apart from certain religious, philosophical and moral convictions in non-political matters. He claims, against those

\(^{117}\) M. Sandel *Liberalism and the Limits of Justice* p.62
who like MacIntyre assert that his concept of the self is detached from society\textsuperscript{118}, that even in his earlier work he acknowledged ‘a social setting as well as a system of belief and thought that is the outcome of the collective efforts of a long tradition’\textsuperscript{119} and that this is reinforced by his later argument regarding the public nature of the articulative process\textsuperscript{120}. He also attempts to resist claims like that by Sandel that communal goods cannot be limited to the non-political arrangements\textsuperscript{121}.

Equally, he responds to those such as Walzer who assert that he ignored cultural differences by intending that his theory can be applied universally\textsuperscript{122} and that he assumed some universal vantage point from which to determine his principles and to determine the distribution of goods\textsuperscript{123}. Rawls distinguishes between political and other goods\textsuperscript{124} and he makes clear that he is referring only to democratic societies in his delineation of public political culture\textsuperscript{125}. This in turn allows him to reject the assertion that his account of conceptions of the good is arbitrary or subjectivist: one can be committed to the truth of a moral doctrine without it having to be included in political matters and one may not be committed to the truth of a political judgement without forgoing its objectivity as based on reasonableness. Finally, he acknowledges that the priority he gives to right over good is compatible with various senses of good (for example the rational as a good; the permissibility of comprehensive conceptions of the good; the well-ordered society as a

\textsuperscript{118} A. MacIntyre \textit{After Virtue} pp.232-3

\textsuperscript{119} In this context, he states that the basic structure of society shapes human wants and the ideals of the person, \textit{A Theory of Justice} pp.522, 259-263

\textsuperscript{120} \textit{Collected Papers} p.582

\textsuperscript{121} ‘Note that what is impracticable is not all values of community...but only political community and its values. Justice as fairness assumes...that the values of community are not only essential but realisable...in the various associations that carry on their life within the framework of the basic structure and...in those associations that extend across the boundaries of nation-states, such as churches’, \textit{Political Liberalism} p.146


\textsuperscript{123} M. Walzer \textit{Spheres of Justice} p.5

\textsuperscript{124} J. Rawls \textit{Political Liberalism} p.189

\textsuperscript{125} ibid p.14
good), so although the liberal State is not to promote any particular comprehensive notion of the good, there is a compatibility between Right and Good\textsuperscript{126}. On all this may be based a claim that there are reasons to regard Rawls as himself significantly communitarian\textsuperscript{127}.

For Rawls, the fairness of these arrangements is to be achieved by a process of systematic articulation of ideas which are implicitly shared due to their being embedded in the communal culture and practice. The Original Position models the conditions of fairness through which the representatives of these free and equal citizens articulate the terms of the social co-operation through that basic structure, while it also excludes matters of the good through the veil of ignorance. In this sense, justice as fairness is purely political. It claims to imply no conception of the good or of the nature of the self: it is the rational articulation of arrangements drawn from shared ideas of fairness\textsuperscript{128}. It is because these ideas, unlike those relating to matters of the good, are implicitly shared and articulated in a publicly rational manner that they are justifiable\textsuperscript{129}. For Rawls, the paradigm cases of such public rationality are the speeches of the legislature and the decisions of the Supreme Court in a constitutional democracy.\textsuperscript{130} He appears to apply the practice of rationality to his own political constructivist theorising, although this is somewhat misleading since the purely political principles it generates can be regarded as if they were the outcome of rational construction\textsuperscript{131}.

\textsuperscript{126} ‘Now, as I have said, the right and the good are complementary: a political conception \textit{must} draw upon various ideas of the good’ (his emphasis) Collected Papers p.451
\textsuperscript{127} Stephen Mulhall & Adam Swift Liberals & Communitarians p.222
\textsuperscript{128} That is, ‘an account of a political conception of justice that applies...to the basic structure and articulates two kinds of political values, those of political justice and of public reason’, Political Liberalism p.64
\textsuperscript{129} ibid pp.100-1
\textsuperscript{130} ibid p.216
\textsuperscript{131} ‘(C)itizens cannot agree on any moral authority...Nor do they agree about...the dictates of what some regard as natural law. We adopt, then, a constructivist view to specify the fair terms of social co-operation...if the procedure can be correctly formulated, citizens should be able to accept its principles and conceptions along with their reasonable comprehensive doctrine’, ibid p.97
Rawls may very well come to state in 1985 that “I shall make some general remarks about how I now understand the conception of justice that I have called ‘justice as fairness’ (presented in my book *A Theory of Justice*). I do this because it may seem that this conception depends on philosophical claims I should like to avoid, for example, claims to universal truth, or claims about the essential nature and identity of persons”\(^{132}\). That is, justice as fairness is now a political and not a metaphysical concept on which is based the argument of Right before Good. The problem is that the rejection of metaphysics and the embracing of cultural embeddedness don’t lead to a realisation of the full cultural embeddedness of the idea of State.

Rawls remains too much a Kantian. That is, he has rejected Kantian metaphysics but retained enough Kantianism to sustain what is claimed here to be mythology. Far from recognising the long emergence of the democratic concept of the State and justice since Hobbes, with all the moral presumptions embedded in that concept, Rawls denies any coherence in the emergence of that idea, taking the view that there was incoherence, an incoherence which could only be sorted out by the application of Kantian reason\(^{133}\). For him ‘The course of democratic thought over the last two centuries, say, shows that there is no agreement on the way basic social institutions should be arranged if they are to conform to the freedom and equality of citizens as moral persons’\(^{134}\). He goes on: ‘To proceed, let’s specify more exactly the above-mentioned impasse in our political culture as follows, namely as a conflict between two traditions of democratic thought, one associated with Locke, the other with Rousseau. Using the distinction drawn by Benjamin Constant between the liberties of the moderns and the liberties of the ancients, the tradition derived from Locke gives pride of place to the former, that is, to the liberties of civic life, especially freedom of thought and conscience, certain basic rights of the person, and of property and association; while the tradition descending from Rousseau assigns priority to the equal political liberties and values of public life, and views the

\(^{132}\) *Collected Papers* p.388
\(^{133}\) ‘We are not trying to find a conception of justice suitable for all societies regardless of their particular social or historical circumstances. We want to settle a fundamental disagreement over the just form of basic institutions with a democratic society under modern conditions…since, let’s say the Declaration of Independence’, ibid pp.305-306
\(^{134}\) ibid p.305
civic liberties as subordinate…Somehow we must find a suitable rendering of freedom and equality, and of their relative priority, rooted in the more fundamental notions of our political life and congenial to our conception of the person. But how are we to achieve this? Justice as fairness tries to uncover the fundamental ideas (latent in common sense) of freedom and equality, of ideal social cooperation and of the person¹³⁵. Rawls has not seen the mythology in both Locke and Rousseau and so still sees these as different political traditions.

Where this thesis sees continuity in the difference between Locke and Rousseau, both drawn from Hobbes in the political tradition, Rawls sees only conflict and contradiction. Rather than therefore seeing the way forward in seriously addressing the internal dynamics and implications of that continuing tradition, Rawls is able to say that by merely applying reason to what is embedded in ‘common sense’ or reconstruing traditional convictions, we can found a new, rational conception of justice (and by implication, the State)¹³⁶.

By doing this, he effectively camouflages the mythological genealogy and diverts attention from the reality of the mythological conceptions that sit beneath all this, including the content of ‘free and equal’, seeing it merely as the product of an application of Kantian reason. He forgoes metaphysics but not what is in effect his contribution to mythology through the strengthening that his two principles give to the Kantian myth and he still justifies their emergence through Kantian constructivist reason rather than through the actual long history of their emergence. He denies what is in effect the mythology of his argument in hiding his myth behind reason. But his strengthening of the elimination of fear and the creation of a dispersed magnitude to which self-responsibility is forgone

¹³⁵ ibid p.307
¹³⁶ ‘To justify a Kantian conception within a democratic society is not merely to reason correctly from given premises. The real task is to discover and formulate the deeper bases of agreement which one hopes are embedded in common sense, or even to originate and fashion starting points for common understanding by expressing in a new form the convictions found in the historical tradition by connecting them with a wide range of people’s considered convictions: those which stand up to critical reflection. Now, as I have said, a Kantian doctrine joins the content of justice with a certain conception of the person and this conception regards persons as both free and equal, as capable of acting both reasonably and rationally, and therefore as capable of taking part in social cooperation among persons so conceived’, ibid p.306
reveal the mythological reality of his thought. He conceals what needs to be exposed, what for Blumenberg should be ‘radically criticised if self-assertion, enlightenment, and true modernity are ever to prevail’\textsuperscript{137}.

Where Rawls’ mythology emerges clearly again, that is beyond the justification for and nature of the institutional arrangements, is his distinction between right and good. He asserts that the right is prior to the good and has priority over it\textsuperscript{138}. He states his reason for this\textsuperscript{139}, having pointed out that primary goods are ‘rights and liberties, opportunities and powers, income and wealth’\textsuperscript{140}. What Rawls is effectively doing here is elaborating the mythological importance of the sympathy of the magnitude, necessary to balance its fearsome power, whereby it is constrained so that spheres of activity are established from which the magnitude withdraws. That is, the magnitude remains empowered to enforce right in the form of primary goods but is constrained to withdraw from matters which relate to what is Good, as determined by a person’s own interests and aims. Necessarily for Rawls, these comprise the elements of a successfully executed rational plan of life and will feature such human goods as ‘the familiar values of personal affection and friendship, meaningful work and social cooperation, the pursuit of knowledge and the fashioning and contemplation of beautiful objects’\textsuperscript{141}.

**Rawls’ amended Kantian mythology remains flawed**

As with his predecessors, the content and effect of Rawls’ work is not comprehensively mythological. There are elements of his thought that would survive mythological deconstruction. Examples of this would include his promotion of the principle of just economic arrangements, enforced by law\textsuperscript{142}, and his insistence on the preservation of

\textsuperscript{137} *The Legitimacy of the Modern Age* Translator’s Introduction p.xxv
\textsuperscript{138} *Collected Papers* p.319
\textsuperscript{139} ‘(O)nce the principles of justice are chosen…there is no need to set up the account of the good so as to force unanimity on all the standards of the rational choice. In fact, it would contradict the freedom of choice that justice as fairness assures to individuals and groups within the framework of just institutions’. He points out in this context that ‘the notion of rationality must be interpreted so that the general desire for primary goods can be established’, *A Theory of Justice* p.447
\textsuperscript{140} ibid p.92
\textsuperscript{141} ibid pp.433, 425
\textsuperscript{142} ibid pp.275-277
wealth for following generations\textsuperscript{143}. Further he would not contest some injustice in the laws, since the parties in the Original Position sign up not only to the laws that sustain the two principles but generally to enter into a state of affairs which carries with it ‘political duty and obligation’\textsuperscript{144}: they accept that a society can never be completely just but they will abide by just constitutional arrangements so long as the inevitable imperfections of a constitutional system are shared equitably\textsuperscript{145}. Further, there is nothing distasteful about the attempt to establish the optimally extensive system of individual rights. Looked at in one light, this can be construed as optimal self-responsibility. The problem is that it comes in Rawls at the cost of the forgoing of that responsibility and, as we shall see, colours the nature of those rights. If he were to acknowledge the full embeddedness of his notion of justice as fairness in the genealogy of the State, argued here to be mythological in nature, he might well be dissatisfied with the constitutional democracy that he so readily accepts, and argue his justice as fairness on a non-mythological foundation.

Nonetheless, despite Rawls’ attempts to correct the flaws in the Kantian political mythology and realise an idea of the State that achieves its two primary purposes, serious flaws remain. First, within the context of his own premises, Rawls’ argument fails. That is, his argument that, despite the foundation of his concept of justice in custom, reason alone will produce a notion of Right in the form of the basic structure and that this has priority over Good\textsuperscript{146}, is wrong. As this thesis has shown, there is a comprehensive Good which precedes Right and the democratic structure that it forms. This is the mythological concept of the State and the individual. This is a Good because it satisfies Rawls’ own definition of what constitutes a comprehensive Good: ‘Thus, a political conception of justice is different from many familiar moral doctrines, for these are widely understood as general and comprehensive views. Perfectionism and utilitarianism are clear examples, since the principles of perfection and utility are thought to apply to all kinds of subjects ranging from the conduct of individuals and personal relations to the organisation of society as a whole, and even to the law of nations. Their content as political doctrines is

\textsuperscript{143} ibid p.298
\textsuperscript{144} ibid p.351
\textsuperscript{145} ibid p.355
\textsuperscript{146} Collected Papers p.451
specified by their application to political institutions and questions of social policy. Idealism and Marxism in their various forms are also general and comprehensive’. His error is that, as this analysis of the mythological concept of the State has shown, he goes on to say: ‘By contrast, a political conception of justice involves, so far as possible, no prior commitment to any wider doctrine. It looks initially to the basic structure and tries to elaborate a reasonable conception for that structure alone’\textsuperscript{147}. It has been argued extensively in this thesis that the basic structure itself is the product of long-refined mythological, and in Rawlsian terms comprehensive, idea since Hobbes and that reason has been employed, not just since Kant but since Hobbes, in the service of that thought.

The immediate implication is that, in direct contradiction to Rawls, the mythological State cannot be neutral: Right is founded on Good and so has no priority over it. Further, this State must reject concepts of the Good that contradict its mythological premises, such as those based, at one extreme, on religious fundamentalism or, on the other, on individual self-responsibility. Mythology makes his claim to State neutrality unsustainable: even when it operates through alliance and agency, say through Church or market, the State is always interested in and responsible for the practices of individuals, given its assumption of responsibility for the relief of fear and the creation of sympathetic conditions of existence. This allows for the artificial construction of what constitutes both fear and the desire that sympathetic conditions are to satisfy.

One example of how the State cannot be neutral is revealed by any examination of the debate concerning crime and whether the preferable response is punishment, rehabilitation or restoration, each of which may be seen in the light of varying comprehensive notions of the good and each of which would require institutional arrangements and practices significantly different from the alternatives. That the State is not, nor can it be, uncommitted in that debate casts serious doubt over the possibility of State neutrality and the issue of the application of State coercion. Rawls asserts, against these variations of response, that State coercion can be exercised only in ways that all citizens can reasonably be expected to endorse in the light of their common human

\textsuperscript{147} ibid p.424
reason\textsuperscript{148}. However, the radically different variations indicate that the kind of universality for which he seeks to authorise State coercion is not available. That the State cannot be neutral on such questions of the Good not only contradicts Rawls’ liberal position but shows that the arrangements he has established are mythological, since it is a basic tenet of the mythological political arrangements that interests will always emerge to dominate the otherwise vacuous structural arrangements of the State, so that they may determine what constitutes fearsome behaviour and determine conditions of existence that they regard as sympathetic.

This raises the whole issue of Rawls’ lack of concern for processes of normalisation, by which the elimination of fear and the establishment of stability that he seeks could be eliminated, relying instead on the natural attribute of reason. The one gesture he makes towards adjusting human behaviour has to do with punishment for the breaking of rules, wherein he acknowledges the force of his State in its authority to punish ‘bad’ characters\textsuperscript{149}. In seeking to combine the retributive and the utilitarian, that is the backward and forward looking approaches represented by the judge and legislator respectively, he is more concerned with limiting the deleterious effects of utilitarian institutions of punishment\textsuperscript{150}. While this is an admirable approach, it says nothing about normalisation. But even here, he is only concerned with whether punishment should fit the crime or be preventive. Therefore, beyond his concern to limit the unchecked decisions of officials, there is no place in his thought to this point for the role or impact of the regime of disciplines, as we shall see below regarding punishment, or any other means by which behavioural norms are established. This issue of normalisation, and its role as an essential means of dispersing the mythological State, will be explored in a subsequent chapter.

More generally regarding the unavailability of State neutrality, the notion of liberalism which Rawls is promoting here is one in which State coercive power, constituted by the

\textsuperscript{148} Political Liberalism pp.139-140, and Collected Papers p.578

\textsuperscript{149} A Theory of Justice pp.314-315

\textsuperscript{150} Collected Papers pp.21-29. He adopts a similar approach to the keeping of promises ibid pp.29-33
corporate power of free and equal citizens, is exercised only in ways to which all citizens would agree as rational beings.\(^{151}\) It is this rationality which constitutes, he claims, rather than is constituted by, political stability.\(^ {152}\) Stability is therefore for him coincident with the rational legitimacy of the regime: he denies that his theory is pragmatic in that it simply seeks to avoid conflict. Nor does he accept that the competition between comprehensive conceptions of the good will destabilise, since reason will ensure the tolerance necessary to sustain the overlapping consensus of such conceptions.

This reveals something more about the nature of the mythological relationship between right and good. The elimination of fear requires the elimination of forms of life which challenge the dominant form. The justification for such elimination is that any form of life which challenges the dominant form is a source of fear. Consequently, the concept of right must at least be complemented by a determination of good. The result is that, in any mythological political system, there is not only promotion of rights and liberties but also of how those rights and liberties will be exercised through forms of individual life. Rawls developed this latter notion to such a level of refinement that he conceived the good as an individual life plan,\(^ {153}\) and that, as rational, such an individual plan will inevitably form part of a coherent mega-plan for the entire community. For him, this mega-plan comprises a well-ordered society, the integrated coherence of which eliminates the uncertainty and competition which is the source of fear.

Beside these arguments is one further put by Rawls that political stability is a result of, not a justification for, this exercise of public reason. His preference is clearly for political institutional arrangements and practices which assure stability and unity in the face of pluralism: he does not assert that different comprehensive doctrines should stand alone politically but that they should be accommodated in a single State form. This is the attempt to ensure the elimination of the potentially destabilising and therefore fear-

\(^{151}\) J. Rawls *Political Liberalism* pp.139-40

\(^{152}\) ‘The problem of stability is not that of bringing others who reject a conception to share it...by workable sanctions if necessary...Rather, justice as fairness is not reasonable in the first place unless in a suitable way it can win its support by addressing each citizen’s reason’, *Political Liberalism* pp.143-4

\(^{153}\) *A Theory of Justice* pp.407-416
producing effects of pluralism. His argument is that these political arrangements are the result of the exercise of public reason and that their stability is secondary: it is not a matter of ‘bringing others who reject a conception to share it...by workable sanctions if necessary...Rather, justice as fairness is not reasonable in the first place unless in a suitable way it can win its support by addressing each citizen’s reason’.154

The problem here is that reason is so defined, derived as it is from his conception of culturally shared intuitive ideas, as to presume stability as the outcome: the political arrangements could not be other than stable, given the manner in which he conceives reasonableness. There is no undertaking the riskiness of working towards provisional stability by agonistic, respectful self-assertion. For Rawls it must be categorically assured from the start, by eliminating any element that might introduce risk, including such self-assertion. He was clear about his post-Kantian aspirations well before Political Liberalism, stating that it is necessary to adopt ‘the method of avoidance’ such that ‘differences between contending political views can at least be moderated...(and)...social cooperation on the basis of mutual respect can be maintained’.155 Although without the comprehensive moral imperative of Kant, his theory remains true to the Hobbesian-Lockean presumptive, prescriptive establishment of peace, order, stability and unity. This mythology has caused him to deny that, alongside the centripetal force of shared ideas, stands both the centrifugal force of contrary views concerning the preferred basic structure, which may derive from various rational but ideological comprehensive doctrines, and the position of those who might wish to exercise the principle of insufficient reason through the construction of nothing more than provisional arrangements. That is, he does not conceive that there may be no universality or unanimity regarding preferred arrangements and that stability as he defines it is not a necessary or, depending upon what price is paid for it, a necessarily desirable outcome. His argument, again, is circular. Even his insistence that the pervasive influence of the

154 Political Liberalism pp.143-4

155 Collected Papers p.395
basic structure be realised by being made fully public\textsuperscript{156} does not lead him to consider that this form of the constitutional democratic basic structure might not be preferred.

The attempt to eliminate contingency is shown by Rawls’ bracketing of any reasonable, pluralist comprehensive doctrines from the basic structure by the veil of ignorance, the intention of this anti-perfectionist neutrality being to avoid the coercion of individuals by the State on behalf of any preferred doctrine\textsuperscript{157}. Although Rawls does not emphasise the point, this proscription would appear to have the added benefit of eliminating the general contingency which may result from conflict between such comprehensive doctrines. However, rather than having this eliminative effect, such proscription could have the opposite effect, that is it would have a destabilising impact due to the frustration of unresolved views. This is because Rawls’ attempt to sustain the classical liberal protection of the individual from the State as a principal source of contingency may well increase destabilisation. In that circumstance, it would be counter-intuitive, at least on Rawlsian liberal grounds, to exclude comprehensive doctrines from the public political process that determines the basic structure, as he does\textsuperscript{158}: it would be their agonistic engagement, for example by encouraging respectful debate, which would be a more fruitful strategy against contingency and its associated fear\textsuperscript{159}. Of course, it may be that disagreement is not inevitable as he infers, in which case such bracketing is unnecessary.

Further, his latest conception of the liberal State as a corporate body of free and equal citizens is problematic. Qualified by the cultural imperatives which Rawls claims to have been fully implicit from his earlier work, this corporatism is to be seen within a

\textsuperscript{156} Political Liberalism p.68

\textsuperscript{157} As Mulhall and Swift point out, the problem for Rawls is that power is exercised ‘whenever the State implements its decision, whether or not that decision involves constitutional essentials or matters of basic justice’, Liberals and Communitarians p.225

\textsuperscript{158} Political Liberalism pp.31, 146

\textsuperscript{159} M. Sandel Liberalism and the Limits of Justice p.211 where he argues that the notion of public reason for which Rawls argues ‘leaves little room for the kind of public deliberation necessary to test the plausibility of contending comprehensive moralities’. It is such persuasion which is more credible as the basis of tolerance and engagement than as the basis of protective bracketing.
contractarian frame which is characterised by a common human reason with stout parallels to the Kantian general will\textsuperscript{160}: ‘the liberal political ideal (is) that, since political power is the coercive power of free and equal citizens as a corporate body, this power should be exercised, when constitutional essentials and basic questions of justice are at stake, only in ways that all citizens can reasonably be expected to endorse in the light of their common human reason’\textsuperscript{161}. This denial of the strong possibility of difference and dissent regarding constitutional and justice issues suggests an unreasonableness on the part of those with a different view which, in the face of the engagement of coercive power of the State, amounts to the elimination of dissent on political issues as destabilising. There is presumed consent to or forceful imposition of political liberalism on those who dissent on political issues because of the adoption of comprehensive doctrines, or because of their preference for an agonistic search for accommodation, or especially due to the rejection of rational life planning, or on grounds of deep cultural difference, as we shall see regarding the Aboriginal experience of colonisation by the British. This would be the context of a punitive, rather than a restorative, approach to matters of criminal justice. On such grounds, Rawls’ argument for an anti-perfectionist State neutrality on both political and politically driven comprehensive doctrines would not be available\textsuperscript{162}.

There is a possible alternative reading of this passage, to the effect that people will often disagree on such matters, but ‘when constitutional essentials and basic questions of justice are at stake’, coercive power can be justified when exercised ‘only in ways that all citizens can reasonably be expected to endorse in the light of their common human reason’. This reading does not seem to recognise that Rawls has bracketed any

\begin{footnotesize}
\begin{enumerate}
\item Gierke makes the point that the Kantian general will is constituted by individual co-operation but that this individuality is theoretical and deprived of practical importance, since it relies on the individual as noumenon, not phaenomenon, and thus is from ‘pure reason, which lays down the rule of right’ and in doing so depersonalises both the individual and the group-will - see \textit{Natural Law} pp.134-5. This is suggestive of the Rawlsian notion of political individuality.
\item\textit{Political Liberalism} pp.139-40, see also \textit{Collected Papers} p.578
\item See Mulhall and Swift p.238: ‘By defining ‘the reasonable’ as including a commitment to a politically liberal vision of society, Rawls defines anyone who queries or rejects that vision as ‘unreasonable’; but he offers no independent reason for accepting that morally driven and question-begging definition”.
\end{enumerate}
\end{footnotesize}
comprehensive concept from the determination of the basic constitutional structure, so any interest apart from those supporting the Two Principles to eliminate the malevolent opponent (which I have argued is one comprehensive Good) will be excluded and suffer the exercise of the coercive power of the State.

Rawls comes to acknowledge that he is vulnerable in this regard. He states ‘it is usually desirable to settle political questions by invoking the values of public reason. Yet this may not always be so’\(^1\). Further, he states that being reasonable is not primarily an epistemological idea, rather ‘it is part of a political ideal of democratic citizenship that includes the idea of public reason’, the content of which includes ‘what free and equal citizens can require of each other with respect to their reasonable comprehensive views’\(^2\). This is the constitution of the reasonable, that is including political matters, by moral constraint. He confirms this: ‘in affirming a political conception of justice we may eventually have to assert at least certain aspects of our own comprehensive religious or philosophical doctrine’\(^3\). The consequences of these acknowledgments are various. Since there is no final bracketing of such comprehensive doctrines from political reason available, Rawls cannot sustain an argument regarding the priority of the political, nor that the State can be neutral in an anti-perfectionist manner, nor that political liberalism can claim priority over alternative conceptions of constitutional justice driven by comprehensive doctrine. This provides some comfort to my claim that his political liberalism is a rational mythological strategy designed as a political form which is constructed as the locus of transferred individual authority. This is so even though that form is constrained to the extent of constitutional democratic arrangements, the intention of which is to eliminate contingency as a source of fear, for example through bracketing or through the exercise of State coercion. Such contingency would be characterised in a Rawlsian pluralist society by the competition between comprehensive doctrines and its elimination would deliver a well-ordered Hobbesian-Kantian polity. Rawls has finally to acknowledge what is inherent in any mythological political paradigm, that is that the

\(^1\) Political Liberalism p.215

\(^2\) ibid p.62

\(^3\) ibid p.152
elimination of fear draws concepts of the Good into the determination of right and that coercion is adopted early rather than late in this arrangement.

We may therefore now argue not only that Rawls’ enterprise is mythological but that, as all political mythology is doomed to be, it remains a failure in that. The version of justice as fairness presented in *Political Liberalism* shows the failure of the touted aim of myth to create an entity which is fearsome but fairly so. Rawls’ argument that comprehensive doctrines should not trump but be subject to political values and arrangements may seem attractive, that political arrangements should be value free, but there are two problems with this. First, it cannot be argued that the political should have exclusive priority over the comprehensive since there are cases in which the principles of justice should be bracketed. That is, there are cases where the Categorical Imperative, on which Rawls’ principles of justice are founded\(^{166}\), should not apply: gay marriage, choosing the moment of one’s death, quiet drug use and so on should be a matter only for the individual, even though they may feature in some comprehensive moral doctrine, and so the political should have no priority. Irrespective of this normative circumstance, because the institutional arrangements of the mythological State are a vacuous framework created to be colonised by dominant interests who make the best claim to deal with fear and sympathy, comprehensive doctrines do infiltrate the political process to prescribe and proscribe practices which are properly the province only of the principal. That is, against Rawls’ argument for the priority of Right, his mythological arrangements are established to promote comprehensive interests. The State is always unfairly fearsome because it is merely the institutional structure, gradually assembled from Hobbes to Montesquieu and reinforced by the engagement of every individual through Rousseau and Kant, the latent power of which is used by the dominant to promote their own interests while delivering differentially on fear and sympathy across the community. It is more than ironic that competition delivers into the hands of the dominant the very fearsomeness that is required, along with passing the fear-sympathy test, to create submission to its interests. As a result, Rawls’ argument therefore fails because, despite his Kantian arguments to the contrary, he has assumed the flawed premises of the political mythical tradition. The

\(^{166}\) *A Theory of Justice* p.253
result is that, far from the conception of justice and the State being the consequence of the exercise of each individual’s reason concerning equality, it is the consequence of the primal desire for the elimination of fear and the creation of sympathetic conditions of existence. Dressed up in the palliative of the exercise of reason, submission is the heavy price of not being responsible for dealing with fear and creating one’s own sympathetic conditions.

Summary

In all this, Rawls is sustaining and strengthening what has been essential to the mythological political tradition since Hobbes. Because its first premise is fear of conflict, Rawlsian liberalism, divesting itself of the strong metaphysics of Kantianism, retreats into a sterile process of presumed co-operation, parliamentary debate, judicial decision and pre-emptive State coercion, even when the communitarians force recognition of the virulence of competition between comprehensive goods, but without forgoing the mythological practices of the unfairly coercive State. Rather than accept this competition in an agonistic process sponsored by a reformed State right down to the level of individual disputes, Rawlsian liberalism restricts itself to the formalised safety of such debate, decisionism and pre-emptive coercion, concealing the mythological features of the State. Its principal effect in doing so is the continued protection and strengthening of the mythological political paradigm, this time in the form of liberalism, whose unrealisable raison d’etre is the claim of the stabilising elimination, on behalf especially of dominant interests, of fear rather than the empowerment of self-responsibility.

Put simply, Rawls assumed the mythological magnitude of Hobbes, as refined through Locke, Montesquieu, Rousseau and Kant. He effectively extended it and refined it to strengthen it in the expectation that he could finally eliminate circumstantial fear through the full balance of a fully-empowered State which was at the same time fully sympathetic. He denied the mythological implications of his position, that is that the State ultimately cannot be neutral, that it is in fact the forum in which competition for dominance regarding notions of the right and the good, as the means to achieve that
balance, are resolved. Rawls’ notion of liberalism not only protected that competition but was itself also a competitor in the sense that it established pre-emptive control over the determination of the nature of structural arrangements.

Rawls’ Two Principles of justice certainly pass this mythological test, given that they are founded on the forgoing of individual self-responsibility. Conceived for *A Theory of Justice*, the first principle, that ‘Each person is to have an equal right to the most extensive total system of basic liberties compatible with a similar system of liberty for all’ is properly seen, in the context of the mythological institutional arrangements he adopts, as concerned with the elimination of fear in the form of contingency and personified in the malevolent opponent. We shall also see in Chapter 10 the mythological nature of liberal rights. The second principle is concerned with the creation of sympathetic conditions of existence: ‘Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity’. Then, despite the other changes he has made along the way, by the time he gets to *Political Liberalism*, he is still concerned to presume the fairness embedded in American society, a fairness which delivers tolerance and therefore peace, in other words the relief from fear. All this is the forgoing of Kantian metaphysics but is the retention of an empowered mythological magnitude primarily concerned with the fear/sympathy nexus.

Unaware of the mythological presumptions of the political tradition within which he operates, he attempts to argue that Right can and should always precede Good. Those from Hobbes who constructed what were to become Rawls’ principles and arrangements were motivated by a comprehensive Good not Right: Good is built into the construction of Right. What Rawls calls Right is just an amended way of organising the fundamental (‘first order’) Good, which is the elimination of fear and the creation of sympathetic conditions of existence. It will be argued in a subsequent chapter that primary goods or rights as the ‘second order’ Good, on the other hand, are ways of ensuring the realisation

---

167 J. Rawls *A Theory of Justice* p.302
of the intentions especially of dominant interests, which come to control the arrangements of Right but who must make ‘popular’ concessions to sustain the arrangements they dominate. The breadth of those rights is a reflection of the vast extent of the dispersal of those interests in a way that deals with the primary concerns of individuals – notions of the Good are therefore at the foundations of the sectional benefits of civilising, as we shall see.

In this context, Rawlsian liberalism becomes a reworked option among competing non-neutral mythological political arrangements. This in turn requires an acknowledgement that Rawlsian liberalism is a non-neutral and thus comprehensive doctrine which, despite the paradigmatic amendments which also characterise each of his progenitors, is incapable of eliminating contingency and therefore fear. Like other comprehensive doctrines, Rawlsian liberalism is in itself a source of such contingency by its very tactics of attempting to assert its superiority and to bracket compelling issues. This is also to say that there is no safe ground, including that presented as political liberalism, which may not be either the source of or subject to fear.

In the end, then, what kind of citizenship are we left with by Rawls? Despite asserting the freedom and equality of individuals who act rationally to generate a basic institutional structure and practice which is just and fair, he relies on arguments which are either flawed or circular. These arguments are unsuccessful attempts to extricate himself from the implications of the mythological premises of his basic argument, an argument built on the presumptions of his eminent predecessors in the mythological political tradition. His flawed arguments include that social co-operation can be presumed in a democratic community because of the existence of certain ideas shared in the community; that the exercise of reason will produce agreement on matters fundamental to the basic structure; that the exclusion of notions of the good from the jurisdiction of the State will lead to stability rather than undermine it; that stability is a product of, rather than a justification of, the process of public reason; and that the liberal State can be neutral, when it is founded on a comprehensive notion of the good which justifies the exercise of coercion by the State.
The source of these problems is the mythological nature of Rawls’ notion of ‘free, equal and rational’ which, rather than being constituted by full individual self-responsibility, is limited to the attempted elimination of what for him are matters of social and material contingency\(^{168}\). This identifies the State as an arrangement primarily concerned with limiting conflict and dissent, employing coercive methods whenever required to achieve that as a political end, rather than as an active promoter of self-responsibility and respectful, agonistic reconciliation. In essence, Rawls took the Kantian political myth, identified its significant weaknesses and claimed to address these through his two principles, the effect of which has been to strengthen the myth, within the context of the political mythological tradition, but without addressing its flaws.

Despite amending or clarifying the Kantian metaphysics of his early position so that he can resist communitarian criticisms, Rawls at no time foregoes the core elements of the Hobbesian-Lockean-Kantian mythology. That mythology especially includes constitutional democratic institutions and rights which, structurally neutral in themselves, have been colonised by dominant interests over a long period and which, as we shall see in Part 3, have been used to affirm their own interests through the promotion of strategies of normalisation based on the forgoing of individual self-responsibility.

This is the context in which Rawls’ acknowledgment of his Kantian framework should be seen. That is, his initial adoption of moral-rational arrangements was in effect due to their significance as legitimate mythology rather than for their metaphysics, as his late rejection of Kantian metaphysics reveals. There appears to be a strongly arguable case that the effect of Rawls’ first position was that Kantianism, appropriately amended to deflect a range of criticisms of its foundationalism, provided the soundest potential for the sustenance of the Hobbesian-Lockean mythology but, when required to acknowledge

\(^{168}\) It might be added that even his method of political constructive theorising avoids the contingency of the actual use of human practical reason, assuming as it does that principles and values can be regarded as if they were the outcome of a procedure of construction. This is intended to avoid controversy ‘about the nature of truth’ - see Mulhall & Swift pp.180, 216
the flaws in that foundation, he forwent Kantian metaphysics in an ultimately unsuccessful attempt to sustain the rational myth by non-foundationalist means.

In effect, his work is an extension of just one tradition, the mythological political tradition, among others and so is not privileged. His is merely a failed attempt to strengthen Kantian mythology through wider dispersal, that is by more thoroughly engaging each individual through the claimed elimination of fear as contingency, through wider rights which we will see to be mythological in nature, and by the creation of sympathetic conditions, through wider redistribution of resources and opportunity by the dominant. Rawls cannot escape the contradiction at the heart of mythological political theory, despite his being the then latest attempt to resolve that contradiction. That is, it is not possible to create an ontologically vacuous but fearsome political arrangement, irrespective of its claims regarding fear and sympathy. The State becomes and remains a source of fear, inherently in its nature through the forgoing of self-responsibility that comes with the bracketing of comprehensive doctrines other than itself and then through the artificial creation of fearsome circumstances by dominant interests for their own benefit. His work attempted to strengthen myth but failed to recognise, let alone address, its inherent flaws.
Chapter 8 – The Republican form of the Political Myth: Pettit

The Attractions of Republicanism

Of those whose thought we have explored as contributors to the political theoretical tradition, several might be regarded as carrying the brand of liberalism. Others are seen as republicans. However, these lines of selection are not uncontroversial and often blurred. This is the context within which we now turn to the work of Pettit.

While acknowledging that there may be objections to the claim that a single tradition can be seen to span the concern about the power of the State which emerged in the seventeenth century, Pettit attempts to put a coherent but different conception of the tradition presented here. He argues that Locke, Montesquieu and Rousseau are best seen within a republican tradition stretching back to Cicero through Machiavelli and forward to Skinner, rather than merely as implied defenders or critics of a paradigm inspired by Hobbes. Consequently, liberalism and republicanism represent for him distinct strands of this debate and liberalism is better presented just as a rationale against interference in the lives of citizens and therefore as distinct from the non-domination which he defends.

For Pettit, the principal attraction of republicanism is that it offers a concept of individual freedom which is separate from and superior to both elements of the dominant prevailing analysis, that is from negative and positive freedom, which he characterises respectively as the absence of obstacles to individual choice and as the exercise of the facilities which foster self-mastery and self-fulfilment. This preference flows from two arguments. On the one hand, he argues that republicanism

---

1 P. Pettit *Republicanism* p.10

2 Pettit distinguishes interference from domination by claiming that ‘I may undergo interference without being dominated…Suppose that another person or agency is allowed to interfere with me but only on condition that the interference promises to further my interests and promises to do so according to opinions of a kind that I share…but that otherwise they are blocked from interfering or are subject to a deterrent penalty for attempting interference…In such a case it is not possible to see the interference as an exercise of domination; the person interferes with me but not on an arbitrary basis. The person envisaged relates to me, not as a master, but more in the fashion of an agent who enjoys a power of attorney in my affairs’, ibid p.23

3 ibid p.18
prevents the domination which is allowed by liberalism’s prevention of interference. On the other, he argues that the realisation of republican non-domination will create the conditions for the subsequent individual pursuit of autonomy or self-mastery, which he does not deny as a proper political ideal. Non-domination is not freedom from interference, which is the basis of the imposition of a suitable system of law, but from intentional, arbitrary interference. It is freedom even from the uncertainty that accompanies the prospect of arbitrary interference.

Pettit has a clear picture of the role of the State in creating such conditions. Rejecting the liberal insistence that the State is the pre-eminent source of interference, Pettit argues that the State, effectively constrained, is the pre-eminent defence against arbitrary interference. Not only may the State interfere in the lives of its citizens but it must do so if freedom from arbitrary interference is to be realised. The role of the State is not merely to contribute to the reduction of domination but effectively to be responsible for its elimination. One profound effect of this fully empowered legitimacy is that the constitutional and institutional arrangements of the State are not merely responsible for allowing or causing individual freedom. They, and only they, are that freedom.

To protect his position against arguments that this wide empowerment of the State is itself a potential threat to freedom, Pettit emphasises the advantages of the corporatisation of individual interests, but he also sees the very nature of the republican State as being crucial for the exercise by the individual of dominion over

---

4 He argues that it is possible to be dominated without being interfered with. For example, that I may be a slave but with a benign master who doesn’t interfere or “that I am cunning or fawning enough to be able to get away with doing whatever I like”. The problem with such an argument is that if I can get away with whatever I like, that is if I can do anything I like including leaving his household and wandering the earth, I am not a slave. If I’m prevented from doing such things, then I am being both dominated and actually interfered with; ibid pp.22-23, 97, 132, 139, 141, 142, 145; this distinction is the subject of similar analysis by Quentin Skinner in his essay ‘Liberty Before Liberalism’, in particular at pp.36-41

5 ibid pp.81-2

6 ibid pp.27

7 ibid pp.84-85
8 ibid p.85
9 ibid pp.67-68
10 ibid p.81
11 ibid p.193
his own life. For him, it is a fundamental feature of the republican State that it tracks
the interests of its citizens\textsuperscript{12}, thereby establishing the conditions of individual
freedom.

\textbf{Pettit and Mythology}

The work of Pettit can properly be seen as contributing to the mythological understanding of the State. Despite the claimed difference between Pettit’s characterisations of liberal and republican positions, they share fundamental features. In particular, they are each profoundly informed by the reality of existential anxiety\textsuperscript{13} and are each conditioned by strategies that deal with that reality. The aim of both non-interference and non-domination is the elimination of such fear: that is, the interference which is of primary concern to liberals is the fearfulness generated by an intrusive State and the domination which is of concern to republicans is the fearfulness generated by the intrusive social practices to which a wide range of citizens are subjected\textsuperscript{14}.

So, when Pettit states that non-domination is concerned with protecting the interests of a citizen, the proper test for his account of how republicanism avoids constraint of these interests is whether his preferred institutional arrangements do minimise fear in pursuing interests without the forgoing of self-responsibility. To justify the mythological criticism of Pettit’s republicanism, it need only be demonstrated that non-domination is realised by such forgoing.

If this forgoing can be demonstrated, his republicanism is as much mythology as the other contributions to the political tradition we have looked at. It is not mythology merely because it is concerned with the elimination of fear, although that is an

\textsuperscript{12} ibid p.188
\textsuperscript{13} ibid pp.27 and 28, where Pettit argues that republicanism was founded on the search for security and freedom from anxiety and fear not on a search for democracy; see p.85, where he argues that arbitrary interference produces anxiety; and p.263, where he argues that republicanism is associated with tranquility and boldness; see also the reference to ‘uncertainty’ at p.89, to ‘insecurity’ at p.132 and that ‘everyone is capable of becoming vulnerable to others’ at p.68.

\textsuperscript{14} Pettit includes in this category, along with slaves, such others as certain wives, employees, debtors and welfare dependants - ibid p.5.
important feature. It is mythological because it promises that, by constructing political arrangements founded on the forgoing of self-responsibility, individual existential fear can in fact be effectively eliminated and sympathetic conditions of existence can be constructed. A non-mythological arrangement would accept that fear cannot be eliminated but, by the full and continuing acceptance of individual responsibility for oneself through respectful self-reliance and ongoing engagement in political affairs, it can be recognised and accommodated.

The strong Republican State

Rejecting the liberal insistence that the State is the pre-eminent source of interference, Pettit argues that the State, effectively constrained, is the pre-eminent defence against arbitrary interference: not only may the State interfere in the lives of its citizens but it must do so if freedom from arbitrary interference is to be realised. Thereby he makes what is for him an important distinction between arbitrary interference (domination), the elimination of which establishes freedom, and systematic interference by the State, which not only is not necessarily dominating but which is necessary to promote freedom as non-domination. He begins with the empowerment of the State, wherein lies his distance from how he characterises the liberal position. He is also clear that the role of the State is not merely to contribute to the reduction of domination but effectively to be responsible for its elimination. Thus, empowering the State is an advanced rather than a preliminary move for Pettit. In fact, we shall see that it may well be regarded as his endgame. Consequently, empowerment is to take a fully elaborated form.

To reinforce this pre-eminence of the State, Pettit makes it clear that it is only the State and not the individual privately which may pursue the establishment of liberty, essentially because such individual pursuit would end in the domination of the Hobbesian war of all against all: ‘freedom...is not something that individuals can satisfactorily pursue by private, decentralised means and it is something that the state

---

15 ‘The strategy of constitutional provision seeks to eliminate domination...The authority will deprive other parties of the power of arbitrary interference and of the power of punishing that sort of interference. It will thereby eliminate domination...’, ibid pp.67, 68
is able to pursue fairly effectively' and ‘The decentralised arrangement...has all the disadvantages canvassed in the state of nature that is demonised...by Hobbes’.

He does not consider the possibility of an arrangement whereby individuals remain responsible for themselves and, with the support of a different form of State, which thereby promotes respect without promising the elimination of fear.

The full extent to which Pettit empowers the State is also clear from his insistence that it is the State alone which carries the responsibility for the establishment of republican non-domination. He elaborates this point: ‘...when the state reduces or removes domination in one area...’ and ‘The state may have a choice, therefore, between being more restrictive on the extent of choice...and being less restrictive and giving them a lower degree of non-domination’ and ‘Republicanism is a consequentialist doctrine which assigns to government, in particular to government authorities, the task of promoting freedom as non-domination’ and ‘The shift (to freedom as non-domination) is going to make us potentially more radical in our complaints about the ways in which social relationships are organised. And it is going to make us potentially less sceptical about the possibilities of rectifying those complaints by recourse to state action’.

The form which this State responsibility takes may be constituted only by the mythological, coercive constitutional-legislative-institutional framework. It is the State as refined from Hobbes through Montesquieu to Rousseau to Kant. For Pettit, the only acceptable strategy for achieving non-domination is that of constitutional provision and this is coercive: ‘Devotees of non-domination look for a sphere of

---

16 ibid p.92
17 ibid p.94
18 ibid p.94
19 ibid p.104
20 ibid p.207
21 ibid p.78
22 ibid pp. 177-180, 191-192
23 ibid p.67
action (for the individual) that is untainted by coercion - or the capacity for coercion - from arbitrary quarters only\textsuperscript{24}. This leap to resolution by coercion rather than by a search for means by which resolution is agreed is symptomatic of the requirement that individuals forgo self-responsibility, and thereby of the establishment of mythological arrangements. The fullness of the empowerment of the State is also made clear by the role given to the laws promulgated under these constitutional arrangements in the elimination of domination: ‘...so freedom is seen in the republican tradition as a status that exists only under a suitable legal regime. As the laws create the authority that rulers enjoy, so the laws create the freedom that citizens share\textsuperscript{25}. In stating this, Pettit rejects the Hobbesian claim that law is necessarily an invasion of freedom and endorses Harrington’s claim that ‘liberty in the proper sense is liberty by the laws...And in that (commonwealthman) tradition...there is little or no suggestion that law necessarily reduces the liberty of those who live under it; on the contrary, the right sort of law is seen as the source of liberty’\textsuperscript{26}. By itself, this would satisfy a non-mythological arrangement, within which law would play a crucial role. But, as we shall see, the means by which Pettit’s republican law is generated and operates alienates rather than engages individuals, thus assuming responsibility for them, and so encourages coercion.

This empowerment is also made clear by Pettit’s assertion that it is proper for the jurisdiction of the State to be widely dispersed: ‘...targeting only forms of dominating interference, not interference as such, means that we are going to be relatively well-disposed towards giving the state considerable power; we are going to look more fondly on state interference...’\textsuperscript{27} and ‘Does this mean...that republicans generally favour big government? Yes and no. They will be well disposed towards a form of government that gives the law and the state a considerable range of

\textsuperscript{24} ibid p.84; further, ‘...if we try to further someone’s freedom as non-domination then we will remove the spectre of such uncertainty. Maybe the person has to live by the standing rule of a constitution and a law, a rule that makes for a degree of coercion in their lives’ and ‘While a constitutional authority will not dominate people, it must invariably limit the choices available to them...’ and ‘The constitutionalist, democratic republic described...offers an image of the form that a state has to take if it is to reduce the presence of arbitrary will...in the coercive apparatus of the state’ ibid pp.86, 93, 230

\textsuperscript{25} ibid p.36

\textsuperscript{26} ibid pp.38, 39

\textsuperscript{27} ibid p.78
responsibilities...'\(^28\). Specific areas of responsibility which Pettit urges on the State include external defence, internal protection, personal independence, economic prosperity and public life\(^29\). This is an elaborately intrusive State.

Beyond this wide responsibility, there is a further, open-ended concession to the intrusive State: ‘Suppose that another person or agency is allowed to interfere with me but only on condition that the interference promises to further my interests, and promises to do so according to opinions of a kind that I share\(^30\). That the agency he has in mind is an agency of the State is subsequently made clear by his reference to Paine’s complaint against monarchy\(^31\). It is not yet clear whether Pettit has shifted ground between these two senses of what constitutes shared interests, that is whether the emphasis is on interests that are mine or only on those I share with others, but it is at least clear that this allows the State to assume wide responsibility for individuals on the grounds of tracking their perceived interests. There is much Rousseau and Kant in this.

The effect of this optimised responsibility of the State, and of the coercive and universal arrangements which give it form, is that the legitimacy of republican State authority per se is not challengeable. For Pettit, the authority of the State to exist and promulgate laws and establish institutions for their execution, as distinct from a particular government or a particular law or a particular institutional practice, is not questionable if freedom is a primary goal. For him, freedom as the elimination of domination is not able to be realised except by the activity of, and only of, a State fully empowered in such a form.

\(^28\) ibid p.150

\(^29\) ibid pp.150-170

\(^30\) ibid p.23

\(^31\) ‘What is required for non-arbitrary state power...is that the power be exercised in a way that tracks, not the power-holder’s personal welfare or world-view, but rather the welfare and world-view of the public. The acts of interference perpetrated by the state must be triggered by the shared interests of those affected under an interpretation of what those interests require that is shared, at least at the procedural level, by those affected’, ibid p.56
The Republican State is freedom

Pettit then outlines a profound effect of this fully empowered legitimacy. For him, such constitutional and institutional arrangements are not just responsible for allowing or causing individual freedom. They, and only they, are that freedom: ‘the institutions which promote people’s freedom as non-domination go to constitute that freedom, not to cause it; the doctrine does not countenance any temporal or causal gulf between civic institutions and the freedom of citizens’, instead they are coextensive, and ‘we can surely identify with the republican polity for the fact that it gives each of us...the measure of non-domination that goes with being a fully incorporated member: a fully authorised and a fully recognised citizen. If we cherish our own citizenship and our own freedom, we have to cherish at the same time the social body in the membership of which that status consists’. He emphasises this through a medical analogy, whereby the State should be seen as the antibodies that constitute rather than cause immunity. This is a mythological State that is not only fully dispersed but one also in which liberty is constituted by the political absorption of the individual.

The Republican State assumes responsibility for its citizens

What this claims, through the full empowerment of the Republican institutions, is that freedom and citizenship are given effect only by the direct and immediate realisation of institutional prescription in the legitimate practices of individuals. It is in this sense that constitutional-democratic republican institutions constitute freedom and citizenship for Pettit. It is a proper conclusion that the unchallengeable legitimacy of

---

32 ibid p.81
33 ibid p.260
34 ‘The presence of certain antibodies in your blood makes it the case that you are immune to a certain disease, but it does not cause your immunity...the presence of those antibodies constitutes the immunity, as we say. By analogy, the presence in the polity of...empowering and protective arrangements makes it the case that you are more or less immune to arbitrary interference, but it does not cause that immunity; it constitutes it...anyone who thinks of freedom as coterminous with citizenship, as republicans have traditionally done, is bound to take freedom to depend in a constitutive rather than a causal way on the institutions that support it. If freedom consists in being a citizen of a polity and a society in which each is protected against arbitrary interference by others, then freedom is not brought causally into existence by the institutions that characterise that polity and society. Like citizenship, it involves nothing over and beyond the status of being suitably incorporated within those institutions’, ibid p.108
the republican State requires the assumption by the State of responsibility\textsuperscript{35} for its citizens, who thus cannot themselves be empowered in this regard: only by individual citizens becoming immediate manifestations of State-prescribed practice can freedom and citizenship be realised. This is the full dispersal of the mythological State across social space, irrespective of any particular challenge that might be mounted against a particular government, law or institutional practice. Pettit presents this in his ‘power of attorney’ analogy, whereby a person may interfere with me if it is in my interests\textsuperscript{36}, but such an analogy does not capture the full force of the arrangements he is proposing, given that a power of attorney can be withdrawn but the State cannot. The institutions of the State, beyond merely allowing or causing individual freedom, actually constitute that freedom and the institutions of State and citizenship are ontologically coextensive. There is no citizenship or freedom separate from the institutions of State, so any recovery by the individual of the State’s authority to act as citizen could not be achieved without loss of that status or the freedom and citizenship which it constitutes. It is the State in its prescribed role of eliminating fear as domination, and not individuals, which determines, pursues, realises and constitutes freedom and citizenship: it is not just that there is no freedom without the State, but that it is only the State which determines, pursues and realises what freedom is and it does so through the practices of the individual citizen. The State has to this considerable extent assumed responsibility for individuals. Given the role prescribed for the State in eliminating the fear caused by arbitrary interference, the effect regarding citizenship and freedom could not be otherwise. Pettit fulfils the implications of the Hobbesian State’s assumption of responsibility for individuals.

