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PART I

The personality of associations

CHAPTER I

Introduction

The question of how men form themselves into associations lies at the heart of Western political thought. An association is a group of human beings possessed of a distinct, formal identity based on the relation subsisting between its members, and it may fairly be said that it is around such groups that our political understanding has been constructed. The most prominent of these groups is the state, or civil association, and though the state can be regarded as an association *sui generis*, to be understood in its own terms, it has commonly been understood in terms of the associations that it contains. Sometimes it has literally been built out of them, a construct of the separate associations of ruling and ruled, government and people. As often it has been seen as analogous to the other associations in which men are familiarly to be found. Some of these associations have a natural existence, like the family, from which the Aristotelian *polis* is evolved. Others exist within particular systems of law, and, like the Roman or medieval corporation, may offer a model of considerable theoretical complexity to which the state can be compared. In each case, the state's identity rests on the identity of associations other than itself. And so not only must there be at least one association if there is to be a state, the character of that association will frequently depend on what is taken to characterise the business of association *per se*.

To ask questions about the personality of associations, however, is not simply to inquire into their general character. It is to inquire into their specific ability to bear the character of persons. Inevitably, this is a narrower problem than that of man's associative capabilities in general, and it presupposes a narrower sense of the word 'person' than one which renders 'personality' synonymous with 'character' or 'make-up'. Yet the problem of personality in this narrow sense was once seen as the key to a complete understanding

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of political life in general, and of the state in particular. Within the terms of contemporary, English-speaking political theory this claim seems, at the very least, an unlikely one, if only because the terms themselves, 'person' and 'personality', have disappeared from the language of political argument in all but their broadest senses. Yet it was a claim made during this present century, and for a while it dominated political thought in England. It is the purpose of this book to describe that period in English political thought and to judge its significance. In order to do so, it is necessary first of all to explain why associations might once have been thought to be persons.

The period during which the question of the personality of associations engaged English political theorists was relatively brief, barely outlasting the first three decades of this century. Furthermore, its immediate origins lay not in England but in Germany, in the work of the German jurist and historian, Otto von Gierke, for whom the idea of associations as group persons had a peculiarly 'teutonic' significance. Nevertheless, Gierke's use of the idea of personality was anything but parochial. It provided him with the basis for one of the widest-ranging of all histories of ideas, the monumental *Das deutsche Genossenschaftsrecht*, in which he sought to organise the whole history of Western political life and thought around the problem of group personality. To that end, Gierke had to understand the arguments not just of German but of all political theorists as a response to this problem, and as a more or less successful resolution of it. Again, by present-day standards, in historiography as well as political theory, this is an unlikely and in many ways an arcane project. But it is not a spurious one. The concept of personality does constitute one of the familiar means by which European political thinkers have undertaken their characteristic engagement with the question of group identity. And though not all of those whom Gierke's history surveys may have thought in these terms, his particular form of history requires only that the thoughts of each should be comprehensible in the same terms. His is, in this sense, a distinctively German history, for it tells the story of an idea immanent in the world of ideas; what it is not, though, is merely a story about Germany, because the concept of the person was one Gierke discovered in, and used to make sense of, the history of ideas as a whole. What came to England from Gierke came to Gierke from history. And the best illustration of the part

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played by the concept of the person in history is provided by the part it plays at the heart of one of the most significant of all texts in the history of European ideas, written not by a German, but by an Englishman, Thomas Hobbes.

CHAPTER 2

Hobbes and the person of the commonwealth

I

Hobbes's *Leviathan*, which was first published in 1651, is divided into four parts, 'Of Man', 'Of Commonwealth', 'Of A Christian Commonwealth' and 'Of The Kingdome Of Darknesse'. Though much of the historical interest of the book resides in parts III and IV, the political philosophy on which its fame rests is located in the first two. Part I provides an account of man's natural condition, of the passions by which he is regulated, of the state of war to which he naturally inclines, and of the laws of nature by which he may still be bound. Part II provides an account of man's condition in civil society, of the covenant by which such society is created, of the sovereign by whom it is governed, and of the liberties which his subjects may yet enjoy. However, the final chapter of the first part, chapter XVI, which provides the bridge to what follows, addresses none of these themes; instead, it concerns 'Persons, Authors and things Personated'.¹ It is in this chapter that Hobbes introduces the concept which establishes the fundamental link between man's natural and his civil conditions, that of ownership, or rather the only form of ownership possible in the state of nature, ownership of words or actions. Hobbes defines his terms as follows:

A PERSON, is he, whose words or actions are considered, either as his own, or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction.

¹ Chapter XVI of *Leviathan* continues to receive little attention in the growing mass of literature devoted to Hobbes. The most substantial account is probably still the one given by H. Pitkin in her *The concept of representation* (Berkeley, 1967). More recently, it has provided the focus for a paper in which it is argued that Hobbes's doctrine of representation incorporates the notion of 'latent "group personality"' (see M. Forsyth, 'Thomas Hobbes and the constituent power of the people', *Political Studies*, 29 (1981), 191–203). For reasons that will become clear, this is not the view that is taken here.

