

The Daniel Lecture

What Form of Government for

WHAT IS the best form of government for the happiness of man? The answer to this question should be critical, argumentative, imaginative and speculative—not merely eulogistic or descriptive.

Assuming this position then, it is first of great importance how we think about the nature and meaning of the state and government. Indeed this is, as any serious student of political life knows, perhaps the most basic question we face, since the state is, like other institutions, both a reflection of our personality and effector of it, and we do not have to accept fully Sorel's myth theory to understand that men are influenced by what they believe to be the nature and the meaning of their institutions, the state included, as well as by their actuality.

Thus, my first affirmation goes to the heart of this matter.

Specifically that is, I believe that a government best for the happiness of man must be conceived in an ethical sense although the details of the ethical system and the ensuing state policy expressions thereof need to be created consciously and rationally and experimentally expanded.

In arguing this point I am aware that I confront at once a serious logical difficulty caused by a semantic dispute in political theory. I may use the term government or state in the sense in which certain modern scholars insist it should be used—as an ethical neuter whose central characteristic is power. If I do this, then, on a basis of my affirmation, I must argue that a “best” form of government should be conceived according to some *exterior* ethical system imposed upon it. On the other hand, I may fall back upon the older classical and mod-

ern idealist view that for a government or state to be called such by men it must partake of an ethical character. Here I am faced perhaps inevitably with the problem of proving that certain ethical criteria are necessary to the very meaning of the state.

To many the first approach will seem the most accurate one. It is, as indicated, the most modern, having been influential at least since Machiavelli. Also, Hume, Austin and their successors in logical and legal positivism, according to this theory, drove the last nail in the coffin of the idea of the state conceived as a good as well as power, and neither a Kantian categorical imperative nor a Hegelian dialectic can, miracle-like, instill life in and obtain the resurrection of the ancient mummy. Nevertheless, before accepting this approach we should examine its development and use in more detail. In doing so, we will also find support for my first argument.

The history of it begins then almost inevitably with Machiavelli who, even though wavering a bit from time to time, in general did substitute a narrow utilitarian ethic of power as the heart of the state for the more inclusive ethics which classical and religious philosophers had insisted must mark a true state.

Possibly influenced by him, probably more by the developing individualism in practical life, certain later thinkers even more definitely stated that we must not mix ethics and politics semantically. They insisted this is true because of the way in which the state naturally develops. Thus Hobbes, Nietzsche and Pareto assert or imply that it grows out of the atomistic individual identified as a bundle of instinctive wants or urges for food, for sex, for self-preservation, for power—and yet

full of fear, adding that our seemingly altruistic behavior is simply a guilt complex resulting from these basic drives.

Thus, the state supposedly developed when the bloody brawl of each against each had so exhausted man that his tiny spark of intelligence finally was able to break through in his momentary repose as he hovered quivering in a cave, and it told him that if he was weak he should band together with others of his kind to protect himself against the strong, or if he was strong he should put on royal raiment and lord it over the weak. All ensuing government has then moved in cycles—a struggle for the position of being the elite. So it evolves, rape and riot, wars and revolutions without end.

Most recent so-called democratic theorists of society only modify this argument. They do not reject it. Still building on the conception of the atomistic individual defined as a bundle of animal instincts and habits, they have erected the conflict-compromise theory. This holds that, if the structure of the struggle to secure the wants (now called interests) can be made sufficiently pluralistic and fluid, a democratic and relatively peaceful society is possible. The task of the political leader here is to compromise the interest conflicts through promising a bit more to each than he can deliver but to give some satisfaction to each. If the conflict becomes too dangerous, he may, through his exercise of the state authority in the form of the centralized violence power, simply force acquiescence. The use of this force, is, in fact, the ever present threat to those who break the habit of obedience to the state-supported compromises. The adherents of this theory argue that world politics and tension are

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By JOHN PAUL DUNCAN

merely a reflection of the internal tension based on individual and social insecurity. Thus, they add that only a world government backed by its own violence power can enforce international compromises and bring peace to this arena. Ethics, according to the theory, still has nothing to do with the fact of order except as a rationalization, or "sales pitch." A state and society are only viable depending on how well the interests are juggled and the pretensions of the dissatisfied held within peaceful limits by force.

