

THE EMPLOYMENT RELATIONSHIP AND INTEGRATED THEORY

Submitted by

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George Sansbury October, 2004.

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ABSTRACT

This research falls within the field of normative business ethics.

Its aim is to examine the moral nature of the employment relationship in western democracies by examining the liberal, democratic justifications that are normally advanced for its probity. Its concern is to challenge the notion that the employment relationship is in conformity with these liberal democratic values. Thus, the research is an exercise in the examination of the application of the liberal, democratic tradition to the social institution of employment.

Thus research examines areas of dissonance between the political relationship of employee – employer and the dominant values of the liberal tradition found elsewhere in western democracies.

The research firstly identifies the key moral characteristics of the employment relationship in private, capitalist organisations. This is derived from a consideration of the development historically, of the employment relationship, with acknowledgement of the combined influences of statute, common law, contract law and custom in forming the current employee relationship.

Secondly, the research identifies the justificatory arguments from the liberal tradition that are normally advanced in support of the employment relationship's moral probity. These include notions of rights deriving from private property, the separation of social life into public and private spheres and the application of contract law to employment.

Thirdly, the research examines these arguments for their moral probity. Specifically, this involves an examination of the arguments regarding the private property status of employing organisations, the application of contract law to employment, the moral characteristics of the master and servant relationship as a basis for employment and the relevance of democratic values within employment.

As an additional perspective, the literature on human needs is reviewed as a source, outside of the liberal tradition, for a basis upon which to outline the moral requirements of human relationships to work.

FOREWORD

This research is written in the first few years of the twenty first century and might therefore be considered to be written 'post socialism'. It would seem that the great debate between socialism and capitalism has ended with the apparent collapse of socialism as a political and economic force in the world. We find ourselves in a shrinking world in which 'liberal democracy' and 'free market mechanisms' are promulgated as the universal values from which the role of the state, the welfare of its subjects/citizens, globalisation and the rationale for wars are derived.

Thus, it seems that with the apparent demise of the socialist 'great alternative', our economic and political systems and institutions need answer only to their own credo of liberal democracy and the free market for any authoritative moral critique.

Yet the demise of socialism as an energising political force does not remove the need for such a critique. There are many aspects of our western liberal democracies that proffer themselves for moral consideration. The increasing inequity in the distribution of wealth, the low rate of theoretical and practical democratic participation, the loss of community, the increasing loss of individual and associative rights in the fight to protect private property and economic activity, the increasing reduction of access to education, health and public services, the shrugging off of community responsibility for individual welfare; all raise general and specific questions regarding the well-being of individuals, social groups and the community at large.

Accordingly, even if one regards the socialist analysis as having been demoted to the status of an historical footnote there are still effective critiques to be made. And ironically, such critiques may indeed rely upon the theories and arguments of liberal values for their effectiveness.

This research seeks to provide such a 'liberal values' critique on one aspect of our western, liberal democracies-the employment relationship. This relationship is an economic, political and social relationship that provides a cornerstone for our free-market economies and political systems. Thus, the research seeks both; to identify the liberal values in effect as justificatory arguments for the moral nature of the employment relationship and, to examine their acceptability.

I take my general approach from those writers (Bottomore 1975; C. Wright Mills 2000; Prilleltensky, 1999; Hugh Willmott's 1997) in the social sciences who believe that research has a social function as well as an academic one. Briefly their argument runs thusly; that social research is by humans and must therefore improve the wellbeing of humans – an eminently moral approach. Such improvement will be brought about if research is both critical and emancipatory. In other words research should consider the nature of our social relations and suggest more humane ways of conducting them.

As an example of this, Bottomore (1975) argues that Sociology provides an opportunity for social criticism, a position echoed by C. Wright Mills (2000) who claims social criticism as a duty of the academic.

"If we take the simple democratic view that what men are interested in is all that concerns us, then we are accepting the values that have been inculcated, often accidentally and often deliberately by vested interests." (page 214)

"What I am suggesting is that by addressing ourselves to issues and troubles, and formulating them as problems of social science, we stand the best chance, I believe the only chance, to make reason democratically relevant to human affairs in a free society, and so realize the classic values that underlie the promise of our studies." (page 214)

Similar positions are taken in Psychology by some academics;

“Critical Psychology concerns itself with society as much as with Psychology. Indeed, it is critical of society as much as it is critical of Psychology.” (Prilleltensky, 1999. page 95)

Further support is found in Hugh Willmott’s (1997) review of Habermas’ theory of Cognitive Interests that identifies three functions for academic endeavour. Firstly, a technical interest of an empirical nature that seeks to identify, control and predict through the removal of irrationality. Secondly, a practical interest that seeks to improve mutual understanding and thirdly, an emancipatory interest that seeks to engender the development of more rational social relations.