When they are considered as his owne, then is he called a *Naturall Person*: And when they are considered as representing the words and actions of an other, then is he a *Feigned or Artificiall* person.²

Words and actions are thus the responsibility of persons, but this does not mean that words and actions are ‘owned’ by whoever is responsible for them (i.e. whoever performs them). Rather, they are owned by the person who *takes* responsibility for them. This allows Hobbes to distinguish in chapter XVI of *Leviathan* between three different sorts of person: the natural, whose actions are his own; the artificial, whose actions are owned by another; and the fictitious, to whom the ability to own actions is granted by pretence.

Before asking what use Hobbes makes of these distinctions, it is worth asking how the transference of ownership on which they rest is possible at all, such that one man may act without owning, another may own without himself performing an action, and even a thing other than a man (Hobbes gives the examples of ‘a Church, an Hospital, a Bridge’³) may own when incapable of action altogether. The answer is contained in the notion of representation, and the ability of persons to represent, personate or act the part of one another. Inevitably, this ability to act on another’s behalf presupposes some prior arrangement or form of relationship between the representer and the represented, and the most important of these is that which Hobbes describes as subsisting between an author and an actor whose words and actions the author owns. The actor is an artificial person, and is said to act on the authority of whoever owns his actions. The simplicity of this model does nonetheless allow for some significant variations, for while the relation between actor and author will frequently be founded on a covenant between them, it may also be founded on a covenant between the author and a third party binding both to treat of the actor’s words and actions as though they were the author’s own. This distinction is significant, not only in the development of Hobbes’s own argument, but also for the diverse conceptions of authority which may follow from it, since there is a great difference between acting according to a prior agreement to be another’s representative, and having one’s actions taken as representing the actions of another: in the former case the actor may be quite narrowly constrained in the range of actions he can perform, while in the latter he may be not merely unconstrained

² T. Hobbes, *Leviathan*, ed. R. Tuck (Cambridge, 1991), p. 111.

³ *Ibid.*, p. 113.

but even ignorant of the agreement of another to authorise what he does. Thus the actor bound by covenant may find himself committed to acting in accordance with the strictly laid-down preferences of his author, while the author who is represented by an uncovenanted actor may find himself committed to owning actions he could not possibly have foreseen. Neither to have authority, nor to give it, has any necessary connection with freedom of action, the scope of which is dependent on the conditions under which authority is held and the terms on which it is given.

There is, though, another form of relation besides that of actor and author for which Hobbes's concept of representation allows. A representative, or artificial person, may sometimes act on behalf of some 'thing' which cannot itself be the author of its representative's actions. Instead, these actions will be authorised by whoever owns or has dominion over the thing to be personated, in order, in Hobbes's words, 'to procure [its] maintenance'.⁴ The thing in question might be a human being who happens to be without the capacity to authorise actions – 'Children, Fooles and Mad-men that have no use of Reason, may be personated by Guardians, or Curators', on the authority of 'he that hath right of governing them'⁵ – but equally it might be property of a more conventional, inanimate kind, as when the owners of a bridge provide it with its own representative. The purpose of an arrangement like this would be to provide for some stability in the terms and conditions under which a bridge is used, which might not be possible if its users were held to be transacting with its owners every time they used it. Owners are not always available, nor are they always constant – they die, they disappear, they have other interests, they lose interest – and recognising this, they may seek to provide for a readily available representative of some more constant interest, and more solid thing, than they themselves embody. Yet because the act of personation is predicated on the personality of whatever is to be personated, this is not possible unless the bridge itself is conceived as a person. So it has to become a person by fiction, assuming the guise of an author but represented by an actor whose authority is derived from elsewhere. Thus while artificial persons are made from the capacity of natural persons to represent one another, fictitious persons are made from the capacity of artificial persons to be deemed the representative of almost

⁴ *Ibid.*⁵ *Ibid.*

anything. As Hobbes himself says: ‘There are few things, that are incapable of being represented by Fiction.’⁶

The different sorts of person described by Hobbes – natural, artificial and fictitious – can thus be set apart from each other in accordance with the different number of subjects or vehicles of personality that they require: in the case of a natural person, one, the natural man himself; of an artificial person, two, author and actor; and of a fictitious person, three, owner, actor and fictitious author. However, this distinction ignores a feature common to all three types of personality, and that is the additional presence of someone in each case to raise the issue of an action’s ownership. It only matters to whom actions belong if there exists an audience for the actions whose own conduct will be shaped by the answer to that question. This audience may take almost any form: it could be someone threatened by a stranger, or someone offered a contract by the agent of a third party, or someone negotiating with a government official, or someone who wishes to know against whom he has redress when the bridge he is accustomed to use is closed. In complex situations, it may even be someone who has himself helped determine the ownership of the actions in question: the owner of a bridge, for example, may find himself, perhaps as a user of the bridge, transacting with a representative who acts on the bridge’s behalf. In each instance, the need to know to whom an action belongs presupposes the presence of some party to whom an action is addressed, or is taken as being addressed. Thus it is that ‘actions’ and ‘words’ are interchangeable in this context, and are used interchangeably by Hobbes, for actions which raise the issue of ownership are by definition communicative acts.