Now it is not correct to say that such theories have been the sole cause of modern social disorganization. Nevertheless, it is true that statesmen and politicians have often justified anti-social actions by this theory and this semantic approach to the definition of the state, and the latter has contributed to a certain moral confusion.

Thus, we have heard that might makes right, treaties are just scraps of paper, it is the destiny of all animals to end in the bellies of other animals and "you" shall end in ours, power, like money, "makes the mare go" so we must get it honestly if possible but by all means get it, the public be damned, history is that of the class struggle, the state (like property) is robbery, how many divisions does the Pope have?, or as Stalin also asked Churchill, how many millions have you killed? The schools

in which we heard these lessons had tough classes: before Verdun where the German commander sought victory by outbleeding to death the French army with his own troops, later in Dachau and Buchenwald and the ovens of Auschwitz, and Pearl Harbor, Katyn Forest, Coventry and Hiroshima and the rape of Budapest. Our classrooms read like chambers of horrors.

The usual answer given to such an accusation by those who believe the state should be treated as a moral neutral and conceived as a mere power center is that the leaders who behaved thus and controlled their states were simply the "wrong" people. But here they are caught red-handed, for how is anyone to know who the wrong people are if, as this theory holds, not only the state but all social organization, including the ethical structure, also has its origin in the individual, conceived merely as a bundle of animal wants? And that is precisely what this approach and theory does argue. On its basis there can be no wrong people—only successful and unsuccessful human animals.

Yet clearly most of us believe there are wrong people and not all law is good law and not all states are good states. And why do we think thus? Curiously, it is partly because those who generally insist on the so-called "realist approach" themselves ad-

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THE DANIEL LECTURE—The will of the late Joseph L. Daniel, prominent Oklahoma City businessman, established the Daniel Lecture Fund, which provides for an annual address at the University of Oklahoma. The title of each year's lecture is "What Form of Government Is Best for the Happiness of Man?" Dr. John Paul Duncan (right), professor of government at the University, who delivered the 1964 Daniel Lecture, has written an abbreviated version for Sooner Magazine. His entire address is tentatively scheduled to appear in the August issue of the Oklahoma Law Review.



'only in a democracy or a democratic republic is a system of ethics and its political application possible'

mit so from time to time. True, they do not always know they do so, but they do.

Machiavelli himself writes in *The Prince* in Chapter VIII "On Those Who Have Become Princes By Crime" but have endured despite this fact:

I believe that this depends on whether cruelty is used well or ill. It may be said to be well used (if we may speak of using well a thing in itself bad) when all cruel deeds are committed at once in order to make sure of the state and thereafter discontinued to make way for the consideration of the welfare of the subjects. Bad use of cruelty we find in those cases where the cruel acts, though few to begin with, become more numerous with time. Those who practice the first kind may find some defense for their state in the eyes of God and man, but as for the second class, it is impossible for them to stay in power.

AH, THE modern answers, but Machiavelli now and then slipped because he was still under the spell of the Popes.

But there are more recent examples and they are only representatives of many others. Thus I have called attention elsewhere to the fact that Otto Kirchheimer in his fine work, *Political Justice*, avowedly insists upon and stays within this positivist legal tradition in his use of the words "law" and "state" until he comes to comment upon a decree of the Third Reich which was made in regular legal order but which provided for the extermination of large numbers of Poles and Jews. Then Kirchheimer says that "reference to its valid enactment cannot be invoked as a defense by those who applied it, since it intentionally violated 'minimum standards' in that it showed on its face 'the character of inhumanity.'" It lacked the "dignity of law" and was the "negation of law which even in the form of the shoddiest enactment must still offer the password: ordering of human relations."

Obviously Kirchheimer thinks some law and some states are not truly such, because they fail to meet certain ethical criteria, criteria having nothing to do with sheer power.