There are significant implications which follow from this assumption of responsibility by the republican State for its citizens, beyond the unchallengeable legitimacy of law-making institutions and coercive institutional practice. The first is that the pre-eminence attributed to the State by its full empowerment and its assumption of

\textsuperscript{35} In this context, ‘responsible’ is first meant to indicate ‘being the primary cause for the nature of’, although the further sense of ‘liable to be called to account for’ also applies.

\textsuperscript{36} ibid p.23 where Pettit outlines the role of a person who ‘is allowed to interfere with me but only on condition that the interference promises to further my interests, and promises to do so according to opinions of a kind that I share…In such a case it is not possible to see the interference as an exercise of domination; the person interferes with me but not on an arbitrary basis. The person envisaged relates to me, not as a master, but more in the fashion of an agent who enjoys a power of attorney in my affairs’
responsibility actually creates conditions of arbitrariness regarding State interference, given that fearful individuals may not wish to see a place for such empowerment or such a constitutive role. That is, Pettit appears to presume that there is no position available other than the extremes of individual private pursuit, which he rejects, and complete State responsibility in the establishment of freedom and citizenship. That is, if I do not regard it as in my interest for the State to assume responsibility for a coercive programme intended to eliminate what I regard as fearful circumstances by constituting through my practices what it regards as freedom and citizenship, my loss of responsibility puts me at the complete disposal of the State which allegedly ‘furthers my interests…according to opinions that I share’. The State would itself be an irresistible source of fear as domination, irrespective of any claim of mitigation by constraint. That is, it cannot track my own interests and there will be no possibility of challenge by me.

This would be particularly so if I do not wish the State to assume responsibility for me in a prescribed role of eliminating fear but wish to accept fear and, with other citizens, deal respectfully\(^{37}\) with attempts by either other citizens or agents of the State to interfere arbitrarily in my life by ignoring my interests, although I would wish a State whose functions are redesigned to play a well-defined secondary role in such a process. This wish would defeat the interests of the republican project in that, having claimed its justification as the only legitimate means of the elimination of arbitrary interference, it has established this elimination in a manner which is against what I regard my interests, even if it is not against what agents of the State regard as in my interests. Pettit appears to move between these two senses of what is in my interest. This is so irrespective of what constraints might be applied to State activity, since it refers to the conditions of the existence of the republican State, as opposed to other State forms, rather than to its actual practice. By assuming responsibility for me, the republican State is a condition of primary arbitrariness.

Further, if I regard it as against my interest for the State to be responsible for pursuing a programme to eliminate fear as domination, my capacity to contest specific, as

\(^{37}\) As was indicated in the Introduction to this thesis, ‘respectful’ is intended to indicate action that does not assume responsibility for other individuals, either by force or inducement, and so reveals an awareness of the other’s right to self-responsibility.
opposed to the conditions of, coercive laws and institutions to that end will fully depend on the existence of effective arrangements for such contest. Should such effective arrangements not exist, this will create a secondary condition of arbitrariness, since I will be at the disposal of the State in regard to those specific arrangements. This would be a source of fear as possible or actual arbitrary interference, despite the claim of constraint. It would not track what I regard as my interests.

Finally, if the State assumes responsibility for me by the establishment of fully empowered coercive institutions of which my legitimate practices are mere manifestations and if there are apparent rather than effective arrangements for constraining the specific practices of the republican State, that is if there is both primary and secondary arbitrariness, then republicanism is attempting to give effect not only to a profound arbitrary interference by the State but in this a regime that cannot be challenged.

** Constraining the Republican State **

In fact, the republican claim for the effectiveness of recommended constraints on the State turns out to be difficult to sustain. To deal with the problem paradigmatically generated by Hobbes, that is how to control the necessarily fully empowered State, the republican State must track or ‘further my interests, and promises to do so according to opinions of a kind that I share...but otherwise they are blocked from interfering or are subject to a deterrent penalty for attempting interference...In such a case it is not possible to see the interference as an exercise of domination; the person interferes with me but not on an arbitrary basis’38. Pettit elaborates this point39.

This variation begins to emphasise the communal nature of opinions rather than the individual nature of the interests apparently indicated in the first reference. This

38 ibid p.23
39 ‘In particular, interference occurs without any loss of liberty when the interference is not arbitrary and does not represent a form of domination: when it is controlled by the interests and opinions of those affected, being required to serve those interests in a way that conforms with those opinions’, ibid p.35
communal emphasis is extended further in a subsequent reference: ‘the legal authorities will be entitled and enabled to interfere only when pursuing the common interests of citizens and only when pursuing these in a manner that conforms to the opinions received among the citizenry’\(^\text{40}\). In a subsequent reference, this communality becomes universality: ‘What is required for non-arbitrary State power...is that the power is exercised in a way that tracks, not the power-holder’s personal welfare or world-view, but rather the welfare and world-view of the public’\(^\text{41}\) and ‘the interference that (a constitutional authority) practices has to track (the interests of the parties involved) according to their ideas; it is suitably responsive to the common good’\(^\text{42}\). The shadow of Rousseau and Kant is clear. What is first presented as a constraint constituted by my individual interests has progressively evolved into a matter of the common good. As will be indicated below, this is an important - indeed fatal - shift, particularly in the context of the strategies recommended by Pettit for contesting State interference.

For the present it need only be noted again that Pettit’s presumption regarding the available alternatives for the pursuit of freedom, that is the unaccepted private pursuit by individuals or the preferred pursuit by the fully empowered republican State, eliminates other alternatives which I may prefer. I may argue that it may not be in my interest to have the State assume responsibility for eliminating my fear, since it may be my position that fear is inevitable and my preference is that I will myself deal respectfully with attempts by the State or other individuals arbitrarily to interfere in my life, although I would want to do so with the support of redesigned institutions of State. Since this claimed elimination is against my interest, Pettit has invalidated his own primary constraint, with the consequence that he makes the coercive republican State\(^\text{43}\) an arbitrary force. Pettit seems to be attempting to protect himself against this criticism by the evolution of the position that has been outlined, that is that the State is only required to track the interests which comprise the common good. However, it

\(^\text{40}\) ibid pp.36-7

\(^\text{41}\) ibid p.56

\(^\text{42}\) ibid p.68

\(^\text{43}\) ibid p.65
does not protect him from the argument that shared interests have no right to priority over the interests of respectful self-responsible individuals, especially in the context of his own counter-majoritarian arguments, such as his preference for a bill of rights.

This casts new light on the claim by Pettit that an ‘empire of laws, and not of men’ is one in which the State not only thereby creates freedom but is also thereby necessarily constrained. For Pettit, if the laws are not subject to such constraints as being general, intelligible, consistent, stable and promulgated in advance ‘then those who make, execute or apply the law may easily be given arbitrary power over others’. However, given the primary arbitrariness of the republican position, no argument about the ‘rule of law’ per se will do as an argument for effective constraint of the State, even if such laws have the benefit of eliminating the incidence of situational violence by agents of the State. A rule of law which is intended to eliminate fear, even if it satisfies those particular constraints, would be an effective empowerment of the State to act arbitrarily, i.e. against my interests, rather than a constraint on that State.

Similar arguments apply to constitutional arrangements, separation of powers and such counter-majoritarian arrangements as a bicameral legislature and a bill of rights. Only a coercive rule of law which recognised my interest not to assume my responsibility for dealing with my fear and which allowed me to deal respectfully with those who interfered arbitrarily with me, with the support

---

44 ‘majorities are easily formed...and majoritarian agents will exercise...arbitrary power if their will is unconstrained...Modern republicans are bound to support some institutions, then, that serve to guard against majoritarian threats. They are bound to look favourably on...the introduction of a bill of rights’, ibid p.181

45 ibid p.39, where Pettit quotes Harrington in this regard

46 ibid p.174

47 Pettit does state that, for him, ‘an act of interference will be non-arbitrary to the extent that it is forced to track the interests and ideas of the person suffering the interference’, but qualifies that to say that ‘my relevant interests and ideas will be those that are shared in common with others, not those that treat me as exceptional, since the State is meant to serve others as well as me’ ibid p.55-56

48 ibid p.86

49 ibid p.177

50 ibid p.181
of a non-republican State\textsuperscript{51}, would be effectively constrained. Such a rule of law would then not be a source of coercive and arbitrary systematic interference, the more intrusive for being not just coercive but also arbitrary. Given his position regarding the necessary full empowerment of the State and the justification for that, such a qualification is unavailable to Pettit\textsuperscript{52}.

Given these arguments regarding the primary arbitrariness of the republican State and the implication of that for the republican rule of law and other structural arrangements, it is already impossible to sustain the claim that the republican State form can be constrained. However, this impossibility is further confirmed when the question of possible secondary arbitrariness, that is that it is possible to effectively constrain the State in its actual activity as opposed to the conditions of its existence, is considered.

Pettit recommends a range of methods of constraint. In the context of presenting republicanism as having communitarian credentials, he argues that domination is best seen as experienced through membership of a vulnerability class\textsuperscript{53}. For him, ‘Freedom is not the atomistic good associated with non-interference. It can be enjoyed by individuals...only so far as it can be enjoyed by the salient groups to which those individuals belong’\textsuperscript{54}. There is of course no difficulty posed by an assertion that freedom can be achieved by groups of cooperating individuals but there is real difficulty when this expectation is used as the basis of an argument that the preferred

\textsuperscript{51} Indicative features of a non-Republican, in fact non-mythological State, were provided in Chapter 2, and a further indication will be provided in the penultimate chapter.

\textsuperscript{52} This may be the reason that Pettit shows no enthusiasm for making the republican State readily accountable to its citizens regarding both external defence, where he makes no allowance for popular consultation before specific directions in international relations are developed, and internal protection, where he makes no allowance for the possibility of negotiative partnerships between police and individual citizens before criminal charges are laid - ibid pp.151, 155

\textsuperscript{53} ‘your vulnerability class...may consist of you alone. But those who interfere arbitrarily with others, if they are not absolutely random in their choices, do so on the basis of certain markers: this is my wife, this is a black youth, this is an immigrant worker, this is someone old and frail...that means that each person, in all likelihood, will belong to a significant vulnerability class...But if the class has a salient unity...there is no way of achieving the best in the way of non-domination...short of eliminating the domination of all members of the class’, ibid p.122-123

\textsuperscript{54} ibid p.125
process of contesting legislative, executive or judicial decisions through debate\textsuperscript{55} is through social movements\textsuperscript{56}.

**Constraint through Corporatisation**

Corporatisation of interest may optimise the accommodation of individuals’ interests by the institutions of State\textsuperscript{57} but it is indicative of the extent to which statism rather than the interests held by individuals dominates the republican analysis. For Pettit, individual interest is best sifted and converted to incorporated interest since it is the latter which optimises the chances of interest being accommodated by the institutions of State as a condition of freedom.

This rationale has various consequences. The first is revealed by the republican position regarding the social movements recommended as paradigmatic for this corporate strategy. For example, the republican representation converts the environmental movement to one which is primarily concerned with a fear which is best addressed by empowering the operational State\textsuperscript{58}. His position is that it requires those who are committed to various political causes to articulate the concerns they want the State to take up rather than by arrangements by which all individual citizens are either engaged to (in the case of environmental predators) or enabled to (in the case of environmental victims) accept respectful responsibility for their conditions of existence. Such pressure and such enabling need not be restricted to a primary responsibility of the State, that is there is no justification for the State to assume

\textsuperscript{55} ibid p.188

\textsuperscript{56} ‘The channels of contestation will be more effective to the extent that there are social movements to which you can take your complaint in the first instance...they can serve as an initial clearing-house where complaints are sifted and consolidated. And such movements can be very effective in pressing those complaints that they do take up’, ibid p.193

\textsuperscript{57} Pettit places considerable emphasis on the necessity for ‘a minimum statistical representation for the major stakeholder groupings’ - ibid p.192

\textsuperscript{58} ‘These linkages between us and our environment mean that when you degrade that environment you hurt me and mine...we are each physically vulnerable, then, not just in our own individual bodies but in our shared environment and world...The republican state that we envisage here, the state that is dedicated to promoting freedom as non-domination, is bound to espouse…the environmental cause’, ibid pp.137, 138
responsibility for individuals in this regard. A non-mythological State may play a secondary role in such processes.

Similar problems result from the manner in which republicanism presents a range of other arguments. For example, feminist arguments: ‘...the image of the person who need not fear or defer to others...has always had a presence in the literature of feminism’\(^{59}\) and ‘...in principle the institutional means of furthering freedom as non-domination can be designed as much with women in mind as men...’\(^{60}\). Or regarding socialism: ‘As capitalism began to develop in the nineteenth century...one of the main ideas that served to articulate the disaffection of socialists was that of wage slavery. The image of workers as wage slaves casts them as dependent on the grace and mercy of their employer’\(^{61}\). Here the preferred republican strategic antidote is to legislate to disallow the so-called free contract of employment and to allow the strike as collective action\(^{62}\), that is it is the State rather than the worker supported by the State which is given the primary role. Further, regarding multiculturalism: ‘...so far as membership in a minority culture is likely to be a badge of vulnerability to domination’\(^{63}\) and ‘It may be necessary for representatives of the mainstream culture to acknowledge the dispossession...’\(^{64}\). Each of these is presented as an argument which further empowers the fear-eliminating State rather than as catalysts to allow citizens who are women, employees or from ethnic minorities to assume self-responsibility and to actively engage men, employers and those from ethnic majorities also to do so, a process in which a redesigned State would play a facilitative rather than prescriptive role. Pettit may be ‘constraining’ the republican State to track what its agents see as in the interests of members of such social movements but such republican ‘constraint’ only confirms the assumption by the State of responsibility for its citizens.

\(^{59}\) ibid p.138
\(^{60}\) ibid p.140
\(^{61}\) ibid p.141
\(^{62}\) ibid p.142
\(^{63}\) ibid p.145
\(^{64}\) ibid p.145
Interest corporatisation is also the context within which Pettit’s comments on inclusiveness should also be seen. He extends this legislative strategy to the administrative and judicial arms: ‘...one factor that should make for inclusiveness in these areas...is a certain minimum of statistical representation for the major stakeholder groupings’. It is an extra dimension to the problem, that is beyond the meaning of inclusiveness as ‘constraining’ the republican State by its further empowerment, that the Statist-corporatist notion of interest does not allow Pettit to apply inclusiveness comprehensively, that is without exemption. It extends only to those interests which are filtered and brought together as a group interest. Inclusiveness thus excludes rather than includes any individual interest that is not shared.

At a more general level, interest corporatisation is a good example of the argument presented in Chapter 2 regarding the disposition of the mythological magnitude to be colonised by dominant interests.

**Pettit’s Mythology of Justice**

One test case for the republican argument is that of the prisoner. In the context of the prime argument of this thesis, criminal offending is not an example of self-responsibility. On the contrary, it shows, where there is a victim, lack of respect and a disposition to intrude into the lives of others. Apart from those occasions where there are genuinely mitigating circumstances, for example where there is over-reaction to provocation, offending is indicative of a lack of self-responsibility. For these very reasons, dealing with the issues that lead to offending behaviour on its own terms, not merely by attempting to erase these by simple processes of punishment or crude socialisation, as we shall see is found in the application of disciplinary techniques, are fundamental to effective criminal justice.

---

65 ‘...the group offended will have a voice for contestation only insofar as they...can make themselves heard in decision-making quarters...At the level of legislative decision...ideally the group will achieve representation...via the presence of some of its own members. The reliably inclusive legislature will have to incorporate...all the voices of difference that are found within the community’, ibid p.191

66 ibid p.192
Broadly, Pettit at first appears able to resist the claim for the expanding empowerment of the State at the expense of individual citizens. He is clearly against political positions which slavishly respond to demands for heavier prison sentences for serious offences and is in favour of leniency. However, his argument is based on the grounds that leniency discourages ‘offenders constitut(ing) themselves as a class apart and establish(ing) effective networks and groupings’\(^{67}\). In this, his motive is the prevention of the general fearsomeness which comes with the formation of a criminal class rather than an appreciation of the real-life circumstances which influenced the offender. Further, where he elaborates his preferred criminal justice arrangements, he reveals an ideology which is clearly not inclusive of the interests of individual offenders, despite its apparently progressive nature.

Certainly, he is disposed to less criminalisation\(^{68}\), to more lenient sentencing and the promotion of reintegration of offenders\(^{69}\), to less police powers\(^{70}\), to more selective prosecution\(^{71}\) and to sentences which balance moral education of the offender with the protection of the community and the reconciliation of offender and victim\(^{72}\). The problem for Pettit is that none of this is premised on the legitimate expectations of the offender being fully accepted, along with those of the victim or the community, in the resolution of the criminal incident and in its implications\(^{73}\). Despite his emphasis on the restriction of the loss of offenders’ democratic rights to only the loss required by incapacitation\(^{74}\), punishment is to be constituted by the protection of dominion, that is the elimination of the fearfulness of actual or potential domination\(^{75}\), of all parties and

\(^{67}\) ibid p.196
\(^{68}\) J. Braithwaite & P. Pettit *Not Just Deserts* p.94
\(^{69}\) ibid p.103
\(^{70}\) ibid p.110
\(^{71}\) ibid p.119
\(^{72}\) ibid pp.128-9
\(^{73}\) This position was raised in the Introduction to this thesis
\(^{74}\) ibid p.131
\(^{75}\) For Braithwaite and Pettit, dominion ‘means that others do not deliberately or culpably worsen your situation so that the choice of options in question ceases to be possible or at least ‘eligible’ ”, that is, it
the reintegration of the offender. This is ‘inclusiveness’ but not in the sense of tracking the legitimate individual interests of prisoners. This is demonstrated by his elaboration of the principles of reprobation and reintegration which, along with parsimony and the checking of power, constitute the four general presumptions of republican criminal justice. For Pettit, reprobation is of primary importance because it emphasises the positive importance of moralising as the purpose of socialising institutions. The method by which moralising is introduced is that of shaming the offender, as the optimal means to give meaning to the institutional experience to which offenders are subjected, necessary since coercive methods often do not have any meaningful effect for the offender. For Pettit, offender shaming should penetrate the entire continuum of the justice process, rather than merely operate post-conviction.

Clearly, there is little here to do with the interests of the offender regarding himself and his life circumstances in this process, save possibly for the expurgation of some residual guilt after having committed the offence. There is emphasis on the assumption by the State for instigating and managing\(^{76}\) the shaming process and, although the republican position would be that the offender assumes responsibility for commission of the offence within the process of shame, this is not a process in which the offender is provided with the opportunity or resources to assume full self-responsibility, as a means by which future offending might be avoided. The republican response to this may be that it is through the complementary process of reintegration that the interests of the offender are addressed, but the primary element of reintegration is that the ‘victim’s dominion can be restored in a number of ways but the most effective is likely to be when the relevant community acts symbolically and tangibly to assure the victim that she is not devalued as a person...this is done by condemning the crime and the criminal - reprobation. Tangibly it is done by restitution or compensation for the victim\(^{77}\).

\(^{76}\) ibid p.90

\(^{77}\) ibid p.91
Passing reference is made to the legitimate interests of offenders but only to ensure that they acquire State-endorsed skills\textsuperscript{78} and that they do not ‘slip into the status of second-class citizens, lacking the full enjoyment of dominion...(or that they be) drawn into offending again’\textsuperscript{79}. Despite his emphasis on parsimony and the checking of power, Pettit’s analysis of criminal justice in the penal environment appears to be an amalgam of his dominant statism and the standard complementary fear of the ‘criminal classes’. His analysis does not give any attention to the respectful interests of all individuals involved in resolving the causes or impact of the criminal incident. It is a claim for the pre-eminence of the fear-eliminating State which assumes responsibility for individual citizens, with a consequential emphasis on the interests of the victim by shaming of the offender to ensure, along with the adoption of standardised skill development, her reintegration rather than facilitating her respectful self-responsibility. That is, there is no provision made here for victims or the agents of the State to commit themselves as much to promoting the respectful self-determination of the offender\textsuperscript{80} as the State and the offender are required to commit to the victim.

Essentially, Pettit is arguing that the criminal justice system is one primary method of incorporation by socialisation\textsuperscript{81}. Republicans may respond by claiming that the empowerment of the State here is only a means by which freedom as non-domination is established for the members of incorporated social groups (including victims

\textsuperscript{78} Braithwaite and Pettit refer only to the traditional programmes of work release, study release and compassionate leave. There is no reference to the features of the reconstituted custodial programmes which would be required even for their notion of dominion to be taken seriously - ibid p.131

\textsuperscript{79} ibid p.92

\textsuperscript{80} Braithwaite and Pettit give extensive justification for mercy being extended to white collar criminals due to the debilitating effects of remorseless punishment and so that the culture of resistance can be avoided and persuasion can achieve higher standards, ibid pp.191-2. Similar arguments are applicable to blue collar criminals. Although class-based inequalities are recognised by the authors, these arguments are not developed into a regime in which the offender and the victim are equally entitled to full, respectful self-determination.

\textsuperscript{81} One is reminded of the reference by Pettit to children ‘and perhaps some other categories of people, (who) are in a special position relative to the state and society...they must be subjected to the disciplines inherent...in fostering education and development’ and ‘Parents and teachers would be allowed to exercise considerable interference in the lives of children...but the interference would be designed to track the children’s interests according to standard ideas’, Republicanism pp.119, 120
groups), that is by which fear is eliminated. However, by focusing on the empowerment of the State, this response selects only one possible means and this presumptiveness is returned to the problem associated with the conditions of existence, that is the primary arbitrariness, of the republican State. The effect of this inclusive corporatisation is not to constrain the republican State but to confirm its empowerment beyond the structural arrangements which provide its form. By ensuring that dominant interests are incorporated or incorporate themselves into the institutions of State and dissident and thereby fearsome groups such as criminals are denied group status but socialised in a manner which denies primary status to their legitimate individual interests, the pre- eminent role of the State, dispersed into the lives of offenders, is affirmed. Membership is preferred to the respectful self-responsibility of individuals.

Republican Inclusiveness

The analysis of the penal environment demonstrates one caveat to republican inclusiveness. However, there are a number of other applications by which Pettit reveals the extent to which republicanism qualifies inclusiveness. In fact, qualification is so extensive as to make his notion of inclusiveness at least selective or at worst actually equivalent to exclusion. The qualifications or exclusions endorsed by the republican position include screening out categories of agents and other social groups, including through the gagging of debate and disenfranchisement through selective internal and external referral. The net effect of these qualifications to inclusiveness is the reinforced empowerment of the fear-eliminating republican State and its assumption of responsibility for individual citizens.

Pettit employs the tactic of screening both positively and negatively. Suitable institutional agents and options are to be screened in and the unsuitable out, the aim, beyond the attempt to predetermine a socially valued outcome, being that it will

---

82 This is demonstrated by Pettit’s analysis of civility: ‘For the norms of civility that are required for fostering freedom as non-domination are norms of solidarity with others, not norms of compromise, and they are intimately tied to adopting group-level points of view’ and ‘if we cherish our own citizenship and our own freedom, we have to cherish at the same time the social body in the membership of which that status consists’ - ibid pp.259, 260

83 ibid p.214
have “the virtuous - ‘the choicest persons of the nation’ - come to the top”\textsuperscript{84}. He would apply this tactic at least in the selection of legislative and administrative agents\textsuperscript{85}. Apart from a presumption about what generally constitutes virtue, the dubiousness of such a tactic comes from its attempt to pre-select individuals (or options) to ensure specific outcomes that are likely to receive wide assent. However, not only can this involve a presumption about what is socially valued but it denies that an alternative combination of refusing to make such presumptions and a more transparent process is at least equally likely to produce outcomes which reflect the full variety of social values. That is, screening runs the danger not only of getting the outcome wrong but also of reaching that outcome in a way that which will encourage suspicion and even fearsome dissent.

More significantly, such a tactic performs the function of eliminating the challenge posed by respectful, non-compliant individuals pursuing their own legitimate interests. It thereby reinforces the arbitrary-systematic interference of the fear-eliminating State which assumes responsibility for individuals. Pettit seeks to eliminate corruptibility, to which one cannot object, but it has the broader added characteristic of generally fostering compliance, which carries the danger of suppression. Ironically, this is a characteristic of which Pettit is aware in relation to the application of the parallel strategy of sanctioning\textsuperscript{86}. In this circumstance, an alternative strategy of transparency which discourages corruptibility but which does not attempt to predetermine compliant outcomes would be preferred.

Another form of exclusion recommended by the republican position is the gagging of debate in selected circumstances\textsuperscript{87}. Again, apart from a presumption about what is the

\textsuperscript{84} ibid p.221

\textsuperscript{85} ibid p.234

\textsuperscript{86} ‘Let us assume, then, that...people in power are not always actively corrupt; they have a natural, culturally supported tendency to think in public-spirited terms...This assumption invites us to consider the likely effects of deviant-centred sanctions...It turns out that there are a variety of negative effects, and that these give us reason to wonder whether a deviant-centred strategy can do...any good’, ibid p.217

\textsuperscript{87} ‘Suppose, for example, that it is difficult to get politicians to make reasoned decisions on certain issues...because of the pressures to which constituents will subject them. If we screen in the possibility that those politicians can refer such a matter to a committee of experts who are not going to be subject to similar pressures, then we may easily make the desired result attainable’, ibid p.235; see also p.223
desired result, such a process by which the State arbitrarily interferes with the interests of the constituents is likely to raise suspicion and dissent, especially given the wide democratic concern about weighting and pressuring of committees for such purposes. Such a strategy denies that, if politicians are subject to such pressure, it may well be for identifiable reason and a preferred strategy might be to relentlessly confront such reasons rather than attempt to subvert these reasons by mitigating the responsibility of the politicians. Similar comments might be made about equivalent republican strategies in relation to the use of committees generally and in relation to the role of extra-national bodies.

Questioning such proposals is not to reject the content of arguments in these areas nor is it to doubt the strategic value of reference to committees or external bodies. However, the prospect of such bodies responding to such references with a more conservative position than already applies (unless the committee is fully manipulated) indicates the difficulty with gagging debate in the State and allowing disenfranchisement by allowing such bodies to assume responsibility for that State. This might lead to it being observed that it carries risks of the kind which result from allowing the State to assume responsibility for its individual citizens.

A further form of republican exclusion is that of secession or conscientious objection, recommended in selected cases where accommodation within the jurisdiction of the mainstream State is not achievable. In these circumstances, Pettit recommends that, at ‘the limit, the ideal of non-domination may require in relevant cases that the group are allowed to secede from the state, establishing a separate territory or at least a separate jurisdiction’ but that where secession is not possible ‘short of the secessionary limit,

---

88 In relation to the perennial problem of pressure for harsher sentences for criminal offences, Pettit recommends that policy-determination be referred to ‘autonomous, professionally informed bodies that are not exposed to the glare and the pressure of public debate; the responses must be determined in a de-politicised way...contestatory democracy requires that the demos, and the legislative representatives of the demos, generally tie their hands and gag their mouths’, ibid p.197

89 ‘Given the existence of multinational bodies of various kinds, there are some domestic issues on which it may be better...to give over control to those bodies and thereby to restrict the local state...Should development be allowed in a particular wilderness area? Should homosexuality be legally permitted and homosexuals allowed full civic rights?...international bodies, and indeed informal international movements, may promise to counter local factional interests in a more reliable manner than the domestic state’, ibid pp.152-3

90 ibid p.199
it may still be possible to boost the freedom as non-domination of radical dissenters. The measures that can help to achieve this result may be described...as measures of conscientious, procedural objection.\(^{91}\) Like other examples of republican exclusion, such measures are more likely to have the effect of creating a threshold difficult to cross rather than of easing the voluntary passage to separate jurisdiction. In that they would be effectively protecting the integrity of the fear-eliminating State. However, it might also be noted that these measures demonstrate the possibility of a legitimate alternative to that State which if allowed more generally would be transformative of the republican State from within.

What is being asserted is that each of these forms of exclusion, far from being constraints on the republican State, the purpose of which is to prevent arbitrary interference by its agents, is to affirm the pre-eminence of the State, resistant to challenge or disagreement and able to pursue its promise of eliminating fear by arbitrary-systematic interference in the choices of individual or even groups of citizens. This republican strategy is extended by Pettit’s position regarding consent, where for him ‘what is required for non-arbitrariness in the exercise of a certain power is not actual consent to that sort of power but the permanent possibility of effectively contesting it.\(^{92}\) The first part of this is pretty much straight from Locke and Kant. Regarding the second, given what has been argued about the impracticability of individuals successfully contesting more than situational features of the vast array of State practices unless one’s interests coincide with other members of dominant interests, this absence of the necessity of the State to seek consent would reinforce State pre-eminence, both regarding the conditions of its existence and its practices.

\(^{91}\) ibid pp.199-200

\(^{92}\) He continues ‘The state will not interfere on an arbitrary basis...so far as its interference has to be guided by certain relevant interests and ideas and those interests and ideas are shared by those affected. This does not mean that the people must have actively consented to the arrangements under which the state acts. But what it does mean is that it must always be possible for people in the society, no matter what corner they occupy, to contest the assumption that the guiding interests and ideas really are shared and, if the challenge proves unsustainable, to alter the pattern of state activity’, ibid p.63; Pettit has emphasise the need for a representative arrangement in which all ‘major stakeholder groupings’ are recognised and whereby consent to the legislative programme is assured. However, it has been argued that this must be seen in the context of the interest corporatisation which is a feature of republicanism. This is also the context within which Skinner’s emphasis on legislative consent is understood, Liberty before Liberalism p.30
This provision seems to sit oddly with a republican State whose express responsibility is to track the interests of those affected by its actions, even in its corporate form. Such a State would be expected, more likely than other forms, to actively seek consent on a wide range of policies and practices rather than to act presumptively. It is true that if ‘explicit individual consent is required for non-arbitrariness...then non-arbitrariness in public decisions becomes an inaccessible ideal’\(^93\). But not requiring explicit instantiated consent, that is on every action taken by the State, is the absolute opposite position from presuming consent unless such actions are successfully contested. Pettit acknowledges the range of methods which a State determined to track the interests of its citizens might take\(^94\). However, applying to such methods the condition of presumed consent leaves the strong impression of not only presumptive statism but, when seen in the context of interest corporatism, of protecting the State against the legitimate desires of individual citizens. There appears to be far more of Pettit’s ‘automatic pilot’ than of individuals who ‘contest decisions at will’\(^95\). More profoundly, constricting the framework to the pre-eminence of a State form which presumes consent but which may be effectively challenged only by interests in a corporate form reaffirms Pettit’s elimination of any other arrangement by which the conditions of the existence of the republican State might be challenged.

The Republic, Rousseau, Kant and Hobbes

Due to the influence of Rousseau on republican thought, this statism carries an apparent further Kantian theme. Pettit places considerable emphasis on the importance to republicans of notions of the common good, of the public good, of standard ideas and of overall levels of non-domination. Pettit’s use of these is best understood in the context of the Rousseauean notion of the general will: ‘The line that

\(^{93}\) op cit p.184

\(^{94}\) Pettit places some emphasis on the need for public decision-making to be debate-based, which would ‘mean that at every site of decision-making, legislative, administrative, and judicial, there are procedures in place which identify the considerations relevant to the decision, thereby enabling citizens to raise the questions as to whether they are...appropriate’, ibid p.188

\(^{95}\) ibid p.186, where Pettit describes ‘automatic pilot’ as the circumstance in which the self-ruling demos allows ‘public decision-making to materialise under more or less unexamined routines’.
we are defending here (i.e. that law is a legitimate intervention in civil life) has connections with the republicanism of Jean-Jacques Rousseau. The main component of freedom, according to Rousseau, is the enjoyment of non-vulnerability to the will of others...But non-vulnerability can only be guaranteed for each under a law that is internalised by others as a legitimate and welcome form of constraint, not as a forceful imposition that will be systematically resisted and strategically avoided...Rousseau’s solution is to require that the law satisfy his version of the democratic constraint: that it be identified, under conditions of full participation, as a matter of the general will. The real significance of this is elaborated by Rousseau himself, as he emphasises the need to change human nature, if necessary through the annihilation of man’s natural resources and through surveillance, banishment and death.

There is no ‘welcome form of constraint’ here. Instead, there is, for the respectful but non-compliant, forceful imposition, even ‘annihilation’, in which each citizen is institutionally reconstructed and then ‘is nothing and can do nothing without the rest’: the role of Rousseauean institutions is to interfere against even respectful individual interests, therefore arbitrarily, for the purpose of constructing common interests. This not only informs Pettit’s assertion that institutions do not cause but constitute both freedom and citizenship, but also explicates in what sense ‘interests’ and their ‘tracking’ is to be understood. Rather than supporting the respectful aspirations of individual citizens, the State, adopting through its exclusionary practices the corporate or dominant interests, becomes the active constructor and entrepreneurial sponsor of not only those ‘interests’ but of the status of citizen which is to carry them. It is only

96 ibid pp.252-3

97 ‘Anyone who dares to institute a people must feel capable of, so to speak, changing human nature; of transforming each individual who by himself is a perfect and solitary whole into a part of a larger whole from which that individual would as it were receive his life and his being; of weakening man’s constitution in order to strengthen it; of substituting a partial and moral existence for the independent and physical existence we have all received from nature. In a word, he must take from man his own forces in order to give him forces which are foreign to him and of which he cannot make use without the help of others. The more these natural forces are dead and destroyed, the greater and more lasting are the acquired ones, and the more solid and lasting also is the institution: So that when each Citizen is nothing and can do nothing except with all the others, and the force acquired by the whole is equal or superior to the sum of the natural forces of all the individuals, the legislation may be said to be at the highest pitch of perfection it can reach’, The Social Contract p.69

98 We have seen how Rousseau was ultimately forced to acknowledge that the acquisition of such characteristics can only come from a culture which promotes this and not through coercion.
in this context that Pettit can state that what ‘is required for non-arbitrary state power...is that the power is exercised in a way that tracks, not the power-holder’s personal welfare or world-view, but rather the welfare and world-view of the public. The acts of interference perpetrated by the state must be triggered by the shared interests of those affected under an interpretation of what those interests require that is shared...by those affected’99 and ‘a constitutional authority...will deprive other parties of the power of arbitrary interference and of the power of punishing that sort of interference. It will thereby eliminate domination… The reason...is that the interference it practices has to track their interests according to their ideas; it is suitably responsive to the common good’100. Similarly, this is the context of his assertions ‘that those in power are required...to base their decisions on considerations of the public good means that there is a standard in relation to which they are bound to be judged in the opinion of the public’101, ‘the state may expect to maximise the overall level of non-domination in the society’102 and ‘the interference would be designed to track the children’s interests according to standard ideas, and it would not constitute a form of domination’103. That is, if Pettit’s claim for Rousseau as a principal reference point is taken seriously, the republican State, far from being constrained by institutional and other arrangements, is formally and fully empowered as an arbitrary constructive and determinative force regarding both an individual’s status as citizen and his interests.

This arbitrary constructivity introduces parallels not only with Kant but also with the Benthamite account of the proper role of the State, in which the institutions were ideally suited to the exercise and refinement of panoptic power. For Bentham, panoptic power is ‘a great and new instrument of government...; its great excellence consists in the great strength it is capable of giving to any institution it may be thought

---

99 op cit p.56
100 ibid p.68
101 ibid p.232
102 ibid p.118
103 ibid p.120
proper to apply it to¹⁰⁴ and the arrangement of institutions in a manner consistent
with panoptic principles has multiple benefits: ‘Morals reformed - health preserved -
industry invigorated - instruction diffused - public burthens lightened - Economy
seated, as it were, upon a rock - the gordian knot of the Poor-Laws not cut, but untied
- all by a simple idea in architecture!’¹⁰⁵. This complements the criticism already
made regarding the republican position as it refers to penal arrangements, to which
Bentham regarded panopticism as particularly applicable, which is to say that not only
does this position fail to fully recognise the legitimate interests of the offender in its
primary focus on the victim¹⁰⁶ but it must be seen as predisposed to the profound
unilateral reconstruction of the offender in the interests of the general will.

Recognising the Rousseauean-Kantian influence on republicanism explains two
further issues. First, it explains the republican emphasis on the preferred corporatist
arrangements of interests, since interests that are corporatist in form are more likely
than those that are individuated to promote the general will; and second, that giving
priority to the general will promotes institutional stability¹⁰⁷. It thereby protects the
constitutional arrangements from which fear has been institutionally eliminated by
constructive strategies¹⁰⁸. It is also not to challenge the primacy of stability, in fact it
is to reinforce it, for Pettit to enlist the Lockean argument that any particular
government which has breached its trust by failing to do its job may be resisted and
overthrown¹⁰⁹, which is to say contested, but without challenging the conditions of its
existence. As we saw in Chapter 2, overthrowing a government is not overthrowing
government per se, but is in fact reinforcing it as an institutional arrangement.
Further, the promotion of this sense of stability identifies the Hobbesianism implicit

¹⁰⁴ J. Bentham Works IV p.66
¹⁰⁵ ibid p.39
¹⁰⁶ op cit pp.155-7
¹⁰⁷ ‘not only does constitutionalism necessarily involve the presence of devices for stabilising the
republic; the democratic process...is bound to have a similar effect’, ibid p.232
¹⁰⁸ ‘The people who live under the institutions do not have to wait on the causal effect of the
institutions in inhibiting potential interferers before they enjoy non-domination. To enjoy such non-
domination, after all, is just to be in a position where no-one can interfere arbitrarily in your affairs, and
you are in that position from the moment that the institutions are in place’, ibid p.107
¹⁰⁹ ibid p.202
in Pettit’s republicanism. In fact, one is reminded of Pettit’s own assessment of later Rawlsian analysis\(^{110}\).

Therefore, beyond the necessarily arbitrary-systematic interference which the republican State performs, in that it can assume responsibility for its citizens against their individual interests in its pursuit of freedom defined as non-domination, it is intentionally constructive rather than passive in nature. In these terms, not only can it not be seen as constrained but it must be seen as unconstrainable and a source of arbitrary interference. This view is reinforced by other manifestations of this constructivity or intended absence of constraint, in particular regarding the determinative priority given to law over civility; the republican institutionalisation of trust; the republican reluctance to take seriously the equitable distribution of resources; the republican failure to recognise the determinative effect of concealment; the promotion of the intangible hand in the absence of a reliable criterion for its application; and the reluctance to make the institutions of the republican State operationally accountable to its citizens. These will be examined in turn.

**The Republic and Civility**

Pettit’s analysis of the relationship between civility and law is at least ambiguous. At certain points he regards them as mutually indicative: ‘One of the recurrent themes in the tradition is that the republic requires a basis in widespread civility; it cannot live by law alone’\(^{111}\), ‘Is it possible for laws to be so designed...that they nurture the fulfilment of the very civil conditions on which their success...depends? Can the state do anything to make it likely that the laws which enshrine the aims and forms of the republic will be securely based in civil norms?’\(^{112}\) and ‘The laws will present themselves, not just as sanctioning devices, but as instruments that signal what civility

\(^{110}\) ‘Rawls’ defence of this outlook (of political liberalism) is, in the end, a defence of a liberalism which will secure stability and social unity...In this respect, his political philosophy returns liberalism to one of its oldest concerns: peace. Indeed, we suggest that it gives Rawls’ politics a decidedly Hobbesian flavour, since he now ties his conception of justice, not to autonomy or individuality, but order’, C. Kukathas and P. Pettit *Rawls - A Theory of Justice and its Critics* p.140

\(^{111}\) op cit p.245

\(^{112}\) ibid p.251
requires. However, his position is clearest when he argues that law is determinative of such norms: ‘The regime of mutual reliance and trust to which republicans look in seeking a pattern of widespread civility is a dispensation which...maximises the prospects for freedom as non-domination. It is built on an institutional infrastructure of republican law and regulation. The implication is that, although effective law cannot be separate from civil norms, what constitutes civility is determined by the arbitrary-systematic republican State. This is a manifestation of the empowerment, not of the constraint, of the State which ‘constitutes’ both freedom and citizenship. It is Pettit’s attempt to solve the Rousseauian riddle, that is that a regime of law cannot be successful without there first being a culture of civility. Unlike Rousseau, for whom law is based on cultural practice, he appears to reverse the priority, arguing that law can create civility. This is truly a powerful State.

The Republic and Trust

Pettit argues for extensive levels of personal trust, not merely by citizens in other citizens but also by citizens in agents of the republican State, whereby ‘people...confidently put themselves in the hands of public officials, be they police or politicians or bureaucrats, even when that reliance is not supported by the existence of effective constraints on those officials’. To reach this position, he has to accommodate Ferguson’s warning of the need for constant and active vigilance. To do so, he separates ‘having trust’ from ‘expressing trust’. The practical effect of such demands directed towards such empowered authorities is of course negligible. In effect, although this is highly conditioned form of trust, this accommodation is clearly

113 ibid p.253
114 ibid p.266
115 ibid p.262
116 ibid p.251
117 That is, that ‘whatever confidence people feel in the authorities, they will have all the more reason to feel such confidence - to enjoy such personal trust - if they always insist on the authorities going through the required hoops in order to prove themselves virtuous. To be vigilant in this sense will not be to feel an attitude of distrust towards the authorities...but to maintain a demanding pattern of expectations in their regard’, ibid p.264
generated by an attempt to make the republican State such that citizens are effectively at the mercy of its arrangements and agents, which is the manner of personal trust. This appears to be an extravagant strategy, the only benefit of which, should it be valid, is to establish the republican State as the equivalent of a lover or friend: ‘when acts of personal trust are potentially communicative and creative...they are going to appeal to someone who cherishes freedom as non-domination. I am never so safe as when I am in the hands of a lover or friend. If it takes an act of personal trust, an act of putting myself at the mercy of another, in order to usher such a relationship into place, then so be it’\textsuperscript{118}. This appears to be taking statism to an extreme position, emphasising the extent to which republicanism represents the assumption by the State of responsibility for individual citizens rather than the promotion of their self-responsibility. In this context again, republican notions of trust cannot be argued to be a constraint on the State, rather they appear to be a justification of its full empowerment.

**The Republic and Material Inequality**

A further demonstration of the absence of constraint on the republican State, that is the failure of the republican State to track the reasonable interests of its individual citizens, concerns the issue of material equality. Without adopting any socialist ideal, criticism of the republican position can be mounted on the grounds of equal access to the material resources needed to establish self-responsibility. The focus here is Pettit’s position on the standard of socio-economic independence, which is limited to ‘the basic capabilities for functioning in society...(which)...would require the substantial reduction of certain material inequalities. But...a person can have sufficient capabilities not to be exposed to domination...without necessarily having the same resources as others’\textsuperscript{119}.

Self-responsibility does not require that every person have access to the same resources, only that, within the capacity of the community to provide, they have access to sufficient resources to establish a self-reliant life free from exploitation, that

\textsuperscript{118} ibid p.268

\textsuperscript{119} ibid p.161
is one that is respectfully self-responsible. This is an egalitarian position but only regarding opportunity, not resources. This is not a libertarian position, since, although it argues for freedom against State meddling, it does not rely solely on market mechanisms: the State has a crucial role promoting self-responsibility but nothing beyond that.

Pettit’s arguments against equal resource distribution are different. He justifies his welfarist position by the dubious argument that ‘for the state to provide one person with extra resources, and thereby to extend their undominated choices, it must deprive another person of those resources. There is no reason to think that the transfer will make for a gain. On the contrary, the costs of the state intervention will almost certainly mean that less is given to the second person than is taken from the first and that the transfer makes for a decrease in the extent of undominated choice overall’\textsuperscript{120}. This argument ignores the fact that, even if there is discounting for the cost of State administration, the impact on the choices of the receiving individual surviving on resources at a subsistence level would far outweigh the sense of loss experienced by a resource-laden individual forced to forego those same resources. There would be a quantum gain in terms of the impact of resources on the choices of the former. Pettit can only argue as he has because his method is one of accountancy, that is that every unit of resource has equal value, no matter to whom it is allocated. There is no sense of value as it relates differentially to individuals in his analysis: ‘The money that will enable me to do something, poor as I am, will enable you to do exactly the same things...Thus there is no reason to think that for any extra choice that it allows to those who are well off already,...the state would have done better to ensure that the extra choice went to the less well off’\textsuperscript{121}. This kind of thinking is a consequence of his principal focus on the overall level of societal non-domination: ‘There is no reason to think that by equalising holdings...the state may expect to maximise the overall level of non-domination in the society’\textsuperscript{122}.

\textsuperscript{120} ibid p.161
\textsuperscript{121} ibid pp.118-119
\textsuperscript{122} ibid p.118
This is a rationale which has as its primary benefit the effective protection of the interests of resource-laden individuals and the absolution of the State from responsibility, apart from at the extremes\(^{123}\), for equalising the life choices of citizens. It is not a State which is required to track what the majority of its individual citizens would regard as in their individual interests. This argument against Pettit is reinforced by his favourable comments regarding the free market\(^{124}\). He doesn’t offer an opinion about the prevalence of great differences of bargaining power nor what he would do about them. The interests of those that dominate the mythological arrangements of the State would be well served in Pettit’s republic.

**The Republic and the Intangible Hand**

The republican position also places significant reliance upon the effect of the intangible hand, that is on the effect of shame and glory, as a way to constrain agents of the State so that non-dominating behaviour is realised. These negative and positive sanctions are ranked alongside screening in this regard. Pettit thus establishes the central importance of social approval and the avoidance of disapproval to the republican position, especially in preference to the effects of the invisible and iron hands over market forces and management control respectively\(^{125}\).

There are a number of difficulties presented by the manner in which republicanism enlists the invisible hand to check institutional agents. First, it is clear that this use of shame and glory will have little effect without the intervention of the Republican State as sponsor: ‘the power of the intangible hand...may not be able to achieve much unless its operation is supported by radical screening procedures’\(^{126}\). Second, he

---

\(^{123}\) We have seen Pettit’s concern to establish basic capabilities for functioning in society at the lower extreme, to which he adds, regarding the other extreme, that ‘even such a state will have to impose legal limits on the growth of the holdings of the richer’, ibid p.118

\(^{124}\) ‘Do republicans have to oppose the free market...No, they don’t...Short of great differences of bargaining power, this arrangement does not mean that anyone is exposed to the possibility of arbitrary interference by any other or any group of others...(T)here is no question of permanent exposure to interference by another’, ibid p.205

\(^{125}\) ibid pp.255-6

\(^{126}\) ibid p.236
acknowledges the difficulty in applying such a regime even within the legislature\textsuperscript{127}. This is clearly a problem since it is the legislature which is required not only to determine screening methods but which is also responsible for establishing and guiding the ‘forums for the discussion of the ethics of public life, and perhaps for seeking agreement on appropriate standards of behaviour...for politicians and ministers...for members of the bureaucracy...for players in the criminal justice system...and for those in the media’\textsuperscript{128}. Yet the difficulty establishing it within this primary agency of the State is acknowledged. Perhaps because of this difficulty, Pettit is forced back to self-interest as the reliable way to constrain bureaucrats and judges: ‘appointment and promotion are the main means whereby people gain positive regard in these areas, as non-appointment and non-promotion are the main means of suffering the negative. Thus, so far as well-structured committees can be made responsible for appointments and promotions, there is every reason for expecting incentives of regard to work well’\textsuperscript{129}.

Beyond although related to these difficulties associated with the invisible hand, there is a more fundamental problem. It is identified by Rousseau but relates to Pettit’s republicanism and it relates to the power of opinion\textsuperscript{130}. The regime of opinion was for Rousseau the problem rather than the solution. Manent draws out some of the implications of this, concerning both its self-referentiality and the over-value of

\textsuperscript{127} ‘The idea of a legislative assembly, and the idea of making those in government responsible to such an assembly, points us towards a set of arrangements that ought to boost a suitable economy of regard. For where there is such an assembly there will usually be a well-established sense of relevant standards...We all know that these arrangements can get perverted as political parties close ranks...But in principle there ought to be ways of ensuring the proper operation of the system’, ibid pp.236-7

\textsuperscript{128} ibid p.236

\textsuperscript{129} ibid p.237

\textsuperscript{130} ‘Everyone began to look at everyone else and to wish to be looked at himself, and public esteem acquired a price...and this was the first step at once towards inequality and vice: from these first preferences arose vanity and contempt on the one hand, shame and envy on the other: and the fermentation caused by these new leavens eventually produced compounds fatal to happiness and innocence...From here arose the first duties of civility...because, together with the harm resulting from the injury, the offended party saw in it contempt for his person, often more unbearable than the harm itself. Thus...vengeances became terrible...(and)...many hastened to conclude that man is naturally cruel and that he needs political order in order to be made gentle, A Discourse on the Origin of Inequality p.166
wealth\textsuperscript{131}. To this self-referentiality of opinion, Rousseau adds that the role of the institutions of State is specifically to construct tractable individuals, that is to ‘make mild’ those that are made discontented by the process which produces the glory and shame on which republicanism relies so heavily. Republican opinion promotes the interests of the wealthy and constrains the dissident.

So, when seen in the context of a radically screening State whose institutional arrangements arguably promote the perversion of standards which should apply to its own processes and cause a reversion to self-interest, there is a vacuous self-referentiality about opinion as the source of shame and glory. Further, it is a method which requires a further level of intervention by the State to deal with its inevitably fear-inducing effects. At two levels, the invisible hand is founded on intervention by the fear-eliminating arbitrary State: it empowers rather than constrains the State. In none of this is there a place for the fear-accepting, respectful and self-responsible individual supported by a redesigned State to stand against community disapproval.

For Pettit, although the republican State is urged to avoid introducing heavy-handed patterns of control that are likely to undermine the influence of this more or less autonomous mode of regulation, that is civility, it should be remembered that, given that this civility is built on an institutional infrastructure of republican law and regulation, any apparently autonomous status and influence it subsequently attains does not deny its source in republican law.

**The Republic and Concealment**

There is still another difficulty for the republican strategy for constraining the State. It concerns the determinative effect of concealment. Pettit is clear that, in the absence of effective challenge, ‘the self-ruling demos or people may often...run on automatic

\textsuperscript{131} ‘For Rousseau the king’s favour no longer determined men’s credit and thus their position. It was opinion, an authority with no specific organ and no specific place apart from ‘Paris’, which had replaced Versailles. The credit that opinion conferred was attributed by no-one in particular, but it was recognised and obeyed by all...Consequently, men were ranked not on the basis of their power, birth, competence, or even riches, but rather on the basis of this imperceptible credit of which wealth was only the outward or measurable sign. The society Rousseau was contemplating was not characterised by powers attributable to persons or institutions, but by an inequality relating only to itself, with no content or meaning other than itself’, P. Manent An Intellectual History of Liberalism p.65
pilot, allowing public decision-making to materialise under more or less unexamined routines\textsuperscript{132} and ‘the power of offenders to reassure ordinary people - in effect to tranquilise them - is so great...\textsuperscript{133}. We have seen that the republican position is that effective challenge is only possible in the context of a vulnerability class and through membership of social movements, the effect of which is to operationally strengthen the State by the accommodation and representation of such interests. The consequences are that, at least so far as the non-aligned individual is concerned, there is no effective challenge available and that consequentially the automatic pilot or tranquilisation will occur on the basis of unexamined practices. Under these circumstances, the republican provision that domination ‘will be a matter of common knowledge among the people involved’\textsuperscript{134} will not apply. This in turn allows that, contrary to the republican position, it would not be the exception that ‘one person or group is in a position to exercise backroom manipulation’\textsuperscript{135}, nor that ‘a dominating party will always be an agent’: that is, it may indeed ‘be a system or network or whatever’\textsuperscript{136}. Further, given the republican promotion of only minimal equality of socio-economic resources, the ‘unscrupulous’ would be ‘in a position to make free with me’\textsuperscript{137}. That is, in such circumstances, the differential practices and standards of not only ‘backroom manipulators’ but also of the empowered, determinative and fear-eliminating State and its dominant interests would remain concealed. The Machiavellian antics of agents of the widely-empowered State would not be on view.

