

notion of democracy conceived in terms of 'participatory democracy'. Merquior sees the ultimate reason for this in Weber's 'culturalism', that is to say an excessive preoccupation with values and their survival in a world progressively threatened by bureaucratization — a view which was shared by many German academics of the time. Here Merquior definitely adopts a polemical stance, in particular when he associates this sort of thinking (following Ringer's well-known, though largely mistaken thesis) with the precarious social position of the German academic elite (the so-called mandarins) within Wilhelmine society. This is indeed highly questionable, and considerably underrates the universalist origins of Weber's fundamental notions about the historical process. But it must be admitted that Merquior argues this point very cautiously and at great length, defending Weber against all too hasty criticism on this account.

In order to do so Merquior goes out of his way to give a comprehensive assessment of the development of Weber's methodological position within the intellectual context of his time, something which one would not expect in a book with this title. In actual fact these sections are among the best written and most impressive passages in the book; they correctly describe Weber's own stand as a basically anti-historicist one, being firmly on the side of rational empirical reasoning. According to Merquior, however, Weber's fundamentalist 'culturalist' convictions, in particular his deeply-felt cultural pessimism, drove him to conceive his theory of legitimate rule in an extremely elitist and at the same time formalist manner, which tends to regard the claim to legitimacy on the part of the ruler as the only thing that matters, at least as long as success is on his side. It is at this point, in Merquior's opinion, that Rousseau's notion of a 'participatory deliberative legitimacy' should be played up once again against Weber's culturally distorted theory of legitimate rule, which emphasized, undoubtedly in a somewhat one-sided manner, the authoritarian features of domination of whatever kind, democratic or otherwise.

All in all Merquior's book may be described as a critique of Weber's sociological theory of domination which makes use of a revitalized and somewhat idealized Rousseauan conception of democracy, based not so much on the rule of the *general will* as on the ideal of participation by all citizens in the political process. It would appear that while Weber's position has been presented here in an impressive, clearcut and on the whole remarkably balanced manner, the Rousseauan alternative itself remains surrounded by rather thick clouds. Apart from that, one might well doubt whether Merquior has actually succeeded in sticking to his professed intention of steering clear of all fundamentalist notions of the sort he describes as 'culturalist'. Whatever one may think of Merquior's key thesis as such, there

can be no doubt that this is a fascinating and most informative study. Not only are Rousseau's and Weber's theories presented on a very high *niveau*, taking into account their scholarly achievements as well as their respective *weltanschauliche* backgrounds; Merquior's own views are also developed in a constant debate with the various positions in the field which gives remarkable insights into the present trends in research, both in the political and social sciences. Perhaps the only thing one might wish is for the German terms to have been checked a little more thoroughly by the publishers. There is no such thing, if this may be pointed out, as *Volksgesien*.

Government & Opposition, Vol. 17, No. 1, Winter 1982

Delba Wirthrop: Rights and Utilities

Alan H. Goldman: *The Moral Foundations of Professional Ethics*, Totowa, New Jersey, Rowman & Littlefield, 1981, 305 pp., £11.50.

Professor Alan Goldman has written an interesting book on a subject of interest to almost everyone: professional ethics. Who has never been outraged at realizing that he has paid dearly for the services of an expert, only to discover that the servant has become his virtual master? Goldman does not wish to fuel our animosity towards professionals by recounting the sins of those who neglect their professional duties or abuse their professional privileges for petty self-serving ends. Rather, he looks at dedicated, responsible professionals in an attempt to discover the ground of their moral authority. We tend readily to grant that the various professions should have codes of ethics, written or unwritten. (For example, a lawyer should not violate his client's trust that incriminating revelations will remain confidential.) At the same time, we have difficulty justifying adherence to such codes when our ordinary moral sensibilities are offended. (Should a lawyer really not reveal that his client on trial for murder was previously convicted of murder, but freed on a technicality?) Professional ethics can appear most unethical, and consequently we must wonder about the relation between these ethical codes and the everyday moral context into which professions must be integrated. Reflecting on this relation, Goldman hopes, will enable us to learn something fundamental about moral authority.