Still, this semantic inconsistency of the modern positivists who slip into the classical, religious and idealist tradition when it

suits their purposes is not confined to professional social scientists. The practicing legal profession does this frequently. Taught in the law schools that the law is the law (except for a course in legal ethics and in a few schools an elective in philosophy of law), the fledgling attorney soon learns that if he wants a jury to see the facts his way he had better appeal to what the members consider *right* as well as to *rights*. There are also instances in which judges appear interested in writing opinions that will support a decision as good rather than reflecting only good law. I cite for example *Meecker v. City of East Orange* (Court of Appeals, New Jersey, 1909) where the court refused to apply the English rule of absolute rights to underground percolating waters because of what it called the "general principles of law" and "consonance with natural equity," commenting also that under the older rule "might literally makes right and we are remitted to 'The simple plan, That they should take who have the power, And they should keep who can.'" I also cite *Dailey v. Parker*, (Circuit Court of Appeals, Seventh Circuit, 1945) where despite the fact the court admitted no judicial or statutory rule existed allowing it to try the case in which minor children sought to sue a woman who had seduced their father into leaving the family, the court insisted nevertheless that by following what Dean Pound calls judicial empiricism it could still do so, for the defendant's claims, it said, "all seem to grow out of the age old philosophy—'whatever is, is right.'" Thus in cases necessary to be accepted for trial in order to give justice, "Even in the common law, in 1945, . . . the courts can scarcely be advisedly called radical if they indulge in law-making by decisions" whether previous rules exist or not. In such opinions the argument is not followed that the law is the law, no matter the ethics, but right and justice are sought.

Meanwhile, practicing politicians and statesmen are notorious for ignoring the modern definition of the state and law except where they want to do so. They often mix up ethics and politics and not a few mix

in religious ethics. True, Mr. Khrushchev's infrequent references to the Almighty may be considered relapses to a younger period in life which he tries to forget, but his constant references to "our fraternal society," and Mr. Chou En Lai's use of the term "abhorrent" in reaction to the assassination of our late President show how far the confusion can be carried—even among hard-headed Communists who claim to have a scientific viewpoint and thus know better. Indeed, I recall even the scholarly English Marxist, Harold Laski, once saying to me as Nazi bombers first began to come over London, "You know, this fellow Hitler just isn't decent."

Obviously the general public in the West thinks equally inconsistently, on the one hand, grumbling that all politics is crooked and the state is bad business so that government is best which governs least, but at the same time it insists public office is a public trust, cheers "do not ask what your country can do for you but what you can do for your country," donates its blood to public hospitals and sends its best sons and daughters not only to the military defense of the state but to join its Peace Corps.

The review of this first approach, then, and these facts lead to two conclusions. First, one should doubt the claim to clarity by this approach to thinking about the state and ethics, since it is as intellectually inconsistent and confusing as its predecessor. Even the most educated people are clearly confused between thinking of the state as amoral and as necessarily ethical, especially when the latter suits their interest. Second, this approach has not done much for us practically in the attainment of the good life. It hasn't gotten us anywhere or at least where it has helped lead us—to the social and moral confusion so prevalent in our times—is not where we always wanted to get. It has left us rather on a stormy existentialist sea without a rudder save our individual animal wants and blind wills. For there is little practical value in applying ethics to a state conceived as mere power when both the ethics applied and the state are considered as origi-

nating in the same individual animal drives for food, sex and power. We would obviously be in a sorrier predicament than we now are if it were not for the fact that we are not really the people this theory claims we are and the fact we behave quite differently part of the time, including toward the state.

IN FAIRNESS, therefore, we should re-examine the alternative classical and modern idealist approach even though it had its faults. First, it rested upon a different view of man. It saw man as a social creature who organized his life on mutual needs and aid. This was considered true of his family life, religious life, economic life and state life. The family and state were conceived as natural, not artificial, growing out of a natural tendency toward cooperation and division of labor. Not only the supposedly idealistic Plato thought this, so did the presumably more practical and realistic Aristotle. Recall he says,

If the earlier forms of society are natural, so is the state, for it is the end of them, and the nature is the end. . . .

Hence it is evident that the state is a creation of nature, and that man by nature is a political animal. And he who by nature and not by mere accident is without a state, is either a bad man or above humanity, or below it; he is the 'Tribless, lawless, heartless one,' whom Homer denounces—the outcast who is a lover of war; . . .

Second, the state as natural was likewise not conceived as simply consisting of power. To Plato it was justice defined through knowledge and wisdom; to Aristotle it meant the same values realized in law; to St. Thomas it was a human reflection of divine reason designed to help us toward the heavenly kingdom. For Hegel and Bosanquet the very meaning of the state was ethical—the ethical state.