**Some Observations**

Not one of the methods nominated by Pettit to ensure that the republican State will be constrained from arbitrary interference in the choices of individuals has the effect claimed for it. In fact, although promoted as part of establishing or maintaining a

\textsuperscript{132} Republicanism p.186

\textsuperscript{133} ibid p.251

\textsuperscript{134} ibid p.59

\textsuperscript{135} ibid p.60

\textsuperscript{136} ibid p.52

\textsuperscript{137} ibid p.159
structural and practical regime to eliminate fear through arbitrary-systematic interference, all are either direct or indirect sources of such interference. Generally, it appears that the primary republican aspiration to eliminate arbitrary interference, which is to eliminate fear, combined with a view of the incapacity of individuals to privately pursue freedom without generating a Hobbesian war, has led Pettit into a republicanism that relies on the establishment of fully-elaborated institutional arrangements as the only means to realise freedom conceived as non-domination. It is for Pettit only the widely empowered State which can, by systematic interference, eliminate the arbitrary interference that individuals experience at the hands of others and can do so, allegedly due to a regime of constraint, without itself becoming a source of arbitrary interference.

However, because the republican aim is not the reduction but the elimination of arbitrary interference between citizens, not only is it the State and not citizens which must be so empowered but this State must be fully empowered. The form of this empowerment comes first in a coercive and universal constitutional-institutional framework whereby law is conceived, against liberalism, as the source rather than an invasion of liberty. But beyond these structural arrangements, this empowerment also results, again in contrast to certain forms of liberalism, in a profound extension of State jurisdiction, not only in specific areas but generally in relation to the determination and promotion of the interests that citizens will share, although the operational effects of such determination is claimed to be in contest.

Pettit’s first mistake is to believe that liberalism is intended to avoid interference by the State. As the mythological analysis has shown, liberalism, by its very institutional arrangements, cannot be other than a source of such interference. His second mistake is, in attempting to deal with the issue of domination on which he sees liberalism as failing, that he adopts for republicanism the institutional arrangements adopted by liberalism. These are the arrangements that emerged from Hobbes through Locke and Montesquieu, that is the constitutional, tri-partite, separated structural arrangements that assume responsibility for typically willing individuals and which take advantage of the typical willingness of fearful individuals to forgo their self-responsibility by promoting especially the interests of the dominant. In doing so, he reverses the rhetoric of liberalism and fully empowers the State as a source of interference.
The first effect of this full empowerment is that the republican State legitimacy is unchallengeable, since only the State and only the fully empowered State can apparently eliminate arbitrary interference to establish republican freedom and citizenship. Further, the republican claim is that citizenship and freedom are conceivable only as manifestations of the practices of the institutions of the republican State: such a State has thereby assumed responsibility for individuals and this is so irrespective of any legitimate contesting of any particular government, law or institutional practice.

Restricted by its own narrow presumption regarding the alternative choices, that is either a Hobbesian war or the fully empowered State which assumes responsibility for citizens by constituting their freedom, there is primary arbitrariness in the practices of the republican institutions. State activity, having assumed responsibility for the individual and thus determining (that is, ‘tracking’) what it regards as in his interest, can operate against what is in his individual interest. These, for the individual, may lie in the third alternative, self-responsibility. Because the republican State both fully empowers itself and assumes responsibility for him, it is a primarily arbitrary arrangement. This applies equally to the activity of all such constitutional arrangements of the republican State as the rule of law, the separation of powers, bicameral legislature and a bill of rights, unless provision is made to subvert such primary arbitrariness.

However, I have argued that there is a secondary arbitrariness on the part of the State, beyond the nature of the republican State per se, since the constraints foreshadowed by Pettit are ineffective, because the capacity of individual citizens to contest particular governments, laws or institutional practices are ineffectual. The features of republican interest corporatism, exclusiveness as inclusiveness, screening, debate constriction, effective jurisdictional disenfranchisement, absent consent, the priority of law over civility, the institutionalisation of trust, the tolerance of wide material inegalitarianism and the promotion of the intangible hand show that not only is the State not constrained to respond to the legitimate interests of individual citizens but that it is intended to be fully and arbitrarily empowered as a constitutive force, given the nature of the systematic interference invested in it by its function in eliminating
fear as domination. These are features identified by Rousseau and by Montesquieu\textsuperscript{138}. Further, given that the systematic interference of the State is shown to be arbitrary because it assumes responsibility for citizens and is unable to be effectively contested and does not track what the individual might regard as his interests, the overall effect of the republican State is compounded by the inevitable realisation of the institutional practices within the form of life of citizens. Such an outcome is anathema to accepted notions of freedom and citizenship.

**Conclusions – The Mythology of Pettit’s Republicanism**

Therefore, the rationale of his republican State is unsustainable. Established on the grounds of eliminating arbitrary interference, it is premised on arbitrary interference which is systematic in nature. This arbitrariness derives from the conditions of its existence, which require the full empowerment which allows it to assume responsibility for, even worse to ‘constitute’, its citizens. It is due to this that what are recommended as constraints on the republican State fail to constrain it from arbitrarily interfering in this systematic manner. Further, they do so by affirming that interference: for example, by presumptions concerning the alternative methods for the pursuit of freedom or the meanings which should be attributed to ‘tracking’ and ‘interests’ or the conditions under which the constitutional provisions apply. Further, they do so by assuring the circumstances which sustain that interference: for example, by the corporatisation of interest, the constrictions that apply to debate or inclusion or consent and so on. The republican State necessarily breaches the conditions of its own existence by engaging systematically in the arbitrary interference which it claims to eliminate.

\textsuperscript{138} Manent argues of Montesquieu that his system ‘is to separate the will from what it desires, or to prevent each person from doing what he cannot prevent himself from desiring. The people cannot do what they want, they can only elect representatives in the hope that they will do what the electorate wants; the representatives in turn cannot do what they themselves want, but must be keenly aware of what the executive wants; and the executive cannot do what it wants since it must seriously take into account what the legislature wants’, that is that there is no tracking the legitimate interests of individual citizens within such arrangements but there is a function of systematically eliminating the fear which results from what is regarded to be unbridled desire. It might be best seen as a cacophony of mutual denial, *An Intellectual History of Liberalism* p.62
None of this is to indicate a preference for any liberal position over that argued by republicans. Although republicanism does profoundly assume the responsibility for individuals which necessarily denies autonomous freedom, the assertion it makes against liberalism stands, that is that it allows the fear which domination brings. Because republican interference is constituted by the assumption of responsibility for its citizens which is required by the claim to eliminate fear as domination, only a State form which establishes self-responsibility, that is which realises that fear must be accepted and addressed by individual citizens respectfully and strategically supported by a redesignated State, can honour an undertaking not to interfere arbitrarily. By this explanation, this cannot be a republican State.

The implications for the primary distinction claimed by republicans are of interest because, although non-interference and non-domination differ in regard to certain characteristics, they share others. The difference comes from the fact that non-interference, more concerned about the intrusions of the State, claims to minimise this, whereas non-domination, more concerned about interference by other individuals (for example, by master, husband, employer, welfare agent or creditor), aspires to optimise ‘constrained’ State interference\(^{139}\) so that these forms of intrusions can be eliminated. However, they share a characteristic that is more profound than those by which they differ: each is motivated by fear (although each asserts that fear is sourced differently) and a promise of its elimination, one by optimising the State and the other by its minimisation. They also share reliance on interference by the State to eliminate external and internal sources of interference and to create sympathetic conditions of existence. By this, they each demonstrate their mythological credentials.

There are further circumstances which indicate how non-interference and non-domination are mutually reflective rather than different. The circumstances of the slave described by Pettit\(^{140}\), whether or not subject to a benign master, are such that a person in such a position will adopt a form of life which will minimise the likelihood of arbitrary interference by her master. This is a claim that she will assume the systematic features of an appropriately compliant form of life and to that extent is

\(^{139}\) op cit p.35

\(^{140}\) ibid p.22
subjected to a, perhaps somewhat self-imposed, regime of interference in her life because of the likely (in the case of a non-benign master) or unlikely but possible (in the case of a benign master) prospect of arbitrary interference in her life. Similarly, for the person supposed by Pettit to be subject to interference but not domination, say a prisoner, there will also be the adoption of a systematic form of life intended to minimise the chances of arbitrary interference. If her interests have not been ‘tracked’, that is if no regime of regulation or practice exists to prevent it, arbitrary interference could be in the form of violence perpetrated by prison officers or other prisoners. If her interests have been ‘tracked’, that is if there is a regime of accountability which prevents violence, this will still be in the form of arbitrary decisions within the prison regime in regard to location, daily routine, food, family contact, work, recreational choices and the like.

From this it can be said that, contrary to the republican assertions\(^\text{141}\), there can be no domination without systematic interference and no systematic interference without domination, despite the variation between them. Further, in both circumstances it will be clear to the subject that, despite the self-imposition of a defensive, systematic form of life, there is no assurance that such arbitrary interference can be eliminated. Fear will persist irrespective of whether one is the subject of domination or systematic interference. Slavery and imprisonment both comprise a pervasive fear. If there is such common ground between non-interference and non-domination, then, beyond those features which make them different, there is common ground between liberalism and republicanism.

There are two broad comments that may be drawn from this. The first is that it reveals that mythology strongly informs republicanism. This fear-eliminating theory promotes an arrangement that is founded on the full, and therefore fearsome, empowerment of the magnitude of the State: only a fully-empowered State can claim to eliminate domination and such a State can only be, consistent with its refinement since the Lockean and Montesquieuean response to Hobbes, coercive constitutional-legislative-institutional in form. This is an arrangement which is fully dispersed across social space in its form and influence. This is an empowered and arbitrarily

\(^{141}\) ibid p.63ff
interfering, not a constrained, State and one in which the law is its instrument rather than its constraint. It is an empowerment founded on the assumption of responsibility for individuals, revealed by its position regarding the nature of freedom, that is that these constitutional and institutional arrangements do not deliver freedom but are that freedom; and that this State effectively determines, through its concepts of the common good, corporatisation, screening, gagging, disenfranchisement and constructivism, what it will regard as my interest.

In this, republicanism reveals again the structural flaw in mythological political theory, that is that when the State is so fully empowered as is the republican State and is colonised by corporatised interests, it cannot be sympathetic to non-corporatised interests, which can be gagged, screened, disenfranchised and constructed so that the common good is realised in terms of corporatised interests, which not only colonise the institutions of State but become those institutions. This is the real effect of Pettit’s claim that these institutions do not merely deliver but are freedom and are fully extended in their jurisdiction to give effect to this. The republican State is intended to remain a source of fear itself to non-corporatised interests. Such an arrangement is inevitably, given the mythological desire of interests to compete in colonising the magnitude to achieve dominance. The consequential emergence of a dominant interest and the effective elimination of fear for that interest effectively institutionalises fear for other interests, through its processes of interference. Even more than the Kantian State, republicanism is therefore the form of government of fully realised mythology. In that it is intended to institutionalise fear for unincorporated interest, that is which although respectful of others does not conform to the common good, mythological politics is therefore revealed as inevitably self-defeating as a means of eliminating existential fear. It is merely an instrument for the elimination of fear, and therefore a source of full sympathy, for those who successfully compete to colonise its fearsome institutions.

The second broad comment is that republicanism reveals that what is common to political theory in the Western mythological political tradition is more significant than the various personae that it has assumed, for example as liberalism or republicanism. This is not to claim that liberalism and republicanism are the same, even though they have common ground, but it is to say that the mythology that informs each of them is
the context in which they should be understood. It is therefore a mythological analysis which is more richly informative in the consideration of political issues than one which relies on applying the features of liberalism or republicanism as interpretive tools. Such issues would include constitutional and institutional structure and reform, individual rights, normalisation and deviance. The issues of rights, normalisation and deviance, especially to the extent that these notions have been infused with mythological thinking, will be considered more closely below.
Part 4 - Embodiment

Broadly, this thesis argues that existential anxiety has driven the long term and continuing imagination by mankind of fearsome mythological magnitudes which are always absolutist in nature but are then engaged, through subjection, forgoing and other tactics, in an attempt to ensure the elimination of fear experienced by individuals (both of them and of other individuals) and the sympathy of the magnitudes towards man. These imagined magnitudes then become the objects which man attempts continuously to realise in his social relations. That is, there is a disposition in man first to imagine and then to realise such magnitudes. The imagined magnitude then remains as the archetypal reference point against which actual instances are realised and judged, so that although man appears unreservedly disposed to imagine and be willingly subject to such myths, his subjection to any actual model is conditional because he always remains to be satisfied that any such model is a realisation of the archetypal myth and his preferred relationship with it.

With the irrecoverable breakdown in the sixteenth century of the absolutist theological myth brought about by the Reformation, Hobbes may be seen as one who demonstrated the continuing disposition to mythologise by conceiving that the resulting void could be filled by an absolutist political idea. The other theorists who followed Hobbes may then be seen as those who have undertaken the refinement of the imagined arrangements, that is the engagement of the absolutist Hobbesian political myth, in a manner that seeks to assure man that the empowered, fearsome political mythological magnitude to which he forgoes his self-responsibility is sympathetic to his needs and desires. Finally, though there has been continuous gradual work on this myth within the theoretical tradition to achieve this outcome, absolutism remains the foundation of its principal form, democracy, irrespective of its liberal or republican forms.

However, it is one thing to put an argument, especially an ambitious argument stretching across time from Hobbes through to Pettit, that the history of the idea of the State reveals a disposition to imagine, create and refine a mythological magnitude. It is another thing
to show how this has been a real factor, not just in the ideas of the political philosophers, but in the sweated lives of men and women. That is, to show how anxiety becomes fear and how this is the key factor in the generation of the actual embodied practices of individuals and how such practices are inextricably linked to the formation, historical refinement and maintenance of the widely empowered but sympathetic State. What is needed is a psychology and sociology of political mythology. We don’t have one but perhaps the nearest is the work of Norbert Elias.

This Section commences with an analysis of Elias’ work on civilising. It is followed by an examination of the work of Foucault, whose analysis of both governmentality and the modern disciplinary techniques are suggested here to indicate the refinement that civilising processes underwent in the modern era, beyond Elias’ focus on the Middle Ages and, in that, to reveal the progressive, material consolidation of the political mythology. This Section is completed by looking at the understanding of the social processes of norms and certainty provided by Wittgenstein, who thereby provides an ontological context within which we can see how that civilising, governmentality and discipline work to embed the idea of the political mythology in the lives of individuals.

Chapter 9 - Elias

Fear, Civilisation and Habitus

There are a number of features of Elias’ thought which complement the notion of a political mythology that is being presented here. Most importantly, Elias appreciates the powerful influence of fear in the lives of men and women and argues that this fear has been a driving force in the emergence and refinement of civilising practices and that this, in turn, significantly explains the formation of the State. He does not talk about mythology, except to claim that like all good sociology his work is a means of its elimination, but his demonstration of the relationship between the inextricable elements of fear, civilisation and State formation in fact suggests a way of explaining why and how the concept of the mythological State that is presented here is created and sustained. In
effect, given that fear of others is the form into which existential anxiety is commonly converted, we create an empowered magnitude, that is the State and its company of interests, agents and allies, to which we forgo responsibility in order that it creates us through civilising us in a manner such that we are not fearsome but are increasingly productive. That is, so that we therefore are not fearful of others but of the State and its agents and allies. It is the progressive refinement of this idea that has been argued here to have informed political theorists from Hobbes to Rawls and Pettit.

Elias makes repeated reference to fear as a core factor in so-called primitive and in medieval life. For him, primitive people “experience human and natural events within a relatively narrow circle which is vitally important to them…(Therefore) the ability of primitive people to distinguish things in forest and field…is more highly developed than in ‘civilised’ people. But among more primitive people the natural sphere is far more a danger zone; it is full of fears which more civilised people no longer know”\(^1\). He also describes the fearsome medieval warrior society and other societies where there was not a complex and stable monopoly of physical violence\(^2\). Fear of external powers in the form of other people is for Elias a pervasive feature of human life before the civilising regimes were established.

Substantially, for Elias it is for the purpose of eliminating such fears that the process of civilising, through the internalising of control, emerges. He provides a range of examples of these processes. A number of these seem unrelated to the control of fear as such, for example those that relate to various bodily functions and I shall come back to these. But there are examples which relate directly to fear. A simple example is the use of the knife when eating\(^3\). More generally, Elias examines changes in aggressiveness. He describes

\(^1\) N. Elias *The Civilising Process* p.419

\(^2\) ‘The agency of individual self-control, the super-ego, the conscience…is instilled, imposed and maintained in such warrior societies only in relation to acts of physical violence…Compared to the self-control agency in more pacified societies, it is diffuse, unstable, only a slight barrier to violent emotional outbursts’. There, as ‘the decisive danger does not come from failure or relaxation of self-control, but from direct external physical threat, habitual fear predominantly takes the form of fear of external powers”, ibid p.373

\(^3\) ‘In the Middle Ages, with their upper class of warriors and the constant readiness of people to fight, and in keeping with the stage of affect control and the relatively low degree of binding or regulation imposed on drives, the prohibitions concerning knives were correspondingly few…But there are indications in the
the aggressive and therefore fearsome life in the Middle Ages as typified by ‘Rapine, battle, hunting of people and animals - all these were vital necessities which, in accordance with the structure of society, were visible to all. And thus, for the mighty and strong, they formed a part of the pleasures of life…A particular pleasure was taken in mutilating prisoners’. And ‘no punitive social power existed. The only threat, the only danger that could instill fear was that of being overpowered in battle by a stronger opponent’. In fact, ‘The warrior of the Middle Ages not only loved battle, he lived for it. He spent his youth preparing for battle. When he came of age he was knighted, and waged war as long as his strength permitted, into old age’. But for Elias, this was not only a condition for the knighted but was a common condition. Elias relates the general excess of this behaviour simultaneously to the structuring of emotional control and to the structuring of society. For him, it was the emergence of regimes of civilising that brought about moderation through self-restraint, thereby structuring the emotional world. Yet, in a sense with which Blumenberg would have agreed, primal fear is never extinguished, since it becomes a continuum with internalised fear. In the course of this civilising, he argues, inner fears grow in proportion to the decrease of outer ones.

late Middle Ages…that the caution required in using a knife results not only from the rational consideration that one might cut or harm oneself, but above all from the emotion aroused by the sight or the idea of a knife pointed at one’s own face’. He quotes Caxton regarding this then observes ‘Here, as everywhere later, an element of rationally calculable danger was indeed present, and the warning refers to this. But it is the general memory of and association with death and danger, it is the symbolic meaning of the instrument that leads, with the advancing internal pacification of society, to the preponderance of feelings of displeasure at the sight of it, and to the limitation and final exclusion of its use in society. The mere sight of a knife pointed at the face arouses fear’ ibid pp.104-105

4 ibid pp.162-164

5 ‘But in medieval society this permanent readiness to fight…was a vital necessity not only for warriors, the knightly upper class. The life of the burghers in the towns was characterized by greater and lesser feuds to a far higher degree than in later times; here too belligerence, hatred and joy in tormenting others were more uninhibited than in the subsequent phase. With the slow rise of the Third Estate, the tensions in medieval society were increased. And it was not only the weapon of money that carried the burgher upward. Robbery, fighting, pillage, family feuds - all this played a hardly less important role in the life of the town population than in that of the warrior class itself’, ibid p.166

6 ‘Much of what appears contradictory to us - the intensity of their piety, the violence of their fear of hell, their guilt feelings, their penitence, the immense outbursts of joy and gaiety, the sudden flaring and the uncontrollable force of their hatred and belligerence - all these, like the rapid changes of mood, are in reality symptoms of one and the same structuring of the emotional life. The drives, the emotions were vented more freely, more directly, more openly than later. It is only to us, in whom everything is more subdued, moderate and calculated, and in whom social taboos are built much more deeply into the fabric of our drive economy as self-restraints, that the unveiled intensity of this piety, belligerence or cruelty appears to be contradictory’, ibid pp.168-169

7 As a consequence, ‘people begin to experience each other in a more differentiated way which was precluded as long as they constantly faced serious and inescapable threats from outside…Social life ceases
Despite this self-restraint, fear never disappears\textsuperscript{8}. Fear, especially of others, is both continuous and pervasive.

For Elias, one key outcome of civilising is the development of a personal habitus, which for him is the ‘durable and generalised disposition that suffuses a person’s actions throughout an entire domain of life or, in the extreme instance, throughout all of life - in which case the term comes to mean the whole manner, turn, cast, or mold of the personality’\textsuperscript{9}. The concept of habitus is prominent in \textit{The Civilising Process}, the starting point for which is the nature of court society, where Elias sees both continuity and difference between that and subsequent bourgeois capitalist society. The differences, generated by the bourgeois in opposition to the practices at court, are interesting enough. They include the distinction between public and private life, the development of an economic rationality as a core of life and the dedication to work, which is that productivity increases. The continuities are even more instructive. In particular, court society was based on a habitus, comprising a particular mode of conduct and psychic structure, which formed the basis of bourgeois life. Courtly rationality, as a form of the balance between short term desires and long term consequences, ironically became bourgeois legal rationality. This was not because of the former’s organisation of power around economic capital - court society was rather organised around the display of such symbolic capital as status and prestige - but because court society identified itself through the practice of manners, an essential element of which was the management of emotion. It is the habitus which results from the adoption of acceptable practices as manners that

\textsuperscript{8} ‘Nowhere in human society is there a zero-point of fear of external powers, and nowhere a zero-point of automatic inner anxieties. Although they may be experienced as very different, they are finally inseparable. What takes place in the course of a civilising process is not the disappearance of one and the emergence of the other…People’s fears of external powers diminish without ever disappearing; the never-absent, latent or actual anxieties arising from the tension between drives and drive-control functions become relatively stronger, more comprehensive and continuous…And one thing certainly should not be overlooked in all this: the fact that today, as formerly, all forms of adult inner anxiety are bound up with the child’s fears of others, of external powers’, ibid pp.421

\textsuperscript{9} R. van Krieken \textit{Norbert Elias} p.47
becomes the ‘second nature’ of men and women\textsuperscript{10}. This habitus or second nature is the outcome of civilising, which thereby produces us in a manner so that we are not fearsome to each other. This is not to say that, despite this durability, habitus does not continue to evolve in response to the shifts in relationships with others during one’s life: ‘the structures of personality and of society evolve in an indissoluble interrelationship’\textsuperscript{11}. But it is the form that human material practice takes. Civilised behaviour, intended as not fearsome but productive, becomes ‘second nature’.

The bourgeoisie solved the problem of the tension between the authentic expression of one’s feelings and rationally controlling them in pursuit of long term goals by constraining the former within the bounds of a private life\textsuperscript{12}. But it was court society that had adopted a regime of self-observation to promote a self-discipline that complemented the observation of others in the search for competitive advantage. In this context, the display of emotions, especially if produced by fear, became a sign of weakness on the grounds that it offered advantage to others. For Elias, this regime played the important role of sustaining the relational nature of power: the sovereign and the nobility needed each other equally, the former because of his need of the nobility as a weight in the equilibrium of the classes he ruled and the latter because only life at court gave them the economic opportunity and prestige they needed to retain their position. For Elias, the nobility do not exercise their potential collective power and overthrow the sovereign because of the competition between them for the advantage he can bestow\textsuperscript{13}. This connection between fear, the adoption of emotional restraint, the creation of opportunity and the sustenance of the relational nature of power is for Elias fundamental to the emergence of the State.

The emergence of this connection can be seen in his description of the process of rationalisation, which is for Elias the progress of human reason and is synonymous with

\textsuperscript{10} ibid p.47
\textsuperscript{11} The Civilising Process p.456
\textsuperscript{12} op cit pp.86-89
\textsuperscript{13} ibid pp.90-91
the civilisation of men. He states “Its precondition is a rise in the standard of living and in security, or, in other words, increased protection from physical attack or destruction and thus from the uncontrollable fears which erupt far more powerfully and frequently into the lives of individuals in societies with less stable monopolies of force and lower divisions of functions…We scarcely realise how quickly what we call our ‘reason’, this relatively farsighted and differentiated steering of our conduct, with its high degree of affect-control, would crumble or collapse if the anxiety-inducing tensions within and around us changed, if the fears affecting our lives suddenly became much stronger or much weaker or, as in many simpler societies, both at once, now stronger, now weaker’. Further again: ‘The more deeply we immerse ourselves in the historical processes in the course of which prohibitions, like fears and anxieties, are formed and transformed, the stronger grows an insight which is not without importance for our actions as well as for our understanding of ourselves: we realise the degree to which the fears and anxieties that move people are human-made’ (Elias’ italics). Further, in a manner that will become significant in the examination of Wittgenstein below, ‘The fears which grown-ups consciously or unconsciously induce in the child are precipitated in him or her and henceforth reproduce themselves more or less automatically. The malleable personality of the child is so fashioned by fears that it learns to act in accord with the prevailing standard of behaviour, whether these fears are produced by direct physical force or by deprivation, by the restriction of food or pleasure. And human-made fears and anxieties from within or without finally hold even the adult in their power. Shame, fear of war and fear of God, guilt, fear of punishment or of loss of social prestige, man’s fear of himself, of being overcome by his own affective impulses, all these are directly or indirectly induced in a person by other people. Their strength, their form and the role they play in the individual’s personality depend on the structure of his society and his or her fate within it.

Even though he makes no reference here to existential anxiety and therefore moves a little too quickly to collapse primal fears into those that are socially and intentionally

---

14 The Civilising Process p.441
15 ibid pp.441-443
produced, there is no doubt that for Elias fear is at the heart of the existence of every individual and from the earliest age. There is also no doubt that for him fear is a primary, perhaps the most fundamental, generator of social practice and, as we shall see, through the process of civilising that is intended to minimise it (albeit by replacing it with internalised fears), of the formation of the State as the monopoliser of violence.

Elias does not claim that the elimination of fear from threat of aggression is the only purpose of the civilising process. On the contrary, he is at pains to argue that there is a range of behaviours that civilising is intended to eliminate or transform. He describes at length the manners and display of bodily functions which, through the influence of the practices of court society, are suppressed or transformed\(^{16}\). But in that the process has a wide socially consolidating effect. When one acts in like manner, when one identifies with others, the prospect of threat diminishes.

**Civilising, Monopolies and the Formation of the State**

Elias connects the process of civilising, as the imposition first of external restraint and then of self-restraint over one’s emotions and pleasure drives, to the presence of a central authority sufficiently empowered to produce that result.

This civilising is not to be understood as the production of uniformity, since self-restraint allows the proliferation of social function, even if within a framework of accepted patterns of behaviour\(^{17}\). But although there is diversity, Elias states that there is direction, not mere process, in this interweaved evolution of individual and community, although in a multilinear rather than a unilinear sense\(^{18}\). This directionality led him to see progress in

\(^{16}\) These include graphic descriptions and commentary on changes in behaviour at table, regarding the natural functions, blowing one’s nose, spitting, behaviour in the bedroom, and relations between men and women, ibid Chapters 4-9 pp.72-142

\(^{17}\) ‘The more differentiated (social functions) become, the larger grows the number of functions and thus of people on whom the individual constantly depends in all his actions...As more and more people must attune their conduct to that of others, the web of actions must be organized more and more strictly and accurately, if each individual action is to fulfill its social function. Individuals are compelled to regulate their conduct in an increasingly differentiated, more even and more stable manner...this involves not only a conscious regulation’ ibid p.367

\(^{18}\) R. van Krieken p.69
human affairs, in respect of control over the natural world, the reduced level of brutality and the equality that comes from more widely established democratic arrangements. It is in this sense that society had become increasingly civilised. This view of progress attracted much criticism, even though Elias later argued the continuing presence of disintegrative processes, which could overtake civilisation. It will be argued that his way of looking at social processes is flawed and that, if he had understood civilising differently and had argued that civilising and decivilising were parts of exactly the same process, he might have avoided such criticism.

For Elias therefore, this diversity of social function existed increasingly in a world being given direction through the connection between civilising and the centralising of power into the monopoly that would assume the form of the modern State. Whether one lived a worldly life or went to a monastery, “In both cases it was the structure of society that required and generated a specific standard of emotional control…In this society there was no central power strong enough to compel people to exercise restraint. But if in this or that region the power of a central authority grows, if over a larger or smaller area the people are forced to live in peace with each other, the moulding of affects and the standards of the drive economy are very gradually changed as well…the reserve and ‘mutual consideration’ of people increase, first in everyday social life. And the discharge of affects in physical attack is limited to certain temporal and spatial enclaves. Once the monopoly of physical power has passed to central authorities, not every strong man can afford the pleasure of physical attack. This is now reserved to those few legitimised by central authority (e.g. the police against the criminal), and to larger numbers only in exceptional times of war or revolution, in the socially legitimised struggle against internal or external enemies”. Further, “In the civilised world, even in war, individuals can no longer give free rein to their pleasure, spurred on by the sight of their enemy, but must fight, no matter how they may feel, according to the commands of invisible or only indirectly invisible leaders”, even if “these affects do have, in a ‘refined’ and more rationalised form, their legitimate and exactly defined place in the everyday life of civilised society. And this is very characteristic of the kind of transformation through

19 ibid p.70-71
which the civilisation of the affects takes place. For example, belligerence and aggression find socially permitted expression in sporting contests. Civilising therefore reveals an underlying dynamic towards the monopolisation of physical force and violence and, as a result, the development of a ‘second nature’ of self-restraint. This ‘second nature’ exists in the form of a personal habitus, as we have seen.

The field in which this nexus between self-restrained habitus and differentiated social functions develops is therefore one characterised by a monopolisation which forms the basis of the formation of the State:

The more comprehensive the monopolised power potential, the larger the web of functionaries administering it and the greater the division of labour among them; in short, the more people on whose work or function the monopoly is in any way dependent, the more strongly does this whole field controlled by the monopolist assert its own weight and its own inner regularities…In other words, the more comprehensive a monopoly position becomes and the more highly developed its division of labour, the more clearly and certainly does it move towards a point at which its one or more monopoly rulers become the central functionaries of an apparatus composed of differentiated functions, more powerful than others, perhaps, but scarcely less dependent and fettered. This change may come about almost imperceptibly by small steps and struggles, or through whole groups of dependents asserting their social power over the monopoly rulers by force; in one way or another the power first won through the accumulation of chances in private struggles, tends, from a point marked by an optimal size of possessions, to slip away from the monopoly rulers into the hands of the dependents as a whole, or, to begin with, to groups of dependents, such as the monopoly administration. The privately owned

20 *The Civilising Process* pp169-170
21 “The peculiar stability of the apparatus of psychological self-restraint which emerges as a decisive trait built into the habitus of every ‘civilised’ human being, stands in the closest relationship to the monopolisation of physical force and the growing stability of the central organs of society. Only with the formation of this kind of relatively stable monopoly institutions do societies acquire those characteristics as a result of which the individuals forming them get attuned, from infancy, to a highly regulated and differentiated pattern of self-restraint; only in conjunction with these monopolies does this kind of self-restraint require a higher degree of automaticity, does it become, as it were, ‘second nature’”, ibid p.369
monopoly in the hands of a single individual or family comes under the control of broader social strata, and transforms itself as the central organ of a state into a public monopoly\textsuperscript{22}.

For Elias, this monopoly emerged not only in the exercise of violence but simultaneously through the emerging monopoly of taxation. He sees in this a financial trend of centralisation made possible by the competition between such social groupings as the nobility and the bourgeoisie but sustained because the sovereign maintained that competition in balance\textsuperscript{23}. Troubled though this process was over time, it was often justified by the need to defend against external threat and it was allowed by the manner in which it was distributed to the benefit of royal favourites. The consequence was the gradual emergence of a central administration to support the centralised exercise of monopolised violence.

There are a number of references that Elias makes to these developments: ‘all these levies were regarded, as we have said, as temporary assistance from society in the conduct of the king’s war; they were \textit{les aides sur le fait de la guerre}’; ‘The kings themselves, however…never adhered very strictly to this demand. They controlled the funds from the \textit{aides} and continued, when they thought it necessary, to meet their own household costs or to reward their favourites from this money. This whole development, this inflow of money to the king’s treasury as well as the establishment of a military force paid from this money, slowly but surely led to an extraordinary strengthening of the central function\textsuperscript{24}; ‘Like a system of forces that has not yet reached equilibrium, society swayed back and forth between the various poles in the struggle for power. It speaks for the social power already possessed by the central government and the royal function at this time, that they were able to make up lost ground with extraordinary speed\textsuperscript{25}; ‘it is above all the disunity of the urban classes themselves which favoured the central ruler…The different towns still confronted each other to some extent like foreign powers; between

\textsuperscript{22} ibid p.271
\textsuperscript{23} This balancing included the preclusion by the sovereign of the involvement of the nobility in the commercial activity of the bourgeoisie, ibid p.337
\textsuperscript{24} ibid p.349
\textsuperscript{25} ibid p.351
them too there was more or less intense competition. The centralization of the army, the monopoly control of taxation had advanced a good distance. The external foe had been driven out, but the army, or at least a good part of it, was still present. It gave the king such internal preponderance that resistance to his wishes by the estates was as good as hopeless, particularly as the exhausted population wanted one thing above all else: peace. Again and again it was the military power concentrated in the hands of the central authority which secured and increased (the king’s) control of taxes, and it was this concentrated control of taxes which made possible an ever-stronger monopolisation of physical and military power. Step by step these two means drove each other upwards until, at a certain point, the total superiority attained by the central function in this process was revealed nakedly to the eyes of its astonished and embittered contemporaries.

The consequence was the emergence of the State as a recognisable entity. He states that “(the king) centralises taxation of the whole country and distributes the inflowing money at his own discretion and in the interests of his rule, so that an immense and ever-growing number of people throughout the country are directly or indirectly dependent on the king’s favour, on payments by the royal financial administration. It is the more or less private interests of the kings and their closest servants which veer towards exploitation of their social opportunities in this direction; but what has emerged in the conflicts of interest between the various social functions, is the form of social organisation which we call the ‘state’. The tax monopoly, together with the monopoly of physical force, are the backbone of this organisation.”

Here, on the one hand in the defence against external and internal threat and on the other in the distribution of largesse to favoured groups, was the embryo of the inextricable link between the absolutist State empowered through submission to eliminate the fear caused
by threat and the complementary condition that its nature be sympathetic. The entity which shows a fearsome face to those who are threatening equally shows a sympathetic face towards those who are fearful but are prepared to become compliant, to say it again, to forgo their self-responsibility.

**Elias and Mythology**

In all this we have Elias’ argument for the inextricable connection between personal fear and the creation of the empowered State as the wielder of monopolised violence. We have such consequential elements as the typically willing but also unwilling subjection of individuals to that entity, here in a systematic manner through the process of civilising as the embedding of non-threatening behaviour, and the emergence of the State as not only fearsome but as sympathetic to those who are regarded as its truest subjects. We have the elaborating web of functionaries, a characteristic of the increasing monopolisation of power, that constitutes the dispersal of the increasingly fearsome entity across social space. We have the creation of spheres of activity from which the entity conditionally withdraws, in particular the economic and theological, although this occurs without the entity forgoing its responsibility to strategically maintain the balance of power between social groupings, thereby sustaining itself as an entity and limiting the fear which emerges from competition between them over the nature of who should be fearful, and why, and who should experience sympathy. This is always on the basis of membership of or alliance with the empowered entity. Thereby we also have the effective incremental gaining of control of the entity by alliance. Thus we have the bourgeoisie joining the aristocracy as a dominant interest. We also have all this in the context of the slow refinement of these arrangements, extended long over time. These elements are the foundation of a covenant between sovereign and subject, the basis of which is a balance of power held in place by the covenant of mutual dependence which founds it as relational in nature.

These elements are also the fundamentals of political mythology. These are the moves that are made in the attempt to establish the archetypal magnitude. While it certainly
could not be argued that there was any conscious determination by Elias to acknowledge, let alone to explain the realisation of, such a political mythological archetype, it can be argued that the evidence that he collects and even the manner in which he patterns the connections across this evidence reinforces the argument that existential anxiety disposes mankind to creating a mythological magnitude in the form of the State. To that extent at least, Elias is beginning to show how it is that the disposition to mythologise is played out across social space. That is, how existential anxiety, commonly made material as fear of other individuals, is dealt with by creating an entity, through the forgoing of self-responsibility, that claims to be both fearsome and sympathetic. In Elias, these elements are brought together in the act of civilising from the child’s earliest age so that fear and aggression can be internalised. Fearsome individuals are dealt with by training them in practices that are no longer threatening. Only an entity that monopolises violence, even though it may act through agents and allies, can ensure the sustenance of the regime of training that does so. The same dynamic applies to the increase in sympathy through enhanced productivity. Elias can be seen to contribute, no doubt unwittingly, to a psychology and a sociology of mythology because for him ‘The structures of the human psyche, the structures of human society and the structures of human history are indissolubly complementary, and can only be studied in conjunction with each other’\textsuperscript{31}. But Elias is not one who understands this process as one of the elaboration of myth. For him, civilising is a sign of the progress in human existence which is the elimination of myth. Consequently, we do not get from him any sense of deep existential anxiety as the foundation of fear, either in the early history of man or even in the life of every individual, except perhaps in the early history of primitive man, since for him fear typically appears to be socially induced. As a consequence, there is no strong sense that civilisation can be visited on or even embraced by the willing individual. It might be noted, as an aside, that this thesis does not claim that subjection is always willing, since competition will always produce dominant forms of civilisation that are then imposed on the unwilling, both within and outside a particular jurisdiction. There is not in Elias, therefore, the complementary strong sense that social groups, despite being prepared to

\textsuperscript{31} R. van Krieken p.60
do so, willingly forgo their sovereignty to the king or State, since for him the emphasis is on an opportunistic intervention by the sovereign to push his interests between the competing groups who are merely seeking favour. He does not, but he might have taken the short step from what he does argue by concluding that it was the fear drawn from that competition which led to a ready subjection to sovereign power so long as the sovereign displayed sympathy towards them.

Consequently, Elias does not acknowledge, let alone argue for, the mythological nature of the State. On the contrary, he sees it as emerging through the natural processes of competition and consolidation, but significantly traceable to the fear that existed in uncivilized life. But it is arguable that these processes of competition and consolidation are attempts to establish political arrangements the effect of which was to eliminate fear through the construction of an empowered entity and the subjection of individuals to it through civilising. Of course, being arguable is not enough to make it compelling as a way of looking at such matters. What would make it compelling is if this approach is found to be more illuminating than others in explaining complex social realities. This mythological understanding is in fact applied in the penultimate chapter of this thesis to such a reality, the destruction of traditional Aboriginal culture by the British colonial power. It will be argued that this application shows the mythological understanding to be more illuminating in that sense.

It is therefore open to refer this process to a disposition in man to create an archetypal arrangement which is mythological in nature. Further, that the many trials experienced in establishing this were characteristic of the caution that inevitably results from contributing to an arrangement to which, in this mythological referral, one must forgo one’s self-responsibility.

Neither is there reference in his work to the notion of individual rights, which shall be considered below as mythological notions wherever they come at the cost of self-responsibility. This absence is hardly surprising given the historical period of his analysis and the purpose for which he undertook this analysis. Nonetheless, he does identify the
emergence of the elements of individuation generated by the civilising process, which is
strongly influenced in its construction by the process of monopolisation of violence and
fiscal management which was for him the foundation of the State\textsuperscript{32}. That is, without me
drawing too long a bow, Elias allows for an interpretation that the status of the compliant
and therefore sympathised individual would emerge from and was therefore inextricably
bound up with both the nature of the empowered State and its behavioural prescriptions.
That is, the manner of its emergence is through the monopolisation and exercise of
violence and fiscal management. Each of these is a prerequisite for an account of
common individual rights, as shall be argued. What Elias does argue for, and which is not
provided for in the mythological model so far, is the notion of habitus as a ‘second
nature’. Such a concept can be used to explain why it is that individuals do not strain to
extricate themselves from such subjection, that is beyond the acquired belief that they can
live an existence free of fear: there is no highly conscious realisation by individuals of the
state in which they exist so long as such subjection allows the sense of peace and
sympathy adequate as to his acquired expectation of the covenant.

\textbf{Resisting criticisms of Elias through mythology}

Beyond the elements that Elias’ work shares with a mythological analysis, it can be
argued that, had he been aware of these elements and adopted the elements of the
mythological framework consistently, the criticisms to which his work has been subjected
would have been less telling. A range of these criticisms are considered by van Krieken
but only those most relevant to this work will be considered here.

The first such criticism leveled at Elias is that to do with human agency, that is that, in
emphasising the blind character of social development, he denies human autonomy and
freedom. His position is defended by van Krieken in two ways\textsuperscript{32}. First he acknowledges
that Elias’ position is vulnerable to a claim by Haferkamp that social development is not

\textsuperscript{32} The Civilising Process p.479
\textsuperscript{33} op cit pp.78-80
blind\textsuperscript{34}, that is that intention and agency can be ascribed to such macro-social actors as nation States, churches or economic organisations. But for van Krieken, this was the position to which Elias was moving in his mature work. Otherwise, he says Elias rejected claims about the effective autonomy of the individual as romantic, except to the extent that there is interweaving of intentional individual action with long-term unplanned social processes. An appreciation of the mythological implications of Elias’ work would bring these apparently unjoined elements together. That is, unplanned social processes and individual autonomy are brought together by emphasising that there is an underlying process of gradual historical refinement of the magnitude to which all individual human beings are disposed over time, so there is no ‘planning’ here except in the sense argued by Haferkamp, which is that there are many examples of micro- or macro-social actors succeeding in their intentions. Within such an historical process, individuals act to realise that outcome, that is they work persistently to refine or accommodate themselves to the mythological magnitude. Such action is not autonomous, however, because they are strongly guided by that individual mythological disposition and by the civilising processes to which they are subjected. Action which did accept fear and worked on social arrangements that avoided the creation and refinement of such a magnitude could be genuinely creative and so more effectively non-mythological without claiming to be autonomous.

The second criticism is that raised by Bourdieu regarding Elias’ emphasis on continuous historical development rather than discontinuities and breaks. For van Krieken, this criticism is easily deflected by recognising Elias’ increasing acknowledgement of counter-trends and the bi-polarity of social processes\textsuperscript{35}. As we shall see in relation to Elias’ analysis of the nature of National Socialism, this combination of trend and counter-trend is also consistent with a mythological analysis. What is of particular interest here, however, is the issue of the degree of transformation in human conduct over time that Elias claims has resulted from the progressive impact of civilising practices. If Duerr is correct in saying that we have more in common than differences with our ‘uncivilised’

\textsuperscript{34} H. Haferkamp ‘From the intra-state to the inter-state civilising process?’ \textit{Theory, Culture & Society} vol. 4 (1987) p.556
\textsuperscript{35} op cit p.80
ancestors, that is that there has not been continuous historical development in this regard, and that the same applies regarding other cultures\textsuperscript{36}, then Elias does have a serious challenge to deal with.

The problem seems to be the question as to which criteria are to be used in deciding what constitutes ‘civilisation’. It doesn’t seem enough to settle, as Duerr does, on the difference between the change in the form of restraint over our bodies and psychic dispositions that undoubtedly occurred from the Middle Ages to now and the change in the effectiveness of that constraint as it moved from external to self-restraint, even though he is correct in making that distinction\textsuperscript{37}. This is because, whether Elias distinguishes them or not, we cannot say whether there was or was not greater restraint. This in turn is because there is no agreed criterion for restraint. Is restraint to be measured by the rate of criminal assault or whether we behave at table with different manners than those of the medieval lumpenproletariat? How we define restraint will then determine whether there has been a change in the extent of civilisation. So we come back to Duerr’s position that what has changed may only be the form of restraint, since that at least is more apparent. That is, Elias seems to have been wrong in claiming progressively greater levels of civilisation over time since the Middle Ages.

However, there may be a sense in which both Elias and Duerr were right. That is, there may be an explanation which sits beneath both positions. If one accepts the mythological argument presented here, then there was a gradual change in the mythological framework within which individuals existed, that is as the theological magnitude was replaced by the myth of State and then itself was progressively refined. This change has been gradual because the two were, and even remain to some extent, allied, although arguably there has been a shift in the center of gravity from one to the other. This shift produces a change in the nature of the relationship between each individual and the magnitude, a change brought about by the nature of that magnitude. That is, God is a myth that cannot be controlled, even by submissive obedience, but He has been gradually but not

\textsuperscript{36} ibid p.119
\textsuperscript{37} ibid p.121
seamlessly replaced by one which can be controlled, the State, through strategic and tactical submission. This argument supports Duerr’s claim that there has been no progress in this change, only a change in the form of restraint. It might be argued that, given the intrusion of an all-powerful God into the psyche of the medieval individual, there is a stronger argument for the internalisation of restraint in the Middle Ages than in the modern, increasingly Godless era in the West.

On the other hand, since the commencement of that shift, Elias could argue that there has been refinement in the means by which individuals are brought to compliance with the behavioural prescriptions sponsored by the modern State. Ironically, Duerr could argue against Elias that the need for this was increased by the gradual disappearance of an internalised God and the need for other means to ensure compliance. It will be argued below that the emergence in the modern era of the disciplinary and governmental regimes, described by Foucault and others, can be seen to have been one means by which this refinement has occurred. The effect of such regimes in terms of compliance or tractability can be seen as refinement or, in the terms of Elias, as progress in civilisation, so long as progress is not related to any absolute but is merely a gauge of the establishment of a level of compliance, made easier by the individual’s desire for the elimination of fear. As has been indicated, this is not to claim that there has been a neat separation brought about by this shift, since theological forces have attempted to sustain their interests by alignment with the State. One example of this has been the subjection of indigenous people to a regime which was governmental, disciplinary and theological, as we shall see in the penultimate chapter.

The mythological framework also allows for a better account of so-called decivilising tendencies than one which sees them as the ‘dark side’ of civilisation. This framework would explain why Breuer is correct in stating that civilising and decivilising are different sides of the same coin, ‘always developing hand in hand’.38 However, beyond Breuer, it is unhelpful to see decivilising as some ‘dark side’ of civilisation, say in the way that Cassirer explores this issue. A mythological explanation may be helpful in

38 ibid p.126
understanding the emergence of such social catastrophes as National Socialism, a study undertaken by Elias. This is not the place to divert into an analysis of National Socialism but it might be said that, looking at it mythologically, it may be seen as the consequence of a profound subjection to arrangements of State which fail to deliver the conditions expected of the real, mythological covenant. The response, consistent with the willingness to be subject, is not to reform the State but to look towards an alternative leadership which promises to deliver the elimination of fear and more widely sympathetic conditions. It may then be helpful to look at the barbarism of the National Socialists not, as Elias claimed, as the breakdown of civilisation but as the destruction of an ineffectual pre-Nazi German State that was not sufficiently absolutist to minimise fear and to give sympathy to the compliant, and its replacement with one that claimed it would do so. If Elias had understood the mythology of much of his psychology and sociology, we would not have had to wait for *The Germans* for better balance in his analysis. It is this lack of appreciation of the barbarism which is necessarily at the heart of every mythological nation-State, due to the restraint-enforcing empowerment that draws from universal subjection, that leads van Krieken to require modification of his account of State formation. From this, van Krieken correctly identifies the significance of this for colonial activity.

Finally, Elias has been challenged on the connection between civilising and State formation. By placing his work in a mythological context, he can be defended against such challenges. For example, it is misguided for van Velzen to use his account of the Djuka civilisation, for whom marriage rather than state-formation forms the basis of complex social interdependency, against Elias. This is because the Djuka appear to display many of the characteristics of a society which has avoided mythologising the State, while Elias can be argued to be identifying many of the features of a mythological arrangement of the State. That is, the Djuka appear to have developed the capacity for self-restraint through processes of continuous negotiation between equals without subjecting themselves to an empowered entity to enforce such restraint. They have a non-mythological society, to that extent. None of this weakens the value of the connection

---

39 ibid p.132
that Elias made between processes of promoting social restraint through the creation of an empowered entity, that is, within a mythological framework. As an unintentional ‘unconcealer’ of the dominant, mythological arrangements of State, Elias would not have to undertake ‘significant reconstruction’ of his account of the civilising processes, as van Krieken suggests. This does suggest, however, that Elias would have done better to have avoided using the term ‘civilisation’ about such processes of restraint production, in particular as it implies superiority in relation to other cultures which, as in this aspect of Djuka society, was clearly not inferior in this regard. Doing so would have made Elias less vulnerable to criticism. In particular, he would have avoided any suggestion that he accommodated some notion of a presocial nature, perhaps of the Hobbesian kind, and, if he had seen the mythology, he would have seen instead a universal and timeless existential anxiety. This anxiety did not pass the Djuka by. They dealt with it through non-mythological social arrangements.

It is in this context that van Krieken raises another criticism of Elias, that is the validity of the link between State formation and processes of civilisation, ‘and the role of other social processes, such as the development of market economies, family forms, systems of cultural and religious beliefs’. In this context, van Krieken refers to comments by Breuer to the effect that market economies may require greater foresight, as Elias suggests, but they also decompose social relations. That is, competition both integrates social units and atomises the individual. Another approach would be, within a mythological framework, to see dominant forces of the market, encouraged by the withdrawing but still active State, as allying themselves to the State as a means of colonising it. For this purpose they support social consolidation, and, when after reaching a position of dominance over the State, complementing that with atomisation for the purpose of exploitation. Family forms, on the other hand, would be seen within the mythological model as a primary means of establishing habitus and then ensuring its evolution in a manner consistent with those interests who through competition and colonisation come to a position of dominance over the institutions of the State. This role

40 ibid p.131
41 ibid p.119
of the family is acknowledged by van Krieken as central to Elias’ argument. Similarly, religious and cultural groups display an affinity to the State as a mechanism by which their own interests can be established, protected and proliferated.

Placing Elias’ work in a mythological framework would also relieve it from the stress of explaining the relational nature of power in the highly improbable terms of a balancing act. Such a balance seems too precarious to be sustained without some other stabilising factor keeping the elements in balance. A more satisfying explanation of this relationship would be to see it in terms wherein all parties, including the sovereign as occupant, need the magnitude to objectify anxiety, including the generalised sense of threat posed by the presence of other individuals, into a fear that can thereby be managed and which can provide an orderly means to secure sympathetic conditions through competition. In such circumstances, it would be counter productive to dispense with the sovereign, since there would be no entity to fulfill this dual role. Such an explanation would also assist Elias to explain why social groups, increasingly including the bourgeois, were prepared to submit themselves to the stringent controls of body and emotion, including through manners and etiquette, necessary to have themselves incorporated into such an arrangement. Neither the search for economic advantage through competition nor the need for prestige would do it in the first instance but the power of fear and the strong desire for its elimination, along with the creation of what would be regarded as sympathetic conditions of existence, would.