In attempting such an ‘emancipatory’ analysis I should point out that although the material is couched in the terms of Political and Ethical Philosophy it is not intended primarily for that audience. Instead, I hope that my principal audience will consist of those academics and practitioners that are involved in organisational studies in the field of Industrial Relations and Critical Management. It is this group that I hope to engage with my discussion. I have endeavoured to write for this audience rather than for ethicists and in doing so I have kept discussion of the intricacies of ethical and political theory to a minimum providing explanation for the non-ethicist where it seems necessary. In order to do this I have necessarily had to consider the moral arguments upon which the employment relationship is based, but only in order to point out (what seems to me to be) the somewhat shaky moral foundations of this particular social institution.

On a personal level, this research was given motive force by personal concerns that surfaced over a period of years whilst working in the Personnel, Human Resources and Administrative fields in various institutions.

These concerns arose in the course of managerial activities such as the administration of labour contracts, hiring of employees, reorganising of departments and the adjudication of disputes.

Later reflection brought me to the thought that it was not so much the moral aspects of the manner in which administration was practised (in its various contexts and formulations) that caused this discomfort but, rather the essential structure of the employment relationship itself. At an intuitive level there seemed to me something about the essential nature of this relationship that was at odds with the values inherent in a liberal school and university education acquired during the 1960's and 1970's.

A late change in career has given me the opportunity to further consider the nature of my disquiet and I happily take this opportunity to consider the issue in more depth.

My own area of interest is the employment relationship and in considering it from a moral perspective I have endeavoured to provide an analysis that might prove emancipatory to some minor extent. My aim in this research, given all of the above, is to give form to those disquieting concerns regarding our relationship to work in the hope that such an endeavour might also assist in developing a more rational and humane form for the social institution of work.

My concern in this research is to sow some seeds of doubt in the minds of Management and Industrial Relations academics/practitioners regarding the moral nature of an institution so central to most of our lives – the master and servant relationship. A relationship held tightly in place by contract, private property and the public/private division of social life.

PREFACE TO: 'ON THE GENEALOGY OF MORALS'

"While every noble morality develops from a triumphant affirmation of itself, slave morality from the outset says No to what is 'outside', what is 'different', what is 'not itself'; and *this* No is its creative deed.

This inversion of the value-posting eye – this *need* to direct one's view outward instead of back to oneself – is of the essence of *ressentiment*¹: in order to exist, slave morality always first needs a hostile external world; it needs, physiologically speaking, external stimuli in order to act at all – its action is fundamentally reaction.

The reverse is the case with the noble mode of valuation: it acts and grows spontaneously, it seeks its opposite only so as to affirm itself more gratefully and triumphantly – its negative concept 'low', 'common', 'bad' is only a subsequently-invented pale, contrasting image in relation to its basic concept – filled with life and passion through and through – 'we noble ones, we good, beautiful, happy ones!'

When the noble mode of valuation blunders and sins against reality, it does so in respect to the sphere it despises, that of the common man, of the lower orders;"

(Nietzsche, 1969. pages 36-37)

¹ May be translated as 'resentment'.

CHAPTER 1: INTRODUCTION

PROBLEM STATEMENT

This chapter seeks to introduce the reader to the subject matter and intent of the research. It does so by; outlining what the author considers to be a problem central to the employment relationship, identifying the aim of the research and, by outlining the manner in which the problem is addressed in the thesis.

The research falls within the field of normative Business Ethics and looks at the moral nature of a social relationship that is central to the lives of most citizens in western democracies – the employment relationship.

This research is in some ways an exercise in the consideration of values within the liberal tradition. These include concepts of equality, autonomy, pluralism, individual rights and democracy-ideas that are arguably the building blocks for the political and social institutions of our western society.

“The basic notion from which I begin is that as autonomous and responsible agents capable of entering into significant social relationships with others we are entitled to political institutions which reflect the moral right that each of us has to be treated as an individual with the capacity to shape and pursue his or her own conception of the meaningful life.”

(Sartorius, 1984. p.196)

It can be argued that many of our political and social institutions are indeed structured so as to support this ‘moral right’.

Governance institutions are built upon concepts of democracy that incorporate notions of equality, due process, limitations of authority and individual rights.

These, along with military, health, education and civil services fall within the public sphere and are subject to these governance institutions and the socio-political values upon which they are based.

In most forms of social intercourse therefore these values of equality, autonomy, pluralism, individual rights and democracy within the liberal tradition can be seen to be upheld, if only formally.