Now on the whole it seems to me that the results of this theory were constructive. First, as men grew up they were taught to look upon their respective states not as morally neutral but as containing at least the seeds of perfection. "Not what a state actually is," Aristotle said in effect, "but what it may be is the end and measure of itself." And the end was cooperation since it was believed that the state developed out of mutual needs in the nature of man. In this notion there was thus immediately presented to men the ideal of human life as an adventure in social harmony.

Second, this idea of the state contained also a great many corollary and subsidiary constructive social ideals. This is shown by the speech which Thucydides claims Peri-

cles once delivered to the Athenians. The range of Athenian citizenship included duty, fear of civic dishonor, interest in public life, the extraneousness of wealth as a test of citizenship, honesty, respect for law, the value of knowledge, lack of suspicion of fellow citizens and public officials.

The educative and formative influence of such an approach is clearly important. While the conservative today may correctly argue that we cannot have good government by bad men, it is equally true that we do not develop men who take the proper interest in politics, who have a good civic sense, if they are certain that the state as such and their government in particular are agencies not only morally neutral but merely reflective of our lonely, hungry, fearful selves. Men do not honestly pay taxes to states which they believe to be inherently dishonest or sheer power mechanisms nor do they serve them in civic uprightness and enthusiasm.

INSIST, therefore, that there was a constructive value in the ancient notion and in the modern interpretation of it by such idealists as Rousseau, Hegel and Bosanquet—namely that the state ideally reflects our real will—the will that tells us what we ought to do in the public interest rather than what our actual, momentary animal wants urge that we do.

It is true that there was and is a danger in this view as Hobhouse, Popper and others have pointed out in criticizing Plato and the modern idealists. The belief that any given state is inherently ethical *qua* state may mislead men to accept what is ethically existent as finally and completely what ought to be. The classical peoples and other thinkers sometimes fell too easily into this trap. They saw through a glass darkly. Simply because Athens was conceived as ethically valuable did not mean it was the highest ethics men might know or practice as is indicated by the trial of Socrates and numerous other misdeeds. The same was true of the medieval Christian state. The same may well be true of our own.

Yet this only means that, in order to have a government best for the happiness of man, it is requisite that there also be a wider system of ethical principles and of obtaining these principles intelligently so that the state and its policies may be judged by all the best we may know beyond belief in the state's own inherent ethical value. It is for this reason that the opening statement

in this lecture included the requirement that the ethical system applicable to judging the state and its policies must be consciously created and rationally and experimentally expanded. Is such a system possible and is there a form of government which permits its utilization?

Theoretically, I think such a system is possible and justified by the process philosophy of Whitehead, the public philosophy and theory of instrumental reason of Dewey and the corporate theory of E. Jordan. In one way or another each of these thinkers indicates some philosophic basis for the argument that in realms like ethics and law it is possible for human thought to coax ideals out of actuality and pose them as concrete possibilities, to create by conceptualization from the world of fact value judgments and meanings which may establish state goals and judge their rightness.

Despite the argument of Plato and other proponents of government by an intellectual aristocracy, only in a democracy, I think, is such a system of ethics and its political application possible. For only in a democracy or democratic republic is the worth and the dignity of the individual legitimated through everyone, in fair and effective degree, being allowed to act intellectually as a creator of value and judge of the rightness of the state.

Logically, I must add, too, that for a democracy so to fulfill itself further requirements are axiomatic. First, a system of free public education or of free parochial education under public standards must be provided and be required for all and the standards must include not merely the teaching of how to do something economically valuable or the memorization of data but the training of the imaginative and critical faculties—the stimulation of philosophic thinking. Furthermore, almost pure freedom must exist in the polity both as to thought and its expression so that human individuals may by intersubjective discussion and testing establish and check upon the ideals of the state and its operation. Finally, all must be in an economic position above the mere subsistence level of the culture so that leisure exists for creative and critical thought and its expression in political action. Democracy cannot exist dynamically or with stability where the mind of man is chained either by political restraint or economic privation or where a mass of men have little to enjoy except revolt.