**Implications**

What all this points to, at the very least, is that, in relation to the emergence of the modern State, there are not two parallel processes going on, one in ideas and one in social practice, but two aspects of the same process. Just as the violent competition between knights and the emergence of the bourgeoisie towards the end of the Middle Ages induced the civilising process and drove European society towards the establishment of nation States, with a monopolisation of violence intended to mitigate violence and create

---

42 ibid p.154-155
sympathetic conditions of existence, political theorists like Hobbes, operating in the violent political wake of the Reformation, reconciled the disparity between various theoretical positions to come to the same conclusion, that is that an absolutist State was the solution to potentially anarchic political circumstances. That there have been these parallel processes supports a view that there has been a disposition in man, revealed as much in his practical politics as in his theoretical analysis of conceptual politics, for the creation of mythological magnitudes. It is immaterial to the argument presented here that the consolidation of the court and civilising processes had been underway before the Reformation of the sixteenth century, that is before the absolutism of the State began to fill the vacuum created by the disintegration of the absolutist theological myth. Without the effect of the already-ongoing consolidation of the courts\textsuperscript{43}, the absolutist State would have been unavailable as an idea to fill this vacuum. Further, those processes certainly continued, overlapping and mutually informing, well after the emergence of such States\textsuperscript{44}.

We will now examine the processes of governmentality and discipline, which Foucault exposes, as means by which this dispersal of the political mythology into the lives of men and women became increasingly refined, especially from the seventeenth century but up to the present.

\textsuperscript{43} The Civilising Process pp.258-260
\textsuperscript{44} ibid pp.170-171
Chapter 10 – Governmentality, Discipline and Certainty: Foucault and Wittgenstein

From his examination of medieval court practices, and focusing in particular on the fifteenth and sixteenth centuries, Elias has given a strong pointer to the primary importance of fear in the emergence of the early modern State. He does this by looking at the generation of fear-mitigating practices, the monopolisation of violence and at the purpose of taxation by the sovereign court. Through the proliferation of these practices at court and by the bourgeoisie, we begin to see both the early stages of the consolidation and dispersal of the political mythology and its colonisation by dominant interests<sup>1</sup>.

However, as with the idea of the State itself, the evolving embodiment of this idea reached a point where the engagement of the people generally was needed for that idea to be firmly and widely established and its fragility strengthened. As we saw in Part 2, this lack of engagement was what Rousseau saw as the flaw in the Lockean amendment to the Hobbesian conception of the Leviathan. Through a mythological lens, this was also the point at which, given the disintegrating theological myth, the State as a set of institutional arrangements could emerge to fulfil the disposition of individuals to subject themselves to an entity which would address the fear/sympathy nexus. Although without mythological intent, Rousseau also saw that this embodiment of a new idea of the State needed to be both wide and deep, wide across social space and deep within the lives of individuals. By the time we get to the seventeenth and particularly the eighteenth centuries, we do see that the methods of social engagement and consolidation are beginning to become far more strategic both in form and in social range.

What was required for the embodiment of the idea of the political myth of the State to be fulfilled was such a strategic approach. Its effect needed to be that each individual was

<sup>1</sup> The notion of dominant interest used here is not the concept of a power elite as argued by such elite theorists as C. Wright Mills. Here the primary emphasis is on the complex manner in which individuals contribute to the creation and sustenance of the mythological institutional framework, to which they forgo their self-responsibility and then which interests come to competitively dominate. The focus here is therefore not primarily on that framework and those interests. That is, the argument here is about the inextricable combination of all these elements rather than just the latter. See B.Hindess *Discourses of Power* pp.3, 27
both fearful only of the State and satisfied about his conditions of existence, so was willing to forgo his self-responsibility to empower it. This would be the fulfilment of the disposition to realise the archetypal myth politically. Although he would have rejected any notion that he contributed to an understanding of the State as mythological, it is the interleaved strategies of governmentality, discipline and individuation which Foucault unmasks that are properly seen as principal means by which the idea of the mythological State is more widely and more deeply dispersed. Such dispersal would consolidate the willing forgoing of self-responsibility and thereby fulfil this disposition. As does Elias, Foucault shows how, through the common conceptual and material connections between the State and government, the idea of the mythological State has been dispersed across social space and thereby consolidated. That is, this thesis makes the first claim that, beyond the evolution of the idea of the mythological State, there has been a long-term evolution of a process by which the idea of the mythological State has been embedded in the lives of individuals. However, a second, more fundamental claim is made here, that the pervasive nature of the mythological disposition has shaped both the evolution of that idea and its embedding. The three interleaved rationalities that Foucault unmasks have taken the form, and have the features they do, because they have been shaped by mythological disposition and thought. Their function has been to realise in material practice the fearsomeness of the State and the strategies to deal with the fear/sympathy nexus, so that individuals will forgo their self-responsibility for its empowerment. As a consequence, the nature of liberalism, as a mythological strategy, as well as its evolution into neo-liberalism will be argued to be a demonstration of the nature and evolution of the embedding of the idea of the State which has been as much shaped by mythology, as have the nature and evolution of that mythological idea from Hobbes to Rawls. Given the previous analysis of republicanism, the same claim is made regarding the thought of Pettit.

This chapter first undertakes an examination of the unmasking by Foucault of these three rationalities and then argues for their sympathy with Blumenberg’s account of the dispersal of myth, as explored and amended in this thesis. In effect, they reveal the means by which the idea of the post-theological mythological State is dispersed and embodied in
the lives of individuals. To illustrate the value of this argument, two fields of embodiment, citizenship and the perception of other cultures, are then examined briefly. The chapter then looks at Wittgenstein’s account of certainty and argues that Foucault’s focus on normalisation is properly seen in that context. In sum, the argument is put here that there is harmony between the amended thought of Blumenberg and that of Wittgenstein, so that it can be said that the conceptual work of Blumenberg is complemented by the ontology of Wittgenstein and that both are materialised by the rationalities that Foucault unmasks.

Dimensions of Post-Medieval Embodiment

What will be seen from the work of Foucault is that the process of embodiment, from the early post-medieval period and continuing thereafter to the present, has occurred at least in three related dimensions. First, although his analysis of it came after that of discipline, was what he saw as the new art of government of a population; second was the spread of disciplinary techniques from their pastoral origins into a broader and more rigorous organisation of individual space, time and activity for the purpose of producing docile, useful bodies; and third was the formative impact of these rationalities on the subjectivity of the individual. These should not be seen as three separate strategies but as three lenses through which to look on the same object, which is the conduct of conduct, as he puts it\(^2\). Of these, governmentality is the strongest lens and so receives a more extensive consideration here. Discipline and individuation are most fruitfully seen in the context of governmentality. Foucault saw each of these very well, although he would have rejected any mythological significance. But they are properly seen in a mythological context, so that together they show not only how the idea of political myth of the State is embodied but also how and why it has evolved as it has.

\(^2\) see C. Gordon *Governmental rationality – an introduction* in The Foucault Effect p.2
The Art of Government

The insights of Foucault most relevant to the arguments presented here are found in his analyses of the art of government and of discipline\(^3\), methods by which the management of the continuum of population, the individual and the self are sought and by which practices that realise the dispersal of the idea of the mythological State are embedded in the lives of individuals. In this section, we shall look at his analysis of governmentality, also at what he sees as its manifestation in liberalism.

For Foucault these rationalities are not anchored in a conception of the State as an entity, so he cannot be seen to argue that they are methods applied by the State to reinforce any privileged position for itself. In fact, for him the State does not have a unity of rigorous functionality but is a ‘composite reality and a mythicised abstraction, whose importance is a lot more limited than many of us think. Maybe what is really important for our modernity – that is, for our present – is not so much the *etatisation* of society, as the ‘governmentalisation’ of the state\(^4\). His new approach to government is therefore distinguished by him from a focus on the State as such. His is a concern about the practice of government rather than primarily with the power of the prince or sovereignty, the institutions and the territorial integrity of the State. The activities of government cannot for him be deduced from any essential properties of the State, ‘in particular its supposed propensity to grow and to swallow up or colonise everything outside itself. Foucault holds that the state has no such inherent propensities; more generally, the state has no essence. The nature of the institutions of the state is, Foucault thinks, a function of changes in practices of government, rather than the converse\(^5\). Further, ‘Foucault does not say that legitimation theory is empty (though in a lecture he does call the social contract a bluff and civil society a fairy story); but only that a theory of the legitimate

---

\(^3\) These two rationalities will not be considered in the temporal order in which Foucault analysed them. His *Governmentality* was produced well after *Discipline and Punish*, following the objections raised by Marxists and others that understanding discipline failed to address the global relationship between society and State (see C. Gordon p.4). The issue of the sequence of his analyses is not important for this thesis, as it is the combined effect of these two rationalities that is taken to be mythologically significant. In fact, discipline is best understood in the context of governmentality, which is therefore considered here first.

\(^4\) M. Foucault *Governmentality* p.103

\(^5\) C. Gordon *Governmental rationality: an introduction* p.4
basis of sovereignty cannot be relied upon as a means of describing the ways in which power is actually exercised under such a sovereignty.\(^6\)

It is in this broad context that Foucault’s new approach, outlined in his 1978 lecture *Governmentality*, should be seen. As with the mythological account of the State, the seeds of governmentality are found in the demise of the unitary theological myth. One key outcome of this demise was the proliferation of Christian pastoral power, which found its field of operation in a State form increasingly autonomous from the cosmo-theological order. For Foucault, this power gained its form in the science of *police*, which spread to touch the existences of its individual members and their conduct. Against this background, he states that governmentality should be seen as comprising, first, the ensemble formed by the institutions, procedures, calculations and tactics which has population as their target, political economy as its form of knowledge and security as its technical means; second, the long-term and widespread tendency to make pre-eminent the form of power called government, resulting in the formation of its apparatuses and forms of knowledge; and third, the process through which the State of the Middle Ages began to be governmentalised.\(^7\) That is, governmentality comprises a range of tactics whose function is to manage a population, with emphasis on political economic and security considerations.

In that lecture, Foucault sees this new approach as emerging from the Christian pastoral, from the seventeenth century notion of *police* and from a diplomatic-military technique perfected in a Europe-wide context with the Treaty of Westphalia.\(^8\) It is significant, given that it is one argument of this thesis that the modern State emerged from the disintegration of the unitary theological myth, that Foucault sees governmentality as having emerged from the crossroads of two processes. These are ‘the one which, shattering the structures of feudalism, leads to the establishment of the great territorial, administrative and colonial states; and that totally different movement which, with the Reformation and Counter-Reformation, raises the issue of how one must be spiritually

\(^6\) ibid p.7
\(^7\) *Governmentality* pp.102-103
\(^8\) ibid p.104; regarding this concept of police, see C. Gordon pp.10-12
ruled and led on this earth in order to achieve eternal salvation”9. Unlike Foucault, this thesis sees these as connected events.

He proceeds to describe the art of government as enclosing the rule of the State but also the economic art of governing a family and the moral art of self-government. The consequence is that the theory of sovereignty, keen since Machiavelli to draw a line between the power of the Prince and other forms of power, becomes a broader art of government10. Territory is thereby no longer the primary definition of government, which now becomes the relation of men with wealth, resources, climate, irrigation, customs, habits, ways of acting and thinking, famine, epidemics and death11, that is its function is to embed preferred individual practices and to enhance conditions of existence. Government of the population, both in the broad and in detail, can be seen as conceptually separable from sovereignty, which despite its other aspirations is in the end a self-referential submission to authority of law. For Foucault, government has a plurality of aims constituted by those relations. Tactics of disposal of things become more important than law in itself12.

Foucault continues by arguing that, as for this thesis, the art of government should be seen as forming in the late sixteenth century around the theme of *raison d’etat*, the rational principles intrinsic to the state. The work of Elias was revealing in that regard. However, unlike the argument to be put here, “until the early eighteenth century, this form of ‘reason of state’ acted as a sort of obstacle to the development of the art of government”13. For him, there was an attempted reconciliation between *raison d’etat* and governmentality in the development of contract theory by seventeenth century jurists, but

---

9 ibid pp.87-88
10 ibid pp.90-92
11 ibid p.93; he continues at p.95 ‘government will have to ensure that the greatest possible quantity of wealth is produced, that the people are provided with sufficient means of subsistence, that the population enabled to multiply etc’ and at p.100 ‘government has as its purpose not the act of government itself, but the welfare of the population, the improvement of its condition (my emphasis), the increase of its wealth, longevity, health, etc; and the means that the government uses to attain these ends are themselves all in some sense immanent to the population; it is the population itself on which government will act either directly…or indirectly’;
12 ibid pp.94-95
13 ibid pp.96-97
the case of Hobbes showed that it remained a formulation of the general principles of public law ‘even though what Hobbes was aiming to discover was the ruling principles of an art of government’\textsuperscript{14}. For Foucault, the opportunity to resolve this impasse came with the eighteenth century expansion of demography, money and agricultural production. Population became the problem to be addressed.

For him, population presented itself as having its own regularities, irreducible phenomena and economic effects, and in this the family becomes an instrument for its government\textsuperscript{15}. As he points out, population becomes the end of a form of government which focuses not on the sovereign act of government \textit{per se} but on the welfare of the people \textit{in toto}, its wealth and health and so on. This is a concern for the embedding of sympathetic conditions of existence. He proceeds to argue that this focus on the macronomics of power is a response to the aspirations of the population, ‘of what it wants’, but not of the methods and tactics employed to deliver these, so it is ‘ignorant of what is being done to it’\textsuperscript{16}. This is a key claim by Foucault and we shall return to it shortly, in disagreement. Importantly, he does not claim that this shift to government of the population marks the end of sovereign power. He says that ‘the problem of sovereignty was never posed with greater force than at this time’\textsuperscript{17}. Here is the place he finds for Rousseau, in two ways: apart from his view that political economy can no longer be reduced to the old model of the family, Rousseau argues in \textit{The Social Contract} about the means whereby there might be government which allows for both sovereignty and the art of government, using nature, contract and general will.

Finally in \textit{Governmentality}, Foucault points out that the new art of government is the proper context within which to understand the rationality and practice of discipline: ‘discipline was never more important or more valorized than at the moment when it became important to manage a population; the managing of a population not only concerns the collective mass of phenomena, the level of its aggregate effects, it also

\textsuperscript{14} ibid p.98
\textsuperscript{15} ibid pp.99-100
\textsuperscript{16} ibid p.100
\textsuperscript{17} ibid p.101
implies the management of population in its depths and its details’. He continues ‘Accordingly, we need to see things not in terms of the replacement of a society of sovereignty by a disciplinary society; in reality one has a triangle, sovereignty-discipline-government, which has as its primary target the population and as its essential mechanism the apparatuses of security…Three movements: government, population, political economy, which constitute from the eighteenth century onwards a solid series, one which even today has assuredly not been dissolved’\textsuperscript{18}. This statement complements the mythological analysis, as we shall see.

We shall look at discipline shortly, but many of the themes of governmentality - pastoralism, police, political economy, wealth, security, population management and social contract, as well as the relationship between these and sovereignty - are connected in Foucault’s analysis of liberalism, a key manifestation for him of the emergence of governmentality. It is useful to look at his account of liberalism because it helps an understanding of the connection between the triangular connection of sovereignty-discipline-governmentality. With his emphasis on the dynamic of the latter two of these, it is his notion of liberalism which is the context in which sovereignty – and its relationship to the State – can be best understood. But not as a notion that, as it does for him, despatches the State to the status of a ‘mythicised abstraction’. In fact, it is one which affirms the place of the State as a mythological entity.

Specifically, for Foucault and his colleagues, liberalism should be seen as realising a number of themes which are connected, although not always compatible. This incompatibility might present liberalism as unharmonious but he can often explain this. Where he cannot, mythology can do so. The first is the recognition, one might say from the late seventeenth century of Locke, of the finitude and so the limit of the State’s power, realised in the doctrine of \textit{laissez faire}\textsuperscript{19} but which is still consistent with the notion of \textit{police} or the management of an entire population. The second is that liberalism

\textsuperscript{18} ibid p.102
\textsuperscript{19} C. Gordon Governmental Rationality: an introduction p.17
is concerned with prosperity\textsuperscript{20}, and thereby with both liberty and the enforcement of security which is its protection\textsuperscript{21}. For Foucault, prosperity is the capacity to establish and enhance a global level of existence and what is required for that is a concern for security, a ‘holding out’ of the State over an indefinite span of time. It is this concern for security which is then a condition for the emergence and sustenance of liberty. The third is that individual interest denies that Lockean social contract theory can be definitive: there is a radical discord between the economic and the juridical register\textsuperscript{22}. Foucault sees these as rationalities that are dissonant. Fourth, for the Foucauldian Donzelot, the Benthamite Panopticon, an architecture of universal surveillance that we shall examine shortly, is not only a framework for disciplining individual bodies but is also dispersed through delegation to commercial interests as a technique for increasing economic production\textsuperscript{23}. Fifth, the emergence of the pauperized masses constituted a palpable threat and so required political incorporation\textsuperscript{24}. Sixth, it is civil society which for Foucault carries much of the responsibility of situating all these ‘as relative moments, partial aspects of a more englobing element’\textsuperscript{25}. Finally, emanating from that, liberalism evolves into neoliberalsm, wherein the responsibility for the adoption of docile and productive behaviour transfers from the State to the individual, the process of self-creation promoted by the increasing importance of the market\textsuperscript{26}.

Through these themes, the picture of the liberal State from the seventeenth century is not only that it begins to withdraw from economic management into a regulatory role and endows both enterprise and market with the function of governmental infrastructure\textsuperscript{27} but that, while retaining its function in training, management and enforcement, it shepherds the institutions of civil society in the assembly of a generally coherent and productive

\textsuperscript{20} ibid p.19. Further, Adam Smith’s \textit{Wealth of Nations} and his Edinburgh lectures are seen by Gordon as placing ‘political economy as falling within a branch of the art of legislation, namely police’, p.16

\textsuperscript{21} ibid p.19

\textsuperscript{22} ibid p.21

\textsuperscript{23} ibid p.25

\textsuperscript{24} ibid p.31

\textsuperscript{25} ibid pp.22-23

\textsuperscript{26} See C. Gordon p.41ff; Hindess provides an analysis which connects and emphasises the external function of liberalism, that is outside the jurisdictions in which it evolved, and the emergence of neo-liberalism. See \textit{Liberalism – What’s in a Name}, Technical Report, First Semester Seminars, Electronic Papers 2002, Political Science Program, RSSS ANU pp.8-10

\textsuperscript{27} op cit p.26
social field. This is effectively the issue of the redefinition of the role of civil society and
the State\textsuperscript{28}, which is now to be at once activist and disengaged, in that the ‘social’
designates a field of governmental action operating between the discrepancies of
economy and society to produce a politics of prosperity: the State stands back but
becomes a guarantor of progress\textsuperscript{29}. By the twentieth century, with the evolution of
liberalism into its neo-liberal forms, the working class concedes increased productivity
and abandons its syndicalist demands for self-management in return for improved wages
and working conditions\textsuperscript{30}. As Gordon states: ‘The fulfilment of the liberal idea in
government consists…in a recasting of the interface between state and society in the form
of something like a second-order market of governmental goods and services. It becomes
the ambition of neo-liberalism to implicate the individual citizen, as player and partner,
into this market game’\textsuperscript{31}. We shall look at the significance of these themes shortly.

**Discipline**

Despite the temporal sequence in which the respective works were produced by Foucault,
discipline is best seen in the context of governmentality. It nicely complements the notion
of management of the population, operating both in the broad and at the level of detail,
especially given Foucault’s emphasis on the manner in which pastoral power, which is
central to the emergence and nature of governmentality, is concerned with the life of each
individual. Discipline emphasises, rather than mere care, the preparation and supervision
of each individual to ensure his harmonious and useful place within the flock. It affirms
both the micro and the macro within governmentality.

\textsuperscript{28} ibid pp.28-29; also pp.31: ‘1848 and 1871 make spectacularly evident to an anxious bourgeoisie the
danger represented by the indiscipline, the asocial autonomy, of the pauperised urban masses. Urgent
efforts are addressed to the reconstruction of the population of the poor according to a model of collective
economic citizenship: the social incorporation of the working class as an element of the body politic’, and
p.32, where Gordon assesses the changing approach under the Second and Third Republics, whereunder
law, and therefore right, becomes an expression of society as the autonomy of the individual is questioned
and intermediate bodies (familial, commercial, professional, political, religious) re-emerge as the
foundations of civil society and of citizenship as a subject of right. See also pp.39-40 where Gordon
considers how social threat is converted into an actual reduction of social risk by encouraging the working
class to adopt the bourgeois ethic of individualised risk reduction.

\textsuperscript{29} ibid p.34

\textsuperscript{30} ibid p.35; the place of the Keynesian welfare State is also located in this arrangement

\textsuperscript{31} ibid p.36
Foucault argues that these new strategies interested those in the eighteenth century because of several factors: the scale of control was now possible at the individual level, ‘obtaining holds upon (the body) at the level of the mechanism itself - movements, gestures, attitudes, rapidity: an infinitesimal power over the active body’; the object of the control could now be ‘the economy, the efficiency of movements, their internal organisation’; and the modality ‘implies an uninterrupted, constant coercion, supervising the processes of the activity rather than its result and it is exercised according to a codification that partitions as closely as possible time, space and movement’. He then makes the point that pre-existing disciplinary methods became general formulas of domination and docility from the seventeenth century\(^{32}\). In effect, discipline emerged in the factory, the barracks, the school and the prison largely from the pastoral institutions, dispersing across social space while being adapted to these other contexts\(^{33}\). It was an adaptable but very intensive rationality that organised space, time and activity as a matrix to manufacture the individual as docile and productive.

Discipline works not only directly by training the individual body but also indirectly through surveillance. That is, to complement the production of docile bodies, discipline employs techniques of hierarchical observation to allow the application of normalising judgment. Within the factory and the prison, this is achieved through an architectural design that allows wide observation from a central point to identify unacceptable behaviour, for example laziness, fraud, lateness, lack of cleanliness, idle chatter, 

\(^{32}\) My emphasis. Further, “These methods, which made possible the meticulous control of the operations of the body, which assured the constant subjection of its forces and imposed upon them a relation of docility-utility, might be called ‘disciplines’. Many disciplinary methods had long been in existence - in monasteries, armies, workshops. But in the course of the seventeenth and eighteenth centuries the disciplines became general formulas of domination…The historical moment of the disciplines was the moment when an art of the human body was born, which was directed not only at the growth of its skills, nor at the intensification of its subjection, but at the formation of a relation that in the mechanism itself makes it more obedient as it becomes more useful, and conversely…Thus discipline produces subjected and practised bodies, ‘docile’ bodies…disciplinary coercion establishes in the body the constricting link between an increased aptitude and an increased domination”, *Discipline and Punish* p.137-138

\(^{33}\) “the mechanisms (of the disciplinary establishments) have a certain tendency to become ‘de-institutionalised’, to emerge from the closed fortresses in which they once functioned and to circulate in a ‘free’ state; the massive, compact disciplines are broken down into flexible methods of control, which may be transferred and adapted…On the whole, therefore, one can speak of the formation of a disciplinary society in this movement that stretches from the enclosed disciplines, a sort of social ‘quarantine’, to an indefinitely generalisable mechanism of ‘panopticism’”, ibid pp.211, 216
indecency, in fact any breaches of rules. The standard that defined unacceptable behaviour was normalising judgment\textsuperscript{34}. This search for knowledge of the individual extends beyond the institution’s walls into the general community, allowing the “emergence of ‘population’ as an economic and political problem: population as wealth, population as manpower or labour capacity, population balanced between its own growth and the resources it commanded. Governments perceived that they were not dealing simply with subjects, or even with a ‘people’, but with a ‘population’, with its specific phenomena and its peculiar variables: birth and death rates, life expectancy, fertility, state of health, frequency of illnesses, patterns of diet and habitation’ \textsuperscript{35}. That is, discipline and governmentality are seamlessly related.

Discipline is driven by the function to normalise, to set standards from a premise of formal equality between individuals, which leads to homogeneity and thereby conformity. This in turn allows ever finer differentiation and individuation through examination and through the compilation of dossiers. This is the sense in which Foucault asserts that the modern individual is thereby constructed\textsuperscript{36}. That is, normalising is the setting of standards for the regimes which embed productivity and docility, regimes to which individuals are subject. These techniques of power-knowledge are applied not only within such institutions as factories and prisons but, regarding the latter, in their supplementary regimes, such as community-based programmes of parole supervision and through police practices of surveillance. In fact, these extra-institutional programmes are best understood not as less intense applications of the disciplinary strategy but as essential elements of a programme of discipline which is co-extensive with what is conceived as the criminal sub-culture within and without the prison walls. The issue of crime control is clearly of immediate interest in the strategy to eliminate fear. These extra-mural activities complement the dispersal of ‘positive’ practices, such as are found

\textsuperscript{34} ibid pp.177-178; regarding the nature of normalising judgment, see H. Dreyfus and P. Rabinow Beyond Structuralism and Hermeneutics p.198 where Foucault’s sense of normalising is described as operating ‘by establishing a common definition of goals and procedures, which take the form of manifestos and, even more forceful, agreed-upon examples of how a well-ordered domain of human activity should be organised’

\textsuperscript{35} M. Foucault History of Sexuality - Volume 1 p.25
\textsuperscript{36} M. Foucault Discipline and Punish pp.181, 190, 191, 211;
in schools and factories. Recognising these emergences is not a claim that these techniques are effectively all-pervasive in the sense of being totalitarian, as we shall see.

The paradigmatic realisation of this programme is for Foucault the Benthamite Panopticon: ‘a generalisable model of functioning; a way of defining power relations in terms of the everyday life of men…It is polyvalent in its applications’\(^{37}\). Its architectural lines of sight extend across social space, not only to manage criminality but also in ‘factory production, the transmission of knowledge, the diffusion of aptitude and skills, the war machine’\(^{38}\). In all this, Foucault is identifying the Panopticon as ‘the diagram of a mechanism of power reduced to its ideal form; its functioning abstracted from any obstacle, resistance or friction, must be represented as a pure architectural or optical system; it is in fact a figure of political technology that may and must be detached from any specific use’\(^{39}\). That it was embedded in, among such other spaces as factories and schools, prison design and operation is confirmed by its acceptance within English and therefore Australian penal administration\(^{40}\), a matter that we will see has been of no small significance in the management of Aboriginal people.

**Individuation as Subjectivation**

Foucault is therefore clear that the impact of the rationalities does not remain at the level of the population generally. But this impact on the lives of individual men and women is broader than that which derives from either the institutional organisation of space, time and activity or from the surveillance-normalisation nexus. This impact also emanates from the programme of governmentality itself, which therefore acts at both the general level and at the level of detail. It is this latter we shall now examine.

The first point to be aware of is Foucault’s argument, referred to above, that the individual impact of governmentality was born largely out of the archaic Christian

---

\(^{37}\) ibid p.205  
\(^{38}\) ibid p.211  
\(^{39}\) ibid p.205  
\(^{40}\) See L.W.Fox *The Modern English Prison* pp.61-62; I. Brand *The Separate or Model Prison, Port Arthur* pp. 24-30, and D. Grant *Prisons - The Continuing Crisis in New South Wales* pp.34, 62
pastoral⁴¹ and that this was a technique to transform human beings into subjects⁴². In this regard it should be stated that the value of pastoral power after the demise of the unitary theological myth brought by the Reformation should not be understood to imply that the State or its practices are to be seen as filling the role of a secularised Christian entity. As we saw in chapter 2, there was a mirror-image correspondence between theological and political absolutism and there was the adoption of qualities of absolute (divine) authority through a process of inducement. This allows for the persistence and dispersal of techniques developed and applied during the Christian era but it does not mean the State is a secularised Christian entity. It became legitimate in its own right, through its focus on consent, liberty, law and rights rather than on sovereignty, raison d’etat, will, decision and friend and enemy. Foucault’s position is in sympathy with this argument.

Pastoral power is characterised by Foucault⁴³ as having particular original traits, including its aim to assure the individual salvation in the next world, that there is a preparedness ‘to sacrifice itself for the salvation of the flock’, that it looks after the whole flock and each individual during his entire life and that it requires knowledge of the individual conscience and an ability to direct it. Pastoral power is not the ecclesiastical institution but its function which has spread outside the institution. From this he makes several further points. First, that the ‘modern state’ was not an entity developed above individuals, ignoring their existence, but a sophisticated structure in which individuals can be integrated under the condition that this individuality would be shaped in a new form. Second, he argues that in the eighteenth century a new organising of individualising power emerged and this was around pastoral power. This new form of pastoral power had its own characteristics. These included that the salvation it sought for individuals was in this world not the next and now meant security and protection against

⁴¹ Foucault says that a second source was a diplomatic-military technique and that it relied on the instrument of the seventeenth and eighteenth century notion of police. The former refers to a technique, ‘perfected on a European scale with the Treaty of Westphalia’, that is at the level of nations, Governmentality p.104. The latter refers to “an area of government administration – covering everything apart from justice, finance, the army and diplomacy…The theory of police exemplifies the comprehensive responsibility for the welfare of the flock and each of its members that is central to Foucault’s treatment of the ‘pastoral’ rationality of government”, B.Hindess Discourses of Power pp.120-121.

⁴² M. Foucault The Subject and Power in H. Dreyfus and P. Rabinow Michel Foucault – Beyond Structuralism and Hermeneutics p.208ff (especially at p.213ff)

⁴³ ibid p.214
accidents, health and well-being as wealth and living standard. Further, the officials of pastoral power increased and this power was exerted by the state apparatus or by private ventures or welfare societies but, importantly, also by the family. Further again, this new pastoral power focused on developing knowledge of man in two forms, one global concerning the population and the other analytical concerning the individual: “And this implies that power of a pastoral type...spread out into the whole social body...instead of a pastoral power and a political power, more or less linked to each other, more or less rival, there was an individualizing ‘tactic’ which characterised a series of powers: those of the family, medicine, psychiatry, education, and employers”44. One could add prisons and barracks. Foucault proceeds to urge that ‘the political, ethical, social, philosophical problem of our days is not to try to liberate the individual from the state, and from the state’s institutions, but to liberate us both from the state and from the type of individualisation which is linked to the state. We have to promote new forms of subjectivity through the refusal of this kind of individuality which has been imposed upon us for several centuries’45.

It is in this context that Foucault’s comments concerning the family are made in his outline of the notion of governmentality46. He sees the ‘explosion’ of the problem of government in the sixteenth century as including government of, among others, children. This multifarious new kind of power is for him the mark of difference from sovereign power. Referring to the writings of La Mothe Le Vayer, he points out that the three fundamental types of government, that is self-government, of a family and of the state, are a continuity. The government of the family is economy, involving the correct management of individuals, goods and wealth in a family, the issue then being how to introduce this into the general running of the state. For Foucault, this issue continues through to the eighteenth century when it is taken up by Rousseau. But with the emergence of the problem of the population, the family was eliminated as a model and the notion of economy was recentred. But this was not the end of the broader role of the family. As an element internal to the population, it was the focus whenever information

44 ibid p.215
45 ibid p.216
46 Governmentality pp.87, 91-2, 99-101
was required concerning the population, such as sexual behaviour, demography or consumption. The family also became an instrument for the government of the population, for the embedding of docility and productivity in individual practice. Ultimately, as liberalism and then neo-liberalism emphasised the importance of the market, this responsibility was transferred to the individual as a process of self-creation.

**Foucault and Mythology**

Seeing the work of Foucault in a mythological context has significant value. It not only demonstrates how the strategies have themselves been shaped by the common mythological disposition but also demonstrates the methodology of the dispersal of the idea of the mythological State through embedded practice. It also clarifies the nature of the political myth itself and it helps to place certain issues in Foucault in a new perspective. All this enriches his work, but it is an enrichment that also reveals his undervaluing of the nature of the State in itself, as distinct from the art of government.

*Affirming the mythological account of the State*

Regarding the first advantage, that his work affirms the mythological account of the State, there are two points to be made. First, the rationalities, separately but especially together, function to *realise the key mythological outcomes*, that is they embed the fearsomeness of the State, the claim to eliminate fear of all else and the creation of sympathetic conditions of existence for those who are willingly subject to being changed. That is, they are best seen as comprising features shaped by mythological thinking. Second, the nature of the *liberal manifestation of governmentality* is that it confirms this mythological shaping of governmentality. In doing so, it also demonstrates the argument presented in chapter 2, that the mythological magnitude acts not only directly but also through its agents and allies. We shall look at these in turn.

Particular statements that Foucault makes about governmentality, discipline and pastoral power make clear how these are *realisations of key mythological outcomes*. That is, how
each of these is founded on submission, empowerment, fear and the enhancement of conditions of existence.

Regarding governmentality, he says:

- ‘The art of government…is…concerned with…how to introduce economy – that is to say, the correct manner of managing individuals, goods and wealth within the family…and of making the family fortunes prosper…into the management of the state’47
- ‘To govern a state will therefore mean…to set up…a form of surveillance and control as attentive as that of the head of the family over his household and his goods’48
- ‘The art of government is just the art of exercising power in the form and according to the model of the economy’49
- ‘The things with which…government is to be concerned are in fact men, but men in their relation…with those other things which are wealth, resources, means of subsistence…; men in their relation to…customs, habits, ways of acting and thinking…; men in their relation to…accidents and misfortunes such as famine, epidemics, death’50
- ‘That government concerns things understood in this way…is I believe readily confirmed by the metaphor…of the ship. What does it mean to govern a ship? It means clearly to take charge of the sailors, but also of the boat and its cargo’51
- ‘Government will have to ensure that the greatest possible quantity of wealth is produced, that the people are provided with sufficient means of subsistence, that the population is enabled to multiply’52
- ‘Political economy arises out of the perception of new networks of…relations between population, territory and wealth; and this is accompanied by the

47 ibid p.92
48 ibid p.92
49 ibid p.92
50 ibid p.93
51 ibid p.93
52 ibid p.95
formation of a type of intervention characteristic of government, namely intervention in field of economy and population.\footnote{ibid p.101}

- ‘One has a triangle, sovereignty-discipline-government, which has as its primary target the population and as its essential mechanism the apparatuses of security.\footnote{ibid p.102 but see also Burchell in Civil Society and ‘the system of natural liberty’ where he describes this sense of security in the following terms ‘The objective of a liberal art of government becomes that of securing the conditions for the optimal and, as far as possible, autonomous functioning of economic processes within a society or, as Foucault puts it, of enframing natural process in the mechanisms of security’, p.139}

- ‘By (governmentality) I mean…the ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population.\footnote{ibid p.102}

- ‘This downwards line, which transmits to individual behaviour and the running of the family the same principles as the good government of the state, is just at this time beginning to be called police.\footnote{ibid p.92}

Taken together, these statements clearly show that governmentality is founded on the exercise of an intrusive power by which men are managed in their habits and ways of acting and thinking, both as individuals and as a population. Also that, through and along with this, there is the management of the economy for the generation of wealth and the minimisation of misfortune. This concern with the forming of action and habit by the intrusion of an empowered government for the purpose of enhancing conditions of existence is consistent with political mythology.

For Foucault the notion of police\footnote{ibid p.104; see also Pasquino in Theatricum Politicum: the genealogy of capital p.110 for the wide range of functions which policing entailed in the eighteenth century. These included religion, health, tranquillity and public order, commerce and policing the poor.} is a form of pastoralism which is at the heart of the operation of governmentality as the simultaneous management of the population and the individual. This is much broader than the simple notion of law enforcement which that concept now carries. It is the transmission to individual behaviour and to the running of
the family of the same principles as the good government of the state, that is the introduction of political economy into political practice. But this is empowerment as much as it is shepherding. This governmental, pastoral or police State is thereby one through which the exercise of power is as fearsome as it is intent upon creating harmonious relations and sympathetic conditions of existence. As governmentality emerged from the shadows of sovereign power and extended it in a different form, individuals might have been typically willing in their subjection and apparently clear about their aspirations but they had little choice about the regimes to which they were made subject. On both these points, governmentality displays the key attributes of mythology.

Regarding discipline, he says:

- “La Mettrie’s L’Homme-machine is both a materialist reduction of the soul and a general theory of dressage, at the centre of which reigns the notion of ‘docility’, which joins the analysable body to the manipulable body. A body is docile that may be subjected, used, transformed and improved”

- “The historical moment of the disciplines was the moment when an art of the human body was born…the formation of a relation that in the mechanism itself makes it more obedient as it becomes more useful…Thus discipline produces subjected and practised bodies, ‘docile’ bodies…disciplinary coercion establishes in the body the constricting link between an increased aptitude and an increased domination”

- ‘The examination combines the techniques of an observing hierarchy and those of a normalising judgement…In it are combined the ceremony of power and the form of the experiment, the deployment of force and the establishment of truth. At the heart of the procedure of discipline, it manifests the subjection of those who are perceived as objects and the objectification of those who are subjected’

- ‘(The human sciences) have been conveyed by a specific and new modality of power: a certain policy of the body, a certain way of rendering the group of men

---

58 *Discipline and Punish* p.136
59 ibid pp.137-138
60 ibid pp.184-185
docile and useful. This policy...brought with it new procedures of individualization...Knowable man (soul, individuality, consciousness, conduct, whatever it is called) is the object-effect of this analytical investment, of this domination-observation.

Here again we have the combination of characteristics, specifically in the techniques that not only ensure that individuals are docile but also productive, that are embedded mythology. These are forceful techniques by which the fearsome individual becomes docile and the lazy or unskilled becomes useful to the enhancement of the general conditions of existence.

Discipline is therefore a tactic that complements governmentality. Its function is to produce docile and productive bodies in an environment of extensive surveillance, doing this in the service of normalisation that affirms the fearsomeness of the State form and its agents. It also demonstrates by this same method the construction of sympathetic conditions by its focus on embedding practices which generate the wealth and health of the community. In the factory it is to promote productivity and so richer conditions of existence, in the school it is to train individuals for this and in the prison it is to eliminate fearsome behaviour: as much as it is a productive force, it is the forceful imposition of practices that eliminate what is fearsome about oneself and others and what is unproductive. In promoting these functions, the State operates both directly as legislator and administrator, for example of the educational and judicial apparatuses, and indirectly as guarantor through commercial, theological, familial and other agents. This is the assumption of responsibility for typically willing individuals. Discipline is therefore an important tactic in the strategy of the art of government which, because making oneself subject to its regimes is the forgoing of self-responsibility, is thereby mythological.

61 ibid p.305
Regarding pastoral power, he says:

- ‘Pastoral power is not merely a form of power which commands; it must also be prepared to sacrifice itself for the life and salvation of the flock’\(^6^2\)
- ‘I don’t think that we should consider the ‘modern state’ as an entity which was developed above individuals, ignoring what they are and even their very existence, but on the contrary as a very sophisticated structure, in which individuals can be integrated, under one condition: that this individuality would be shaped in a new form, and submitted to a set of very specific patterns’\(^6^3\)
- ‘A few more words about this new pastoral power…in this context, the word \textit{salvation} takes on different meanings: health, well-being (that is, sufficient wealth, standard of living), security, protection against accidents’\(^6^4\)
- ‘Concurrently the officials of pastoral power increased. Sometimes this form of power was exerted by state apparatus or, in any case, by a public institution such as the police. (We should not forget that in the eighteenth century the police force was not invented only for maintaining law and order…but for assuring urban supplies, hygiene, health and standards considered necessary for handicrafts and commerce). Sometimes the power was exercised by private ventures, welfare societies, benefactors and generally by philanthropists. But ancient institutions, for example the family, were also mobilized at this time to take on pastoral functions’\(^6^5\)

Yet again we have key characteristics of mythology. Pastoral power is the exercise of fearsome and intrusive power by the ‘sophisticated’ State and its agents to the effect of the shaping of individuality, the integration of individuals into a coherent whole and a concern for enhancing conditions of existence.

The emerging focus of pastoral power was the salvation it sought for individuals in this world: it focused on their security but also on their health, the prevention of accidents,

\(^6^2\) M. Foucault \textit{The Subject and Power} in H. Dreyfus and P. Rabinow \textit{Michel Foucault - Beyond Structuralism and Hermeneutics} p.214
\(^6^3\) ibid p.214
\(^6^4\) ibid p.215
\(^6^5\) ibid p.215
general well-being and living standards. Its generation of knowledge, especially through the family, the Church and increasingly welfare and health professionals, was to identify the abnormal and assume responsibility for the embedding of preferred behaviour. Alongside the managed population, the intended end product of pastoral power is the individuated person. Attempting to create the individual subject is the ultimate tactic in the dispersal of the political myth of the State through governmentality, especially through the promotion by neo-liberalism of the market and its desired outcome of individual self-creation. It is the intended endgame, the effective function of which is to form the individual as a mythological creature, docile and content because fearful only of the State and its allies yet reliant on it and its agents for sympathetic conditions. If all individuals were brought, or ideally bring themselves, to such a condition then the optimal state of the myth would have been reached. Individuation complements discipline as a tactic of governmentality. It does so through the strategies of the mythological State, acting directly in legislation, as administrator in psychiatry and education and as enforcer in punishment, and indirectly as guarantor through the family, commerce and other functions of civil society, especially the market. So it can be perceived as fearsome yet claim to deal with the fear/sympathy nexus.

Seeing Foucault as effectively unmasking the mythological strategies of the State also adds greater value to his account of the liberal manifestation of governmentality. Generally, as we saw in earlier chapters, the disposition to construct mythological magnitudes was the foundation of the transition from the disintegrating theological myth to its replacement with the idea of the political mythology of the absolutist State by Hobbes, the idea of which was then progressively refined. The mythological disposition is therefore at the heart of the political theory from Hobbes through Locke to Kant. Mythology is therefore at the heart of thought that came in response to Hobbes and is commonly regarded as liberal, which is then properly seen as a strategy formed by mythological thinking to realise in practice the idea of the mythological, constitutional State. In short, if liberal thought is understood as having mythological presumptions, and that is one argument from the examination by this thesis of the principal thinkers of the tradition, then the management of population in the post-Reformation era is properly seen
as a field of operation for mythology, the dispersal of mythological practice across social space.

This does not require the universal activity of the State. Apart from its legislative role and its active management of schools, barracks and prisons and so forth, the liberal State can be seen to best withdraw to a *laissez faire* regulatory role, as its agents or the market that it promotes and regulates realise both what is understood as liberty, as well as sympathetic conditions of existence in the form of prosperity through increasing individual productivity. In fact, it is the interplay of the social institutions that constitute liberal civil society – familial, commercial, professional, political and religious – which for Foucault does as much as the State to incorporate the threatening pauperised classes and to construct a global domain of governmentality. In this the State retains the special role of acting for the general interest, as the guarantor of progress. Together these institutions and the regimes which are their practice promote the changes in individual behaviour by which the fear/sympathy nexus is addressed. The State, as argued in chapter 2, operates not only directly but through its agents and allies. From this, neo-liberalism can be understood as the endgame to which liberalism evolves in the search for an ideal mythological outcome. It does this, first, by allowing the widest representation of dominant interests in the empowered regimes that function to form individuality. Second, it promotes the self-creation of the individual as a mythological subject. This is no abrogation of responsibility by the State, which becomes the neo-liberal guarantor of docility and productivity through its institutional agents and the dynamics of the market, that is through the activity of its agents and allies.

There is an important issue which flows from this, to do with the possible charge of the totalitarian effect of the rationalities identified and analysed by Foucault. A consideration of this issue further consolidates the compatibility of Foucault’s work with the

---

66 see C. Gordon *Governmental rationality: an introduction* p.19. Further, Adam Smith’s *Wealth of Nations* and his Edinburgh lectures are seen by Gordon as placing political economy ‘within a branch of the art of legislation, namely police’, p.16

67 ibid pp.22 and 32-33

68 Regarding the notion of self-creation, see Lemke’s *The birth of bio-politics: Michel Foucault’s lecture at the College de France on neo-liberal governmentality*, pp.201-203; regarding the central role of the market in neo-liberal self-creation, see Hindess’ *Neo-liberal citizenship*, pp.134-135
mythological account of the State. That there are systematic attempts to embed such practices is not a claim that a community is subjected effectively to such a totalitarian disciplinary regime as exists in the prison. It is a claim that such practices are dispersed strategically by the institutional agents and allies of the mythological magnitude, as a highly pervasive means of socialisation, with the purpose of realising mythological norms. Foucault does not claim the total effectiveness of that purpose but its intention and significant effect. This is not, therefore, to deny that there may be categorical resistance to the dispersal and effect of such fine grained power. It is conceivable that, at any time, individuals, become aware through an experience of unconcealment\(^{69}\), may fundamentally question and reject such experience.

Typically, however, the reality of such experience is concealed by the process of mythological normalised training itself, and by the resulting sense of certainty we shall look at through Wittgenstein, disposing the individual towards mythological docility and compliance rather than self-responsibility. More commonly, there is only situational resistance, which is best understood as a reflection of disciplined training and other forms of socialisation. In fact, for Foucault, situational resistance is the necessary mirror image of dispersed power, necessary because the strictly relational character of power is such that its existence depends on a multiplicity of points of resistance: these play the role of adversary, target, support, or handle in power relations. These points of resistance are present everywhere in the power network\(^{70}\). Situational resistance is, however, not a questioning of the mythological presumptions of power relations. It is the claim here that situational resistance is typically the instance of doubt which, as we shall see, for Wittgenstein follows certainty or from Blumenberg is the questioning of the instance rather than the archetypal form of the magnitude. This may lead to the changing of a particular governing group rather than of the mythological form of government itself. Situational resistance effectively reinforces such power rather than questions it. On the

---

\(^{69}\) The notion of concealment may be likened to the Heideggerean concept, whereby a particular form of presenting comes to be taken as the final truth about things. In such a circumstance, being, as appearing, ‘cloaks itself as appearance insofar as it shows itself as being’. M. Heidegger An Introduction to Metaphysics p.109.

\(^{70}\) M. Foucault History of Sexuality Vol.1 pp.95-96; see also Charles Taylor Foucault on Freedom and Truth in Foucault - A Critical Reader pp.94-95; also B. Hindess Discourses of Power p.101
other hand, if the individual resists normalisation and is being fearsome, subjection will be enforced, typically through the criminal courts and prison or the psychiatric apparatus. This will be considered in relation to Aboriginal people in the following chapter, but what can be said here generally is that governmentality, even where liberal in form and though non-totalitarian in nature, fulfils the mythological disposition.

Clarifying the nature of the political myth

There is an issue embedded in Foucault’s arguments that needs to be addressed, as it has significance for the broad mythological argument being put here. That is to do with the notion of the autonomous, consenting individual. One can take the view that the effect of governmentality and discipline is generally contrary to the claim that there is an autonomous, consenting individual behind arrangements of the State, since individuals are significantly impacted by such forces as the powerful effect of such rationalities and so are not autonomous. Such a claim about individual autonomy and consent is important because, on the one hand, the tradition of the social contract, from Hobbes at least to Kant, relies upon it: autonomy and consent are at the base of their claim that the State is legitimate because it is the agreement of autonomous, consenting individuals to forgo their individual sovereignty which is the ground for its formation. Further, it is the argument of this thesis that the social contract plays a central role in the mythological account of the State, as we have seen. Further again, however, the view of power as resting on autonomous consent is seen, for example by Hindess, to have no place in Foucault. If Foucault’s thought is to be compatible with the mythological account, these disparate points, we might say ultimately between Hobbes and Foucault, need to be somehow brought together.

---

71 Or, at the most, that sovereign power based on consent is but one of a range of rationalities that operate within the field of government. See B. Hindess Discourses of Power pp.145, 157. Hindess attributes the notion of an autonomous, consenting individual to Locke (ibid pp.16-17), for whom it is thereby central to the notion of legitimacy of sovereign power (ibid p.96). As we saw in Chapter 4 of this thesis, autonomy and consent are also central to the Hobbesian conception of power.

72 Ibid p.151
The position adopted in this thesis is that mythology recasts the relationship between Hobbes and Foucault. Certainly, governmentality and discipline are taken to be important strategies by which mythological ideas are embedded in the practices of individuals. So there can be no autonomous individual in the sense of a person unaffected by the heteronomous features of existence, including the effects of political power, who simply makes rational political decisions. But here lies the difference from the position that sees Foucault as radically different from Hobbes. Whether because of the individual’s own existential fear or because the exercise of political power by dominant interests has artificially generated fear and desire to secure their own advantage, the repeated instances of forgoing by each non-autonomous individual of his self-responsibility is in a clear sense a consent to the existence of the thereby empowered political magnitude, conditional upon that entity satisfying its responsibilities regarding fear and sympathy. This is so despite the fact that the individual is already disposed to create and affirm archetypal mythological entities and irrespective of whatever training to which an individual may have been subjected regarding the validity of the State as a realisation of the archetype. The primal nature of fear and desire for sympathetic conditions of existence are consciously held, even if their realisation in the State form is the result of disposition and training. Hence the consent to the validity of the mythological State, while not by autonomous individuals, is real.

Such consent, generated by this real or induced fear and affirmed by training, recognises that each of us will subject himself to the change in us needed to establish a regime which addresses fear and sympathetic conditions. It is even accepted by consenting individuals that the State is clearly colonised by dominant interests and so the change to which we subject ourselves will be somewhat against our individual interests. There will be some exploitation but this is accepted by non-autonomous consenting individuals so long as the fear/sympathy nexus is satisfactorily addressed. The problem that arises, as it must with the forgoing of self-responsibility in the first place, is that dominant interests push these regimes more widely and deeply into social space and attempt to cause change that is mostly against individual interests. They can do so by ensuring compliance through artificial generation of fear or the artificial inducement of desire for what is presented as
being improved conditions of existence. Even if there is benefit from it for some, there is more than some exploitation - there is Foucauldian governmentality and discipline. By forgoing self-responsibility, individuals are ensnared in an arrangement partly of their own making, that is to which they are disposed. In essence, the non-autonomous consenting individual is the mythological individual.

There is an argument that finds a place for both autonomous and non-autonomous consent within the mythological arrangements. This argument is that the claims about autonomous consent are nothing but the public face of political arrangements employed to allow a claim of legitimacy but that it is masking a form of consent which is non-autonomous and which is the foundation of the political mythology. In other words, there was increasingly the popular liberal myth of institutions of true representation of autonomous individuals in a social contract, fair judicial interpretation of the law and the execution of popularly determined policy, each reflecting the preference of the autonomous, consenting individual, that is over which he has some real control. It was this which Foucault might justifiably describe as related to ‘a mythicised abstraction’, even though it persists as a salve to what lies beneath. What does lie beneath is the real mythology of a fearsome legislature of dominant interests, of hard justice that especially protects those interests and its dispersal through strategies that embed practices the function of which is to promote global management and detailed discipline, almost universally embraced by non-autonomous individuals on the promise that the fear/sympathy nexus is being addressed. Control, to the extent that it exists, only relates to the interests to which individuals will make themselves subject in the hope that their concerns about fear and sympathy will be addressed. Seen in this light, Foucault’s work is compatible with a mythological interpretation of Hobbes and his successors in the tradition. That is, formal consent, and the notion of an autonomous individual on which it based, is a key element in the popular myth of the State that plays a key role in sustaining the real mythology beneath it: individuals are more ready to accept the forgoing of their self-responsibility if they can claim that they do by their own decision as autonomous persons, even if their consent is of a different kind, of subjection motivated by fear and desire. Both of these are indicative of reason in the service of mythology.
We can link this to the argument in the previous section. ‘Hobbesian’ liberalism, the liberalism developed by those who in effect worked on the idea of the Hobbesian myth to imagine the adoption of preferred practices by all individuals while claiming the protection of their liberty, is properly seen as a strategy of governmentality which is itself mythological. It is mythological because it is founded on this masking of the real mythology of the liberal State by the popular liberal and neo-liberal myth of autonomy. This is also what it really means for the State to be the guarantor of progress: it sustains the popular myth but does so through the promotion of mythological strategies and tactics. But it is still the fearsome entity which, in return for the willing but conditional forgoing of self-responsibility which empowers it, must - through its own dominant interests, through the market it regulates and the civil society it shepherds - ensure not only that all individuals embody the practices of docility (rather than fearsomeness) and productivity but also that such macro conditions of existence as health, education, security and so on are sympathetic. Mythology is thereby embedded, typically consensually, in the lives of individuals under the banner of liberalism and neo-liberalism.