Goldman's is a study of four important professions in which the problematic relation between their peculiar ethical codes and 'our common moral framework' is obvious: law enforcement, especially the judiciary, and politics; law; medicine; business management. Each profession has a specific function or end, or to use Goldman's preferred term, 'value'. The

ethical code of each presumably consists of the rules according to which its members must act in order to fulfil that end. But the ultimate moral justification of any action must be that the end secured contributes to or necessarily transcends the end or ends implicitly posited in our ordinary moral understanding. Only then does the professional rightly assert his moral authority, however unethical his behaviour at first appears.

The ends of the profession of law enforcement are, according to Goldman, justice and social tranquillity. Or, later we learn that social tranquillity is its principal end; justice is the end of the legal profession. Given their ends or end, Goldman contends that law enforcement officials, especially judges, must step outside the common moral framework in one way. They, as distinct from all other citizens, can never oppose their own moral judgment to the law, but must base their official decisions on the law in virtually all circumstances. The ordinary citizen has no morally compelling reason to obey the law. He will act either out of respect for moral rights or out of a prudent regard for the legal consequences of failing to do so. He ought not to elevate law-abidingness to a moral principle for, as the Vietnam war showed, 'an attitude of "respect for law" or deference to law is impermissible' (p. 57). The judge, however, should foster the myth of legalism, above all because the law must be consistent and stable so that citizens and lawyers know its bounds and therefore the bounds of legal interference in people's lives.

The notion that it is unethical for judges to attempt to transcend law in the name of equity may strike many as strange, especially since Goldman himself insists that the law can never be a substitute for 'good moral sense' (p. 140). Also strange is the emphasis on our overriding interest in, and therefore moral right to, legal consistency and stability, as if we could not make the crucial moral choices determining our lives without such assurance. Is the life of the democratic citizen one that consistently or constantly skirts the fringes of the law? If so, it is not by carelessness that Goldman comes to associate justice with lawyers, not judges.

As the lawyer sees it, the end of the legal profession is to advance the interests or rights of clients, and his ethical code is summarized by the principle of 'full advocacy'. Especially in modern democracy the lawyer furthers the causes of morality and justice by providing every person or legal entity requesting one with a legal expert and spokesman (thereby putting none at a legal disadvantage) and by vigorously pursuing the legal objectives of all clients (thereby helping to realize their legal rights). The lawyer thinks he should not pass moral judgment on the client he represents, nor allow moral scruples to deter his use of any legal means. Goldman wonders whether the lawyer's refusal to oppose our common moral framework to

legal ethics does bring about morality and justice. For Goldman, the principle of full advocacy is only appropriate in criminal cases, 'in which the accused individual, often of unfortunate background', is opposed by the state (p. 118). Corporations surely merit no such aid in advancing their narrow selfish interests. And in our contemporary social context, in which there can be found an ample supply of venal lawyers to represent corporations and their interests, the unjust anti-democratic consequences of full advocacy as well as the suspect motives of those who espouse the principle serve to discredit legal ethics.

For the traditional principle the lawyers must substitute that of moral rights. 'Only a fanatic on the subject of obedience to the law' (p. 139) could reject the principle that lawyers must aid their clients in achieving 'all and only that to which they have moral rights', even though application of the principle amounts to requiring lawyers 'to refuse to violate moral rights of others even in the pursuit of that to which clients might be legally entitled' and 'to exceed legal bounds in order to realize moral rights of their clients' (p. 138). Clearly law, no less than legal ethics, must be subject to some higher standard.

This thought returns us to Goldman's discussion of the political profession, for we did not really need Machiavelli to tell us that it is especially in politics that the moral necessity to do wrong is often glaringly apparent. We do need Goldman to explain this seeming paradox, however, for our imperfect understanding of our common moral framework precludes us from doing so. The professional obligation of the politician is 'to defend and honour moral rights and promote utility through legislation and political action' (p. 73), not, as is frequently contended, to secure the common good understood as utility, or aggregate welfare. It is in the active promotion of rights that he appears to employ a different ethical code while actually articulating ours. Rights often conflict not only with utilities but with one another, and it is therefore necessary that they be ranked. This truth is merely more obvious to the politician than to the ordinary citizen. The right to be defended and honoured above all by the politician is moral right, the right to a 'moral space for the free development and integrity of individuals who can formulate and pursue their own life plans' (p. 67).