Though all actions performed by persons require an audience, it is not the case that the ownership of an action is determined by the audience for whom it is performed. A man who is threatened by a stranger claiming to issue his threats on another’s behalf does not by disbelieving him confine those threats to the stranger’s own person; if he is wrong, and has mistaken an artificial person for a natural one, his dealings will still be with whoever takes himself to own the mistakenly attributed threats. Nonetheless, Hobbes recognised that the ownership of actions was not always the result of a person’s decision to give authority, and so accept responsibility, for them. The

⁶ *Ibid.*

difficulty lies with fictitious persons, and in the fact that their ownership of actions is determined by a decision to which they themselves cannot be party. That decision is made by whoever has responsibility for whatever is to be personated, and so rests on a prior arrangement determining ownership not of actions but of things. An arrangement of this kind is only possible against the backdrop of civil society, because, as Hobbes has been at pains to establish elsewhere in *Leviathan*, there can be no ownership of things ‘before there be some state of Civill Government’.⁷ Thus the personation of a fictitious person depends not merely on the decision to authorise a representative but also on the conditions of ownership which precede such a decision and give it force. And these conditions must hold for everyone involved – authors, actors *and* audience – just because a fictitious person cannot establish its own claim to actions undertaken on its behalf. If the representative of a bridge is not regarded as such by those with whom he deals, the bridge itself cannot make good his title by some action of its own; instead, its representative must rely on the title of the bridge’s owners, and on its being upheld.

This marks an important difference between fictitious and artificial persons. For unlike fictitious personality, artificial personality is not contingent upon government, if only because government itself is contingent upon the authorisation of at least one artificial person – the person of the sovereign, without whom there can be no civil society. A sovereign is a man, or assembly of men,⁸ who, having been authorised by a group of natural persons, has ‘the *Right to Present* the Person of them all, (that is to say, to be their *Representative*)’.⁹ He, or it, acquires this right in one of two ways, corresponding to the two means of authorising an actor: either the group of natural persons

⁷ *Ibid.*

⁸ Hobbes allows that an artificial person can be an assembly. All that is required of an artificial person is that it speak with one voice, and in an assembly this can be achieved by the simple expedient of majority voting – ‘And if the Representative consist of many men, the voyce of the greater number must be considered as the voyce of them all. For if the lesser number pronounce (for example) in the Affirmative, and the greater in the Negative, there will be Negatives more than enough to destroy the Affirmatives; and thereby the excess of Negatives, standing uncontradicted, are the onely voyce the Representative hath’ (*ibid.*, p. 114). It does not matter for the minority themselves that they have been outvoted in any instance, since the purpose of each vote is to make decisions on behalf of whomever it is that the assembly represents. Thus Hobbes does not have to consider one of the more familiar difficulties with majority decision-making – that the minority are committed to something that they oppose – since here it is not the assembly which is committed to anything, but the person on whose behalf the assembly acts, and by whom alone the words and actions of the assembly are owned.

⁹ *Ibid.*, p. 121.

covenant with each other that they will each be represented by the same artificial person; or they covenant separately with the same person such that he becomes the representative of them all. In either case, the salient features remain the same – commonwealths arise out of the capacity of artificial persons to represent natural persons, and are properly called commonwealths only when a group of natural persons is represented by the same artificial person, making that person sovereign. It is the concept of artificial personality alone, therefore, which provides man with his escape from the brutishness of a natural existence.

The performance of this crucial task does not, though, confine the work done by the concept of artificial personality to the process of transition from the state of nature to a state of civil society. It has also to function within the life of the commonwealth, if only to allow for the creation of those fictitious persons which cannot exist without representation and cannot exist elsewhere. This is a secondary task in itself, but it raises one very important question about the nature of the commonwealth that contains it. Artificial persons make fictitious persons by providing representation for something incapable of representing itself. Is then the representation by the sovereign of a group of natural persons (which as the initial, disparate group is no person and is therefore incapable of representing itself) sufficient to create of that group the supposition or pretence of its own personality? Put in these terms the question might seem contrived, but it is one to which Hobbes provided an explicit answer. His commonwealth was indeed a person. For he writes:

A Multitude of men, are made *One* Person, when they are by one man, or one Person, Represented; so that it be done with the consent of every one of that Multitude in particular. For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*. And it is the Representer that beareth the Person, and but one Person: And *Unity*, cannot otherwise be understood in Multitude.¹⁰

The group of natural persons represented by the sovereign are one person, but only because they are represented by one person, just as a bridge is a person only because it has a person as its representative. On this account, the person represented by the sovereign – called by Hobbes ‘the Person of the Commonwealth’ – is a fiction. Yet this raises an obvious difficulty. Fictitious persons only come into being

¹⁰ *Ibid.*, p. 114.