Accommodating these clarifications produces a finer tune in the understanding of the political myth, that is as layered in liberalism and neo-liberalism in the form of palatable public elements which mask the deeper motives of fear and desire.

*Mythological Interpretation of Foucault*

There are other key issues addressed by Foucault that find a comfortable place within the mythological framework, both by way of the resituating of his work and as reinforcement of its mythological relevance.

The first concerns his claim that individual interest and Lockean social contract are dissonant. In the mythological context this is not so, so long as one understands the

---

73 C. Gordon pp.21, 22
social contract as the means by which individuals expect to have their interests about fear and sympathy dealt with through, not necessarily by, the State that is empowered by their willing but conditional disposition to forgo self-responsibility. Interest and contract are in this sense fully compatible.

The second concerns his statement that throughout the seventeenth century, the art of government was immobilized by the ‘reason of state’ or the ‘rigid framework of the problem and institution of sovereignty’ 74. Contra Foucault, it can be argued that there was perhaps a temporary but no final obstacle presented to the art of government by *raison d’etat*, since its own nature prevented the State in its sovereign form from realising the dispersed mythological form to which it was disposed by its own dynamic: the sovereign State was but the first stage in the development of the post-theological mythological entity. It was bound to metamorphise and disperse across social space. It could not itself disperse and would remain a fragile entity without strategies that ensured this dispersal.

For Foucault, there may have been the attempt at reconciling these in the contract theory of seventeenth century jurists, the case of Hobbes showing that it remained a formulation of the general principles of public law ‘even though what Hobbes was aiming to discover was the ruling principles of an art of government’ 75. But Foucault does not claim that this shift marks the end of sovereign power. In a manner that turns out to be in sympathy with the mythological analysis, he says that ‘the problem of sovereignty was never posed with greater force than at this time’ 76. The resolution of this ‘problem’ of sovereignty is easily put in the terms of this thesis: Hobbes created a concept of the State which was intended as the basis of government but the conceptual complications of which kept it as a *raison d’etat*, complications that would have to be worked on by Locke and a series of successors down to Rawls to try heroically to justify the idea of it as an art of government. Pettit should be included in this attempt, though not directly in response to Hobbes.

---

74 *Governmentality* pp.97-98
75 ibid p.98
76 ibid p.101
This in turn shines another light on Foucault’s triangle of sovereignty-discipline-government and on the related thought of Rousseau. That is ‘Accordingly, we need to see things not in terms of a replacement of a society of sovereignty by a disciplinary society and the subsequent replacement of a disciplinary society by a society of government; in reality one has a triangle, sovereignty-discipline-government, which has as its primary target the population and as its essential mechanism the apparatus of security’. Mythology reveals governmentality and discipline as the working out of the limitations of sovereignty. What is missing from Foucault’s account is a rationale for the willingness of individuals to make themselves subject to such a triad of influence. Mythology provides that rationale and it anchors notions of consent, contract and legitimacy, albeit differently conceived than in the context of sovereignty. Further, for Foucault, Rousseau was an important player in the emergence of the art of government. He was concerned with the problem of how to introduce oeconomy, properly used to signify the wise government of the family, into the general running of the State\textsuperscript{77} and further, given that this model could then no longer be reduced to the old model of the family, how a new definition of the art of government might be possible. This would be one which asks how it is possible, ‘using concepts like nature, contract and general will, to provide a general principle of government which allows room both for a juridical principle of sovereignty and for the elements through which an art of government can be defined and characterised’\textsuperscript{78}. We have seen Rousseau’s important role in the development of the idea of the mythological State through his perception of the flaw in the Hobbesian-Lockean State, and his correction of that flaw through his attempt to link his reconceived idea of the State with its dispersal across social space. Foucault’s parallel view that Rousseau’s was an attempt to link sovereignty to the art of governmentality can be seen as a further affirmation of the mythological significance of Foucault’s analysis of the nature of governmentality.

Finally, for Foucault the target of governmentality is, as we saw, the population. In fact for him the emergence of the problem of the population, emerging and becoming more significant through gains in both demographics and wealth, was critical to the emergence

\footnotesize{\textsuperscript{77} ibid p.92  
\textsuperscript{78} ibid p.101}
of governmentality. For this thesis, the problem of population coincided with, and provided the opportunity and incentive for, the post-theological State to engage its subjects in a process with universalist aspirations. This coincidence joins the range of issues which allow the positioning of Foucault’s work within a mythological context, a positioning which enriches the value of his work.

_Foucauldian Account of the State Reconceived_

Without at all denying the value of his analysis of the rationalities, in fact to find their full value, where this thesis differs is in their broader significance. Here, it is argued that these are best understood as the inheritors and successors of the civilising processes that Elias saw in the late medieval period, that is as the method by which the idea of the fearsome mythological State is attempted to be realised from the sixteenth century through the refinement of its institutional arrangements and by the strategic production of docile and productive bodies and of the sympathetic conditions of existence this also requires79.

We have seen how for Foucault the ‘modern’ state was not an entity developed above individuals, ignoring their existence, but a sophisticated structure in which individuals can be integrated under the condition that this individuality would be shaped in a new form. The argument of this thesis both disagrees and agrees with that claim. On the one hand, it agrees that the State should not be seen merely as a _monstre froid_ confronting us and which can be reduced to a certain number of functions80. But the mythological State should be conceived as ‘above individuals’, in the sense that it is a real entity conceived ‘over and against man’, an entity which converts the forgoing of their individual sovereignty into strategies to deal with their fear and conditions of existence. On the

79 ‘The great book of Man-the-Machine was written simultaneously on two registers: the anatomico-metaphysical register, of which Descartes wrote the first pages…and the technico-political register, which was constituted by a whole set of regulations and by empirical and calculated methods relating to the army, the school and the hospital, for controlling and correcting the operations of the body…La Mettrie’s _L’Homme-machine_ is both a materialist reduction of the soul and a general theory of dressage, at the centre of which reigns the notion of docility, which joins the analysable body to the manipulable body. A body is docile that may be subjected, used, transformed and improved’, M. Foucault _Discipline and Punish_ p.136

80 op cit p.103
other, it is an entity whose fate ‘comes into man’s hands’ by his acquiring control of it as a set of institutional arrangements and then by the engagement or incorporation of all individuals first as subjects and later as citizens. The former is the mythological magnitude, the latter is its strategy of governmentality. The strategies adopted for this were broadly ‘civilising’ strategies and include those identified by Elias and, in the ‘modern’ era, by Foucault. The difference between these responses is the difference between the conception and the dispersal of the mythological magnitude.

What is argued here is that the State is a magnitude which should be understood not as a mythicised abstraction but as the real, institutional and embodied mythology which is thereby the justification for non-autonomous consent to subjection by individuals to the rationalities which Foucault analyses. Foucault is right about the governmental strategies of social and individual construction but wrongly dismissive of the State conceived as an infrastructure of real mythological institutions and interests by the embodiment of which such strategies are largely dispersed. Without the seamless connection between the conception of the magnitude as fearsome and the knowing embodiment of its institutional practices, there would be no willing acceptance by individuals of the impact of the rationalities he correctly identifies and analyses. That is, it is the preferred practices of the real, continuously affirmed mythological State which are embodied, usually willingly, rather than just a range of less connected, if forming, activities.

Further, Foucault urges that ‘the political, ethical, social, philosophical problem of our days is not to try to liberate the individual from the state, and from the state’s institutions, but to liberate us both from the state and from the type of individualisation which is linked to the state. We have to promote new forms of subjectivity through the refusal of this kind of individuality which has been imposed upon us for several centuries’81. In the words of this thesis, we need to acknowledge the existence of both the mythological magnitude and its techniques of dispersal and search for a subjectivity that promotes self-responsibility.

---

81 M. Foucault *The Subject and Power* p.216
This reconception of the Foucauldian State as mythological is consistent with his conception of governmentality but explains more, as it provides the complex of motives for the willing subjection of individuals to the regimes he explicates and thereby an explanation for their emergence, a motive that he undervalues. The undervaluing of this motive, the effect of which he sees clearly, is related to his undervaluing of the State, which needs to be conceived as mythological rather than a ‘mythicised abstraction’. Positioning his work in this way thereby takes even greater value from his analyses.

Comment

Bringing all this together, there are three broad points that need to be made. First, governmentality and discipline together display all the key characteristics of the mythological State in practice. These include its empowered fearsomeness, illustrated by management and control of the population in toto and of individuals; its acting both directly and, by withdrawal from direct action, as guarantor of progress through its agents and allies; its responsibility for ensuring the creation of sympathetic conditions of existence, for example by creating the conditions for the wealth and health of the community and by training its citizens in productive practices; and the strategies that allow a claim it will eliminate fear, examples of which are its broad concern with security and the imposition of disciplinary regimes in response to crime. Through governmentality, the archetypal myth is affirmed as the idea of the mythological State and embedded in the lives and practices of individuals and the mythological State assumes ultimate, if not immediate, responsibility for all individuals, willingly forgone on the condition that their two principal concerns are seen to be addressed. The endgame is the neo-liberal programme of self-creation. To the extent that this occurs, individuals are themselves real, mythological beings and the State is the mythological magnitude dispersed across social space into their lives. None of this precludes, in fact it positively allows, the artificial construction of fear and desire, the promoters and first beneficiaries of which are dominant interests.
Second, what the mythological analysis provides is therefore not an account of the State as a ‘mythicised abstraction’ but a genealogy of the mythological nature of the refined Hobbesian State and its dispersal and embodiment through governmentality and discipline, a rationale for this ‘solid series’. So, it is not that ‘governmentalisation of the state is what at the same time has permitted the state to survive’ but that governmentalisation has allowed the mythological State to fulfill its potency by dispersing across social space and, it will be argued in the following chapter, beyond the European borders of its inception and elaboration in the attempt to disperse its range more widely. Foucault’s thought, then, is not distant from Hobbes, as he is analysing and unmasking what emerges from the arrangements that Hobbes commends. In fact, through a mythological perspective their work is seen to be close and complementary, although with vastly different motives. The Foucauldian rationalities work systematically to embed amended ‘Hobbesian’ mythological ideas and arrangements into the lives of men and women and this is done typically with their consent, understood in its mythological sense.

Third, it is therefore argued here that the broad question which Foucault is ultimately addressing, even beyond the governmental context within which discipline should also be seen, can be best understood by seeing the emergence of governmental and disciplinary power in the eighteenth century as a stage in the history of the ongoing dispersal and refinement of the mythological magnitude. It is claimed, against Foucault, that it was the emergence of the myth and the colonisation of existing power relations by the emerging mythological State that integrated those power relations following the faltering of the theological myth and gave them universal coherence, influence and meaning within respective communities. It was myth which gave them broad significance and which in turn allowed the strengthening and dispersal of the power of the mythological State through rationalities of governmentality and discipline. That is, these rationalities are best understood through the emergence of the mythological State rather than, as Foucault argues, that the State is best understood through those rationalities. Without the myth, there is no reason to be willingly subject to the strategic rationalities. The State as myth, and the disposition of the courtly and bourgeois interests that had come to dominate and

---

82 Governmentality p.103

348
promote it, had evolved to a point in the seventeenth and eighteenth centuries where, in its disposition to seek means, as the framework of dominance, to extend its claim to deal with fear and sympathy for the special benefit of the dominant, it adopted the disciplinary regime and a global approach to government and promoted their dispersal. That is, the opportunity had been presented by the progressive, historical refinement of the institutional arrangements of the mythological magnitude, disposed to the emergence of any method that might induce the forgoing of self-responsibility through claims regarding fear and sympathy, to generate enhanced management of the population. This opportunity embraced the complementary regimes of governmentality, discipline and individuation. In this, the magnitude itself was further elaborated and refined, for the primary benefit of its dominant interests. The art of government developed to take the opportunity created by the accelerated evolution of the mythological State caused by the Reformation.

In sum, this is not merely the justification of the claim for the validity of the idea of the mythological State by looking at these rationalities as a means of its dispersal. Rather, it is the perception of the reality of the mythological magnitude of State, the evolution of which created the circumstances for the emergence of the Foucauldian rationalities. This is what the apparatus of the mythological State as magnitude should be significantly understood to mean. It is where the work of Blumenberg, Foucault and, as we shall see, Wittgenstein, intersect with that of the political tradition from Hobbes to Pettit. To fully appreciate the insights of Foucault, one needs to understand those of Blumemberg, as amended and fully explored here.

**Wittgenstein, Normalisation and Certainty**

Wittgenstein cannot be brought into this argument as a political thinker in the sense that Hobbes, Kant, Elias and Foucault may be seen. He does not appear interested in the nature of political institutions or in their relationship with individual citizens. His work, especially as it relates to the argument presented here, is more a sociological ontology, how ways of thinking get anchored both across a community and in an individual. His analysis of normalisation and certainty, therefore, are equally applicable to both
mythological and non-mythological ways of thinking. However, where his work is useful is that, given the argument that there are mythological presumptions at the heart of the political tradition from Hobbes to Pettit, he helps an understanding of the process of the embedding of those ideas in institutional form and in individual practice. Thereby, he helps an understanding of the fact of that embedding but also how deconstructing it would allow non-mythological ways of thinking and doing to flourish.

As it has gradually emerged through long-term work from Hobbes, the Western mythology of the State has, in the context of the testable covenant between each individual and the magnitude, assumed the claimed responsibility to eliminate fear, guided by combinations of dominant interest but gathering the concession of each individual. The principal method for doing so is its gradual dispersal across social space by the elaboration and proliferation of itself through the regimes and practices promoted by its institutions, agents, allies and officials, so that individuals develop a measured assurance that fear is, with the ultimate goal of its elimination, being substantially reduced and that active sympathy is also forthcoming. As the engagement increasingly includes constitutional democratic concessions, there is increased assurance that the claims regarding the fear-sympathy nexus can be delivered.

This desire for assurance is a search for ultimately unattainable certainty. There are two elements that comprise this quest for certainty, first the matter of the archetypal myth and second the separate but related matter of the realisation of that in the political myth. There is an inherent disposition to forgo self-responsibility to the archetypal myth, given the strength of existential fear, but there then is strong inducement for this disposition to be realised by the actual forgoing of self-responsibility to the political magnitude. This is the hope that individuals’ archetypal disposition will be satisfied in instances of the magnitude (that is, particular sovereigns or governments) and thereby forgo their self-responsibility in return for the political promises regarding fear and sympathy. That is, dominant interests seek certainty that individuals are forgoing responsibility to the institutional structures and prescriptions of the articulated magnitude. For their part, individuals want to be certain that the magnitude is dealing with their fear and creating
sympathetic conditions, even if these are artificially created. Balancing these desires might be seen as a sign of the art of government.

There are two levels of certainty in this. The first, existential certainty, is readily realised as it is founded on the reality of existential fear and the desire for its elimination by the creation of a sufficiently fearsome mythological entity which is sympathetic. Such an entity might as well be theological as political or something else. As we shall see in looking at Wittgenstein, this certainty can exist unconsciously. The second level of certainty is more difficult to realise, as it requires that individuals be convinced that the political mythological magnitude, and within that the particular instance of it, i.e. a government, will deal effectively with fear and sympathy. This difficulty is caused by the reality of politics, given the prominent position adopted by dominant interests, the result of which always makes such forgoing to that instance highly conditional.

The method employed in the search to establish this second, political level of certainty is best understood simply as training, in some sense of the kind involved in producing Elias’ civilised and Foucault’s governmental and disciplinary practices. Such training typically starts at infancy, as Elias explains. It is training in this sense that produces practices that convert the archetypal disposition to forgo responsibility into practices that reliably sustain mythological arrangements of State and, in turn, ensure that both others and oneself are not fearsome but are productive. This certainty is therefore best thought of as behaviour and not as a mental state. Wittgenstein makes penetrating comments in this regard: “Ask, not: ‘What goes on in us when we are certain that…?’ - but: How is ‘the certainty that this is the case’ manifested in human action?”83. The style of training can be formal or informal, that is by instruction or absorption.

For Wittgenstein, the ability to first recognise regularities in the world and then to recognise linguistic behaviour is innate, that is pre-linguistic: “But what is the word ‘primitive’ meant to say here (e.g. in treating an injury)? Presumably that this sort of behaviour is pre-linguistic; that a language-game is based on it, that it is the prototype of

---

83 L. Wittgenstein *Philosophical Investigations* p.225
a way of thinking and not the result of thought\textsuperscript{84}; and ‘Being sure that someone is in pain, doubting whether he is, and so on, are so many natural, instinctive, kinds of behaviour towards other human beings, and our language is merely an auxiliary to, and further extension of, this relation. Our language-game is an extension of primitive behaviour’\textsuperscript{85}. Further, ‘A child learns to walk, to talk, to play. It does not learn to play voluntarily and involuntarily’\textsuperscript{86}. In considering Wittgenstein, Kober sees that children in such a process ‘are brought to act as other normal, competent members of their community do’\textsuperscript{87}. This is being trained to act in a particular way: ‘what has the expression of a rule…got to do with my actions?…I have been trained to react to this sign in a particular way…But that is only to give a causal connexion…I have further indicated that a person goes by a sign-post only in so far as there exists a regular use of sign-posts, a custom’\textsuperscript{88}.

It is not only that children learn, that is are trained, by copying particular behaviours and language but that there is no point giving justifications for this. Civilising children seeks to work in this way and subjecting them to practices of governmentality and discipline is also supposed to do so. Children have no immediate choice but to copy: ‘For how can a child doubt what it is taught’\textsuperscript{89} and ‘The basic form of our game must be one in which there is no such thing as doubt’\textsuperscript{90} and ‘The child learns by believing the adult. Doubt comes after belief’\textsuperscript{91} and ‘A child learns there are reliable and unreliable informants much later than it learns facts which are told it’\textsuperscript{92}. But this should not be read to mean that such learning is merely mechanical. A child may learn that there are unreliable informants later than it learns facts that are told it but there is still an element of preference in their initial learning. This is not choice as such, since there is strong disposition for children to be trained by parents and other individuals significant for

\begin{thebibliography}{9}
\bibitem{84} L. Wittgenstein \textit{Zettel} 541
\bibitem{85} ibid 545
\bibitem{86} ibid 587
\bibitem{87} M. Kober ‘Certainties of a world-picture: The epistemological investigations of \textit{On Certainty}’ in the \textit{Cambridge Companion to Wittgenstein} p.420-421
\bibitem{88} \textit{Philosophical Investigations} 198
\bibitem{89} L. Wittgenstein \textit{On Certainty} 283
\bibitem{90} L. Wittgenstein \textit{Philosophical Occasions 1912-1951} p.377 (his emphasis)
\bibitem{91} op cit 160 (his emphasis)
\bibitem{92} ibid 143
\end{thebibliography}
them. But the element of inducement inherent in this process should not be discounted. Inducement may not need to be especially strong for a very young child to be trained, given the bonds that usually exist with a parent, but there is still inducement by the parent for the child to be trained, in the form of either love or punishment, and to this extent the child is induced. As we saw, Elias emphasises that fear is socially instilled from early childhood. For its part, as much as it is disposed to, the child is further induced by such love or punishment to want to be trained.

Although increasingly affected by doubt as a child grows, this inducement to adopt understandings and practices as certainties remains as an essential element of growth. As Kober states: ‘Certainties…do not compel you to follow them unconditionally. Rather, certainties induce you to follow them, if you want to participate in certain practices of one community or another, that is, they determine your acting only if you want to communicate with others’. He goes further to argue the extent to which certainties determine, that is are not dependent upon, other sources of truth: “Certainties…conceptualise the world. They are epistemic norms of their respective practices and neither true nor false as such. They however determine how one has to talk about the world within these practices: a certainty is ‘a norm of description’ and determines truth. Therefore, certainties do not typically come to be doubted, although doubt is possible, for it does not normally make any sense to doubt the truth of the sentences which themselves are determining truth”93. In support of these statements, he refers variously to Wittgenstein: ‘Think of chemical investigations. Lavoisier makes experiments…and now he concludes that this and that takes place…He does not say that it might happen otherwise another time. He has got hold of a definite world-picture - not of course one that he invented: he learned it as a child. I say world-picture and not hypothesis, because it is the matter-of-course foundation for his research and as such also goes unmentioned’94.

93 M. Kober p.427, where he refers to On Certainty 205, 167, 321, 54 and 454
94 On Certainty167
Kober points out that ‘children are born into a community and simply acquire the community’s language and the community’s world picture’. Again, to the extent that Elias, and for that matter Foucault, can be read as describing what it is to be human, rather than just a particular historical development, his civilising and the establishment of a socially acceptable habitus is part of this. And the certainties of the acquired language-games are for the time being ‘certain beyond all reasonable doubt’\(^\text{95}\). Although not simply, the same applies to more complex language-games since they grow from primitive ones. Therefore, there is no strict distinction between language-games that are elaborate and those that are primitive, which themselves grow from pre-linguistic action: “The origin and the primitive form of the language game is a reaction; only from this can more complicated forms develop. Language - I want to say - is a refinement. ‘In the beginning was the deed’”\(^\text{96}\). Then, although more complicated language-games are not so obvious, almost all adults in a community would assent to them, since they become rationality standards of individuals belonging to a community: “‘We are sure of it’ does not mean just that every single person is certain of it, but that we belong to a community which is bound together by science and education”\(^\text{97}\), to which one can add political arrangements, and the practices associated with each of these. Kober again: ‘Only on the basis of such an adopted world-picture, which includes practices of proper doubt and justification, can some certainties be called in question’\(^\text{98}\).

What is argued here is that children, already disposed to the acceptance of archetypal mythological magnitudes, are trained in the behaviours and language-games of institutional arrangements, as they learn both fear and a dominant world picture, from an early age through strong inducement by adults and with their willing participation, initially at a primitive level. It is important that this willingness is properly understood. It is claimed here that, at an age where there is no sense of responsibility and no distinction made between their archetypal dispositions and what they might be induced to prefer, they desire the elimination of anxiety and the expression of sympathy in their reliance on

\(^{95}\) op cit p.422, referring to \textit{On Certainty} 416
\(^{96}\) \textit{Philosophical Occasions} p.395
\(^{97}\) \textit{On Certainty} 298
\(^{98}\) M. Kober p.424
parents or other significant adults. Early training takes advantage of this lack of distinction. Perhaps the parental relationship is even a model for the later commitment to a mythological magnitude. Rather than provide for these needs while encouraging children to learn means by which they can assume responsibility for themselves, parents and significant others typically satisfy these needs by assuming responsibility for children or allow, for example, educational or denominational institutions to do so. That they do so is usually the result of their own experience, reproducing their own lack of training in the self-responsible. Mythological practices are typically reproduced.

This is not an argument that such practices are universal or invariably deep, but that they are typical. Thereby, a child’s disposition to the existence of mythological magnitudes and its desire that fear be eliminated and that sympathy is demonstrated induces training in the forgoing of self-responsibility. This general disposition readies children to then accept, as they mature, the assumption of responsibility for them by the political magnitude, through the strategic practices of parliaments, courts, the plethora of executive agencies and their agents, as well as by such allies of these institutions as corporations and churches, by looking to these for the satisfaction of their concerns about fear and sympathy. Among this plethora, the State, typically seen as ‘the Government’, is argued here to play a pivotal, exemplary role. Children then become progressively sophisticated in such behaviour and language and these behaviours and language can become certainties in the sense intended by Wittgenstein, that is as unquestioned references for truth statements.

Further, training is intended to produce practices in a largely unconscious manner. That is, beyond the universal lack of awareness of the disposition to archetypal mythological magnitudes, there is, in the case of such early training, a typical lack of awareness of the effect of this. Kober argues that it is not necessary that certainties, as opposed to things that are known by justification and reason, ‘be known explicitly or be potentially enumerated, for certainties can also be mastered unconsciously’⁹⁹. In saying so, he refers

⁹⁹ ibid p.416, where he refers to Last Writings on the Philosophy of Psychology Vol.1 892 and On Certainty 360, 446
to Wittgenstein: “But on the other hand: how do I know that it is my hand? Do I even here know exactly what it means to say it is my hand? - When I say ‘how do I know’ I do not mean that I have the least doubt of it. What we have here is a foundation for all my action. But it seems to me that it is wrongly expressed by the words ‘I know’ 100 and “But why am I so certain that this is my hand? Doesn’t the whole language-game rest on this kind of certainty? Or: isn’t this ‘certainty’ (already) presupposed in the language-game? Namely by virtue of the fact that one is not playing the game, or is playing it wrong, if one does not recognise objects with certainty”101. Similarly, the effect of such training, where it works effectively and from an early age, is close to and reinforces the inherent disposition to create archetypal mythological magnitudes. By this is meant that, while the disposition to create certainty about archetypal magnitudes is unconscious, the beliefs and practices regarding the political myth are usually acquired unconsciously but are then manifest as conscious dispositions: the child is unaware he is being trained to accept the reality of the mythological State but the man is typically aware of his disposition. Indeed, given the continuous profile of political matters and the prevalent discourse of fear and desire encouraged by dominant interests, this awareness is a matter of constantly reaffirmed consent by non-autonomous individuals.

The world picture that an individual adopts within a community is comprised of an overlapping plurality of such language-games, of varying complexity but in which those that are more complex are built on those that are more primitive. A world picture for Wittgenstein is a kind of myth, and ‘A myth exhibits the views and convictions of a cultural community or form of life. It may contain traditions, tales, or legends concerning the origin of the world, the world’s shape and processes (the seasons…the behaviour of plants and animals…reproduction of the species, etc.) as well as political structures…and religious beliefs - in brief, all those matters which may be of interest in a community’s life’102. Although this argument doesn’t depend on it, it is interesting that for Wittgenstein a world picture is a kind of myth: ‘The propositions describing this world-picture might be part of a kind of mythology. And their role is like that of rules of a

100 On Certainty 414
101 ibid 446
102 M. Kober p.418 (my emphasis)
game; and the game can be learned purely practically, without learning any explicit rules. Wittgenstein does not provide a definition of the sense that ‘mythology’ has for him but there is nothing in his argument which is inconsistent with the notion of mythology used here.

What is argued here is that, beyond the unconscious archetypal disposition but taking advantage of it, the language-game of institutional structures of the State, itself a part of a dominant mythological world-picture, is intended to be learned by individuals from childhood as a certainty through increasing levels of complexity and to a considerable extent unconsciously. Further, that this is to be part of the manner in which an individual understands the institutionalised ways in which he comes to believe he can have fear eliminated and to experience sympathetic conditions. Where this training is effective, this language-game comprises the way we understand, talk about and behave in relation to the institutions of the State, as well therefore as the expectations we have of those institutions, that is, engaged through the forgoing of responsibility, that they exist to deal with fear and sympathy. The effect of this training, where it is experienced early and is effective, may be unconscious but the attitudes and practices which result from it are not.

This is not to say that there is no doubt in the form of questioning of the efficacy of such an outcome. But such doubt, which follows learned certainty, almost always concerns the particularity or instance of the State (e.g. a particular sovereign or elected government or decision), rather than the concept of the State which itself is typically embedded as a certainty. This certainty is the instance of the archetypal mythological magnitude, the necessity of which is then rarely questioned. That is, the question is almost never seriously asked whether there should not be government by State of the kind described here as mythological, only whether a more satisfactory particular government can be identified to realise this archetypal notion. Doubt typically applies only about such particularity. Most political scientists would merely recognise this as institutionalisation, the condition of a stable polity, but in the argument presented here this very stability is the sign of the effectiveness of the training in dominant mythological practices. This is

---

103 op cit 95
certainly not to say that other conceivable political arrangements, including those possible in a non-mythological form, may not also demonstrate stability.

It is argued here that this search for, this teaching of and the acquisition of certainty is normalisation. The search for certainty concerns the establishment of a political entity which will be accepted as fearsome but fear-eliminating and sympathetic. Further than this, it is argued that, in the context of the dominant mythology, normalisation itself, that is by its very nature, is mythological. Norms are best understood as preferred rules to be followed and it is the dominant mythology which heavily influences which rules are preferred.

This claim begins with Wittgenstein’s statement that a finite array of incidents may be compatible with any number of rules\(^{104}\) and continues with his analysis of the nature of rule-following about which he expresses two views. The distinction between them is controversial but in the mythological context both views are fully compatible. One position is that rule-following is a social practice: ‘To obey a rule, to make a report, to give an order, to play a game of chess, are customs (uses, institutions)\(^{105}\) and “And hence also ‘obeying a rule’ is a practice. And to think one is obeying a rule is not to obey a rule. Hence it is not possible to obey a rule ‘privately’: otherwise thinking one was obeying a rule would be the same thing as obeying it’\(^{106}\). ‘Privately’ is used in the context of his denial of the argument that there can be a private language, so should not be read to imply that an individual cannot follow a rule of his own making. He makes it clear that rule-following depends on a person’s capability and not on how that capability was acquired\(^{107}\). He does strongly imply that rule following is typically social and that certain activities that are guided by rules can only take place in the context of a community: ‘Following a rule is analogous to obeying an order. We are trained to do so; we react to an order in a particular way’. But this does not disallow the construction and following of

\(^{104}\) L. Wittgenstein *The Blue and Brown Books* p.13
\(^{105}\) *Philosophical Investigations* 199
\(^{106}\) ibid 202
\(^{107}\) *The Blue and Brown Books* p.98 (at 41)
an individual rule, as he goes on to say ‘But what if one person reacts in one way and another in another to the order and the training? Which one is right?’\textsuperscript{108}.

Rule-following is both a social and an individual practice. One reason it is social is that mythology can make it so but rule-following can be individual because individuals are capable of developing and following an individual rule, for example one which is not mythological. This does not mean that the social is necessarily mythological, only that wherever the social comprises the forgoing of self-responsibility, and this is commonly the case, the social is mythological. A non-mythological rule would be one which is not normative in the sense of enforcing a dominant mythology. It would still be normative in that there can be agreement between self-responsible individuals as to what are to be the rules, adopted without forgoing self-responsibility. This is not to deny that there need to be sensible run-of-the-mill rules that make things work. These would be produced by a representative body not dominated by established interests and could be introduced without long consultation across the social body down to the individual level. Otherwise, any society, including a non-mythological society, would grind to a halt. But the concern is that the tacit consent provisions of a Locke or a Kant or a Pettit can hide the introduction of rules that assume responsibility for others and favour dominant interests. So there need to be thorough processes which allow that rules are actually widely scrutinized after a cooling down period and changed, without requiring civil disobedience. Awareness of such scrutinisation would constrain interests that might be dominant in the legislative or executive process.

Again it is said here that the assumption of self-responsibility and the development of redesigned institutional arrangements would not be instantaneous but progressively generated by individuals working together through different State-promoted practices of participation. As was explained in the Introduction, self-responsibility has to be learned, just as its forgoing is now learned. This strengthens the argument here that although an individual may typically follow socially constructed mythological rules, he is able to

\textsuperscript{108} op cit 206
determine his own non-mythological rules and work these into non-mythological individual and social practices.

Generally, the mythological significance of Wittgenstein is that he lays out some of the ontological ground which Foucault materialises. The function of the rationalities is not merely to change human practice through training but to do so in a manner that government, and the institutional arrangements which promote it, are seen as ontologically certain and effective in dealing with the fear/sympathy nexus. Wittgenstein was no mythologist but his account of rule-following as normalisation identifies the conditions to which political mythology aspires in attempting to realise the archetypal myth.

Fields of Embodiment

We shall now look briefly at two fields where the impact of these arguments about embodiment is closely felt, the notion of citizenship and the perception of other cultures. These are real world illustrations of the way that mythological arrangements get anchored in the practices and beliefs of individual men and women. They are also complementary notions, in that the first refers to the impact of the mythological argument on the political status of insiders and the second refers to how mythological political concepts impact on the manner in which a community deals with outsiders.

Citizenship and Rights

The mythological argument has broad significance for the concept of citizenship, through the normalisation by which an individual is brought to share and is given status in mythological institutional arrangements and in the associated world picture of the community. This occurs in the context of the covenant by which, given the forgoing of self-responsibility, the dominant interests of the mythological magnitude will deliver through its particular instances to each individual the satisfaction regarding the fear/sympathy nexus. Through this covenant and the training or normalisation under
whose umbrella it takes place, the individual is brought into the world picture of that community and is delivered membership. Citizenship is more than a matter of legal status, rights and obligations. It is the embedding of mythological rules and practices\textsuperscript{109}. Citizenship is therefore at the heart of the distinction, already made, between the popular myth and the underlying, real political mythology. Rights are commonly regarded as indicators of the former when they are more truly signs of the latter.

It is argued here that not only are citizens’ rights conditional upon the individual accepting the covenant, that is complying with the prescriptions sponsored or allowed by the State concerning his behaviour\textsuperscript{110}, but also that the nature and extent of rights themselves are determined within this mythological context, that is that they consolidate – because they are formed by - the dominant political myth and its responsibility to deal with fear and sympathy rather than encourage the individual to resume self-responsibility. These are an example of the reference in the Introduction to the claim that, although there have been improvements in degree along the liberal-republican, that is mythological, axis, the starting point for that axis remains the fear-sympathy nexus. By implication,\textsuperscript{110}

\textsuperscript{109} In discussing neo-liberal citizenship, Hindess argues that citizenship should not be seen primarily as an internal matter, that is of the relationship between individuals and the State and where the discussion of international order is a ‘derivative, secondary development’. He prefers it to be seen first as a positive project of government, concerned with the problem of governing the larger human population, by incorporating humanity within the modern system of states and using market interactions to civilise and regulate the conduct of states and their populations. Despite the significance of the State-forming Treaty of Westphalia, perhaps this makes too much of any difference between these approaches, which seem to be compatible and equally important. For this thesis, the genesis of citizenship is in the relationship between the individual and a constructed entity which claims that forgoing self-responsibility will allow it to deal with fear and sympathy, especially for its dominant interests, including by expansion into other, differently organised communities. It is consistent with this that States, expanding by colonial activity, would recognise that, to avoid a continuous Hobbesian ‘war of all against all’, there should be a system of States by which there might be an expanding but stable framework for the exploitation they seek. This does not contradict the claim that the primary motive force of the constitutional State is the function of realising the mythological outcomes regarding the fear/sympathy nexus, including by expansion, see B. Hindess \textit{Neo-liberal Citizenship} in \textit{Citizenship Studies} Vol 6, No. 2, 2002 pp. 127-143, especially pp.130 and 136

\textsuperscript{110} As for Foucault and in the argument of this thesis, for Hindess the role of the market is important in the operation of liberalism. While the market appears to be an example of an arms-length approach by the democratic State, the State is not hands-off when it ‘withdraws’, as was made clear in the chapter on Locke. The State retains regulatory and prosecutorial responsibility regarding the market and the operation of the market therefore generally informs the mythological analysis as a field for the promotion of the principles of governmentality, discipline and pastoral power by the State and its agents and allies. Further, the very reluctance of the liberal State to intervene in the market is also relevant as an example of the privilege extended first to the interests which are dominant within it and then to others within the mythological framework, ibid pp.135, 139, 140. The State ‘actively’ withdraws from the market in the interests of promoting the outcomes regarding fear and sympathy.
non-mythological rights would have a different starting point which may include liberal-republican rights but they would extend further and play out very differently, say in political participation, criminal justice and indigenous affairs. Non-mythological rights would not be first about eliminating fear and creating sympathetic conditions but would accept the inevitability of fear and attempt to manage it respectfully by widely promoting self-responsibility with the support of a reconfigured State.

Typically, rights have been seen to fall into three categories, that is civil, political and social\textsuperscript{111}. Civil rights are taken here to have emerged during the eighteenth century and are concerned with freedom of speech and association, rights of property, rights to a fair trial and equal access to the legal system. It is true that it might be argued that the most important work of these rights is to give cues to self-acting individuals on the limits of legitimate action, but a mythological view would argue first that individuals carried little responsibility for the determination of such legitimate action and also that, when matters are referred to the judicial apparatus, such rights merely affirm arrangements in which responsibility for the individual is assumed by those who populate that apparatus. That is, decisions regarding the claims by or about individuals are made by judicial officers, especially without the on-going active participation of the individual and without promoting the self-responsibility of the individual. This is typically justified by the mythologising of the offending act as a symbolic but intentional breach of the covenant, which as we have seen is a particularly Kantian approach to law and has typified the perception of offenders.

This covenant, as we have also seen, is characterised by obedience without significant participation. Self-responsibility, on the other hand, is not conditioned by whether the individual simply abides by the prescriptions of the State, this being a circular argument. It is conditioned by whether the capacity of the individual to become self-responsible (for example by ensuring the acquisition of the capacity by which he would exist in a respectful but independent manner) is the primary task of the judicial process. The

assumption of responsibility is typically the case in the process of sentencing in criminal matters. Offending acts are seen as symptomatic of an intention to be fearsome in the mythological sense. The trial, as the process of determining culpability, does not concern itself with the explanatory context of the life of the individual and the impact of the act on the life of any victim or of the broader community or with promoting self-responsibility. To that extent, the trial is an archetypal mythological event and is thereby a means of inducing subjection to the mythological magnitude of the State.

Political rights are taken to have emerged during the nineteenth century and to be concerned with electoral rights and wider access to the political institutions so that interests could be articulated. These included the introduction of the secret ballot, the creation of new political parties (especially to represent the interests of workers) and the extension of the franchise. These are even more clearly arguable as mythological, in that they engage individuals in the presumptions and processes of the mythological State for the purpose of eliminating fear and extending sympathy. They authenticate the authority of the State and its dominant interests rather than establish self-responsibility. Such rights are, for example, limited to concern about the election of ‘instances’ of the mythological magnitude, for example particular governments, usually determined by the extent to which such an ‘instance’ promises to satisfy expectations regarding fear and sympathy. Such rights never extend to rejecting the necessity for government as it is known per se, that is in its mythological form. To this extent, a parliamentary election is an archetypal mythological event. In this context, political rights are a means of inducing subjection to the mythological magnitude.

Social rights are taken here to have emerged in the twentieth century and to be concerned with claims to welfare and thereby the establishment of entitlements to social security in periods of unemployment and sickness. Mythologically, these may properly be seen as reinforcing the viability of the magnitude through the satisfaction of expectations relating to the demonstration of sympathy towards citizens. To this extent, especially when combined with other rights, accepting welfare is an archetypal mythological event. However, it may also be argued that welfare, as a method of satisfying the mythological
expectation of sympathy, can also be employed as an extended means of subjection, that is as justifying the denial of real opportunities for allowing the individual or group to engage the magnitude and having his or their interests represented within the corporate process of representation. In its role of denying engagement, welfare is a means of inducing an extension of the subjection to the mythological magnitude of the State. This is a particularly relevant issue for indigenous people, as we shall see.

However, beyond the mythological effect of each individual right, it is through the combined effect of civil, political and social rights delivered by their respective institutions, that is the judicial, parliamentary and welfare systems, that there is the greatest mythological effect in the satisfaction of the fear-sympathy nexus. It is acknowledged that such combinations do not exist in all Western jurisdictions, but the mythological argument presented here is that, wherever these categories of rights operate, even in isolation, they have a socially subjecting effect. Further, it is a sign of the vitality of the dominant myth that there were elaborate social struggles to establish such rights over such an extended period by individuals and groups so that they might be incorporated within the apparatus of the magnitude, rather than campaign for self-responsibility. Individuals fought for these rights because of their willingness to forgo self-responsibility in return for the claim that the fear/sympathy nexus would be addressed for them by the State and its allies. An example is the extension of the franchise or welfare entitlements. In this, it is argued here that, against the reluctance to share the power to appoint the government of the day, dominant interests were aware of the ‘incorporative’ benefits: by allowing participation, their own dominance was secured through the social stability that resulted from making concessions to the expectations of non-dominant interests. It might also be observed that dominant interests dealt with this apparent concession of universal suffrage by promoting arrangements which limit the electoral choice to dominant, corporatised alternatives, such as occurs where there is a two-party system and its allies. This is a point made in relation to the analysis, above, of Pettit.
The rights that on the face of it appear to contradict this general mythological interpretation of rights are those of free speech and association. They appear to deny the claim made here that the magnitude and the interests which dominate it will not tolerate categorical resistance to its status or powers. It would be too simple to explain this right away through an assertion that it is a mere gesture by dominant interests the purpose of which is that these interests and the magnitude they have colonised may be defended against claims of oppression. In fact, the mythological function of these particular rights is more interesting than that. Their purpose is the creation of a social space to allow the expression of concern that the particular ‘instance’ of the archetypal magnitude, to which individuals have been accommodated through normalising training, is failing to satisfy its responsibility to address the fear/sympathy nexus on behalf of non-dominant interests. That is, like elections but more immediately, by this right the ‘instance’ of the archetypal magnitude is made more responsive to the needs of the non-dominant, thereby stabilising the magnitude and the weighting of interests it represents. The fourth estate commonly, although perhaps decreasingly, fulfills such a role.

What reinforces the mythological view of rights is their provisional status. The commonly-accepted position on rights, that is that they represent the popular rather than the real mythology, is that they have a status of inalienability, that as a member of a society one assumes and inevitably retains this range of rights. However, there are at least two examples which show that this is not the case. The first relates to prisoners, who forgo the right of assembly, voting in elections unless they are serving a short sentence, claiming welfare and, at various times within various jurisdictions, the right to initiate civil law suits. Such rights are automatically resumed upon discharge from prison.

The second, which will be explored further below, relates to the status of Aboriginal people in post-colonial Australia. As Chesterman and Galligan state: “The period from 1880 to 1910 in Victoria provides an illuminating context and precedent for federal citizenship policy…The first and subsequent Commonwealth parliaments and the federal administration defined citizenship negatively, excluding ‘aboriginal natives’ from rights and benefits. We have shown that this policy was not simply the result of fear generated
by the representatives of States with large numbers of Aboriginal inhabitants’ ”112. That is, citizenship was not an automatic condition of being born within a particular jurisdiction. Further, that it had been granted was no assurance of its retention. The Western Australian Natives (Citizenship Rights) Act 1944 allowed an Aboriginal to apply for a certificate of citizenship by which he was ‘deemed to be no longer a native or aborigine and shall have all the rights, privileges and immunities and shall be subject to the duties and liabilities of a natural born or naturalised subject of His Majesty’113. In granting such a Certificate, a magistrate had to be satisfied _inter alia_ that the applicant had adopted the manner and habits of civilized life; that he could speak English; that he was not suffering from leprosy, syphilis, granuloma or yaws; that he was of industrious habits and good behaviour and reputation; and was capable of managing his own affairs. Importantly, “Successful applicants could lose their citizenship ‘rights’ by not adopting the manner and habits of civilized life, by being twice convicted of an offence under the Native Administration Act, or by contracting any of the above diseases”114. That is, if, whether by criminal offence or contracting a proscribed disease, the individual did not sustain the mythological covenant and demonstrably share the dominant world picture, the status of membership and its attendant rights was withdrawn. These circumstances reinforce the mythological symbolism of the criminal act. More broadly, they illustrate the conditional connection between prescribed patterns of normalised behaviour and the status of citizen, with its attendant rights.

In this context, citizenship and its attendant liberal-republican rights are properly seen therefore first as manifestations of mythological arrangements. Further, it can be argued that citizenship rights have been formed by, that is they are a playing out of, mythological thinking. Rights should not be seen as a means of protecting individual interests against the inducements and training that result in the forgoing of self-responsibility. Instead, they should be seen as the legal network which consolidates those inducements and that training. This claim allows the proper understanding of the Foucauldian claims

112 J. Chesterman and B. Galligan _Citizens Without Rights – Aborigines and Australian Citizenship_ p.30, (my emphasis)
113 ibid p.132
114 ibid p.133
concerning what is here seen as the dispersal of mythology through the normalising function of governmentality and discipline\textsuperscript{115}. Importantly, Foucault states that ‘When today one wants to object in some way to the disciplines and all the effects of power and knowledge that are linked to them, what is it that one does…if not precisely appeal to this canon of right, this famous, formal right, that is said to be bourgeois, and which in reality is the right of sovereignty? But I believe that we find ourselves here in a kind of blind alley: it is not through recourse to sovereignty against discipline that the effects of disciplinary power can be limited, because sovereignty and disciplinary mechanisms are two absolutely integral components of the general mechanism of power in our society\textsuperscript{116}. Although Foucault would not have said so, the general mechanisms of power are mythological. Rights are mythological at two levels. First, they sustain the notion of the myth of the autonomous individual, by which the forgoing of self-responsibility is justified as a matter of formal consent when the consent is of an altogether different kind. Secondly, they are means by which the individual is engaged by the magnitude that claims to eliminate fear and creates sympathetic conditions, ultimately by inducing his adoption of neo-liberal self-creation. What are claimed as markers of the liberal, constitutional State are symptoms of the mythological State.

\textit{Other cultures}

One other consequence of using the claims regarding fear and sympathy to embed expectations about preferred patterns of social behaviour and the practices of institutions to inform or correct such behaviour, that is of embedding the dominant myth in practice, is that there is great difficulty in understanding cultures other than through the mythological environment in which an individual is trained. That is, although the desire to eliminate fear and generate sympathy may be universal, the practices by which these end-states are pursued vary greatly between cultures. One consequence of such

\textsuperscript{115} That is, that normalising judgment produces ‘a whole range of degrees of normality indicating membership of a homogenous social body but also playing a part in classification, hierarchisation and the distribution of rank. In a sense, the power of normalisation imposes homogeneity; but it individualises by making it possible to measure gaps, to determine levels, to fix specialities and to render the differences useful by fitting them one to another’, \textit{Discipline and Punish} p.184

\textsuperscript{116} M. Foucault in \textit{Power/Knowledge: Selected Interviews and Other Writings 1972-1977} p.108
misunderstanding is the generation of fear, fear of other cultures. This misunderstanding in turn raises further questions about the criteria by which cultures can be compared and how they can be judged to be changing. These questions become relevant to the exploration of indigenous policy in the following chapter, but are dealt with here as a consequence of the analysis of this issue by Wittgenstein by way of introduction to that exploration.

It is emphasised here that consideration of mythological issues and their impact on cultural relations is not intended to be a single explanation for the wide range of factors which affect such relations. This consideration is intended, rather, to indicate that such issues have a firm place among this range of factors.

Wittgenstein famously points out how this incapacity to understand is easily appreciated regarding non-human behaviour: ‘If a lion could talk, we could not understand him’\textsuperscript{117}. Regarding the understanding of other cultures, he emphasises that the capacity to understand depends on and is limited to the accidental recognition of elements from what might be universal behaviour to which human beings are disposed and which we can therefore attempt to use as common reference points. But such commonalities are ever only partial\textsuperscript{118}. He states “Let us imagine that the people in that country carried on the usual human activities and in the course of them employed, apparently, an articulate language. If we watch their behaviour we find it intelligible, it seems ‘logical’. But when we try to learn their language we find it impossible to do so. For there is no regular connexion between what they say, the sounds they make, and their actions; but still these sounds are not superfluous, for if we gag one of the people, it has the same consequence as with us; without the sounds their actions fall into confusion…Are we to say that these people have a language: orders, reports, and the rest? There is not enough regularity for

\textsuperscript{117} *Philosophical Investigations* p.223e
\textsuperscript{118} ‘Suppose you came as an explorer into an unknown country with a language quite strange to you. In what circumstances would you say that the people there gave orders, understood them, obeyed them, rebelled against them and so on? The common behaviour of mankind is the system of reference by means of which we interpret an unknown language’, ibid 206
us to call it ‘language’ ”.

Given the tenuousness of the connections between languages, practices and therefore cultures and given that there is no reference point that is external to all world pictures and that is thereby culture-neutral, it is difficult to defend an argument that one culture or world picture or form of life is superior to another. One may say, with confidence, only that it is different. For Wittgenstein, truth can only be determined within a world picture. What is more common than giving reasons to establish such superiority is persuasion. Mythologically, acceptance of the superiority of one’s own world picture is predictable, especially given the disposition towards its establishment and refinement over a long period and its consequential wide acceptance through training. However, the hostility towards other world pictures or cultures and the intent to suppress them should not be seen as inversely proportionate to the depth and breadth of its embeddedness within one’s own world picture, that is inversely proportionate to the maturity of one’s own culture. Despite this lack of justification regarding superiority, it may well be that the more developed a culture is, the more likely it is that it will in fact seek wider establishment or at least react against any perceived threat to eliminate any source of fear or seek opportunities to optimise sympathy towards its dominant interests in the form of economic benefits or spiritual dispersal through colonisation. Such motivations might be attributed to such programmes of colonisation as that displayed by the British in the eighteenth century.

Related to this question is that concerning how one judges whether a world picture is changing. For Wittgenstein, certainties, as ways of behaving, can change. In particular,

119 ibid 207
120 On Certainty 95 and 167
121 “I said I would ‘combat’ the other man, - but wouldn’t I give him reasons? Certainly: but how far do they go? At the end of reasons comes persuasion. (Think what happens when missionaries convert natives)
122 ‘But I did not get my picture of the world by satisfying myself of its correctness…No. It is the inherited background against which I distinguish between true and false…The propositions describing this world picture might be part of a kind of mythology. And their role is like that of rules of a game; and the game can be learned purely practically, without learning any explicit rules…It might be imagined that some propositions, of the form of empirical propositions, were hardened and functioned as channels for such
some parts of a mythological world picture may change, for example through training, but it is rare that a practice, let alone a world picture, is changed at once and in all its elements, even over a long time. The propositions and practices that remain ‘harder’ are a common reference point for those within a world picture but may not even be recognised by those from another world picture. Even within a world picture, the evolutionary process may be imperceptible.\(^{123}\)

The mythological significance of inter-cultural relations begins with this difficulty in ‘reading’ another culture, so that it is very difficult to justify either that a position of relative superiority can be argued between cultures or that there are reliable criteria that allow a judgment that a culture is changing in a fundamental manner. However, because of the pervasive nature of fear and the desire for improved conditions, it is the nature of the mythological magnitude that it seeks both refinement and dispersal, as strategies by which its establishment is strengthened and affirmed. It is especially to the advantage of dominant interests and their allies that such refinement and dispersal occur. By these means, there may be the optimisation of the fear-sympathy nexus on their behalf, albeit with an argument for some consequential benefits for interests that they dominate. The consequence is that the references needed to determine superiority are chosen from within the dispersing mythology, for example the level of industriousness, readiness to take on new theological beliefs, not breaking the new law, accepting welfare, the manner of dress and habitation and so on, as happened regarding Aboriginal culture. That is, that it delivers the fear-sympathy nexus better than any other and that this is demonstrable by choosing evidence from within its jurisdiction. This is therefore a self-referential process.