Given this appreciation of the proper ranking of rights, we can easily understand Goldman's criticism of the medical profession. The end of medicine is health (and prolongation of life either as a distinct end or as a consequence of health), or to do no harm to a patient. Reflection on the relation between medical ethics and our common moral framework brings to light the problematic relation of 'medical paternalism' to 'patients' choice', or what we might call human needs to moral rights. In the paradig-

maric case of life-threatening illness the doctor believes himself justified in withholding information and acting without a patient's informed consent because of his expertise in the restoration of health or prolongation of life. But why is he entitled to assume that his end *qua* doctor — health or life — is the highest value of his patient *qua* human being? Why, Goldman would ask, must a woman choose the disfigurement of radical mastectomy over an untimely death? While it cannot be denied that life and perhaps health are preconditions for the determination of value, it is difficult to argue that human beings are most interested in life or health. Thus medical paternalism seems unjustified, and the requirement that the physician do no harm must mean deferring to the patient's value ranking, or to the principle of patients' choice. The doctor must impart to the patient, however competent, enough information to enable him to make his own choice. While active euthanasia for adults is not permitted, the physician must acquiesce in 'passive euthanasia', doing nothing to prevent a suicide when 'known to derive from a [patient's] fixed resolve reflecting a stable order of values' (p. 202), as well as in parents' choice of active euthanasia for defective newborns, who do not meet the criteria of 'personhood' (p. 212).

Rejection of medical paternalism in the name of patients' choice amounts to a rejection of the rational determination of the needs of others (even if not their greatest needs) in favour of the universal right to assert one's own will (even if it is self-destructive) in the name of moral rights. Goldman's argument becomes difficult when he attempts to defend parental paternalism over medical paternalism and to distinguish a patient's overriding interests, or 'real desires', from the seemingly universal desire for life and therefore for the condition of meaningful choice of almost all human values.

Similar difficulties are reflected in the discussion of business ethics. Here Goldman wishes to show that the professional business manager's goal of profit maximization for his corporation and its stockholders must also bow before moral rights. While attempting to argue that the clash is one of the self-interest of the manufacturers of Ford Pintos and their like with morality, he in fact demonstrates that there may be a clash between the self-interest of some individuals, understood as profit maximization, and the moral rights of others 'to be spared unnecessary risk and harm and to have basic needs fulfilled' (p. 285). One might well ask how these 'moral rights' amount to anything other than the interests of other selves. In this connection, we must note that Goldman rests his case for parental paternalism not only on the ground of knowledge of the child's presumed interest, but on the parent's interests. Moreover, the value of the patient that is to override the doctor's end may be nothing more than the avoidance of suffering and 'outrageous expense' (p. 226).

Many of Goldman's criticisms of professional ethics are reasonable. He may be right that no profession has an end that can be said to be the end of human beings as such. But his articulation of what he calls the common moral framework and his insistence that it can constitute the horizon and therefore foundation of professional ethics are more problematic. Goldman takes as the common moral framework, that is, the set of moral principles we can all accept, the one in which moral rights are paramount. Moral rights express interests of individuals that are important enough to be violated. What makes an interest a right is its relation to the ability of individuals to formulate and pursue their own plans of life; and such interests include 'basic material needs, security in expectations, opportunities, freedom from unwarranted interference, and self-respect' (p. 27). That we have such rights is 'intuitively granted' (p. 141), and that we have them equally follows from the fact that they 'derive from universal interests of individuals' (p. 28). Human beings are deserving of moral respect because they have the 'right of self-determination, the ability to create and realize value in activities' (pp. 181—82). 'What gives life meaning for the individual are the goals and projects he sets for himself' (p. 182). Neither the breadth or duration of the goals nor the degree to which they are or are not biologically determined makes the value-creating individual any more or less worthy of his or our respect. How Goldman can think that the foundation of morality is respect for value creation by individuals who may be doing nothing more than willfully demanding that a need be met or expressing an urge remains to be understood. For there is at first sight nothing respectable about needs and urges or even willfulness.

The most interesting part of Goldman's book is the introductory chapter. Goldman accepts the truth of moral relativism: there can be any number of contradictory, yet internally consistent moral systems, and no impartial critical stance towards them is possible. If this is true, then it would seem to follow that there is no rational justification for insisting on the subordination of professional ethical codes to some more comprehensive perspective, however sensible this insistence might seem. Goldman rejects this inference. There is, he contends, no reason why relativism should lead to toleration of others' values; on the contrary, Goldman's relativism leads to an incredible moral activism. He begins with the reasonable and unoriginal observation that there is no human action or even judgment without desire or value as well as fact or belief. From this he reasons that there can be no desire or value that does not lead to action. (Presumably judgments constitute actions, too.) Since one acts out of desire or value, one acts on one's greatest desire or value. Therefore, he says, there can be no moral imperative to be tolerant, for that would mean that one's highest principle is toleration (which is unlikely) and that one must act intolerantly against

the intolerant (which is self-contradictory). These conclusions do not follow from the fact that action presupposes desire.