Similarly, the criteria used to judge that a lesser, non-preferred culture is changing (or is failing to change because it is incapable), for example to accommodate itself to the dominant mythology, are determined from within the dominant mythology rather than from a shared perspective, let alone from within the dominated culture. As a

---

\(^{123}\) ibid 97
consequence, there may be a significant misreading of the nature and extent, including the lack of, change actually taking place within the dominated culture, despite even relentless strategies of normalisation and signs of apparent subjection.

Without claiming that this is the only criterion used, it is therefore common that a position is adopted of absolute cultural superiority\textsuperscript{124} based on the belief in the pre-eminent capacity of a particular culture to deal with fear and sympathy for its citizens, before such other aspirations as moral or cultural enhancement. It is the fulfillment of this belief that leads to the ‘persuasion’ of other cultures to be absorbed into the dominant cultural mythology. When this is a strategy of a State, this fulfillment, that is its dispersal beyond its own primary sphere of influence, is likely to be motivated by the opportunity to optimise the fear-sympathy nexus on behalf of its own dominant interests by exploitation of the opportunities available in new jurisdictions before any spiritual or humanitarian consideration, although these may be allowed as a secondary, tactical initiative. It is for this reason that practices of normalisation are high on the agenda in the establishment of the dominant mythology within a new sphere of influence. Such dispersal beyond the primary sphere of influence may also be motivated by the fear of opportunities lost to other cultures. This is especially relevant to the European context in the seventeenth and eighteenth centuries.

This account of cultural superiority and cultural change is best seen as an illustration of the effect of the embedding of a particular mythological world picture. That is, cultural self-reference is formed by mythological thinking, given the culture-specific field of training which produces it. Further, given that it is in the nature of the mythological magnitude to disperse\textsuperscript{125}, there will as a consequence be difficulty in understanding other

\textsuperscript{124} For Hindess, this sense of superiority is central to the expansion of European liberalism, see \textit{Neo-liberal Citizenship} p.133.

\textsuperscript{125} Complementing the analysis provided in Chapter 6 of the mythological foundation of the Kantian State, and to demonstrate the link between the internal workings of the mythological State and its dispersal beyond its source in the European States, one can see in Kant an emphasis on the necessary internationalisation of the constitutional State. See I. Kant \textit{Toward Perpetual Peace} in \textit{Practical Philosophy} pp.322ff, where he outlines his argument for a constitutional republican State form and pp.325ff where he provides his argument for a federalism of free states. Regarding the latter, he states at p.327 ‘The practicability (objective reality) of this idea of a \textit{federalism} that should gradually extend over all states and so lead to perpetual peace can be shown. For if good fortune should ordain that a powerful and enlightened
cultures. There is an inherent dynamic for a magnitude to establish itself widely across social space as a certainty in its substantial elimination of fear and in the search for enhanced conditions of existence. This certainty is established through the forgoing of individual self-responsibility, absolutely at a categorical level but conditionally regarding the prevailing instance of the magnitude. It does so as part of, as well as for the purpose of, the continuing realisation of a preferred world picture, one generated by dominant interests but to which all individuals forgo responsibility regarding fear and sympathy. Such compliance is promoted by a disposition in man and is effected through normalisation, a process of training for rule-following that is applied both to subjects who are willing and unwilling and who are largely unaware of such a process. Normalisation attempts to work through the ingraining of mythological practice in the lives of individuals. Unwilling subjects are often those who share world pictures at variance with that promoted by dominant interests and which are by definition fearsome to those who share the dominant world picture. It will be argued through illustration in the following chapter that the normalisation of cultures at variance with the dominant culture or world picture is typically attempted through the cultural absorption of children and through the application of discipline to adults.

*Wittgenstein, Foucault and Mythology*

From the earlier Comment in this chapter we saw that Foucault’s rationalities are best seen first as evidence of the formative influence of mythological thinking and then as the means of embodying practices which realise and consolidate the political mythological magnitude. Now we see that this consolidation is better understood as normalisation, an attempt to create a sense of certainty about these institutions and practices. That is, Wittgenstein provides an ontological context within which Foucault’s rationalities are best understood, just as Blumenberg provides a mythological context in which the political implications of his rationalities can be seen. This sense of certainty, which may
be acquired unconsciously, does not contradict the argument that there is consent to the existence and nature of the mythological magnitude. This is because, although certainty is typically unconscious regarding the disposition for archetypal magnitudes and is typically acquired unconsciously where there is early training about the political mythological magnitude, ideas about the State are embedded as a conscious and continuously reaffirmed disposition. They are the subject of consent by non-autonomous adults which affirms the disposition to mythologise, which is also to say they affirm the mythological status of the individual, ultimately as one who self-creates rather than one who has to be created. This is the difference between neo-liberalism and liberalism. None of this prevents doubt about the instance of the political myth but, given its deep embedding in individual practice, there is rarely any doubt about the myth per se.

These ideas find their place in the practices of men and women in several ways. The dominant European political mythology evolved as an idea due to the claim that, following the violence that accompanied the demise of the unitary theological mythology, it could best deal with fear and sympathy. Despite the persistent willingness of individuals to accept this claim, this arrangement positively allows that there may always be contrivance to artificially create the perception of threats and opportunities both within and external to a particular world picture or culture. To continuously affirm their position and influence, it needs to be accepted that dominant interests are demonstrating their capacity within the covenant to deal with these expectations, which ultimately find their form in the claimed liberty of neo-liberal self-creation. This still allows for the artificial creation of such understandings, so that being dominant typically becomes self-fulfilling within a mythological context.

The evolution of the idea of the political myth depended on being embodied in the practices of men and women through the normalising processes of civilising at court and then through governmentality and discipline applied generally across social space. This embodiment operated across two fields, internally within the political communities that were its source and by expansion into alien spaces and cultures.
The internal embedding through normalisation has produced the citizen. Citizenship is typically mythological because the status attributed to it is always conditional upon compliance with the terms of the mythological covenant, that is adopting practices of submissive docility and productivity within an existence whose conditions are claimed to be sympathetic, and because standard rights are properly seen as means of engaging the individual into the dispersal of the dominant political myth and its preferred practices. In this sense, it can be argued that the West has constructed a political magnitude, which will through civilising and governmentality make us as we come to wish to be made, that is through arrangements to produce tolerable levels of fear and acceptable levels of sympathy. There may be resistance to a particular ‘instance’ of the magnitude but virtually no questioning of the validity of the magnitude *per se*. The conditions of our existence are thereby mythological, so individuals who pose a threat or the appearance within a jurisdiction of any opportunity to create expanded conditions of sympathy for its citizens is a chance for the magnitude to demonstrate its vitality and validity.

The external embedding, which motivates and accompanies expansion, confronts the problem and opportunity of other cultures. Such cultures are often difficult to understand and so result in the generation of reference points to measure change that are drawn from the dominant culture, a predictable strategy founded on familiarity and on notions of presumed cultural superiority of the dominant myth produced by its confidence in its own capacity to deal with fear and seek opportunities to enhance sympathetic conditions of existence. Equally, other cultures often present, especially through colonisation, the opportunity to enhance sympathetic conditions for its compliant citizenry. Each of these factors, which together show that the thought of Blumenberg, Foucault and Wittgenstein intersect, is prominent in the colonial experience of traditional Australian Aboriginal people.

It will be argued that the policy and practices of the Australian institutions towards Aboriginal Australians since European arrival in the late eighteenth century are properly and best understood in the context of the long creation and refinement of the Western mythological magnitude and its inevitable dispersal through the normalisation of social
space, first within their own jurisdictions and then beyond. Australian Aboriginal people have been perceived and treated mythologically. Their treatment over a long period by those who share what was transplanted from England into the Australian context as the dominant world picture has been, rather than merely a matter of incidental though continuing injustice, both predictable and consistent in the context of a world picture that demands the forgoing of self-responsibility in return for its claim of dealing with the fear-sympathy nexus. The treatment of Aboriginal people in Australia is best illuminated by the foregoing consideration of the very nature of the mythological magnitude itself, as an entity which consolidates itself by dispersal through normalising assumption of individual self-responsibility, rather than an erroneous application of a single policy by an otherwise fair and just regime. The policies and practices imposed upon Aboriginal people, which we shall now examine, are a manifestation of the deep mythological nature of institutional arrangements and the elaborations of those policies and practices reveal that nature.

Comment

Before that examination and looking back briefly at both the idea of the mythological State (Parts 2 and 3) and its embodiment in the lives of individuals (Part 4), we can say that, to the ontological frame provided by Blumenberg and Wittgenstein, the conceptual political elaboration is added by the tradition from Hobbes to Pettit and the material flesh by Elias and Foucault. This is not to say that what the tradition, on the one hand, and Elias and Foucault, on the other, are doing is the same thing. They are not, as the tradition is in effect creating and working on the realisation of the archetypal myth politically and Elias and Foucault are in effect exposing and unmasking what the tradition commends. Nonetheless, this unmasking does reveal how the myth has been embodied. So, the final claim here is not that there were two separate but parallel political processes going on since the Middle Ages which may have been mutually informing. Rather, it is that both of these, the idea of the State and how that idea was embodied in the beliefs and practices of individuals, have been formed out of the mythological disposition, a bedrock best understood in itself through Blumenberg, as amended here, and Wittgenstein. The
liveliness of this ontology then comes from the political ideas of the Hobbesian and republican traditions and the account of sweated lives given by Elias and Foucault. This is how the work of these thinkers intersect.

Each of these streams has evolved during this time. There has in effect been work on the idea of the mythological State from Hobbes which has caused that idea to evolve, without any diminishment of its key characteristics, as those theorists attempted to work through its inherent dynamic and its internal contradictions. And there has been the evolution of its embodiment from an infant state in the Middle Ages to the sophisticated, dispersed arrangements of liberalism and neo-liberalism. The latter, neo-liberalism, can be seen as the fulfilment of the programme. It is the latest form in which the embedding of the mythological idea of the State, an idea which is premised on the costly forgoing of self-responsibility in the ultimately vain hope of a peaceful, wealthy and healthy existence delivered by the State and its agents, becomes one of self-creation, with its self-imposition of docility and productivity. The myth has finally come ‘into man’s hands’, as the function of establishing it has gradually spread out from the crude power of the sovereign State through the early methods of civilising to the sophisticated, sponsored regimes of governmentality and discipline, and into the hands of the self-creating individual. This is the individual who, for example, willingly subjects himself to the behavioural prescriptions of the market, as a field of operation of the agents and allies of the mythological State, because he has acquired the certainty that it will eliminate fear and produce the sympathetic conditions he desires.

Another way of looking at this is to see that government is not separate from the sovereign State, understood as arrangements for the formal exercise of power over territory and subjects by institutional means through law. The sovereign State is simply where the political myth finds its first form, then dispersing across social space by incorporating all individuals through what Foucault calls governmentality by providing a fearsome, fear-eliminating and sympathetic arrangement to which they can forgo self-responsibility. The latest stage of this is neo-liberal self-creation wherein mythology has taken root in the individual who now undertakes to make himself docile and productive.
rather than having to be subjected to external strategic impositions. Training compounds disposition, with the intended effect being that such an arrangement, and the response to it, becomes a certainty.

As it found its way along this road, the political myth arrived in Australia, where it came up against Aboriginal culture. The outcome of that long meeting is the subject of the final chapter.
Part 5 – Myth’s Empire

Chapter 11 - Mythological State in Practice: Colonisation and Aboriginal Policy

As indicated in the Preface and in the Introduction, the intention of this thesis was to examine a new, mythological understanding of the State, first for its own value but also to ask whether it illuminates better than other accounts such complex social circumstances as the destruction of the traditional Aboriginal way of life. This second task will now be undertaken.

It has been argued to this point that there have been three elements in the emergence of the mythological State. The first is the archetypical conception of it, that is man’s disposition to create fearsome entities by which his generalised existential anxiety can be converted into fear of something and which by strategic and tactical manoeuvres can be induced to be sympathetic, first to those who come to dominate it then to all those who make themselves subject.

The second element is that this concept began to be imagined politically in the modern era by Hobbes, following the crisis in the unified conception of the formerly dominant theological myth. That is, it was Hobbes who created the real, situated idea of the State as a predominantly fearsome but potentially sympathetic entity. This concept, still with its dangerous and attractive features, has continued to be worked on slowly over time to bring it into man’s hands, that is to bring it under man’s control so that it would be sympathetic. This is the idea of its dispersal widely across social space. That is, the refinements by which sovereign power came to the legislature, how the separation of powers was established, how the State has emerged into its empowered constitutional form and how the idea of it was dispersed so that it engaged every individual, usually willingly. This was an unfolding of the implicit dynamic of the original Hobbesian conception, complemented by the disposition to mythologise, and thereby was the foundation of the political theoretical tradition within which these theorists have continued to work.
The third element is that, along with this refinement of the idea of the State against the archetype, there has been equally slowly over time the emergence of civilising, governing and disciplining practices which, together with the monopolisation of both violence and the capacity for the demonstration of largesse by the State, have introduced into the material lives of men and women the reduction of fear, especially of each other, and the creation of sympathetic conditions of existence. These complementary realities of idea and practice have been a demonstration of the disposition to create mythological entities. None of this denies the possibility, in fact likelihood, that dominant interests can artificially generate conditions of fear and sympathy which reinforce compliance, thereby satisfying their own interests.

With all this in mind, we may return to the third outcome identified at the outset, that is the illumination of the sustained subjection of Aboriginal people, effected as it was through a series of different strategies and tactics over a long historical period. This is done to see whether the mythological account of the State developed up to this point can illuminate the circumstances of that subjection. That is, whether the destruction of traditional Aboriginal culture is usefully, even best, seen as the result of the confluence of the main themes argued in this thesis, on the one hand the establishment and refinement of the mythological idea of the State in structural form and dynamic, and, on the other, the dispersal of it through techniques of civilisation, government and discipline. This is not done to use this subjection as some kind of test case which may validate the account of the mythological State. That account, presented throughout this thesis, stands on its own as an argument for a fresh analysis of the nature of the State as mythological. Having said that, no harm will be brought to this fresh account of the State if it is shown to illuminate the subjection of Aboriginal people in a manner that other accounts cannot.

In essence, the approach to be adopted here is to consider that the arriving British chose to deal with the Aboriginal people in a particular way, that is by pre-emptively deciding that they were to be categorised as British subjects so that they would be entitled to deal with them on terms favourable to themselves, especially through the confiscation of land. They might have taken a different approach. They could have said that this was a foreign country which they were occupying and whose inhabitants could be treated in various ways, including by extermination. Deciding that they were
British subjects allowed them to impose upon Aboriginal people whatever means were required to make them into subjects in practice and, much later, citizens, with all the attendant normalised beliefs, practices, rights and obligations that go along with that. But they had to be brought to such a status and this would prove to be a lengthening task. The sense of illumination to be argued here is that, against such standard accounts of this process of civilising as we get from seeing this as the spread of Enlightenment or the unfolding of Social Darwinism or the remote application of Christian ethics, the mythological account is both more explanatory and more predictive.

The particular standard account chosen here, against which the mythological account is presented as a better explanation and as more predictive, is that of Hasluck’s account of the British settlement of Western Australia\(^1\), which combines elements of Enlightenment, Darwinism and Christianisation. Other examples of colonisation could have been chosen and nothing would have been lost by that. However, Hasluck’s is highly regarded as an intelligent, perceptive and even-handed account of the treatment of Aboriginal people in a settled colony. It is not a soft target for a critical and comparative exegesis. So that he does not stand alone, the accounts of Haebich and Thomas will be looked at alongside what is regarded as his pre-eminent analysis.

What will be illuminated here is how the State as an entity is established locally *in vacuo*, what disposition governs its form and its practices, how this largely gives effect to the nature of the relationship between State and individual, one key effect of which in this case has been the dispossession and attempted normalisation of Aboriginal people in that place. This is the strategic and tactical destruction of traditional Aboriginal society and the establishment of a multi-functional regime in which Aboriginal people are brought to assume the status and practices of subject and then citizen. The refinement of this status over the last two centuries is argued here to reflect the refinement of both the idea and practices of the mythological State of Hobbes and his successors in the tradition.

---

\(^1\) Van Krieken has argued for the application of a modified version of Elias’ theory of State formation and civilisation in the examination of colonial and imperial practices, including ‘the ways in which nation-states such as the USA, Canada and Australia based their civilisation on an essentially violent and barbaric relationship with their respective indigenous peoples’. See *Elias* p.133
What has been broadly argued, then, is that the very idea of the State is archetypically mythological and that this is then evident in how it has been realised conceptually, with the progressive amendments made to Hobbes’ notion of absolute sovereignty based on the claim that this fully empowered entity becomes sympathetic to man rather than a source of fear. We have seen that the rationale for these structural amendments was serially explored, elaborated and affirmed by Locke, Montesquieu and, following Rousseau, by Kant. It is not claimed here, of course, that Rousseauean and Kantian thought had any immediate impact on the initial establishment of the State in Western Australia, given the timing. But this is claimed regarding Hobbes, Locke and Montesquieu. Ultimately, Kantian thought can be regarded as relevant, although indirectly.

What will be argued now is, along with the emerging institutional arrangements put in place to realise that mythology, that the civilising, governmental and disciplinary practices subsequently identified by Elias and Foucault were certainly in evidence from quite early in the history of colonisation in Western Australia. Along with the disposition of settlers to be subject to institutions that would deal with fear and sympathy, material means were required by which each individual was brought to an accommodation with the practices needed to ensure its widespread sustainability as the preferred arrangement. This was especially so for Aboriginal people, who posed a serious threat to the survival of the colony. From this, it will be argued that the entity dispersed itself across social space and into the lives of all individuals through normalisation that was mythological, that is, through the forgoing of their self-responsibility to the empowered State, in the expectation that issues of fear and sympathy would be satisfied, largely for the colonists.

The case to be illuminated, then, by this mythological account of the modern State is the policies and practices applied to the management of Aboriginal people by the British-Australian State. It could be asserted, and has been in a similar context\(^2\), that these policies and practices were rendered inevitable and justifiable by the alleged fact that Aboriginal culture was only marginally functional. That is, before the arrival of the British, there was such cultural fragility and incidental barbarism that the...

\(^2\) K. Windshuttle *The Fabrication of Aboriginal History - Vol 1 Van Dieman’s Land* p.386
disintegration that occurred in the face of the arrival of a new, vibrant and civilised culture must be seen as uncontrived because it was inevitable. Reinforcing this claim of fragility would be another that Aboriginal people had no sense of a proprietorial relationship with the land. It is this fragility which would explain the claim that Aboriginal people were easily, if not willingly, absorbed into the newly arrived culture, including by the taking of Aboriginal people into care by the State and by its denominational allies. It is this barbarism which explains the disposition to criminality on the part of Aboriginal people and thereby the range of standard responses by the State to crime, including direct violence and the imposition of regimes of institutional discipline. The application of these policies and practices would be eased by the establishment of the principle of *terra nullius*, that is the absence of any proprietorial Aboriginal relationship with the land.

If claims such as these were able to be substantiated, it would make difficult an argument, like that presented here, that the British State dispersed itself to mythologically normalise a fearsome culture over a long period, at least in the strong sense of mythological dispersal argued in this thesis, since it could not be easily argued that British settlers had cause to regard Aboriginal people as generally fearsome, either as a threatening, competitive culture or as fearsome individuals. However, if it can be demonstrated that Aboriginal people were fearsome in either of those two senses and have remained so, and that the British created a magnitude by assuming responsibility for its subjects and did so as the direct result of the experience of such fear, an argument can be put that the British State was mythological and acted accordingly. Then, the champions of those arguments of fragility and criminality would be vulnerable to an argument that they have presented the facts to apologise for the British and defend them against the accusation that they acted out of fear of a viable culture and used violence and strategies of cultural destruction and reconstruction over a long period to make them subject, for their own purposes.

This argument of fragility, and the inferiority which it implies, is implicit in Hasluck, albeit balanced as it is by an acknowledgement of a certain pre-settlement cultural

---

3 ibid pp.110, 404
4 ibid pp.128-130
viability of Aboriginal people. As we shall see, this is an argument that does not appear in either Haebich or Thomas.

What we should be alert to in the following case study, then, are such factors as the prevalence of fear; the responsive emergence and establishment of the institutions of a fearsome State to ensure the forgoing of individual self-responsibility as a means of eliminating that fear; the emergence of dominant interests; the dispersal of the mythology through the imposition of civilising, governmental and disciplinary regimes, especially upon the fearsome; the emergence of partnerships of alliance and agency for the implementation of these regimes; and the expression of the sympathy of the State towards the compliant. In essence, we should be alert to the appearance of strategies of civilisation and normalisation and whether there is evidence that the function of these was the realisation of the mythological State.

**Fear, Conditions of Existence, Civilising and Governing Aboriginal People**

The arguments put forward by Hasluck invite close examination as a considered basis from which to draw conclusions about the nature of the relationship between white and Aboriginal in Western Australia from settlement in 1829 to 1897. He acknowledges the original viability of Aboriginal culture, but there is a strong sense here of justification of Aboriginal cultural deterioration as an inevitable result of the arrival of a more civilised as well as stronger force. His opening argument is based on the simple claim of indigenous weakness in the face of Western colonisers, inevitably placing ‘the fate of the weaker group in their power to a degree that probably occurs nowhere else in the history of mankind’⁵. He repeats and extends this into justification⁶. Further, ‘men became familiar with the idea of guardianship of native races in colonisation…The responsibility of the stronger race was accepted in principle and some notable attempts were made to apply it’⁷.

---

⁵ P. Hasluck *Black Australians – A Survey of Native Policy in Western Australia 1829-1897* p.9
⁶ For him the “idea of ‘civilising’ primitive people, though it smells in some nostrils, may not be wholly bad…there is still substantial ground for believing that civilised man has something to teach to primitive man. He also knows more than the savage does about the physical nature of life and the laws that govern it…If civilised man chose to apply his skill and knowledge it is probable that he could do a great deal to alter the life of primitive man for the better and not necessarily destroy it”, ibid p.10
⁷ ibid p.11
In examining the impact of British colonisation of Western Australia on Aboriginal people against this perception, Hasluck puts an argument with three elements: that the official policy was that Aboriginal people were to be civilised and converted to Christianity; that they were to have the full status and legal rights of British subjects; and that their well-being was to be fully protected. He says the first two were progressively abandoned and the third neglected, all due to the circumstances of ongoing contact\(^8\). This thesis has the different and stronger claim that this outcome was the inevitable result of the practices of a State that was conceived mythologically and that was concerned first to eliminate fear and establish conditions of existence that were predominantly sympathetic to dominant interests, the land-owning class. Hasluck’s argument acknowledges that, for the British, Aboriginal people were to be formally categorised as insiders, that is with the imposed status of subject and the consequential responsibility that they be protected indicated. Further, the policies of disciplined containment and Christianisation were pointers to the dispersal of the beliefs and practices of the State and its allies.

Hasluck emphasises what he sees as the primitiveness of the Aboriginal way of living (living the ‘lazy’ life of a huntsman\(^9\), ‘scarcely any storing of food or its associated idea of being provident’, ‘flimsy dwellings’, ‘little notion of personal property’\(^10\)), although he does not deny connection to the land nor spirituality nor, consequently, that Aboriginal people were dispossessed against their strong wishes. Although ‘he had built up a complex and, for his native conditions, an efficient social organisation, based on kinship relations and totemism, it was a system quite unsuited to the needs of Europeanised life’\(^11\). That is, there were no chiefs or disciplined body of tribesmen with whom white settlers could enter lasting arrangements, they presented no body of warriors organised for warfare, nor was there any recognisable title to property which the invader might respect or make the basis of a deal, in effect there was no Aboriginal State\(^12\). There is no sense in Hasluck that Europeans had no right to be

---

\(^{8}\) ibid pp.12-13
\(^{9}\) ibid p.11
\(^{10}\) ibid p.16
\(^{11}\) ibid pp.16-17
\(^{12}\) Hasluck completes this pejorative catalogue of cultural characteristics by stating that ‘they are by no means a despicable people…but their complex existence was so different from European life and so unlike the conventional view of what a savage tribe should be, that it is little wonder that colonists found it hard to understand them or to find a way of fitting them into their own scheme of society’, ibid p.17
here, only the inevitability of Enlightened Progress through colonisation, nor therefore that Aboriginal people might have been left alone. There is only the lament that Aboriginal society presented no means of engagement through which Aboriginal people could be easily accommodated into European society.

Hasluck portrays the early years of settlement during the nineteenth century as generally causing disturbance to a passive Aboriginal people, they being subject to assaults by convicts and induced to circumstances which brought both venereal disease and a taste for alcohol\textsuperscript{13}. Where he first acknowledges active resistance to settlement, in the north, he portrays it as caused not by the arrival and spread of the British but by a disposition in Aboriginal people caused by earlier contact between them and an earlier invasion by Malays or by the arrival of the combative northern Aboriginals onto the Australian continent later than those in the south. He claims that the British did all they could to avoid conflict, including by the wide employment of Aboriginal people as stockmen and as pearlers\textsuperscript{14}. Against this, representative government during these years was ‘very much of a class - the landowning and pastoral interests’\textsuperscript{15} who had a distrust of ‘handing over their fair land to an irresponsible riff-raff...through government by party’\textsuperscript{16}. Thus, ‘in the absence of sustained and vigilant political organisation, personal opinion and personal conceptions of where the colony’s interest lay were dominant; and the personal opinions that counted for most came chiefly from one section of the community’\textsuperscript{17}. As a consequence, ‘the black often appeared as a nuisance’\textsuperscript{18}. The dominance of the landowning interests had begun to emerge institutionally.

In outlining the official expressions of policy and legislative and administrative action, Hasluck saw that ‘the first business of authority was to quell disorder, while preventing undue violence against natives and, that done, to undertake the work of training the natives for civilisation’\textsuperscript{19}. Without attempting to attribute cause, except for a passing reference to ‘pillfering’ and that settlers were ‘weak and scattered’, he

\textsuperscript{13} ibid p.22
\textsuperscript{14} ibid pp.30-31
\textsuperscript{15} ibid p.36
\textsuperscript{16} ibid pp.38-9
\textsuperscript{17} ibid p.40
\textsuperscript{18} ibid p.41
\textsuperscript{19} ibid p.43
describes the violent relationship between Aboriginal people and the British, emphasising the ‘depredations’ of the former. This meant that it was necessary that the ‘natives be deterred from violence by force…If authority failed, the settlers had a right to defend themselves’\textsuperscript{20}. He describes the battle of Pinjarra as a demonstration of the British determination to bring peace through civilisation\textsuperscript{21}. There is even an acknowledgement that the British had ‘entered upon their borders uninvited’ and ‘punished the natives as aggressors if they have evinced a disposition to live in their own country. If they have been found upon their own property they have been treated as thieves and robbers’\textsuperscript{22}. The motivation for such ideals, outlined in the Report of the Commons Select Committee, included that ‘a line of policy more friendly and just to the natives would materially contribute to promote the civil and commercial interests of Great Britain’ and that ‘there is but one effectual means of staying the evils we have occasioned, and of imparting the blessings of civilisation, and that is the propagation of Christianity, together with the preservation…of the civil rights of the natives’. That is, ‘superstition’ and ‘tabu’ must be abolished\textsuperscript{23}. The aggressive response to fearsome acts by Aboriginal people had begun to lead to the assumption of responsibility for Aboriginal people, generating claims that they would be protected as British subjects, but along with the first signs of the normalising regimes which were signs of the dispersing practices of the mythological State, practices that would mostly benefit the colony’s dominant interests.

The regime of conversion of the generally unwilling Aboriginal people to the practices preferred by the British was set out in 1837. This included regulating the employment of Aboriginal people and directing them to industries least foreign to their habits, restricting the sale of alcohol to them, promoting Christian religious instruction, protecting those whose lands had been taken and reserving lands on which they could hunt until agriculture ceased to be distasteful: ‘The savage was to be led

\textsuperscript{20} ibid p.48
\textsuperscript{21} He describes ‘an affray known as the Battle of Pinjarra, in which [Governor] Stirling had led a party of whites against a black horde’ and the decision to ‘tranquilise that district [York, in the south]…bringing to punishment the natives concerned in the latest atrocities’. This led to an affirmation by the Colonial Office of the status of Aboriginal people as British subjects, with rights to the protection of the law, and to the unanimous view of the House of Commons that this be accompanied by ‘the spread of civilisation among them’ which would ‘lead to the peaceful and voluntary reception of the Christian religion’, ibid pp.49, 50-51
\textsuperscript{22} ibid p.52
\textsuperscript{23} ibid p.54-55
forward to Christianity and civilisation\textsuperscript{24}. That is, they were to be absorbed, willingly or not, into the British way of life. Their fearsomeness was to be replaced by submission and subservience and responsibility for them was to be transferred to the State\textsuperscript{25}. It was the early sign of governmentality, the management of Aboriginal people as a population, although this strategy met with obstacles\textsuperscript{26}.

Hasluck bemoans the fact that these prescriptions failed to provide for their ‘civilisation’ or any kind of instruction; and that it did not provide a policy ‘more comprehensive than protection from ill-treatment...and relief of hunger, sickness...while the transactions of the Board only added to these the payment of subsidies to enable Christian missions to maintain a very small number...of native and half-caste children in various institutions\textsuperscript{27}. The colonising interests were finding

\textsuperscript{24} ibid pp.55-56
\textsuperscript{25} ‘Are they to be swept off by aggression and disease, or will they pine away under a feeling of their immeasurable inferiority to the white men; or, if they survive, will it be to sink into a state little better than the slave, or gradually to be absorbed into and become one people with their intruders? The last, however apparently unattainable, is the result which in our conduct towards them we should ever keep in view. Eventual absorption was the natural end of a policy which proposed their civilisation and conversion through Christianity...It should be remembered that the colonial future was foreseen chiefly as a number of agricultural and pastoral estates varied by small holdings and served by market towns and that the ideal colonial society was one with clearly-marked classes of landowners, officials, small farmers and the lower orders. There would be plenty of room for coloured families as servants in the households the upper classes or even as small holders, and as such they would keep their own station and associates’, ibid p.57-59
\textsuperscript{26} This regime of conversion was set out in the Royal Instruction which the Governor Hutt brought from England in 1839 in replacing Stirling, the first Governor, and he set about its implementation. Two things prevented this. The flow of funds from the Colonial Office was inadequate and ‘settlers in successive new districts were almost continually facing the urgent problems and dangers of first contact’. In the face of this, the aspiration to civilise Aboriginal people through education and Christianity faded, as did even the notion to protect them: ‘Government allowed settlers to go into these remote regions, both into the east and the north, disturbing native life, but it had no means and apparently sought none of controlling the conditions in which the disturbance took place or even of providing the usual safeguards for law and authority’. This spreading ‘disturbance’ resulted in active resistance by Aboriginal people across a wide front at the same time as Government increasingly failed its assumed responsibility to maintain lawful behaviour, that is to eliminate fear of them. The problems of ‘marauding and reprisal’ worsened each year ‘as pastoral settlement extended’, that is as Aboriginal people defended themselves against the increasing intrusion into their world and onto their land. In 1870, Governor Weld attempted to affirm the protection of Aboriginal people and the treatment of them as workers, as they were being exploited, but also by beginning to treat their defensive actions as crime by taking ‘some measures to discipline the natives by legal processes’. His measures initiated the application of a simple welfare system (the distribution of blankets, clothes and other relief); the taking of Aboriginal children into care, custody and education; the management of native reserves; and their protection from ill treatment. Here we have the unilateral confirmation of Aboriginal people formally as insiders through their subjection to British law, the extending management of them as a population, the imposition of discipline in the Reserves and the expression of the sympathy of the State through measures to allegedly enhance their welfare; ibid pp. 59, 60, 63, 64-66, 67
\textsuperscript{27} He continues ‘There had been an almost complete abandonment of Hutt’s policy of taking positive measures for the civilisation of the natives and their absorption into the white community. These grand
that the unilateral assumption of responsibility for Aboriginal people was not having the intended effect. There was both active and passive resistance to British civilisation.

He defends the failure to live up to ‘the theory held by well-meaning people in England’ by emphasising the ‘exigencies of fact faced by the Australian colonist on the frontier’\textsuperscript{28}. These facts are clearly stated: the intruding settlers needed more protection from Aboriginal people than did Aboriginal people from the settlers\textsuperscript{29} and the first attempts at civilising them in the Mount Eliza Bay institution failed ‘because of the unwillingness of the natives to sit down for a long time in one spot’\textsuperscript{30}. From 1839 the system of protectorship was as much ‘to keep the blacks in order’ as it was to promote the ‘advancement in civilisation’ and a prison was established at Rottnest Island ‘as an agency of discipline and reform’. Education came as much through encouraging ‘settlers to employ and train natives’ as by the encouragement of mission schools\textsuperscript{31}. Hasluck admits that ‘in the broad general issue of contact between the two races, [the protectors’] role became not solely that of mediator or defender of native interests but largely that of a policeman to ensure the safety of white lives and property. Because of the measure of success they achieved in this phase of their work the emphasis tended to shift from the end of civilising the native to the best means to maintain order\textsuperscript{32}. It was in this context of establishing ‘friendly subservience to the wants and wishes of the settlers and that submission to the constituted authorities’ that the British extended their practices into the material lives of Aboriginal people\textsuperscript{33}. Here we have a combination of using protectorship, as an indicator of governmentality, and imprisonment as a method of discipline, to make the fearsome into fearful beings and

\textsuperscript{28} ibid p.53
\textsuperscript{29} ibid p.69, 71
\textsuperscript{30} ibid p.70
\textsuperscript{31} ibid p.71
\textsuperscript{32} ibid p.77
\textsuperscript{33} The British ‘endeavoured…to induce the natives to work;…generally kept an eye open for ill-treatment;…tried rather ineffectually to check drunkenness among natives;…drew attention to the plight of the destitute and sick;…arranged for the inoculation of several hundred against the possibility of smallpox (a measure which, like a good deal of more recent concern for native health seems to have arisen from fear of the menace to whites rather than a prime concern for saving the black alive)’, ibid pp.78-79
welfare, or State sympathy, to placate any criticism of the State as it assumes responsibility for Aboriginal people.

Hasluck attempts to defend this system, which he acknowledges had ‘a bias towards police work in the first twelve years’, by the thin claim that ‘enough had been attempted in other ways to show that the system could be used for a wider purpose’. He bemoans its demise, attributing this to decisions by the British to incorporate the Native Police into the new Convict Police Force and then to direct that the cost of various items be met from increasing colonial revenue, causing a reduction in the budget for Protectors\(^{34}\). He might have acknowledged that this incorporation consolidated the formal status of Aboriginal people as insiders, requiring only the standard application of the British law and meagre colonial welfare, even though there was more to it than that.

He tries to justify the programme of the prison at Rottnest, established by Governor Hutt for the incarceration of Aboriginal offenders, as a credible means of imparting ‘the arts and wants of civilised life’ but quickly admits its failure\(^ {35}\). By 1846, Aboriginal prisoners were put to the ‘more productive’ employment on the roads in and around Perth and then in other parts of the colony. However, by 1855 Rottnest was again established as the principal place of imprisonment for Aboriginal people because the mainland did not have the advantages of Rottnest as a secure prison, as a school in useful farm operations and as a deterrent\(^ {36}\). Protector Symmons welcomed the change, although the activities of the prisoners were principally raking, shovelling and carrying within the saltworks. In addition to such work, Aboriginal prisoners were subjected to repeated violence by the senior prison staff and suffered from epidemics of disease. In this, dread - or fear - is combined with the enforced submissiveness that

\(^{34}\) ‘(I)t was at this point, when, most of its police work being over, the protectors could have been encouraged or directed to continue a constructive duty, that the whole system was ring-barked and slowly died’, ibid p.79

\(^{35}\) ‘One searches in vain for any evidence that its ideal of imprisonment and instruction of the natives was achieved in any respect except this conversion from law-breaking to obedience’. He also states that in his annual report at the end of 1842 (Protector) Symmons confesses ‘the failure of all attempts to induce the natives discharged from Rottnest to abandon savage life and continue in light employment’, even though ‘Rottnest is held in dread by the natives, both those who have been there and those who have been told about it’, ibid pp.82

\(^{36}\) ‘(N)or does confinement on the mainland fill them with the same vague and indefinite terrors’, ibid p.83
comes from the learning of useless skills. We shall look more closely at Rottnest below, illustrating how its purpose was to make the fearsome fearful\textsuperscript{37}.

Governor Hutt’s strategy also included the establishment of Christian missions, although the shortage of both the means and the men to carry out the task of ‘imparting to them the blessings of a civilised and religious education’ made, in the opinion of Hasluck, the Christian missionary record in Western Australia until the turn of the century ‘a very sorry one’\textsuperscript{38}. These difficulties did not extinguish the keenness for success, however, and there were a number of attempts, albeit unsuccessful, to establish these institutions as a primary method of making Aboriginal people civilised. With Rottnest performing its purpose of instilling fear, these industrial and theological strategies were intended to convert Aboriginal people from formal subjects into compliant and economically productive citizens.

The first Christian institution was established in Perth in 1840 by the Wesleyans but funding was shared equally with the Government, its ultimate ally. Sent out to daily domestic service, Aboriginal children were also taught to read, write, count, sing hymns, recite the Lord’s Prayer and Catechism, to wash themselves, wear clothes and attend chapel. Some success was claimed for this and a similar institution in Fremantle but behavioural change was short-lived, not that this deterred the brethren\textsuperscript{39}. This was in vain. The institutions were closed in 1855, in spite of the plea

\textsuperscript{37} In 1841, Hutt adopted an extramural, but equally ineffectual, strategy for the education of Aboriginal people, ‘the offering of bounties for the training of natives’ to those settlers who could keep an Aboriginal person in constant employment for two years. The training was to consist of farming, thrashing, reaping or mowing and, for women, cook, house servant, seamstress or dress maker, laundress or bonnet maker. Hutt stated that the objective was to ‘reclaim a native from his present savage life, and, by instructing him in some useful art, render him a serviceable member of society’. By 1848, with one bounty only having been granted, the scheme was dropped. This did not prevent an increasing level of employment of Aboriginal people, although ‘the conditions in the later northern settlements would develop native labour as a class quite apart from white labour and not receiving anything like the rewards, training or consideration that white labour received’. Again, this inducement to adopt British practices was a strategy to realise submissiveness but, beyond that, exploitation for the benefit of the dominant, land-owning interests: the attempt to realise docility and productivity; ibid pp.86-88

\textsuperscript{38} ibid p.89

\textsuperscript{39} ‘(W)orkers were disappointed to find that the quick changes they had achieved in the youngsters were not as deep-seated as they hoped and that the native still hankered after his tribal life … however bright the blessings of civilisation might be pictured, it became difficult to hold these inexplicable people from leading their own lives’. Nonetheless, the Wesleyans were encouraged to continue ‘shedding some light in the darkness of paganism - weaning the aborigines from many of their debasing customs and superstitious observances and training them to those industrial habits which must
by Cowan, Protector and Magistrate. This spread of preferred religious and industrial practices, in return for which British gestures of comfort were to be given them, was the dispersal of the mythology of the British through its allies. It is unimportant that neither the British not the Aboriginal people saw this emerging pattern in mythological terms. No doubt it was a British determination to punish and a Christian mission to convert and make productive, or a resolve to continue to enjoy their own culture, respectively. But the conditions of the interaction of these two groups displayed mythological characteristics. There was in British-Christian terms a fearsome group to be made fearful, civilised and productive for the benefit of the dominant land-owning class and this was to be achieved by unilaterally assuming responsibility for and converting the subject group. What we have not looked at yet is the role that the political institutional arrangements played in this programme. We shall do so shortly but it is in clear evidence that key features of the mythological programme were present here, that is, the elimination of fear, the assumption of responsibility and the creation of sympathetic conditions of existence by the creation of law-abiding cheap labour, principally for dominant interests but with a barely-noticeable gesture towards the welfare of the Aboriginal people.

---

40 He said ‘...we as a people are bound to make every effort to civilise them. We have taken possession of the country of a savage people; our settlers are now realising large fortunes from the occupation and the community likewise derives large sums annually from the sale of their lands, surely some portion of this should be devoted to their Christian instruction’, ibid pp.91-92

41 Undeterred by the experience of their brothers, the Society for the Propagation of the Gospel opened a training institution for waifs, including half-castes, in Albany in 1852 with a funding contribution by the Government. Some success was claimed for this more modest initiative, encouraging the visiting Governor in 1862 to instruct ‘the resident magistrates in the different colonies to endeavour to induce the natives to give up children for the purpose of instruction and education at Albany at the public expense’. It certainly inspired its founder, Archdeacon Wollaston, to say that the natives ‘must be weaned from their bush habits and associations’ and that this is the work of the Church ‘as God’s instrument for bringing these other sheep into the fold’. The future he saw for the children was ‘respectable situations as domestic servants, or to settle them in marriage - upon the reserved grants - with cottages and gardens, whereby they will be trained to manage as profitably as any white persons can do’. He added ‘Surely the Home Government, having possessed itself of this colony for its own advantage and convenience, ought long since to have taken effectual steps for the amelioration of the condition of the original owners of the soil’. Success in this enterprise of normalisation was therefore gauged by the placement of Aboriginal people into the lowest positions in the British social and industrial hierarchy. Despite this persistence of the Anglicans, it was the Catholics who were the most determined in the application of missionary zeal. New Norcia was established in 1846 by Spanish Benedictines. Its purpose was ‘the conversion of the heathen to the true faith, its method the teaching the natives how to work, planning a village…where the converted natives would settle down as farmers and artisans under the benevolent direction of the mission, learning private ownership and husbandry, as well as receiving moral and religious instruction’. It could not claim any success in this strategy until after 1860, when the expanding settlement began to interfere with the supply of wild game and the mission began to feed the displaced people. This ‘provision’ was clearly the inducement for Aboriginal
Hasluck summarises the effect of these and other missions as having ‘attempted without very marked success a plan of education with the definite intention of introducing the children from the bush into white civilisation in the towns…Most of the children gathered up in the later phases of this mission work were those who…were neglected children and had to be sheltered somewhere lest they die’. For this purpose, the Anglicans gained the greater share of modest State subsidy, pointing to the alliance between proto-typical State and Church in the enterprise of normalisation. Because of the poor response of the Aboriginal people, there was uncertainty about the benefits of the missionary approach. This poor response dented missionary enthusiasm and signified Aboriginal resistance to civilisation, thereby raising an abiding concern about the prospect of their eventual normalisation.

For its part, the State had regarded ‘pacification’ as the most urgent need. As that was progressively accomplished, principally through the harsh regime of Rottnest prison, the administration gave its attention only to scant charitable relief for the destitute and the sick, who were wasted by venereal disease, ophthalmia, dysentery, tuberculosis and pulmonary complaints. It was these conditions which established fringe-dwelling and seasonal work as a way of life for increasing numbers Aboriginal people. Hasluck observes the significant impact of disease. In effect, once the fearsome had been made fearful and submissive, the State could accept its other responsibility to attend, surely in its own terms, to the welfare of the Aboriginal British subjects. But while this scene of destruction grew around the settlements, violent pacification continued in the more remote areas.

people to be trained as farm hands, for their children to be taught to read and write and, in what must be described as supreme British cultural arrogance on the part of Hasluck, ‘adding to their respect for themselves by such accomplishments as cricket and playing in an orchestra’, while behind all the work was the idea of their reception into a faith where all men are children of the one Father. Even then, ‘there is no striking evidence of its good effects (outside of the institution itself) in the neighbourhood or in the colony’, ibid pp.94-95, 98-99

42 ‘The poor things are over-taught, over-dressed, over-washed and scrubbed and eventually killed at the rate of 70 or 80 per cent of those instructed’, ibid p.101
43 ibid pp.102, 104, 106
44 ‘Experience in other parts of the world has shown that disease has been an important factor in determining the fate of a primitive race in contact with white settlement and it is evident…that disease was present to a serious extent among the aborigines of Western Australia during the period of contact’, ibid p.107
45 ‘the policeman…traveled many slow and difficult miles with his plant of horses and native boys, discovered the whereabouts of suspected offenders, pounced on their camp in the quiet hours just
Hasluck completes his account of the performance of the infant State, judged against its claimed aspirations to educate and civilise the Aboriginal people, with a consideration of the real agenda of the establishment of native reserves that occurred at the end of the early settlement period. He points out that the creation of the first reserves was not accompanied by any particular rationale: ‘Official statements refer to the creation of these reserves as something meritorious, but never disclose clearly any idea behind the creation. There is no evidence that any policy of segregation or even the creating of an asylum was then planned.’ That is, as will become clear, segregation at first was not motivated by the desire to foster an independent indigenous living but by a desire to remove them from the field of development, to exploit them so that they did not complicate that development and to keep the white race pure.

These broad developments were reflected in the distribution of the colonial resources, where there was at first to be, under the direction of the Colonial Office, an allocation for the protection and civilisation of Aboriginal people ‘as a charge prior to all others on the revenue derived from the appropriation of the lands of which they were the original inhabitants’, although such an allocation was then not insisted upon. There was, however, little difficulty in providing funds to administer the discipline regime of the Rottnest penal establishment, and some resource was allocated to the provision of rations, clothing and blankets to the destitute and to assist in sustaining institutional Aboriginal life in the Church missions.

---

before dawn, and brought back on the chain as many natives as he could grab. Trial was followed either by transportation to the exile of Rottnest or a flogging and a short term locally, ibid p.110

46 He acknowledges that, although segregation can be ‘based on a belief that there is something to be respected in the natives’ own way of life and in the native’s wish to choose his own future’, it is ‘doubtful whether, under Australian conditions, such segregation can be complete so long as the development of the country is the object of the white invasion, and, because of this, and...because of doubt whether there can be any progress without contact, the advocacy of segregation is often varied to mean really a very great slowing down of the transition and progress of adaptation. Perhaps it is also sometimes a squeamish attempt to exclude that racial mixture which the history of mankind suggests has usually been a considerable factor in the changing of peoples’, ibid pp.112-113

47 He continues ‘No attempt appears to have been made to transfer or confine any natives to these areas, to police the reserves or to improve their resources. The present-day use of reserves for settlements, missions, feeding stations and what might be termed wild life sanctuaries for the oddest specimen of Australian fauna did not come until a later period’, ibid p.116

48 ibid pp.117-118, 120
The explanation provided by Hasluck regarding the shift from educating and civilising to pacification and welfare was founded on the gradual emergence in the colony of particular views: the Aboriginal people were unresponsive; settlement was accelerating the corruption of the tribes and made a positive response less likely; civilising was proving to be not an easy process; the Aboriginal people were declining and must inevitably die out; and they were a contemptible race. Hasluck acknowledges the prejudice in these views49 but they did point to the fact that both the initial (i.e. education and civilisation) and the fall-back (i.e. pacification and welfare) positions had the same ultimate motivation, that is the elimination of fear, consolidated by a combination of suppression and what was sympathy more for the settlers than for the indigenous British subjects. That is, the colonists would have preferred Aboriginal people to willingly embrace British culture but in the face of fearsome resistance they were prepared to settle on subjection and mean welfare for what they regarded as their subjects.

Hasluck also provides an analysis of the legal status of Aboriginal people within the British system during these first seventy years of settlement in Western Australia. From the beginning, Aboriginal people were declared to be British subjects, with their responsibilities to obey the law and their rights as subjects ‘fully acknowledged’. But he acknowledges the existence of their own law, a law which conflicted in its provisions with British law and of which the British knew nothing. The response to stealing and taking of life by Aboriginal people, lawful to them, was the application of force by the colonists, on many occasions outside the procedural provisions of British law. There was an attempt to require the application of such provisions but this was difficult in the context of frontier clashes, not only because of the complete ignorance of British law on the part of Aboriginal people but also because Aboriginal resistance could easily be argued in such frontier locations to be military, and therefore a matter of pride, and so not easily categorised as criminal50. However, Hasluck argues the ‘urgency of a situation that demanded that blacks should learn at once that it is criminal to take the lives of white men or to spoil or remove their property. Unless these two features of British law could be maintained there could be no colony51.

49 ibid. pp.120-121  
50 ibid pp.122-126  
51 ibid p.126
Denial of their right to resist, that is denying them military status, confirms that it was the intention of the British to presumptively and urgently make them insiders, which in turn allowed the immediate imposition of the regime of practice which would end their fearsomeness and sustain them through minimal welfare provision, albeit barely.

For Secretary of State Grey, contra Governor Hutt, this meant that British law must be made to apply among Aboriginal people rather than only between Aboriginals and whites. In the terms of the argument of this thesis, this is evidence that they must forgo their cultural self-responsibility and be made subject to the new and emerging dominant mythology. For Hutt, British law should apply only in the environs of settlements. For Hasluck, despite their status as British subjects, the effect of each of these arguments was that ‘they were a dispossessed and a subjugated people’.

Fitzgerald, who succeeded Hutt, applied Grey’s instructions when possible. This occurred especially when retribution between Aboriginal people involved the Aboriginal employees of the households of the outlying settlers, although the contrary view was adopted by the majority of the citizens of Perth when acting as jurors in cases where Aboriginal people were applying their own laws. British law was therefore not uniformly applied: Grey’s view that ‘tribal violence and the dominance it gave to the tribe over the individual [was] a strong barrier to the spread of

---

52 It is an appropriate comparison to point here to the difference between Western law and traditional, cultural law identified by Llewellyn in his consideration of Cheyenne law. He distinguishes law and justice and in that context says: ‘(C)ultures which have developed the regularity side of law and procedure have rarely managed to avoid having the major emphasis of their technique and theory turned to the development and manipulation of these tough, slow-yielding regularities. In such a situation (which has been that of Western Europe and of these United States) machinery to give any leeway has been so hard to manage that getting a measure of justice into the individual case has tended to swamp effort to handle justice’s broader aspects…The Cheyenne law-way…shows that developed ritual, together with some quantum of very clear rule and imperative procedure, can be handled in favourable circumstances with flexibility, in terms of need, yet with no sacrifice at all of feeling for certainty and form’, K.Llewellyn and E.Hoebel *The Cheyenne Way* University of Oklahoma Press 1978 pp.332-333. He goes on: ‘It would, however, give a sadly inaccurate picture of the Cheyenne law-way if one were to stress the flexibility of its machinery alone. For this might lead to the conclusion that the law-way was flexible only because the law machinery was flexible, that it waited only for that hardening process which legal historians are fond of observing, as it settled first upon the early King’s courts, then upon the Chancery, then and again upon the American courts of the nineteenth century’, ibid p.338. Again, Llewellyn points to a major problem that the application of British law would find, and fail to resolve, in this imposition of their law to Aboriginal people ‘For one major part of the Cheyenne law-way throughout…is the persuasiveness to its people of its results. Where the people needed persuasion to find the results persuasive, then there turned up the skill and labor which were needed for such persuasion and procurement of effective agreement, in advance. Always, and everywhere, this means sense for a sound issue, and skill in drawing and in urging it’ ibid p.337

53 op cit pp.128-129
civilisation…lost its force as colonists lost their interest in civilising the natives.’ In short, once their persistent lack of interest in accepting British civilisation was obvious, it became a matter of secondary importance that Aboriginal people killed each other.

But the case was different in incidents of Aboriginal acting against white. Here, British law had to be made to apply. This required that Aboriginal people had to be familiarised with British law and steps were taken to establish the admissibility of their evidence and to allow summary punishment for certain offences, for example by whipping, so that the swiftness of this action would connect punishment to the offence in the Aboriginal mind. This latter provision was finally assented to, although great reservation had been expressed by Secretary of State Lord Russell, whose concern was that by ‘establishing inequality in the eye of the law itself between two classes, on the ground of national origin, we foster prejudices.’ For his part, Grey’s position was that for Aboriginal people to be subject to a different course of criminal procedure than whites would not promote ‘general improvement and civilisation of the native races’ and that, given the considerable size of the colony and the thin spread of British law, delays in the prompt administration of justice ‘may incite the settlers…to acts of retaliation and summary vengeance’. After this system had operated for only a short time, pressure came through the Legislative Council, especially the representatives from the remoter northern areas, to increase the penalties. This was all evidence that, in the face of aggressive resistance, the law of the increasingly dominant world picture was to be made to apply, immediately and violently.

Hasluck understates the facts when he observes that there ‘were occasional unpleasant hints of something more than a desire for the smooth administration of justice’. The consequence of these harsher provisions, made more oppressive after the granting of responsible government in 1892, was not only the marching of witnesses and alleged offenders from the northern settlements to the scene of the trial ‘on the chain’ and then their detention until required - without which there would have been no

54 Continuing, Hasluck states that ‘there is the implication that the black victim is also somewhat different from other British subjects and his death by violence not quite so serious as the death of a white by violence’, ibid pp.129, 130, 134

55 ibid p.136
Aboriginal witnesses but for which there was no legal authority - but also that the inmate population at Rottnest doubled. Thus, forced to accept the assumption by the British of responsibility for them, they were subjected to the harshest forms of normalising practice so that they would not act in a fearsome manner towards whites. Here we also see the dominant land-owning interests beginning to use their control of the institutions of the State, especially for their own benefit, to force Aboriginal people to forgo self-responsibility.

Hasluck observed ‘In the later years in northern settlements the link between catching a native and convicting him appears to have become purely formal in many instances. The court was a process by which he was sent to gaol; not a place where he defended himself against an unproved charge’\textsuperscript{56}. He continues: ‘The history of attempts to make the black amenable to British law makes mockery of the pretension that he had the full legal status of a British subject’\textsuperscript{57}. Here we have the admission that the presumptive status of subject imposed on Aboriginal people was, in the final analysis, a tactic in the broad strategy of ensuring they were made submissive. Submission was more important than civilisation on the scale of policy.

The disadvantage of Aboriginal people was greater in civil matters, commonly between master and servant, wherein service as herdsman or reaper was in increasing demand in a growing colony\textsuperscript{58}. Hasluck makes the point that the passage of the Aborigines Protection Act (1886), the intention of which was to provide protection of Aboriginal employees, revealed that a number of politicians, especially pastoralists, had long ceased to think of Aboriginal people as the legal equals of whites. The Act may have been intended to stop the practice of station owners using the police as labour recruiters but equally the elected members were determined to reach an outcome by which their demand for servants could be satisfied. The pastoralist members even wanted contracts with Aboriginal people as young as ten to be

\textsuperscript{56} ibid p.143  
\textsuperscript{57} He continues further by pointing out that, as a result of the difficulty in attaining evidence from Aboriginal people unfamiliar with evidentiary process, ‘There is ample evidence that the conviction of a white man for an offence against a black was harder to obtain than conviction for an offence against a white, and that penalties imposed on whites for offences against blacks were often lighter than they would have been for similar offences against whites’. He provides telling examples. ibid p.144  
\textsuperscript{58} Here, the ‘indentures’ of apprenticeship and service were not associated with any purpose of training ‘but rather with the object of binding the vagarious native to his work’. There are ample examples of Aboriginal people being imprisoned or whipped for absconding from service, ibid p.149
enforceable. The point here is that, although they were conveniently and presumptively categorised as British subjects, this was transparently for the purpose of imposing upon them a regime that resulted in them becoming submissive and, thereby, productive for the benefit of dominant interests. They were made ‘insiders’ to justify such treatment whilst avoiding the charge of cultural destruction and slavery. The role of the State legislature and its dominant interests in this was to insist that such a regime, with minimal improvements in conditions, was legalised: the assumption of responsibility for Aboriginals was extended and confirmed.

The legislature was active on other fronts in regard to the status of Aboriginal people. When a franchise was granted by the Legislative Council Act (1870) and extended by the Constitution Act (1889), there was no expectation that Aboriginal people would claim enrolment, though they were not expressly excluded until the Constitution Act Amendment (1893), which provided that ‘no aboriginal native of Australia, Asia or Africa shall be entitled to be registered except in respect of a freehold qualification’. Further, ‘When, under the Elementary Education Act (1871), District Boards of Education...adopted compulsory education in 1873 there seems to have been no question of compelling black children to attend school, and this assumption that black children were in a special class continued with the introduction of the modern education system of 1893. Moreover, in the latter-day extension of social services of various kinds, “the black ‘British subjects’ have been habitually ignored”. In these and similar matters the inferior status of the black was assumed from the circumstances in which he lived. This circumstance did not prevent legislative provision that the Resident Magistrate could bind by indenture or put out as an apprentice any half-caste or other aboriginal child of suitable age without ‘the consent of any parent or any other aboriginal person in loco parentis’. Legal status was a passage to control of them but did not even deliver them rights.

59 A Mr. Grant, parliamentarian, said ‘On some stations they were found useful at seven or eight years old minding sheep, or guarding cattle or horses - and they dearly loved to get on horseback; and in this way they gradually became domesticated. Surely this was better than they would be roaming the bush, following their own savage instincts’. The contracting age was reduced to fourteen, while it was twenty-one for whites, but only a small proportion of Aboriginal people were engaged through contract, leaving them unprotected from mistreatment and exploitation, ibid p.156

60 Nor did it prevent the empowerment of ‘any justice of peace to order any native loitering in town or who was not decently clad to leave town forthwith, with immediate arrest and liability to summary conviction and imprisonment for a month as the penalty of disobedience’, ibid p.160
For Hasluck, the explanation for these and such later legislative provisions as the Aborigines Act of 1905 and the Native Administration Act of 1936, confining ‘the native within a legal status that has more in common with that of a born idiot than of any other class of British subject’, was the consequence of ‘the circumstances in which he lived when in his primitive state’. This leads him to ask ‘If we chose to treat him at law as a sub-normal and incapacitated person, why does not the social conscience require us to accept the full responsibility for the special care he must need’. Hasluck can apparently conceive no other reason for the policy of subjugation and exploitation than the adoption of the pejorative view as to the ‘primitiveness’ of the Aboriginal traditional way of life and finds no better way forward than the assumption of responsibility in the guise of ‘care’. He reveals the mythology deeply embedded in his own thinking: we should have genuinely granted them the status of subject but if they were incapable of that responsibility we should have assumed their care. There could for him be no alternative, such as leaving them be, as Progress was inevitable.

Hasluck also provides an account of white public opinion in relation to Aboriginal people. In pointing out the difference between the opinion of authority and the community, with the latter disgruntled by the prescriptions of the former, Hasluck comments that ‘One point that emerges clearly from these arguments of the eighteen-thirties and eighteen-forties is that the settlers have a natural concern to be secure in their life and possessions’. Hasluck also observes what he describes as the emergence in the southern towns, that is far from the ‘worries and exasperation and even dangers that day-by-day contact with the natives brought’, of a humanitarian concern for Aboriginal people. Its form was Christian so its manifestation was a revival of missionary effort. Through its allies, the State could be sympathetic once

---

61 ibid pp.160-161
62 For Hasluck, ‘The first time that native affairs became a live question in the colony was in the contest between Governor Weld and the northern settlers and their sympathizers in the eighteen-seventies over the central issue whether a white man could shoot a native in ‘self-defence’ or as a punishment or deterrent without being required to account for his actions before a legal tribunal. The settlers’ desire for security of property and person and the inefficiency of the legal measures to give it to them were the basic causes of the argument. After flaring up in Governor Weld’s time, the controversy continued intermittently for twenty years. In the early eighteen-eighties, with the attempts of Governors Robinson and Broome to handle the question by legislation, the argument became particularly warm over such matters as the severity of punishment and the powers of the local justices to deal with offenders’, ibid pp.163-164
63 ibid p.166
the active fearsomeness of Aboriginals, although not their passive resistance to civilisation, showed signs of abating, but not yet in the north where fear of Aboriginal people still pervaded the instincts, thought and action of the settlers.

These attitudes were complemented by a Christian Darwinian sense of physical repugnance, which, although not universally held, derived ‘from a contemporary belief that man, having been made in the image of God, could only become less than godlike by a fall from his first happy state, that degradation probably being the result of, or possibly the divine punishment for, his own wickedness. Hence the ‘low condition of the aborigines was something in the nature of a divine curse’. The presumed superiority of the Enlightened British race was one driver of the practices of its institutional representatives and its subjects. But the attitude of the settlers was still deeply affected by fear.

Hasluck adds to the sources of opinion a factor which might be thought to support those who are inclined to reject a mythological interpretation of all this and prefer one which was merely circumstantial. It is that the opinions held by white of black, and the consequential practices that they applied to them, were little more than the result of the exasperation that comes from co-locating two groups with different attitudes and cultural practices and competing, often clashing, interests. In this context of the

---

64 Further, ‘It may seriously be asked whether a great deal of latter-day missionary and ameliorative effort amongst aborigines is not founded on pity, based on physical repugnance, rather than on a respect for the black man or a faith in his dignity as a human being’, ibid pp.168-169

65 ‘White men feared the blacks would kill them and there were enough bloody examples during periods of first contact to make the fear a lively one’ and ‘The result of my [Mr. Scholl, Resident Magistrate] observation in the colony is that the fears of whites are more the cause of disorder than the aggression of blacks’. Further to this, rivalry between black and white was a factor that also informed the attitudes of each side towards the other: ‘By rivalry is not meant a competitive struggle for the same prize but that the two groups had had different interests in occupying the same tract of country - the blacks for continued access to their tribal ground, food and water; the whites for undisturbed occupation by themselves and their sheep and cattle…the rivalry was probably made keener because the white man generally went to the north to make money rather than to make a home. In the sleepy, unambitious south there had been much less urgency about occupying the land and succeeding in its exploitation’. Along with this desire for sympathetic conditions of existence, we have in this the real, visceral, immediate fear experienced by the emerging dominant interests; ibid pp.171-173

66 ‘The natives drove off his sheep, carelessness with their fires destroyed his pastures, tribal feuds or arrangements brought about the abduction or death of some black servant on whom he was depending; the native whom he had coddled towards civilisation with great patience suddenly showed a preference for his own life and ‘went bush’; the young hopeful whom he had thought he had made a Christian joined in the old ‘revolting’ custom. What was the use of trying to understand them or treat them as anything but a degraded race? There was nothing dark or sinister in such a story. It was simply that two widely differing groups of people were drawn towards their own way of life’, ibid p.173
alleged simple exasperation of incompatible co-location, Hasluck sets out to explain the opinion of settler Moore\(^{67}\).

It is the argument of this thesis that the case of Moore cannot be passed off merely as the increasing exasperation of a fair and generous man caused by the circumstances of co-location to rely increasingly on the application of the force of the State, although that no doubt applied. The questions to be asked are whether he chose to be there in the first place for his own gain; was he aware he was taking others’ land for the purpose of this gain; did he become fearful at their aggressive defence of their land; as a land-owning Parliamentarian, did he utilise the power of the State legislature and executive (Police), ensuring that they acted to protect his interests against those of the Aboriginal people; did he regard them as an inferior race and intend their separation and conversion by civilisation when their interests contradicted his; and did he consider violent action to ensure the order and peace upon which his safety and profit depended when the law was unable to be applied, that is did he believe that it was him for whom the law, that he helped make, was made and that he could therefore even act as that law? If the answer to these questions is in the affirmative, then there is much more at work here than mere exasperation coming from co-location. What is at work is all the elements of the expansion and consolidation of the mythological State, that

\(^{67}\) Hasluck emphasises the tolerance, good humour and even admiration with which Moore regarded Aboriginal people at first, his attitude changing with the aggressive Aboriginal response to settlement, as they made two attempts to spear him, took his stock and after they killed one of his shepherds. After a year of such a campaign, Moore agrees with a neighbour that ‘if we do not make an effort to come to a friendly understanding and arrangement with them they will annoy us, for we are not able to drive them away so as to secure ourselves without their extermination. Each tribe has its distinct ground; and they will of course, rather adhere to it, dispute its possession, and take their revenge on the intruders, than fall back on other tribes of their own countrymen, and fight their way inch by inch with them. It is in our interest to show them, first that we set such a value on our stock as will make us resent and punish any aggression upon them, and next that we are so united together...that any injury committed against one will be resisted by all’. After further theft, aggression and the setting fire to what he regarded as his country, Moore wanted to remove the offending natives ‘wholesale to some island’. He regrets the Battle of Pinjarra, in which twenty-five Aboriginal people are killed by the Governor, his soldiers and settlers but he sees it as ‘likely to be the most humane policy in the end’. Following further raids and with his own flock made more vulnerable, now as a Member of the Legislative Council, he comes to display ‘less patience and less coolness’. Following the killing of two more whites, Moore states that the feelings of settlers ‘are just now greatly exasperated against them’ and complains about the British insistence on due legal process, in particular following the Pinjarra incident. He begins to describe ‘their ways as wholly unaccountable’ and conceives of their future ‘based on their submission and a lower idea of their capabilities...Tribe by tribe we shall be able to...give them by degrees as much of civilisation as their habits will permit them to endure’. He complains that settlers should be taxed to provide the State police force to quell the natives and says that, following a later incident of stealing, he confesses he was glad that he did not meet with them, since otherwise he would have taken the law into his own hands; ibid pp.174-178.
is the State that ultimately assumes responsibility for all individuals, especially the fearsome, through the conferring of a legal status that requires the imposition by its institutions and its agents of practices the generalisation of which gives greatest comfort to dominant interests.

For his part, Hasluck takes a different path to explain ‘why it was that men of decent habit and usually of controlled passions were moved to a tolerance of violence and even to its commission’. He cites examples where the settlers justify killing Aboriginal people on the grounds of inflicting ‘adequate punishment’ on ‘offenders’, as a deterrent against ‘further outrage’ and, in the words of Quaker Backhouse, ‘the notion exists among the whites that the blacks must be made to fear you before they will love you…many a poor black has been shot under this persuasion in Western Australia”68. It is not over-theorising to see that this attitude of settlers taking the law into their own hands would be a threat to the viability of the State as the means of dealing with fear and sympathy and that it therefore would not be allowed.

Hasluck finds the ground of this attitude towards shooting Aboriginal people in the popularly-acknowledged principle that a man may kill in self-defence when his own life is threatened and that the justification is not solely one of fact but whether the defender thought he was in mortal danger. Further, he finds that this tolerance of killing sometimes extends to protective measures to preserve both property and life - the anticipating of danger and checking it. The extent of these measures depends largely on the ability of the constituted authority to handle the situation by a more formal process. If the law efficiently secures the ends he wants, the citizen relies on it implicitly, but if it is badly framed and weakly applied he is tempted to act for himself. It is argued in Hasluck that the individual has the right to act so. For him it is at times accepted that a native who had been apprehended for some offence had either resisted or run away and had been justifiably shot while escaping. Hasluck found on these three pleas - self-defence, protection of property and person, and stopping an escaping criminal - two elements that were peculiar to the relationship between black

68 The fine line between having the State act in the interests of the pastoralists which dominated its institutions and acting directly in one’s own interests is typified by pastoralist Gale ‘I think the presence of the police will do good, but at the same time I think if the Government would shut their eyes for six months and let the settlers deal with the natives in their own way it would stop the depredations effectually’, ibid pp.179-180
and white, that is the idea of punishment and the idea of correction, both being closely intertwined and scarcely separable in the popular phrase that the blacks had to be taught a lesson. In doing so, he makes the important point that conforming citizens will adhere to the behavioural prescriptions of the State only so long as that entity eliminates the fear that brought them to that conformity. It was these three pleas that allowed Governor Stirling to lead a party of police soldiers and settlers in 1834. The impact of dominant interests on not only the legislature but also the executive practices of the fledgling State was palpable: the State was established through a strategy of violence that would enlist the compliance of those of its citizens who had most to fear from Aboriginal people and then perpetrate violence on the fearsome to justify that compliance.

Hasluck acknowledges that these ideas of punishment and correction are hard to separate from ‘hate or revenge’. That is, that justice camouflaged personal motives, especially because ‘the fear of present danger or of future attack is so great as to justify whatever action is taken’. There is for him no other explanation for ignoring such principles of justice as fitting the penalty to the offence, ensuring the identity of the offender, punishing only the offender and ensuring that punishment should follow the crime and not anticipate it. Put simply, beyond the lingering discomfort that contact with an alien and, for them, inferior culture generated, white settlers feared the Aboriginal people. In fact, the fear emphasised the discomfort. Hasluck refers to a range of incidents that demonstrate this. Regarding the Cossack District incident, in which either 10 or 150 Aboriginal people were killed, depending on whom one listened to, pastoralist Richardson commented that the resident magistrate sent in what police he had and swore in special constables to ‘teach them once and for all that

---

69 This party killed either fourteen or thirty Aboriginal people at Pinjarra as a method of ‘punishment’, with the survivors set free ‘for the purpose of fully explaining to the rest of the tribe the cause of the chastisement, that had been inflicted’. Commandant of Troops Irwin, though pained by this loss of life, also felt the need of ‘some severe defeat to convince the tribe of their inferiority in power to the whites’ and to stop quickly ‘a petty and harassing warfare’. This attitude also allowed a small party of police and settlers exploring for new pastoral land in 1864 to kill eighteen Aboriginal people as ‘the first lesson taught the natives in this district of the superiority of civilised weapons over savage’. It was an incident that was lauded by a pamphlet in which the leader of the party, Brown, was praised ‘as their hero’ and ‘it was remembered to his credit that he gave them a lesson’, ibid pp.184, 186, 185

70 ibid p.187

71 ibid pp.187-189 where he refers to incidents at York, Champion Bay, Behn River, Halls’ Creek and the Cossack District.

72 ibid pp.189-190
they could not murder Europeans with impunity. Hasluck observes that there was growing contempt for Aboriginal people and the nature of the interests of the dominant emerged clearly in this debate. The fearsome were being made fearful and the interests of the dominant were being fulfilled through the tactics of the State to which respectful self-responsibility of Aboriginal people was being forcefully foregone.

In the face of Aboriginal resistance, confidence in the potential of success of the Christian missions had also gradually flagged in the minds of the members of the Legislative Council, and the very notion of ‘civilising’ came to take on a much narrower yet precise meaning, regarding dress, language and work habits. But dominant pastoral and pearling interests had come to rely on wider characteristics than these. They needed such refined working skills as the Aboriginal people demonstrated in the pastoral and pearling industries, for their rich rewards.

So the early assumption of responsibility for Aboriginal people, designed to bring them to accommodate themselves to ‘the great changes they have to undergo’ since

---

73 Hasluck continues ‘Therefore the settlers that were in the party were as justified in obeying orders as British soldiers when they shot at either Kaffirs, Zulus, Abyssinians, or any other inferior race, and for which they were frequently decorated with medals…and their names sounded forth as heroes…nor was there any desire…to deal anything but stern justice to savages…Now what was the result? Never afterwards, in that particular part of the district for miles around, was there any further trouble with the natives. They became henceforth good servants’. They were then ‘on the most friendly terms with the settlers, and soon gave up bush life and poverty to enjoy plenty of good food and other luxuries’, ibid p.190

74 ‘From these and a number of other cases to which the same criteria have been applied, it is suggested that, although the various motives grouped under self-defence and punishment are present in deeds of violence in both the early and late parts of the period, the element of revenge is more clearly marked in the later period and is tolerated to a great extent…One explanation seems to lie in the defect of legal authority and in the isolation of northern settlers. Another explanation lies in a general change of attitude, marked by a growing contempt for the aboriginal’, ibid p.190

75 Contempt was exemplified at a meeting of pastoralists in the 1890’s where flogging was under discussion: ‘It should be remembered a native had a hide, and not an ordinary skin like ordinary human beings’. The press expressed this sentiment in its own terms ‘They are a cringing, sly, treacherous and cowardly race, and natural born thieves, and it has been proved by missions in other colonies that it is impossible to convert or christianise an adult native…I admit they have more success with the young, but then only after the elders have been tamed by the settlers, and this taming will never be a success while the present native protection laws exist….Are we to allow those fiends in human shape to murder our employees and kill our stock without punishment?’, ibid p.193

76 ‘The native should learn to wear trousers…He should pick up enough pidgin English to be able to understand instructions and repeat them. He should change his way of life sufficiently to continue for at least several months in the one employment and to be diligent in his labour. He should learn the white idea of right and wrong and fear the penalties for it. He should not be cheeky. He should appreciate flour and tea and especially tobacco…A native who reached those standards would be considered a ‘good boy’ and he would not be encouraged to go any further with his civilisation, though if he could acquire various new skills such as shearing, so much the better’, ibid p.197
‘the natives are gradually deprived of their hunting and fishing grounds’ and even if that meant extending the ‘irresistible claim [of] the blessings of Christianity’, came to be replaced with a hopeful belief that the traditional Aboriginal race was dying out and that they were not responding to attempts to civilise them. Hasluck bemoans that there had been no attempt to base these beliefs, especially the ‘inability of the black to rise much beyond what was considered a brutish state’, on evidence, especially since the Commission of 1883 based its findings on these two premises. Those findings therefore accepted responsibility for the care of Aborigines but stated ‘We have no hope that the aboriginal native will ever be more than a servant of the white man and therefore our aim should be devoted to such instruction as will enable him to live usefully and happily among the white population’. This encouraged employment in forms that ‘demanded less change from the natural habits of the natives’. The State, through this Commission, confirmed its failure to induce Aboriginal people to voluntarily forgo their self-responsibility and that, given the ongoing violence imposed upon their resistance, determined that they would become productive as servants and as passive recipients of its sympathy through welfare: only the compliant are deserving of welfare.

It was not surprising, in this context, that the debates in 1888 leading to the granting of a Constitution for Western Australia featured wide concern that a Governor ‘imbued with extraordinary views with regard to the rights of natives, views which are commonly regarded as Exeter Hall views, very sentimental but utterly impracticable…might take it into his head to set apart large areas of the very best lands of the colony for the native population and the colonists would have no voice in the matter’. The same concern was expressed by pastoralists regarding Aboriginal Protection generally. What was pressed was a resolution that ‘strong and prompt measures’ should be taken to protect the Kimberley settlers from the ‘treacherous hostility of the aborigines’. Fear and the desire for sympathetic conditions of existence were the motivating factors of the legislation that realised these views. Hasluck observes, regarding the handing over of control to the local Government, that

77 ibid p.198
78 ibid pp.199-200
‘The Imperial Government ended its rule of uncertainty, inconsistency and neglect and handed on a charge that was ill-kept, contaminated, hopeless and despised’79.

In his final comments, Hasluck emphasises what for him were the limited and ineffective measures taken during this first period of colonisation to care for, civilise and protect Aboriginal people against the harsh ‘attitude of the invaders’. It was unsurprising that Aboriginal people did not respond as intended. The consequence was that even these minimal measures fell away and reform became based on narrower and harder principles of control and bare sustenance. He makes disparaging remarks about the initiatives being suggested at the time of his writing, that is in the 1940s, to redress this failure. His prescription is to revert to the ‘old conception of the native as a British subject, and as a fit candidate for civilisation’. That is, that they are British subjects and should not be required to earn that status and that the education that will bring them the advantages of civilisation is a human right, not a convenient way out of a difficulty. His final statement is telling, that is ‘If the responsibility is accepted in this light, and the work of education commenced, then the lessons which past experience can give are these: The training will have to be slow, patient, constant and continuous. The cankers that may spoil the work are those numerous fixed ideas about the nature and the destiny of the aboriginal which would declare the work useless and undesirable before it has begun and at every pause in its progress’80. In continuing to promote the assumption by the State of responsibility for Aboriginal people, Hasluck demonstrated impeccable mythological credentials, no less than those who he was criticizing, who had been assuming such responsibility by more brutal methods.

What can be fairly drawn from Hasluck’s analysis, beyond his own mythological presumptions, is the identification of key features of the proto-typical mythological dynamic in practice. The presumption of Aboriginal people as British subjects and their territorial dispossession were preliminary but important steps in a broader strategy of incorporation through civilising. However, their active and passive resistance saw the marginalisation of the attempts at civilising, with direct punitive action and incarceration adopted as the preferred tactic of incorporation, both actively

79 ibid pp.200, 202, 203
80 ibid pp.204, 206, 207
promoted by the new political institutions. The rod replaced word and habit. This is not to say that civilising was abandoned, only given second place, as a means of embodiment. The motive for this tactical change was the visceral fear experienced by whites, combined with their determination to create sympathetic conditions of existence, through exploitation of the land. It might be said that, in these early post-settlement years, governmentality was making its appearance as the underlying strategy. There was, on the one hand, the emergence of the institutions of the fearsome State and, on the other, the employment of crude methods of subjection, including a large degree of violence, enclosure and the first stages of making productive. These were left to achieve what had been hoped for in the early attempts to force Aboriginal compliance through civilising, each the attempted embodiment of the myth, but which resistance made fail.

**The Pastoral, the Prison and the Law – governing and disciplining Aboriginal people**

Haebich and Thomas are more direct regarding the intentions and the manner and the persistence of the subjugation that the British imposed on the Aboriginal people. Their accounts are not vulnerable to a charge that they are concerned to justify the regime imposed on Aboriginal people by the British colonists and their policies of dispossession and subjection, evolving into the strategic imposition of discipline and governmentality.

The task of slow, patient constant and continuous ‘education’ was certainly taken on in the next phase of colonisation but not in the manner which one might generously allow that Hasluck intended. The manner of this ‘education’ drew on the provisions and prescriptions of the Aborigines Act (1905), which ‘laid the basis for the development or repressive and coercive state control over the State’s Aboriginal population’ and in which ‘No provision was made for Aborigines to be consulted over decisions made on their behalf’\(^{81}\). Among its extensive provisions, all under the rubric of welfare and education, were the power vested in the Minister and government appointed officers to declare aboriginal reserves; to order the removal of unemployed

\(^{81}\) Anna Haebich *For Their Own Good – Aborigines and Government in the Southwest of Western Australia, 1990-1940* p.83
Aborigines to reserves and to move needy or orphaned children from their homes to missions or other institutions; to exercise power to manage the property of Aborigines with or without their permission; to approve the marriage of any Aboriginal woman and non-Aboriginal man; to control the employment of ‘Aboriginal natives’ and ‘half-caste’; and to control the movement of Aborigines in settled areas. The failure of the Act to provide the Aborigines Department with any system to regulate the way in which they executed their duties or used their powers ‘created the potential for considerable abuse and dereliction of duty’. The Act applied to a wider range of people of Aboriginal descent than the 1886 Act, including categories of ‘half-caste’ and others. They were allowed only one dog and police were allowed to shoot any excess dogs in Aboriginal camps. It incorporated s.127 of the 1900 Commonwealth Constitution Act which excluded Aborigines from the census. The Act allowed for exemption from its provisions of persons who had attained a ‘suitable degree of civilisation’. In the absence of guidelines for such decisions, few applications were granted. Those that did acquire exemption remained subject to discriminatory provisions in other state legislation and their ‘privilege’ could be revoked at any time. For Haebich, the Act brought a wider range of persons ‘under the Department’s welfare umbrella [who] were thereby denied access to services provided for the general community. This also applied in the case of education’. The assumption of discipline. As a strategy to effect this, the native settlement scheme was the cornerstone of Neville’s administration and dominated Departmental policy until the 1950s. Put simply, it was a self-contradictory scheme where, through separation and training, absorption could be achieved. This was to be achieved by isolating children from their parents within the settlements and bringing them up to follow a European life-style, ibid pp.83, 85, 87, 89. The effect of the 1905 Act can be seen in its administration by A. O. Neville, Chief Protector of Aborigines from 1915. His view was that ‘full blood’ Aboriginal people should be left alone and would die out but that ‘half castes’ could and should be made into ‘as good a citizen as anybody else’. His strategy was their isolation and control while subjected to processes of assimilation and absorption into the wider community. Haebich continues: ‘They were also to be trained in domestic and farm work to enable them to find employment and acceptance outside the settlements. The trainees were to be sent out to approved employers under the supervision of the Department…Neville was convinced that the settlements could be closed down after two to three generations as the young people gained acceptance in the wider community and as the older people died off’. Complementing his rejection of almost all applications to exempt individual Aboriginals from the 1905 Act, Neville’s principal preoccupation between 1915 and 1920 was the establishment of native settlements. These were not conceived on a small scale. Carrolup covered 10,000 acres and another was planned at Moore River of the same size, large enough to enable them to be self-supporting. There were others. Haebich makes the comparison between these settlements and the centralised welfare institutions established in England as workhouses under the Poor Laws. In undertaking this strategy, Neville began to reduce, but not eliminate, financial support for the missions, believing that State funds were better spent on practical and vocational training than on the promotion of Christianity. Missionary work was carried out, but increasingly within the settlements. This indicated a difference at this time in the preferred strategy of normalisation but not in its ultimate
responsibility for Aboriginal people by the State was now virtually complete and it had positioned itself to disperse the practices preferred by its dominant interests into every aspect of the material existence of these of its subjects. This was governmentality as Foucault understood it, albeit at the harder end of its conception.

In a manner that displays the connection between governmentality and discipline, the settlements were unlike anything that Aboriginal people had arranged for themselves, whether or not in their traditional way of life. It was a disciplined management of a population, in the sense of institutions described by Foucault. They comprised a compound, within which staff quarters, the children’s dormitories, school and other infrastructure were laid out, separate from the adult camping area, all surrounded by farming land. Because there was little voluntary movement to the settlements, Protector Neville began to take children from their families under Ministerial warrant. Despite the strong resistance of the Aboriginal people to being moved, by 1920 there was a daily average of 150 at Carrolup and 190 at Moore River. They were then subject to severe punishment for escaping, for their continuous resistance to white authority in the settlements and for refusing to work as labourers. Such punishment included corporal measures, detention or being ordered away and so being separated from their families. As a consequence of this regime, the settlements were slowly built and the farms began to be established, with self-sufficiency the main aim: men did the construction, the farming and the butchering and women the washing, cleaning, sewing and nursing. The children began to learn to read, write, do arithmetic, geography, sewing, knitting, singing and drill. But they still absconded and a wooden shed was built for their confinement as punishment for that and insubordination. Neville was sufficiently reassured to state in his 1919 Annual Report that his ‘sociological experiment’ had been a ‘success’, that Aborigines were doing work no-one thought they were capable of, that ‘women who had been

---

83 Haebich states that ‘The children and young unmarried adults lived in dormitories and were expected to spend their time within the confines of the compound where they attended school and were trained to work around the compound and on the farm. The adults were secondary to the long-term goals of the settlement, although their labour was essential. Those adults who were capable of supporting themselves and whose services were not required at the settlement were encouraged to go out to work while the sick and elderly folk were left to survive in the camp in makeshift shelters and tents’, ibid p.169

84 Haebich adds that the adults were married in Christian ceremonies and the men were taught to play cricket and football, ibid pp.182-183
incorrigible prostitutes’ and men who were drunkards and even murderers had settled down to a ‘new life of peace, contentment and usefulness’. The truth was different.

By the early 1920s, the settlements had evolved into rigid closed institutions characterised by ‘shocking conditions and the harshest discriminatory controls’, due to a combination of neglect and budget cuts. The consequence was the limiting of education to reading, writing, monetary values and the teaching of domestic skills; a fall in nutritional standards; and a consequential increase in susceptibility to such diseases as tuberculosis, measles, pneumonia, scabies, influenza and bronchitis and which were met with inadequate medical care. There were no decent burials. Carrolup was closed in 1922 in the drive to reduce spending on Aboriginal programmes and to make land available to returning soldiers returning from the Great War, some of whom had been Aboriginal men. The Aboriginal people were moved to Moore River, which became during the 1920s a ‘rigid, multi-purpose total institution used by the Department as a dumping ground for Aborigines from various parts of the State’.

‘Available evidence provides a dramatically different view of the settlements. They were drab institutions run on a shoestring budget where Aborigines were forced to live in conditions which would have been considered intolerable for whites. Through their labour the Aborigines played a vital role in developing and working the settlements, but the majority had been forced to live there and most resented the institutional way of life’. She continues ‘The children, in particular, rebelled openly against their situation through their repeated attempts to escape and their unruly behaviour’, ibid pp.186-187

ibid p.199; Moore River was largely cut off from the outside world. ‘Controlled by a small but powerful white staff, [the Aboriginal people] worked, played and slept within the confines of the settlement reserve and many were born and died there’. Many who went out to work poorly trained, became unhappy and returned to establish their families, ‘thereby creating an enduring institutionalised community’. It was an institutionalisation that similar disciplinary places, such as prisons, produced. The staff were poorly remunerated and gained satisfaction largely through their authority and by fulfilling their religious calling. Staff rules were based on those drawn up for staff in psychiatric hospitals and prisons in Western Australia. This included the proscription of fraternisation with inmates, being forbidden to discuss the institution with outsiders and approval to use the telephone only in an absolute emergency. As a consequence, it was difficult to attract staff. Men tended to come from the armed forces, the police or from farming backgrounds and women from the missionary calling or from psychiatric or migrant reception homes. Superintendent Brodie believed Aboriginal people had the ‘mind of a child’ and were ‘thieves and liars’. He beat them with sticks or cat-o-nine tails or boxed their ears in public for what he saw as disciplinary infractions and tarred and feathered at least one youth. He recruited inmates as trustees for tracking and policing the rules. Most inmates who were taken into custody and sent there from across the State were kept under warrant or legal guardianship against their will. They included traditional people of full descent, fringe dwellers, some who had worked outside, those from settlements or missionary institutions and children taken from their families. One teacher was responsible for one hundred children of varying ages. Their consequential poor performance led the State Psychologist in 1927 to applaud the forgoing of Education Department Standards and recommend the adoption of a curriculum whereby they could learn to build a shack, make a bed and fire, prepare soap and pottery for their own use, nose cleaning drill, correct disposal of waste, use of cutlery, setting tables, sweeping a room and preparing a garden bed; ibid pp.200, 204, 206-208, 210
With their fearsomeness brought under control but with their resistance to British civilisation persisting, there was little incentive to do anything more than continue control of them, to doggedly persist in their attempted conversion and deliver them the sympathy of a mean subsistence. While this crude dispersal of the British myth continued, more dominant interests reaped the rewards of the acquisition of their land.

At Moore River, play was strongly discouraged, the children slept in the same clothes all week and food was poor in quality and small in portion. When they rebelled or escaped they were locked in a tin shed (the ‘Boob’) for up to a fortnight with a bucket as a toilet. As they grew older, they left school and were assigned chores around the compound as vocational training, including farm labouring for boys and cleaning the staff quarters and working in the dining room for girls. A number of girls went out into domestic service for very low wages with these skills. However, because of the institutionalisation they experienced throughout childhood and their lack of outside support, most eventually returned to Moore River. Neville often refused permission to marry, as he could do under the 1905 Act. Attempts to elope led to being tracked down, beaten and imprisoned in the ‘Boob’. Adults lived in the camp near the compound, in a state of limbo and regarded ‘as a nuisance by the white staff and as a threat to their work with the children. They were left largely to themselves and there was little for them to do’. The inmates, kept there against their will, put up resistance to the regime as best they could, from resentful cooperation to violence against staff and escaping. For this, the ‘boob’ always followed. Some vestiges of traditional life persisted, including occasional corroborees and acknowledging the maban or spirit men. However, generally ‘there was a lot of tension between the people in the camp and the white people’. This regime was essentially the intense dispersal into the lives of Aboriginal people of the practices preferred by dominant interests, so that they would not only lose their fearsomeness but acquire skills that fitted them to the menial positions of service that helped sustain those interests.

87 Even if they were allowed to marry, most couples stayed at Moore River, ibid p.215
88 Haebich quotes Irene Farrell: ‘The Superintendents were all the same, nasty, and they were the lord and master of everything - rations, hidings, everything. We felt like they really owned us and there wasn’t much we could do about it. We were miles out in the bush and you couldn’t get anywhere. It wasn’t much different to being in jail’, ibid p.220
What is clear from this is that incarceration was the tool for the wide assumption of responsibility for Aboriginal people, down to the detail of their lives. This included their training, marital arrangements, employment, income, recreation, religious practice, territory, habits, customs and so on. They were now a population in the sense intended by Foucault. However, where he saw governmentality as having beneficial outcomes regarding health, wealth and means of subsistence, the Aboriginal population was managed so that the benefits to it reduced from what they had experienced before settlement so that those of the dominant land-owning settlers could increase. Discipline turned governmentality in this case into the degradation of life. This is not a denial of Foucault’s principal thesis concerning governmentality but a corollary to it. That is, as the dominant population is managed to promote their health, wealth, productivity, security and associated conditions of existence, such threatening groups as Aboriginal people are managed to make them both fearful and productive in a manner that will benefit dominant interests more than themselves and offer them membership at the lowest social levels. As we have seen from Chesterman and Galligan, once they have been brought to such a condition, they may be considered for membership through the tenuous, conditional extension of the status of citizen.

It is not necessary to generally trace this century of policy and practice any further, except to say that, as Haebich has shown, it has persisted. There are, however, three elements which complement or explain this account of life in the Government settlements. The first is the continuing pastoral activity of the missionaries beyond the early settlement period that Hasluck outlined; the second concerns the role of imprisonment as an instrument of civilisation, repression and normalisation; and the third concerns the role that Constitutional principles played in this.

89 M. Foucault *Governmentality* p.93
90 Foucault describes the art of government as an attempt to introduce into the management of the State the meticulous management by which the father promotes the prosperity of the family, ibid p.92
91 Haebich’s *For Their Own Good* details the application of policy up to 1940 and her *Broken Circles* explores the continuous State-driven fracturing of Aboriginal families from 1800 to 2000
The Christian Pastoral - civilising Aboriginal people

Although missionary practice was not always synchronised with that of the State - that is the alliance of the dominant interests of Church, Executive and pastoralists shifted over time - the intention and impact of their respective strategies was fully consistent regarding Aboriginal people.

We have seen the early interest taken in Aboriginal people by the Benedictines. Their mission at New Norcia had been founded in 1846 and carried on until 1908 by which time its substantial land holdings had been largely resumed by the State or sold off, and what remained was converted to providing ‘superior education’ for white children in grand new colleges\textsuperscript{92}. Its brief had been to convert the natives to Christianity and have them ‘settle down as farmers and artisans under the benevolent direction of the mission, learning private ownership and husbandry, as well as receiving moral and religious instruction’\textsuperscript{93} but this change of policy, discouraging Aboriginal contact and providing facilities for whites at a much higher standard, led to a violent protest in 1907 by over thirty Aboriginals whose family ties with New Norcia dated back to the 1860s, this being ‘an expression of resentment at their treatment at the mission’. The Benedictines moved their missionary effort to Kalumburu in the remote north in 1908\textsuperscript{94}.

\textsuperscript{92} For Their Own Good p.17
\textsuperscript{93} Hasluck p.97
\textsuperscript{94} The presence of the Anglicans was more widespread. We have seen the early efforts by the Wesleyans as early as 1840 around Perth, encouraged by Governor Hutt as a ‘civilising agent’, and that of the Society for the Propagation of the Gospel from 1852 in Albany, where the mission received increasing funding support through to the late 1880s. Later, they took up an offer from the Government to establish an institution which combined ideas developed at New Norcia with contemporary views on the necessity of segregating all persons of Aboriginal descent ‘for their own good’. Mission authorities at the settlements would retain control over their charges ‘not only as boys and girls, but in future years when both sexes had grown into that stage of life when it was only natural that they should be mated together’. Their families would provide the basis of a permanent segregated mission community. The mission settlements would be established on farming land away from the towns and the focus of training for the young people would be practical cottage industry and farming skills. This would enable them to contribute to the upkeep of the mission settlements and would also provide an incentive for them to find regular employment there or to work their own farming blocks on mission land. It was envisioned that the mission settlements would become self-supporting, relieving the Department of the cost of supporting Aborigines living there. Another children’s’ mission was established by the Australian Aborigines Mission (AAM) in Perth in 1911. With some State funding, it also relied heavily on public donations and the production of goods made by Aboriginal people for sale, ibid pp.89-96;
Claiming to have performed the important task of ‘Christianising and civilising’ the Aboriginal people, some missions closed down around 1917, and their charges were transferred to either Carrolup or Moore River. Some staff also transferred, although they did not carry quite the same dominant role in the face of an emphasis on training for more worldly skills: ‘the province of the state and missionary activity in the south was confined to a guiding and spiritual influence in the settlements’95. The Australian Aborigines Mission (AAM) remained active through the 1920s, although renamed as the United Aborigines Mission and with a new strategy. With the closing of Carrolup, it moved out into the more remote areas, for example into the districts of Gnowangerup and Quairading. Their aim was the ‘salvation of the native people, and incidentally to improve their social and economic conditions’. Without support from their organisation, the missionaries had to seek assistance from the State and the ‘sympathy’ and support of local white residents. The new strategy made them into different institutions from the southern missions or the settlements of Neville, although no less relentless in their determination to Christianise the indigenous people through the application of pastoral principles.

In fact, given the Aboriginal resistance to their earlier attempts to do so, this was merely a more subtle means of achieving the same outcome. They ‘were based on the Aborigines’ existing life style in the town camps and, rather than forcing people to leave their homes, the missions acted as centres for Aborigines working and living in a particular district. They provided a range of services, at a basic level, that were denied to Aborigines in the towns: schools, stores, churches and rudimentary hospitals providing basic medical care and a place for women to have their babies in privacy. The families lived in their own camps and no attempt was made to separate children from their parents. The families could come and go as they wished. Generally the men went out working on contracts for local farmers, leaving their families behind in the protection of the camp where their children could attend the mission school. Many of the women went into town during the day to do domestic work. The Aborigines remained in control of their lives and there was no imposed institutional structure: apart from their religious purpose the missionaries were simply there to provide assistance

95 ibid p.168
and direction as required. They usually lived some distance from the main camp and, due to their financial circumstances, their living conditions were frugal. As a result of these factors, Aboriginal families found life there far more attractive than at the settlements’.

As Haebich stated in 1988, ‘many older Aborigines today still have fond memories of their association with these missionaries’96. One might comment that this was a better association than had been had with the settlements but one of which they might not have been so fond as of their traditional ways, still real to them.

It would be wrong to give the impression that Neville supported these initiatives. In fact, there was tension, even hostility between them: ‘Neville was convinced that the missionaries were intervening between him and his charges. He was convinced that the missionaries were encouraging Aboriginal couples to enter into legal marriages with the deliberate intention of breaking his control over the children…While the missionaries did have their own religious reasons for encouraging couples to marry, they also strongly opposed the splitting up of the families which they saw as the basic building blocks for their work’. Further, the AAM was convinced that ‘their style of mission was more suited to the needs of Aborigines than Neville’s settlements. Brother Wright told the Moseley Royal Commission in 1934 that ‘when Aborigines were permitted to remain in their home areas and in touch with their regular employers they were able to retain their independence and that spirit which enabled them to become worthy citizens’97, including through their association with such women’s organisations as the Womens’ Service Guild of Western Australia, who were concerned about the plight of Aborigines. The difference between these two positions, one secular and one denominational, was only a contest about the means by which Aboriginal people were to be brought to a civilised state. In that, pastoral activity was the face of governmentality.

96 ibid pp.243-244
97 She continues ‘By the 1930s a state of open warfare existed between Neville and representatives of the United Aborigines Mission and they were to play a vital role in the controversies of the Depression years through their vociferous attacks on Neville and his policies’, ibid pp.261-262
Discipline - Civilising Aboriginal people

The second element was the role that imprisonment played in this strategy of civilising. Beyond the regime imposed in the Reserves but complementing that as a carceral continuum, Thomas identifies three stages in the history of the imprisonment of Aboriginal people in Western Australia, each with a particular character.

The first extended from the founding of the colony to the end of the nineteenth century. Despite the expression by some of the liberal attitude promoted by the imperial government, the ‘dominant white attitude...was a dislike of the native population, which in the early years was generated by fear’. From the beginning until the mid 20th century, that is the second stage, Aboriginal people ‘were no longer a considerable physical threat to the lives of the white settlers, but had become an irritant, especially because of their persistent killing of livestock. For this offence many were sent to prison for very long periods...convicted on their own admission’. But the fear of Aborigines remained. Then, as white settlers gained the ascendancy, physical fear of Aboriginal people ‘turned to contempt. Because of the absence of resistance from native people, who by this time were well advanced in the process of demoralisation, imprisonment became a very squalid affair. After the closing of Rottnest as a prison for aborigines, they were dispersed across the State, although they were kept apart from white prisoners. In the northern districts chain-gangs were a common sight, since both prison officials and police officers used

---

98 With his primary experience being of the English prison system but with experience also in North America, Asia, Australia and New Zealand, Thomas is internationally known for his extensive writings on prisons.
99 Thomas continues: ‘There is for present purposes little point in trying to adjudicate on degrees of justification for mutual killing. It is enough to note that when the Aborigines were a physical force to be reckoned with, it appeared to the Victorian that severe punishment would be certain to deter. So natives were murdered in retaliation. But again, in typical Victorian fashion, this retributive policy was elevated and formalised into a legal practice. Aborigines were condemned to death, and to heighten the terror, when they were executed on Rottnest in the prison, the executions sometimes took place in the presence of other prisoners’, J.E. Thomas and Alex Stewart *Imprisonment in Western Australia - Evolution, Theory and Practice* p.121
100 Ibid p.122
In the absence of an effective educational strategy to realise the normalisation of Aboriginal people, violence and degradation would do. The third stage began in response to the excesses of the 1960s, when the number of Aborigines being sent to prison in Western Australia rose sharply and many of these were young. In the early 1970s the formal separation of black and white in the prisons of Western Australia was abolished in accordance with the broad political decision to move towards a new examination of the status and future of the Aboriginal population. It would not be until the Royal Commission into Aboriginal Deaths in Custody (1991) that such a serious examination took place, albeit with ultimately limited effect.

It is illuminating to examine some of the key points of this correctional history. Regarding the first stage, Thomas states that Rottnest ‘contained generations of unhappy and anonymous Aborigines…from 1838 until…the beginning of the twentieth century’. The tactics involved in making the fearsome fearful did not only entail the dry slog of the stock route or the corseted boredom of the maid’s quarters. They could be, and often were, persistently brutal, vulgar, tedious and enclosing. An 1878 Parliamentary Committee enquired into Rottnest. Revealing their own attitudes,

101 Thomas comments that ‘all of this upset very few white people. It is interesting to observe that many of the statesmen who have an honoured place in the history of Western Australia were agreed about the need to crush the native population. Remarks by politicians of the stature of Alexander Forrest and Sir E.H. Wittenoom are typical and are only occasionally tempered by an appeal for moderation. Very rarely in the history of the legislature is there a categorical denunciation of the conditions under which Aborigines were imprisoned’, ibid p.122

102 ibid p.123

103 Governor Hutt made it clear why it was opened: ‘The Criminal Code of England can best be applied to meet the circumstances of a race so totally opposed to ourselves in every one of their customs, ideas and opinions, as are the aborigines of Australia’. An island, Rottnest combined the difficulty of escape with instruction ‘in useful knowledge’ and gradual training ‘in the habits of civilised life’. But Vincent, who ruled Rottnest as its first Superintendent for 27 years from 1839, is judged by Thomas as ‘an arrogant, autocratic, cruel man who must surely have been responsible for creating more unhappiness among Aborigines than most other white men in the history of the state. He must also rank as one of the harshest penal overseers in recorded history’. Although exonerated on investigation by the Chairman of Quarter Sessions in 1842, the statements of the Aboriginal prisoners, who were not called to give evidence, were that he had been directly responsible for three deaths, that they ‘were forced to work harder than they could bear, that he lashed them unmercifully, that he cut their hair close and pulled out their beards with pincers’. In 1846, he was investigated again regarding a claim that he had ‘killed and buried one or more of the prisoners under his charge’. Again he was exonerated against evidence taken from Aboriginal prisoners but on the testimony of the military guards on the island. One of those same guards, however, described ‘how fellow soldiers had struck natives with their fists, hit them with sticks, and on one occasion broken a pitchfork across a native. He had seen Vincent pull a native by the beard, and…had seen a part of a native’s ear lying on the ground, and that Vincent had pulled it off’. Vincent’s son, his Deputy, was dismissed for cruelty in 1865. It was stated he had been guilty of ‘violent and brutal ill-usage of a sick native prisoner’. He had severely assaulted an aged prisoner, who had then died and was swiftly buried ‘joining the hundreds of native prisoners buried in unrecorded graves on Rottnest’. He was convicted and sentenced to three months hard labour, ibid pp.125-127, 128-132
they liked what they saw, although they made suggestions to improve the dietary scale. This was seen to have been responsible for the illness on the island, as was the lack of amusement and exercise, for which they recommended the introduction of quoits, and such rewards as ‘an old hat with a feather in it’ which ‘would be greatly esteemed by these adult children’.

The report that followed the 1883 Commission commented that it ‘was a melancholy fact that throughout Australia the aboriginal race is fast disappearing’ and ‘we have no hope that the aboriginal native will ever be more than a servant of the white man’. They sheeted home the blame for the measles epidemic to a congenital defect of the native and said ‘he was responsible for the predicament in which he found himself [due to] the Aboriginal custom of exchanging clothes’. The evidence of the Superintendent included a statement that the ‘uncivilised’ natives had no idea of how long their sentences were or when they could expect to be released but at least one member of the Commission expressed the view that, since the ‘natives were brought from a warm climate, in overcrowded steamers during cold and wet weather, and placed in an overcrowded prison with total change of diet, surroundings, and occupations’, it was not surprising that they died in large numbers. No major action took place as a consequence of the investigation. Demoralisation was the effect of

104 In 1883, a further series of investigations of conditions on Rottnest began, sparked by the increase in the Aboriginal prison population that followed the opening up of the northern areas of the State. Sixty prisoners, or one full third of the prison population, had died from an influenza epidemic and, for Thomas, the subsequent report showed that, although ‘the physical fear which characterised the early days seems to be replaced by a mixture of sympathy and sorrow at the predicament in which the Aborigines were’, ‘there was also a blatant vein of contempt’. Forrest stated that far too much had been made of the epidemic and complained that ‘it was impossible to put prisoners on public works because of the necessity for chaining’, while Wittenoom stated that it had been perfectly alright to chain prisoners fifteen years before and ‘it was absurd to give way to sentiment when dealing with the blacks’, ibid pp.133, 134-5, 136

105 Then, as Thomas notes, the ‘crude brutality of earlier years was apparently by now replaced with a kind of classic colonial paternalism’. Although during 1897 there were 26 deaths on the island due to influenza, when the Governor and his party visited they used the prisoners as beaters when they wished to shoot birds and wallabies. ‘The demoralisation of Aboriginal prisoners, and more generally of the Aboriginal population in the state appears by this time to have been nearing completion’, ibid pp.136-137, 138, 139; Rottnest closed in 1903 following protesting cries, not that it was inhumane but that it ‘had been a perfect failure’ and that prisoners were having too good a time. Thomas expresses the view that this ‘attitude was consonant both with the puritan social illiberalism which was one of the salient features of the late Victorian world, and with a deterioration in relationships between the races’. In a debate designed to authorise punishment of Aboriginal people by whipping, the Attorney General observed ‘I have come to the conclusion myself, and I have done so for years, that the only way of effectively dealing with all these coloured races, whether black fellows or Indians, or Chinamen, is to treat them like children. I have proved it, in my own small experience’. Alexander Forrest said in 1895 ‘Natives who were taken to Rottnest were pampered too much, and, when liberated, were as bad as when they
the failure to recognise Aboriginal cultural reality and of the consequential imposition of the strategies of civilisation.