Goldman attempts to overcome the need for tolerance with his 'rational method for bringing incompatible systems closer together, if there is a will to do so' (p. 15). We are to begin from agreed moral principles and are required to justify our points of moral disagreement by stipulating underlying non-moral distinctions. Here and only here does Goldman concede that there may be a factual, or natural, ground for values, or humanly posited ends, thus calling into question his own repeated assertion that there is nothing more worthy of respect than the value-creating individual (because there would otherwise be nothing valued, hence valuable). Moreover, we might ask why anyone, except perhaps a moral philosopher, should will rational determination of agreed principles, rather than willfully insisting that the final point of disagreement is in fact his highest value and therefore the one on which he wills to act. Isn't our willful disagreement the reason for our needing legal rights and at the same time the reason for our transgressing them in the name of whatever 'morality' interests us? Isn't this why Goldman's book is full of inexpensive, unabashed and unfenced political assertions? Isn't this why we can conclude that Goldman has failed to provide a foundation for professional or any other sort of ethics?

Professor Goldman is a member of the venerable profession of moral philosophers. While he believes himself peculiarly well-suited to reconcile other professions to our common moral framework, he deems it unnecessary to examine his own profession. He does not think that the relation between his ethics and ordinary morality, or the often claimed right of the philosopher to judge by a standard other than the popularly accepted one, poses a crucial problem. If a problem arises in his profession, he thinks it is chiefly in grading students: the academic norm for grading is quality, but the social function of grades is sorting people for later educational opportunities and careers' (p. 287), a sorting which surely limits the student's choice of life plans. Thus it seems that the professor who must give grades challenges our common moral framework of moral rights in the name of intellectual excellence. Goldman ends his book with a reference to the Aristotelian ideal, 'the healthy and well-integrated personality' (p. 292), by which Goldman means someone who subordinates his professional ethics to contemporary morality. Goldman's is a fashionable but incorrect interpretation of the Aristotelian ideal, because there can be no doubt that for Aristotle morality is subordinate to contemplation. Aristotle may not have provided an unassailable foundation for any morality, but it remains for Goldman to demonstrate, not to assert by implication, that Aristotle's

teaching about the human good and its implications for human actions is groundless. Had Goldman taken more seriously the foundation of his own ancient profession and its ethics, he might have hesitated before putting his expertise in the service of an ungrounded indignation at the authority of the professions.

Albert Weale: Two Party Blues?

H. M. Drucker (ed.): *Multi-Party Britain*, London, Macmillan, 1979, 242 pp., £10.00 cloth, £4.95 paperback.

After the election of 1979 some readers may find questionable the thesis that Britain is moving towards a multi-party system. The ability of the Conservatives to win a clear overall parliamentary majority, the drop in electoral support for the Liberal Party and the poor showing of the nationalist parties would all seem to point to a re-establishment of the familiar two-party system. Appearances can be deceptive, however, and Drucker and his collaborators are careful to state their thesis in a cautious and judicious way. There is, they claim (p. 214), a trend, discernible since 1955, away from two-party politics, so that it is less and less likely that each of the two major parties can expect to enjoy office without the support of a third party. The bulk of the book is taken up with documenting this trend, with special concern for the impact it has had on the individual parties contesting elections in Britain.

Stated in this careful way the thesis has not only great interest, but also considerable plausibility for general reasons. The two-party model of British politics went hand in hand with a two-class model of British society. Voting behaviour was seen to be determined fundamentally by class; and the major problem to be solved was that of explaining the working-class Conservatism which enabled the Conservative Party to attract sufficient votes to secure a parliamentary majority. Yet, as Butler and Stokes¹ showed, the alignment of class and party was weakening as early as the 1960s, particularly with the advent of new voters into the electorate holding less intense class attitudes. We should also expect changes in political behaviour as Britain's class structure changes and the proportion of the population which is working class falls. Moreover, the rise of new

¹ David Butler and Donald Stokes, *Political Change in Britain*, London, Macmillan, 1974, 2nd ed., Ch. 9.