The Report of the Royal Commission into Aboriginal Deaths in Custody (1991) shows that key features of the regime described by Thomas persisted well into the modern era. Between 1 January 1980 and 31 May 1989, 99 Aboriginal and Torres Strait Islander people died in police, prison or juvenile detention custody, at least one-third from suicide. The Royal Commissioners found that ‘the immediate explanation of the number of deaths in custody is the number of Aboriginal people actually found in custody. Aboriginal people are in gross disproportionate numbers, compared with non-Aboriginal people, in both police and prison custody and it is this fact that provides the immediate explanation for the disturbing number of Aboriginal deaths in custody’. These comments refer to research findings that, compared to an imprisonment rate for non-Aboriginal adults of 97 per 100,000 persons, the Aboriginal imprisonment rate was 1465 per 100,000. ‘This means that there were 15 times as many Aboriginal people in prison than there were non-Aboriginal people in prison’\textsuperscript{106}. The comments of the Royal Commissioner in April 1991, as to the wider context of causation for this rate of imprisonment and death in the life circumstances of the vast majority of Aboriginal people, make it clear what he regarded as the range of key determining issues in the deprived condition and status of Aboriginal people\textsuperscript{107}.

\textsuperscript{106} Report of the Royal Commission into Aboriginal Deaths in Custody Volume 1, Chapter 9, pp.76, 225, 227

\textsuperscript{107} ‘I start with the legacy of history, because so much of the Aboriginal people’s current circumstances, and the patterns of interactions between Aboriginal and non-Aboriginal society, are a direct consequence of their experience of colonialism and, indeed, of the recent past. The following chapter reviews Aboriginal society today, covering demographic indicators, and issues concerning Aboriginal identity and social patterns. Two chapters then look at the relationships between Aboriginal people and broader society, first in general terms and then with regard to Aboriginal people’s interaction with police. This is because the police form what may be called ‘the front line’ in the non-
The state of Aboriginal society represented by this description is a far cry from the nature of Aboriginal society before the arrival of the British, described as vibrant, vital and viable\(^{108}\). This latter was a coherent world view, and one embedded in the Aboriginal society’s set of controls over how Aboriginal people live. This leads to a discussion on Aboriginal young people - their patterns of offending and their over-representation in custody. Aboriginal patterns of use of alcohol and other drugs are described next, along with the damaging effect of these substances on individuals, families and communities. The topic of schooling is then discussed, important since it is in schools that many Aboriginal children first meet individual and institutional racism and first experience unwarranted failure. Two other aspects of contemporary Aboriginal life are then canvassed, namely, the patterns of welfare dependency and poverty which our society makes the daily experience of Aboriginal people, and the housing and infrastructure (e.g. water, electricity, waste disposal) facilities available to them, both issues that contribute to the over-representation of Aboriginal people in custody. The topic of land then needs to be addressed, a matter seen by many to provide, in its various forms, a fundamental explanation for the position of Aboriginal people in Australia today and a context for overcoming the serious problems which Australian society has in its dealings with Aboriginal people. Such an analysis leads directly to my consideration of Aboriginal self-determination and self-management, in the final chapter in this part, a topic which has at its heart questions of social control\(^{108}\)ibid Volume 2, Part C, p.1

\(^{108}\) The social and economic organisation of Aboriginal groups varied greatly throughout Australia, but some general observations can be made. Aboriginal society had a relatively egalitarian social structure where age, gender, totemic and land affiliations were important demarcations. Women usually provided the staple food supply, and they owned and had special responsibilities towards sites in the landscape, associated song cycles and Dreaming stories. They had exclusive control of the secret ceremonies of reproduction, and their maternal function as child rearers was highly valued. Men hunted and also played role in nurturing and teaching children, and there were special responsibilities for a wide network of kin in relation to each child. When a baby was born, she or he immediately had a niche in a complex cosmology defined by Dreaming stories. Identity was secure, and the child had a variety of land relationships via its conception Dreaming (sic), as well as inheritance through its father and mother. The child would gradually be introduced to responsibilities towards land and kin and the strict marriage rules. Values which were taught in traditional Aboriginal society included sharing, respecting the wisdom of age, looking out for the young, gentle treatment and close observation of plants and animals, and the fulfillment of kinship obligations. Families and clans traveled the land throughout the year. They harvested the land’s resources when the opportunity was available, and looked after special sites to which they had responsibility. Men and women separately facilitated the reproduction of resources through ritual nurturing. They also spent much time negotiating business in the company of their own gender. Decision making and law enforcement were divided between men and women, and ultimate power was often accorded on the basis of custodial obligations towards relevant land or kinship obligations. The tablet of the law which was ensconced in the landscape itself was explained through Dreaming stories as people travelled. While women were in charge of their own business - sacred and secular - men’s power often appears to have been more highly valued in regard to law and punishment matters concerning the larger group. In some areas, women’s law was more powerful than others and older women held high status. Gatherings of many clans took place from time to time to conduct social, marriage and religious business. Ritual confrontations were also staged to avenge wrongdoing, and other transgressions could be punished physically and through potentially fatal sorcery. Dancing and singing, story telling, drawing, painting and sculpture took place all year round, and through such entertaining means everyone knew the law of their group\(^{108}\); ibid p.7. Llewellyn makes an apposite comment in this context about the way that informal pressures were brought to bear within Cheyenne culture to effect the integration of the individual. That is, any society, including the Cheyenne and similarly the Australian Aboriginal culture, required methods to this effect. But he says “To keep a culture going, with dignity, with effectiveness, and with its huge individual vitality in manageable harness, required law-ways of high effectiveness. It required also that the law-ways be reinforced at every point by other ways, and that they coincide in pressure. Merely to work out overt adjustment in so highly charged an atmosphere calls for juristic art. To do it and yet keep the standards of doing it abreast of a culture in movement, and during a period exposed to the severest trials, calls again for art. Such art, if achieved – such juristic method – had of necessity to keep the law-ways on
lives of Aboriginal people by themselves. The British had no grounds that really could justify what they did, even if they had plenty of reasons that they were happy to adduce to destroy and replace this world view. One might properly call the Aboriginal world view a mythology, although the use of such a term must include a wider reference than that which concerns Blumenberg as he has been extended by this thesis. He focused especially on the creation of mythological magnitudes. But the Aboriginal world view was their own, it made sense of the world, was firmly held and aggressively defended. It is understandable that the British quickly came to regard it as a serious threat to their own life and wealth, both conceptually and materially. The violent destruction by the British of such a threatening world picture through the strategies deployed by their own mythological magnitude is therefore predictable, as has been the desire to sustain such strategies over a long period.

**The Constitution - civilising of Aboriginal People**

The third element is the Constitutional context within which such policies and practices were being drawn and imposed. In this, the presence of the corollary strategy of governmentality, that is of the management of subordinate populations for the benefit of dominant interests, is clear. The Commonwealth Franchise Bill, enacted in 1902, was brought to Parliament by Senator O’Connor, a member of the three-man Constitution drafting Committee in the 1897-98 Federation Convention. Senator Matheson of Western Australia brought forward an amendment to exclude Aboriginal people from voting, stating: ‘Surely it is absolutely repugnant to the greater number of the people of the Commonwealth that an aboriginal man, or aboriginal lubra or gin - a horrible, degraded, dirty creature - should have the same rights, simply by virtue of being 21 years of age, that we have, after some debate today, decided to give to our wives and daughters. To me it is as repugnant and atrocious a legislative proposal as any one could suggest’. Within its own jurisdiction, Western Australia had just enfranchised women but continued to disenfranchise Aborigines. Senator Stewart from Queensland, in support, described Aboriginal people as ‘these opium-eating blacks, these ignorant aboriginals, these people who do not care two straws about the close and singing harmony with the rest of the culture, in ‘harmony’ even with what culture-discord there might be” K. Llewellyn and E. Hoebel *The Cheyenne Way* p.269. There was no evidence of juristic art on the part of the British, since their easy resort to violence and discipline showed little regard for artful cultural adjustment.
government of the country so long as they can get their daily tucker and their allowance of opium’. O’Connor’s defence of the Government’s original inclusionary Bill but his failure to rally effective support regarding the franchise for Aboriginal people marked the start of sixty years of deprivation of basic citizenship rights. Referring to the rule in Western Australia and Queensland that only Aboriginals who owned property to the value of $100 were entitled to vote, he said ‘I think it occurred to those who were framing these laws in the States, that it would be a monstrous thing, an unheard of piece of savagery on our part, to treat the aboriginals, whose land we were occupying, in such a manner as to deprive them absolutely of any right to vote in their own country, simply on the ground of their colour, and because they were aboriginals’. But O’Connor was defeated. This Act set the tone for other legislation, for example regarding pensions. So Aboriginal people were denied the benefits of citizenship. Being a subject allowed the intervention that normalisation required but not the rights that the status of citizen usually brought with it.

The legal status of Aboriginal people remained severely constrained for decades. But the extent to which that status could be varied in a manner that promoted the elimination of traditional ways of life and their replacement with British ways is shown by the operation of the Western Australian Natives (Citizenship Rights) Act 1944. By this, Aboriginal people could apply for a Certificate of Citizenship by which the Aboriginal would be ‘deemed to be no longer a native or aborigine and shall [have] all the rights, privileges and immunities and shall be subject to the duties and

109 As Chesterman and Galligan observe “the Commonwealth Franchise Act, which according to its title aimed to provide a ‘Uniform Federal Franchise’, ended up disenfranchising Aboriginal people. In doing so it adopted the worst State practice for the new Commonwealth, a practice that saw most Aborigines disenfranchised for nearly sixty years”, J. Chesterman and B. Galligan Citizens Without Rights pp.90, 91. It would be difficult to believe that the position that was adopted by Senator Matheson, as a leading Federal representative of the dominant interests in Western Australia and who strongly opposed giving the vote to Aboriginal people (ibid p.89), was unconnected to events in that State at that time. In 1903, the Western Australian Government embarked on, and had been planning since the late 1880s, a major programme of agricultural development in the Avon, Midlands and Great Southern districts in the south of the State. This programme was intended ‘to bring about maximum utilisation of the land through the settlement of little men of limited means on small intensively cultivated farming blocks. At the time, 75 per cent of the Aboriginal population in the south lived in these districts (over 1200 by the 1901 census). Most followed a lifestyle combining employment on the pastoral stations with hunting and camping on the pastoral leases and interspersed areas on unalienated Crown land. The new form of land utilisation promoted by the government, together with other socio-economic changes accompanying development, profoundly disrupted the Aborigines’ lifestyle, leaving them poverty stricken and homeless by the beginning of the First World War’, Haebich pp.9-10. The prospect of enfranchising these people would have been seen as unconscionable by the prospective white land owners and by their parliamentary representatives.
liabilities of a natural born or naturalised subject of His Majesty’. As Chesterman and Galligan observe, the criteria on which a magistrate decided whether to grant a Certificate ‘provides an illuminating statement of what it meant to be a citizen in Western Australia in 1944 and beyond’. The magistrate had to be satisfied that:

- for the two years immediately prior the applicant has adopted the manner and habits of a civilised life;
- the full rights of citizenship are desirable for and likely to be conducive to the welfare of the applicant;
- the applicant is able to speak and understand the English language;
- the applicant is not suffering from active leprosy, syphilis, granuloma or yaws;
- the applicant is of industrious habits and is of good behaviour and reputation;
- the applicant is reasonably capable of managing his own affairs.

Successful applicants could lose their citizenship rights by not adopting the manner and habits of a civilised life, by being twice convicted of an offence under the Native Administration Act (including drinking alcohol, loitering or marrying without official permission) or by contracting any of the proscribed diseases. It was observed that losing citizenship due to the contracting of a disease demonstrated the precariousness of the status of citizen and ‘made a mockery of the rights terminology’. To emphasise the precariousness, this Certificate did not secure the right to vote in Federal elections. There is a strong sense here that we are looking at the emergence of liberal thought and practice, that is the extension of a package of individual rights but the condition of which is subjection to invasive regimes of normalisation.

**Self-Responsibility in Aboriginal Affairs**

Before proceeding to some final comments, it may be helpful to give some further indication, beyond the comments provided in the Introduction, of how self-responsibility might take shape in the context of Aboriginal affairs. This indication is intended as a reference point, a ‘compared to what?’, against which the account of Aboriginal policy just given may be considered, but without intending to provide a

---

110 Chesterman and Galligan pp.132-133
comprehensive account of the nature of a State which promotes self-responsibility, still less to construct the future in any way. What follows is not intended to carry the weight of confirming the ambitious argument presented in this thesis, merely to suggest a shape to the nature of the non-mythological State and to the kind of relationship that such a State might have with its citizens.

It is significant that some contemporary Aboriginal leaders have recently expressed a desire that their communities be relieved of the welfare policy which has dominated their lives and continued to make their people radically subject. Couching this aspiration in terms of the right to self-determination, indigenous leader Noel Pearson states: ‘The right to self-determination is ultimately the right to take responsibility…Our struggle for rights is not over and must continue - but we must also struggle to restore our traditional values of responsibility. We have to be as forthright and unequivocal about our responsibilities as we are about our rights - otherwise our society will fall apart while we are still fighting for our rights. We do not have a right to passive welfare - indeed we can no longer accept it. We have a right to a real economy, we have a right to build a real economy’111. He explains the need for a changed relationship with the State in this112.

This is not the hard end of self-responsibility, that is the ‘to and for oneself’ by every sentient and physically capable adult, but it is a strong pointer to the underlying intention of that concept. What Pearson is driving at is that passive welfare dependency, due to the loss of self-reliance which came with the colonial confiscation of the land and its resources113, be replaced by the participation of Aboriginal people in a real economy. Passive welfare has corrupted Aboriginal social relationships because it has undermined the ‘highly sophisticated and complex system which placed high value on the sharing of resources and concern for the well-being of other

112 ‘When it comes to the performance of functions of government, the independence of our structures from that of the state is critical. There are people who believe that reform in the work of government in Cape York Peninsula can be carried by the state bureaucracy. They are wrong. No matter how much goodwill the people in the bureaucracy may have for us and reform - they are ultimately accountable to their bureaucratic and political superiors, not to our community. In other words, their accountability is upwards, whereas the accountability of our organisations must be downwards. The bureaucracy is compromised and constrained by their primary accountability. The duty of our organisational structures and leaders to be accountable downwards to our community is constant, and our efforts to fulfill this duty must be an ongoing process’, ibid p.80
113 ibid p.29
members of the social group\textsuperscript{114}. Sharing has come to mean only sharing alcohol and illegal drugs. Pearson puts this down to the racism, dispossession and trauma on which colonial and post-colonial policy has been based\textsuperscript{115}.

Linked to these factors is the flawed governance of Aboriginal people that has emerged from the colonial experience, which tends to materialise in one of four forms, either that of the White Dictator, the Black Dictator, the good hearted White Saviour/Servant or the Black Saviour/Servant\textsuperscript{116}. These are manifest not only at the higher levels of the hierarchy but pervade all levels of the hierarchy down to and including the family. All of these have to be replaced by a new model of leadership, which is characterised by a notion that ‘anyone can lead and everyone must’. This is categorically different from the form of governance in which welfare dependency is embedded\textsuperscript{117}. What Pearson recommends for his people is a new arrangement based on the need to share power, because ‘people need to work through the solutions to their own problems’ rather than have ‘armies of public servants’ who ‘will only ever make a momentary dent in the problems that individuals and communities face’. He adds that ‘we are not saying that (individuals have to solve their own problems) in isolation from other individuals and their community. Rather, the community supports individuals to resolve their problems’. So, a partnership approach is needed\textsuperscript{118}.

This means that ‘Cape York Peninsular people must control our own representative organisations and must be free from arbitrary interference from the state and external

\textsuperscript{114} ibid p.30
\textsuperscript{115} ibid p.32-33
\textsuperscript{116} ibid pp.50-51
\textsuperscript{117} He says this is so because ‘The tendency of governance structures to promote the creation of a passive constituency – welfare recipients, clients, customers, those who will be served – rather than a more pervasive leadership, is a real problem with leadership in the wider Australian community. The pyramid-style conception of power and governance is reinforced by the formal systems of government. Leadership must be seen as something that pervades all layers of society, and all citizens in an active democracy must take responsibility for the state of their society and its future direction. Part of the process or removing passive welfare from Aboriginal society in Cape York Peninsular will involve a model of leadership and governance not based on the passive welfare paradigm. Leadership that promotes, and which is premised on, the passivity of individuals in our society, is the wrong kind of leadership...There is no devolution of rights and responsibilities (i.e. power) to individuals. These models must be put behind us’, ibid p.52
\textsuperscript{118} ‘Clearly, the foremost imperative of Aboriginal governance is to devolve and to share power...The devolution and sharing of power, that is, the devolution and sharing of the right and the responsibility, must be the central imperative of Aboriginal governance...This means that the leadership of the Aboriginal community has to adopt an approach which gives ‘hands on’ power to the members of the community’; ibid p.58
quarters. Our regional, community and local structures - whilst having relations with government and outside agencies - must be independent and accountable to our own community. Further, ‘at this stage of our fight for recovery, our problems and challenges are structural. For example, native title and its preservation was a structural/institutional challenge, involving serious political, economic and social forces in government and the wider Australian society. The forces lined up against native title were very powerful…Whenever the powerful interests of government and the wider community have investments in the structures and institutions that affect our people and our prospects - then we need to be organised and equipped to advocate and defend our interests. Those who think that this need can be addressed by us only maintaining our community and local structures of governance are either naeve (sic) or they seek to serve those whose interests lie in maintaining the structures that impoverish and entrap us. Pearson is fully aware of those interests that either dominate the magnitude of State or are allied to it.

He therefore advocates a new partnership between government and community: ‘The state bureaucracy today hoards the great bulk of the resources that our community needs in order to develop. The state bureaucracy’s upwards definition of accountability and its disjointed mode of operating mean that our community does not get the optimum benefit from the state’s transfer of resources…And yet the resources held by the state - financial and expert - are valuable and potentially useful to our development. In the light of this therefore, rather than completely rejecting the role of the state in our community, we have sought to properly define its role…This new partnership should have the following characteristics:

- It should be constitutional, in the sense that it is a formal legal structure, and not a mere policy;
- The parties to the partnership should be properly independent of each other. This means that the autonomy of the community side of the partnership must be recognised and respected;
- There should be genuine and robust negotiation between the partners about the terms of the partnership…the partnership agreement should explore the

119 ibid p.80
120 ibid pp.80-81
concept of the state locating key employees within the community sector, and under the control and direction of the community.¹²¹

Importantly, improved access to resources controlled by the State should be part of a new economic strategy, the elements of which are:

- Access to the enjoyment of traditional subsistence resources, so that Cape York Peninsula people can enjoy their traditional subsistence economy;
- Changing all of the welfare programs to able-bodied Aboriginal people into reciprocity programs, in which what acts of reciprocity are expected of individuals in return for these programs is determined by ‘healthy tension between leadership (by community leaders and by family leaders) and individuals’; the state should play the junior role in the definition of reciprocity;
- Developing our community economies, the development of enterprises to produce self-sufficiency in a manner that learns from the past failed attempts to do this;
- Engaging in the real market economy, an inevitably difficult process which will require attracting capital, engaging in mining agreements, the redistribution of cash grants to individuals.¹²²

With this, Pearson outlines what he sees as the link between acts of responsibility and reciprocity. ‘The first and most important responsibility is to take care of oneself. At the most basic, but most important level this means taking responsibility for one’s own health: eating healthy food, maintaining personal hygiene, seeking medical advice and proper medication when one is ill - and of course - not abusing alcohol or drugs or smoking...At another level of personal responsibility comes education and self-improvement...(by which) we realise that the future can be better and we gain the skills to make it so’. Then ‘The second kind of responsibility that can be expected of individuals in society is towards one’s family...especially to vulnerable dependents such as the old and the young. In practical terms this amounts to the responsibility to feed, protect, shelter, treat and educate. The responsibility to love, to set an example, to give direction, to reward initiative and support the aspirations of our children’.

¹²¹ ibid pp.81-82
¹²² ibid pp.83-91
Then ‘The third kind of responsibility that can be expected of individuals in society is to contribute to the community at large. Again, the breakdown of Aboriginal society in Cape York Peninsula is reflected in the breakdown of responsibility on the part of individuals and subgroups (such as families) to the common good’\textsuperscript{123}. This is not self-responsibility in a pure form, but it is the coincident development of self-responsibility in the context of cultural enhancement and sustainability.

So for Pearson, acknowledging his inspiration in the thought of Lars Emil Johansen, the indigenous Premier of Greenland, ‘Self-determination is the right to take responsibility. Self-determination is hard work’\textsuperscript{124}. He concludes ‘It is not just our community organisations and its leaders who must view accountability as their responsibility, but individuals who receive resources must understand their accountability to themselves and to their families and community’\textsuperscript{125}.

Here we have key elements of self-responsibility, including the creation of sympathetic conditions of existence. The fact that Pearson emphasises the social perhaps more than the individual is not necessarily a problem for the notion of Enlightened self-assertion, which does imply mutual respect, except if the social overrides the interests of the individual and his responsibility for himself. It is, however, an important question of emphasis. This is the problem with which Rousseau grappled unsuccessfully, as we have seen. Neither is it necessarily a problem that he focuses on the need for structural arrangements that represent the community, so long as these are responsible to each member of the community, as he insists. Self-responsibility will require representative arrangements, which are consultative and supportive rather than aristocratic and commanding. What adjustment is needed in Pearson’s thought to reflect self-responsibility in the sense intended here would be an emphasis on the individual, supported by the community of which he is inextricably a part, rather than the individual as first a part of that community. As a consequence of these differences of emphasis, Pearson could have insisted on the introduction of at least those elements of Aboriginal traditional law which would strengthen the call for responsibility to

\textsuperscript{123} ibid pp.85-86
\textsuperscript{124} ibid p.96
\textsuperscript{125} ibid p.98
which he and the ‘mothers, grandmothers and old people’ when they speak ‘every day
to their children and grandchildren’126.

Pearson has continued to develop his thought into a practical programme, which
emphasises the importance of the development of capabilities regarding such
indicators as employment, income, wealth, income passivity (a negative capability),
health, safety, housing, basic infrastructure, education, social capital and governance.
Each of these is an area in which individual Aboriginal people need to develop greater
capability. These are in turn the subject of negotiation with Government, the end
purpose of which is to give greater control over the conditions of Aboriginal existence
at Cape York. These initiatives are not without controversy within the Aboriginal
community, given the emphasis on engaging with the real economy rather than with
first promoting a somewhat more traditional existence127.

The Mythological State and Aboriginal People

In contrast to these contemporary aspirations, the analysis of Aboriginal policy in
Western Australia since settlement demonstrates the strong presence of all the key
features of mythological ideas and practice. There was a policy of governmental
management of the Aboriginal people as a population and into the depths of their
individual lives; Aboriginal people were subjected to productive discipline by the
State, by the Churches and by employers and to reconstructive, fear-eliminating
discipline in correctional and other institutions; pastoral power was exercised by the
State and the Churches in the form of a regime of civilising and an albeit mean
welfare; and there was the eventual availability of liberal rights on condition of
successful subjection to these normalising regimes. All this was a function of the
establishment and dispersal of the British constitutional mythological State. There
was fear, there was the desire for sympathetic conditions and there was a preparedness
to forgo self-responsibility so long as this thereby-empowered entity would deal with
these two problems caused by the Aboriginal people. Dominant interests ensured that
the fate of it came into their hands to be certain that it satisfied this covenant.

126 ibid p.100
127 N. Pearson Freedom, Capabilities and the Cape York Reform Agenda October 2005 Cape York
Institute for Policy and Leadership p.4
While it was inevitable that there would be government in the British constitutional tradition established in that colony, what the particular circumstances show is the nature of the British State and the dynamic that drove its development. That nature and that dynamic are properly seen as mythological. That is, there is an arguable connection between prevalent existential fear, the creation of an absolutist magnitude of State, a covenant with that magnitude by which individuals forgo self-responsibility and in return for which the State must be seen to strive to eliminate fear and create sympathetic conditions of existence for its subjects, the dispersal of the institutions of the magnitude through infrastructural elaboration and governmental strategies of normalisation and training, especially targeting the fearsome, and consequential creation of the legal status of citizen which recognises that normalisation on a conditional basis. Effectively, the enforced forgoing of responsibility of Aboriginal people, with all the long term practices of normalisation that have attended that, was one condition required by colonists for the willing forgoing of their own responsibility. There had to be management of Aboriginal people as a population not merely as individuals. It was the structural political arrangements of the magnitude which managed both of these forgoings. Further, this covenant of ‘forgoing’, this dispersal and this legal status were generated by the determination to overcome, rather than accept, that prevalent existential fear.

This emerged because, although the first expectation was that Aboriginal people would respond without coercion to the opportunity to join in British civilisation, the tri-partite institutions, and the dominant landed interests that captured their influence, quickly focused on dealing with the reality of visceral fear and, through that, the creation of sympathetic conditions of existence for those interests. This quick focus was brought on by the possibility that the embryonic State might lose its sovereign control, since settlers were taking matters into their own hands and killing Aboriginals acting in defence of their land. The fearsome magnitude of Hobbes and Locke, its dominant interests and their allies, and its dual primary role were established quickly, grew and persisted, although acceptance of its authority was always conditional upon its delivering on its primary responsibilities.
The strategies and tactics necessary to disperse the mythological arrangements are reflected in the manner in which the institutions of the State, along with their agents and allies, undertook the process of engaging the fearsome and embedding in them mythological practices. This was the exercise of pastoral governmentality and its disciplinary adjunct to eliminate a threatening, alien world picture in an attempt to establish their own as certain. This happened through reserve, mission and prison but also in the way that the increasingly fearful Aboriginal people were either brought to a level of productivity for the benefit of those interests or were introduced to the mean existence that State and denominational welfare made available to them and to which they became institutionalised. For those few who reached the threshold of normalised behaviour, the marker of conditional citizenship awaited. This was a population managed and disciplined for the benefit of dominant interests within the dominant population, by the strategies that eliminated fear and created sympathetic conditions through land acquisition and the development of governmental and disciplined practices that produced a compliant, submissive productive class. They were trained and this training was ingrained in their bodies, in the hope that they would see such arrangements as certainties, subject to circumstantial but not ontological doubt. Being formally made subjects made them potentially eligible for membership, and their land available for use by the dominant, but for citizenship they were required to display all the individual mythological practices, being prepared to have themselves changed into beings that honoured individualism, ownership and exploitation of land and property, disciplined movement patterns, education, industriousness, Christian spirituality and formal sexual and hygiene patterns and so on, but only so far as their adoption would establish them in a socially marginal position, so that they were never again in a position that would enable them to reappropriate the land. There were to be no traces of traditional existence. To appease all those who were prepared to do so willingly, if conditionally, they had been forced to forgo any sense of respectful self-responsibility.

However, such normalisation is not totalitarian in its application and therefore without variation in its intensity or complexity in the way it was played out or even that it is without internal contradiction.\(^\text{128}\) There was resistance. There was even some

\(^{128}\) Martin Krygier and Robert van Krieken in *The Character of the Nation* in *Whitewash* pp.81-105
humanity in the relationship between the British and the Aboriginal people\textsuperscript{129}. But the context of such resistance, inconsistency, complexity and humanity was, or at least came to be, coherence and system and strategy in the treatment of Aboriginal people by the State and its allies, that is that there was much more at work here than the immediate and short term benevolence or self-interest of colonising citizens of the prototypically mythological British State. What became clear after the arrival of the settlers, perhaps differentially in different jurisdictions on the Australian continent, was that what was at work was the application of the features and characteristics of the mythological State, not just of the imperial, sovereign State.

Neither should the presence in colonial Western Australia of the core mythological characteristics be seen as a perfect fit. A keen eye can see variations from the idea of the mythological magnitude of State and its embodying practices as they were argued in the earlier theoretical sections of this thesis. For example, rather than being put in place in response to abstract existential fear and thereby to prevent real fear in the immediate material world, the mythological State was triggered into existence in Western Australia as much by the retributive actions of the fearful settlers against the fearsome actions of Aboriginal people as by those actions themselves. Further, it could be argued that the Church and State were sometimes in contest regarding who should be responsible for the pastoral care and normalisation of Aboriginal people, as least during the period of Neville’s responsibility, rather than always in alliance for this outcome. Further again, creating sympathetic conditions of existence for one interest can at the same time be a means of violent normalisation and deprivation of other interests. Complementing that would be a claim that, in exercising its responsibility to be sympathetic, say through the Aboriginal welfare system, the State is in effect exercising a tactic of social control. Consistent with this point, the entire notion of protectorship can be seen as a manipulation of the notion of sympathy, as it was more about containing and managing Aboriginal people than it was about limiting the violence visited upon them by fearful settlers. However, none of these variations threatens the theoretical proposal. Rather, they illuminate and enrich it and can therefore be argued to strengthen it. In the real world, material fear is likely to trigger defensive action before any generalised sense of anxiety; the difference of

\textsuperscript{129} This is a principal theme of Inga Clendinnen’s \textit{Dancing with Strangers}
view between Neville and the Church over prime responsibility for the normalisation of Aboriginal people is only a claim, and a temporary one at that, about responsibility for an outcome on which they agreed; and pointing out the two-sided nature of sympathy merely reinforces the central role that dominant interests have within a mythological arrangement.

However, despite the apparent coherence of these mythological arrangements, it should be added that their fundamental flaw remains obvious. The creation of the Legislative Council in colonial Western Australia, although an embryo of the elaborating State, initiates the process whereby existential fear was to be replaced by the universal fear of the State necessary for none to be fearsome, this to be achieved on the basis of normalising each individual to forgo to the State the responsibility he has for himself. As we saw in Chapter 2, such forgoing is conceptually complete although practically conditional on the satisfaction of demands regarding fear and sympathy. That is, the individual citizen has forgone the responsibility to eliminate respectfully what he regards as fearsome circumstances, as well as the capacity to create for himself the sympathetic conditions of his existence. He merely worked and thrived within those conditions, created by the State at the expense of Aboriginal people. The point here is that it is an irresolvable conundrum to create an entity that must be feared but is expected to eliminate fear. What drives this point home is that, as the theoretical analysis above indicates and as the examination of Aboriginal policy shows, the institutional structure is neutral to any particular interest so dominant interests will always emerge in a manner such that they will artificially create fear, even if only by exaggeration once the real cause of fear has passed, and enjoy more sympathetic conditions than others, since they dominate the institutional means by which it is delivered. If Aboriginal people had not aggressively resisted settlement but had welcomed it and willingly submitted to its cultural practices, as was the hope of the British, the interests that came to dominate would have adopted legislation and executive practices quite different in kind, but it would have been to the same end. For these reasons, one conceptual and the other material, it is an arrangement that is profoundly flawed. The elimination of fear and the creation of universally sympathetic conditions of existence, which are the grounds of the forgoing of self-responsibility and the conditions under which the covenant is constructed, are unrealisable.
Understood mythologically, Aboriginal policy tells us a great deal not just about the experience of being Aboriginal but also about the nature of the State itself and how it operates across social space. All citizens are not produced through the extreme processes of normalisation to which Aboriginal people have been subjected but it is argued here that, unless it is claimed that citizenship as it applied to Aboriginals was to have an entirely different meaning than for whites, the outcome intended was that both Aboriginal people and settlers had forgone self-responsibility to the State for the resolution of the fear-sympathy nexus, especially but not only for dominant interests. Such a different meaning could not have been intended because that would have left Aboriginal people still with a different world picture and therefore still a potential threat, as may be drawn from the observations of Wittgenstein on other cultures. The principal reason for the strategy of normalisation of Aboriginal people was to create individuals of like mind and practices with whites but in a condition of deeper subjection. That such attention has been given to their normalisation over such an extended period affirms that such an alien world view was not to be tolerated, especially one which continues to voice the importance of the reclamation of land and still passively resists the ways of the dominant culture.

In this context, understanding why such a conundrum is tolerated is a matter of identifying the primary beneficiaries, of appreciating the institutional arrangements and methods of realising that benefit and on what other failed but relentless hopes it relies.

It is the argument of this thesis that seeing British colonisation of Western Australia as a display of the mythological model of the State presented in the first part of this thesis is more illuminating than seeing it through the eyes of the Enlightened, paternal Darwinian Hasluck, who accepted that Aboriginal people were treated badly though due to good intentions gone wrong and who saw their culture as inferior to that enjoyed by the British settlers. The flaw in Hasluck is a misunderstanding of the nature of the actual nature of Enlightenment, which, as has been pointed out above in regard to the political thought of Kant, was different from the idealised conception of it as a rational arrangement which recognises fullest rights of individuals. It is the notion of Enlightenment that needs reform, as this was argued at the beginning of this
thesis. Further, using the mythological model is even more illuminating than the arguments of Windschuttle, whose Darwinism is more extreme and for whom Aboriginal society was on the point of collapse, than it is of Hasluck. More importantly, rather than the conception and elaboration of liberal or republican ideas, the State since Hobbes should be seen as, beneath both of those ideas, the dispersal of a set of mythological ideas and practice. Given the nature of such myth, what happened to Aboriginal people had, if not an inevitability in the Kantian sense\textsuperscript{130}, the predictability that comes with the force of such a dynamic, even if that force had no easy, justifying sense of right.

\textsuperscript{130} I. Kant \textit{Perpetual Peace – First Definitive Article} ‘The civil constitution of every state should be republican’ and \textit{Second Definitive Article} ‘The law of nations shall be founded on a federation of free states’, where such states are republican, see \textit{Philosophical Writings} pp.277-284
Part 6 – Concluding Remarks

Chapter 12: Summary of Argument

At the heart of this thesis is the argument that there is a strong internal, albeit flawed, logic about the dominant conception of the modern State, a logic that was inherent in its conception by Hobbes and which has been worked on, in an attempt to fulfill its promise, by a series of political thinkers down to Rawls and Pettit. This conception is based first on the establishment and refinement of absolutist institutional arrangements, to fill the vacuum created by the disintegration of the unitary and absolutist theological myth, which will eliminate existential fear, a condition for mankind as well as for individual men and women, and then create sympathetic conditions of existence. This work has dominated the Western political tradition. Further, this flawed logic has not remained as an evolving idea but has been embodied in the beliefs and practices of men and women as citizens, although it benefits most those who come to dominate its institutional arrangements. This way of understanding the State illuminates real, complex social circumstances such as the destruction of Aboriginal culture and does so better than other approaches.

The flaw, which is inherent in the mythological nature of the idea of the State, is that there can be an entity fearsome to all but responsible for eliminating existential anxiety and thereby fear. The force of this argument is brought into high relief by the artificial creation of fear and desire by those who become dominant within the mythological arrangements. This idea of the State, with this flaw, has persisted throughout the modern era. Due to its promise and to a willingness or inducement or compulsion to comply, there has been widespread lack of appreciation of this flaw that has continued to benefit mostly those who dominate the fearsome entity. The consequence of it not having been addressed is that the modern State, as mythological, is not modern. An acceptance that no fearsome entity can eliminate fear or create fully sympathetic conditions of existence would allow the conditions for a modern State to emerge. Such conditions would favour
self-responsibility rather than principally dominant interests. The elaboration of this argument has been the substance of this thesis.

Section 1 – Introduction

In The Legitimacy of the Modern Age, Blumenberg asks two questions: is the modern State legitimate, that is, is it concerned with ‘contract, consent, liberty, law and rights’ rather than ‘sovereignty, raison d’etat, will, decision, friend and enemy’ and, from that, is it truly modern. His answer to these related questions is yes. The conclusion of this thesis is that the State is legitimate but not modern. It is evidently concerned with the former notions and there have been progressive improvements, for example, in citizens’ rights over time. However, consistent with but beyond Blumenberg’s argument in Work on Myth, this concern is in the context of a deeper interest to eliminate fear and create sympathetic conditions of existence for its subjects, especially for its dominant interests. Beneath the popular myth lies real mythology. This identifies the State as a mythological entity. Though this is no longer primarily a matter of faith, neither is its first interest the promotion of reason. The State is still concerned with primal, pre-Enlightenment questions so is not modern.

For the State to be modern, it would need to embrace self-responsibility, a non-mythological concept in which individuals are respectful of others but responsible to and for themselves, rather than claim the elimination of fear and the creation of sympathetic conditions, especially for its dominant interests. This change would realise the proper Kantian sense of Enlightenment.

Seeing this first concern with fear and sympathetic conditions rather than with respectful self-responsibility is a new way to understand the State, presently a persisting pre-Enlightenment entity. It also allows the illumination of complex social and political circumstances in a manner that other accounts do not.
Section 2 – Nature of the Political Myth

Plato and Blumenberg provide valuable accounts of mythology, the latter especially with no direct political interest in mind. Blumenberg provides an outline of the features of mythological magnitudes. With this background, it is possible to identify what would need to be the characteristics of the State for it to be regarded as mythological, characteristics that are both internal and external.

Cassirer has given us an analysis of what he sees as the myth of the State, but this account appears to fall short in key respects. Principally, it relates mythology as a predator on the State rather than exploring how the State might be properly seen mythological in itself.

Section 3 – Establishment and Refinement

If one looks at Hobbes, who reconceived the State at the time of violent political and social upheaval caused by the disintegration of the unitary theological myth, one can see a primary focus on the forgoing of individual responsibility in return for the assurances of the sovereign concerning the fear/sympathy nexus. In fact, the Leviathan is characterised by most of the key features of a mythological magnitude.

Locke, despite looking directly at Filmer, and Montesquieu saw the dangers in the absolutist Leviathan and so serially introduced the idea of institutional and structural refinements to constrain it to allow certain individual interests. These constraints were not intended to dilute its power, in fact to affirm but delineate it. The fate of the entity had begun to come into the hands of man but in a manner that promoted the interests of the dominant.

Rousseau saw a fundamental flaw in this amended Hobbesian State, that it had begun to protect the individual interests of a good number of those subject, especially those who came to dominate its institutional arrangements, but did not engage individuals generally.
in governing themselves. His notion of the universal will was egalitarian and engaging in
this sense but also highly intrusive into individual interest. His general will was the
reverse of the Hobbesian myth, even as amended by Locke and Montesquieu, but it was
still a mythology of Hobbesian proportions in its forgoing of self-responsibility for the
purpose of dealing with the fear/sympathy nexus.

Kant gathered Rousseauean universal will together with the constitutional-republican
institutions to create a State form which, although it was no more his intention than these
predecessors, was an advanced mythology. He had grafted the key institutional elements
of the State as conceived by the refinements of Locke and Montesquieu to the Hobbesian
idea onto the universalism of Rousseauean politics. This was Reason in the service of
political mythology.

All this points to the manner in which the political theoretical tradition took up the pre-
Enlightenment challenge of eliminating fear and creating sympathetic conditions of
existence rather than promoting an Enlightened sense of respectful, reasoned political
responsibility of all individuals. This tradition served mythology.

Section 4 – Modernisation

Rawls took up the challenge of revitalising this tradition, doing so through the work of
Kant. His Two Principles are a means to engage a wider base of citizens and to better
address the fear/sympathy nexus. He amended Kantianism to promote these Principles.
Following the response of the communitarians, he forwent Kantian metaphysics but,
although he moved into the dynamics of the American culture as a source of his
principles of fairness, his claim for the priority of the Right over the Good is
unsustainable because his Right has mythological, and therefore Good, foundations.
Further than that, his institutional arrangements, inherited unquestioningly from the
Hobbesian/Kantian political tradition, sustained the myth’s denial of self-responsibility.
Pettit adopts a republican position on all this but the outcome is similar. His claim that interference by the State to prevent domination is preferred to liberalism’s non-interference ends up with a radically empowered State and the promotion of highly corporatised, dominant interests against the interests of individuals who are respectful but not members of majority interests.

All this shows two things. First, no matter how sympathetic the conditions it appears to create, the myth cannot be both sufficiently empowered to eliminate fear and at the same time be not a source of fear itself. No amount of apparent sympathy can deny its fundamental fearsomeness, demonstrated by the disposition of the dominant to artificially create fear and desire primarily for their own benefit. The consequence of this long effort over time is that it tends either to revert to its absolutist roots or to lose its power to deal with fear/sympathy, wherein its incumbent is replaced by one that can promise this. Accusations regarding these tendencies differ depending on whoever is suffering from its efforts, that is the less dominant or more dominant interests respectively. Second, it shows that what the liberal and republican positions have in common is more significant than how they differ.

Section 5 – Embodiment

Myth is not just an idea refined by political theorists from Hobbes to the present. It is also embodied in the way we live. The work of Elias shows how court society, and from that the lives of the bourgeoisie, saw the development of practices that preserved and promoted sovereign power so that there would be a reduction of fear and the generation of sympathy, mostly to the compliant but socially dominant. Thus was fear inextricably linked to the emergence of the power-monopolising State.

Elias’ work is complemented by Foucault’s examination of the post-Hobbesian era. Foucault shows that both the pastoralism of governmentality, especially as that found a place in liberal and neo-liberal thought, and the disciplinary techniques emerged as complementary means of managing populations and training individuals. In this way, fear
of others was replaced by fear of the State and sympathetic conditions of existence were created, generally but especially for the dominant, by the construction of a docile and productive workforce. The sophistication of governmentality and the disciplines shows how the mythological State has progressed and matured in its techniques and methods since the late Middle Ages. This move from the discourse of sovereign power to the art of government and discipline illustrates the evolution of the dispersal of the mythological magnitude, now in its latest, neo-liberal form.

An examination of the social ontology of Wittgenstein supports this argument by revealing how training produces normalised certainty, unquestioned at the deepest level by almost all individuals. In this way, mythology becomes embedded in the lives of men and women as both ideas and practices. The certainty of this embedding, often unconscious, is not a contradiction of the claim that there is a consent to the establishment of such magnitudes, since it the consent of non-autonomous individuals wanting fear effectively eliminated and sympathetic conditions created, desires whose inherent status is reinforced by the discourse and practices promoted by dominant interests.

The embodiment can be seen in both the conditional nature of individual rights, which reflect the primary concern with the fear/sympathy nexus rather than full and active and respectful participation in the political process without forgoing self-responsibility, and in the attitude that one has to other cultures, commonly the product of the normalised certainty about one’s own culture of which Wittgenstein talks.

As to the connection between the evolving idea of the State and its institutions and practices, Elias showed that civilising started before the emergence of modern State. There was a disposition of sovereign power to embody mythological practice before the time of Hobbes, although it has accelerated since the establishment of the absolutist State. The legacy of civilising has been the art of government and the disciplines by which this art is detailed. Effectively, governmentality and discipline fulfill the civilising disposition of the mythological State: this is the idea of the State as developed by the tradition from
Hobbes to Rawls and Pettit and the strategies to embed this idea that are unmasked by Elias and Foucault. Together with this idea, the civilising explored by Elias and the rationalities unmasked by Foucault should be seen as fulfilling the ontological framework set out by Blumenberg and Wittgenstein. In effect, the idea of the State worked on by the tradition and its embedding in the lives of individuals are together the realisation of the disposition to mythologise. In this, the popular myth of fair representation, protected rights and autonomous individuals masks the real mythology of the State as based on the general willingness of individuals to submit to prescribed change, which is the forgoing of self-responsibility, in return for the elimination of fear and creation of sympathetic conditions.

Section 6 – Myth’s Empire

The mythological interpretation illuminates complex social circumstances, such as the destruction of Aboriginal culture, better than do other accounts. The destruction of Aboriginal culture is thus better explained by the imposition of the evolving British State form, with its political institutions and preferred individual practices, all of which was an attempt to disperse the British constitutional State for the benefit of British subjects, especially the dominant. This turned out to require the training of Aboriginal people to accept Christian beliefs and industrial practices, and so to eliminate their early fearsomeness and to create sympathetic conditions for the dominant interests of the settling community, their successors and their British patrons. In return for their active then passive resistance, they received violent treatment, harsh conditions, low wages, mean welfare and conditional citizenship.

Such an interpretation highlights both the institutional form of the real myth and the civilising, governmental and disciplinary strategies of its dispersal. It is more illuminating than the standard explanation of settlement as being by an Enlightened, caring and superior culture with much to teach the primitive Aboriginal society, but which simply failed to sustain either that teaching or that care due to the challenges of the alleged fragility and ignorance of Aboriginal culture and the distracting harshness of the physical
environment. Mythology explains more than does the paternalistic Darwinism that we see constrained in Hasluck but given freer reign in Windschuttle. Of deeper significance, mythology is the tectonic presence beneath the liberalism and the republicanism by which colonialism is more commonly justified. This was always a planned denial of self-responsibility for the Aboriginal people, as it was through different methods for settlers.

Section 7 - Closing Remarks

This analysis supports the answer to the question put first. It is no longer appropriate to see the State as having emerged from the crisis of the theological myth as based on reason rather than faith, with a claimed concern of promoting individual rights and wide individual political participation. Beneath the popular myth of arrangements drawn from the consent of autonomous individuals, it is better to see a long-evolving, dispersing mythological entity concerned to claim, in return for the typically willing forgoing of individual self-responsibility, the elimination of fear and the creation of sympathetic conditions of existence, but the benefit of which is enjoyed mostly by dominant interests. Faith has been replaced not by reason, but by a reason in the service of mythology suited in political rather than theological form. Because there is an irreconcilable contradiction at its heart, a contradiction generated by its mythological nature, the modern State may be legitimate but it is not modern. The adoption of fear-accepting respectful self-responsibility, guided by the Principle of Insufficient Reason, may provide a way forward that is an alternative to the persisting dominance of the mythological State.
Bibliography


Bentham, J. *Works IV* (ed. Bowring) 1843
Berlin, I. *The Roots of Romanticism* Chatto and Windus 1999
Blumemberg, H. *The Legitimacy of the Modern Age* MIT 1985
Blumemberg, H. *Work on Myth* MIT 1985
Brand I. *The ‘Separate’ or ‘Model Prison’, Port Arthur* Jason Publications 1985

Cassirer, E. *The Myth of the State* Yale 1974
Chesferton, J. and Galligan, B. *Citizens Without Rights – Aborigines and Australian Citizenship* Cambridge 1997
Clendinnen, I. *Dancing with Strangers* Text Publishing 2003
Constant, B. *Principles of Politics* in *Benjamin Constant: Political Writings* Cambridge 1988

Dreyfus, H. and Rabinow, P. *Michel Foucault – Beyond Structuralism and Hermeneutics* Chicago 1983
Dunn, J. *The Political Thought of John Locke* Cambridge 1995


Filmer, R. *Patriarcha* Oxford 1949
Foucault, M. *Discipline and Punish* Vintage 1979
Foucault, M. *History of Sexuality - Volume 1* Vintage 1990
Foucault, M. *The Subject and Power as Afterword* in Dreyfus, H. and Rabinow, P. *Michel Foucault – Beyond Structuralism and Hermeneutics* Chicago 1983
Fox, L.W. *The Modern English Prison* Routledge 1934
Gierke, O. *Natural Law and the Theory of Society* Beacon Press 1957
Gierke, O. *Political Theories of the Middle Age* Cambridge 1996
Grant, D. *Prisons - The Continuing Crisis in New South Wales* Federation Press 1992

Haebich, A. *Broken Circles* Fremantle Arts Centre Press 2000
Haebich, A. *For Their Own Good – Aborigines and Government in the Southwest of Western Australia, 1990-1940* University of Western Australia Press 1988
Hasluck, P. *Black Australians – A Survey of Native Policy in Western Australia 1829-1897* Melbourne University Press 1970
Hegel, G. *Philosophy of Mind* Oxford 1971
Hegel, G. *Political Writings* Cambridge 1999
Heidegger, M. *An Introduction to Metaphysics* Yale University Press 1959
Hindess, B. *Discourses of Power* Blackwell 2001
Hindess, B. *Liberalism – What’s in a Name* Electronic Papers 2002, Political Science Program, RSS, ANU
Hindess, B. *Neo-liberal Citizenship* in *Citizenship Studies* Vol 6, No. 2, 2002

Kant, I. *Philosophical Writings* The German Library Vol.13 Continuum (Behler E. ed.) 1993
*Kant’s Political Philosophy, Essays on* (H. Williams ed.) University of Chicago Press 1992
Kant, I. *Political Writings* Cambridge 2002
Krieger, B. *The State and the Rule of Law* Princeton 1995
Kukathas, C and Pettit, P. *Rawls – A Theory of Justice and its Critics* Polity 1990
Lemke, T. ‘The birth of bio-politics’: Michel Foucault’s lecture at the College de France on neo-liberal governmentality in Economy and Society Vol.30 No.2 May 2001: 190-207
Llewellyn, K and Hoebel, E. The Cheyenne Way University of Oklahoma 1961
Locke, J. Two Treatises of Government Cambridge 1988

MacIntyre, A. After Virtue – A Study in Moral Theory Duckworth 1986
Manent, P. An Intellectual History of Liberalism Princeton 1995
Margalit, A. The Ethics of Memory Harvard University Press 2002
Mulhall, S. and Swift, A. Liberals and Communitarians Blackwell 1997

Nietzsche, F. On the Genealogy of Morality Cambridge 2003
Nisbet, R.A. The Sociological Tradition Heinemann 1966
Nozick, R. Anarchy, State and Utopia Basic Books 1974

Pearson, N. Freedom, Capabilities and the Cape York Reform Agenda Cape York Institute for Policy and Leadership 2005
Pearson, N. Our Right to Take Responsibility Noel Pearson and Associates 2000
Pettit, P. Republicanism Oxford 1997
Plato The Collected Dialogues Bollingen Series Princeton 2002

Rawls, J. Political Liberalism Columbia University Press 1993
Rousseau, J-J. The Discourses and other early political writings Cambridge 1997
Rousseau, J-J. The Social Contract and Discourses Everyman 1973
Rousseau, J-J. The Social Contract and other later Political Writings Cambridge 1997

Sandel, M. Liberalism and the Limits of Justice Cambridge 1982
Skinner, Q. *The Foundations of Modern Political Thought (Volume II) - The Age of Reformation* Cambridge 1996
Strauss, L. *Natural Right and History* Chicago 1965

Thomas, J. and Stewart, A. *Imprisonment in Western Australia - Evolution, Theory and Practice* University of Western Australia Press 1978


Waldron, J. *God, Locke and Equality* Cambridge 2002
Walzer, M. *Political Theory* 12, 3 (1984)
Walzer, M. *Spheres of Justice* Blackwell 1983
Windshuttle, K. *The Fabrication of Aboriginal History - Vol 1 Van Dieman’s Land* Macleay 2002
Wittgenstein, L. *Culture and Value* Blackwell 1994
Wittgenstein, L. *Philosophical Occasions 1912-1951* Hackett 1993