However, private, employing organisations lie outside of this public sphere and are not subject to the constraints and obligations that such liberal values place upon institutions. These organizations do however, enjoy the legal status of personhood by which it is meant that they have legal rights and status that otherwise only human beings enjoy. This entitles them to enter into contracts, own property and enforce agreements much as any other person might. However, whilst both the employing organisation and the employee are 'persons' - they are not equal persons. The source of this inequality between 'persons' can be found in the rights attaching to private property and in the consequential Master and Servant relationship that is at the core of the relationship between organisation and employee. The central tenet of this antique relationship is that the servant (i.e. employee) is subordinate to the authority of the master (i.e. employer) and bound by duty to promote and safeguard the interests of the master. Employment therefore, is an agreement between private parties in which one party (the employee) agrees to subordinate himself to the authority and interests of the employer. This agreement or legal contract, has as a basis, the common law of the master-servant relationship². Within this organisation, the employee (whose property it is not) does not enjoy rights of democratic participation in the governance process.

² The common law relationship is modified to some extent by the terms of contract and by state legislation but, this amounts to a modification or restriction of the master-servant relationship rather than a replacement of it.

Autonomy is not an intrinsic aspect of employment since subordination to superior authority is a condition of employment.

Employers enjoy the right to determine what, when, how and where an employee performs his duties as a direct outcome of their legal right of control of the workplace (i.e. their private property)³. Employees therefore, do not enjoy self-governance⁴.

Neither is Pluralism a recognised feature of the employment relationship since the nature of the employment contract itself establishes that the employee is required to pursue the specific interests of the organisation and because organisations view it as their right to expect employees to be merely agents of the organisation's interests.

“Systems of reward, selection, appraisal, structures, physical spaces, rituals and ceremonies, should all be designed to reinforce organisational values and norms.” (Sinclair, 1993. page 66)

Where work activity is concerned, the organisation has the legal right to require that employees do not follow or openly espouse their beliefs about what is done or how it is done. Such organizational rights are reflected in the legal requirement for employees to be loyal to their employer and to promote its interests. Such requirements render the expression of personal opinion and values (as in whistle-blowing) an unacceptable act.

³ Subordination to superior authority is also a feature of social life in the public, political realm but here the citizen enjoys rights of political participation in which those in authority (in central governance) are chosen and removed through representative elections and power wielded by those in authority is subject to the restrictions imposed by citizen representation.

⁴ de George (1985) notes that an authority system may be ethically criticised if it does not support the freedom upon which it is based, does not benefit all those involved and does not respond to those who are the source of its authority. The internal governance system within organisations does not meet this test.

In this situation the interests and beliefs of employees are necessarily secondary to those of the organisation and normally may not be recognized, expressed or accommodated by right.

The application of the Golden Rule is also largely absent within the employee relationship since its application would largely guarantee a condition of equality with regard to power, authority, due process and the distribution of organisational rewards and discipline.

The presence of such values seems antithetical to the character of the master and servant relationship as outlined above.

Thus, employment represents a political institution that seems to proscribe many of the values held within the liberal tradition i.e. equality, autonomy, pluralism, individual rights and democratic participation.

There exists then, a dissonance between the employment relationship and the dominant values of the liberal tradition found elsewhere in western society. That this dissonance constitutes a problem, has been noted in Organisational and Critical Management studies. Organisations are seen as being driven by values of economic rationality, growth and technological progress (Fox, 1971; Nichols, 1980; Salamon, 1992). Within such organisations however, employee interests are not seen as matching or mirroring these organisational values. (Fox, 1971, 1980; Nichols, 1980; Sinclair, 1993; Sewell & Wilkinson, 1992; Moberg, 1994)

“...the emphasis brought to bear upon work design....is an emphasis upon the practical outcome of work, as against the work experience itself for those who do it.” (Fox, 1980. page 141)

Interestingly, those commentators who most strongly defend the terms of the employment relationship, normally do so in reference to these same liberal values. (Nozick, 1974; Hayek, 1960; Friedman, 1970)

This tension between the nature of the employment relationship and the values of the liberal tradition within society represents a problem worthy of investigation⁵ if only because it begs the question of what relationship to work *would* accommodate these values.

The aim of this research is to examine the moral probity of the employment relationship by examining the liberal democratic justifications that are normally advanced for its probity. It is not concerned with developing a moral argument in support of the employment relationship but rather to challenge the notion that it is in conformity with those liberal values that are proffered as moral justification for its form. By so doing the research becomes an examination of the moral basis upon which the (employed) relationship to work is based. It is a challenge to what I see as the current state of affairs in which the employment relationship is defended by liberal values rather than developed from them. The particular values in the liberal tradition that are examined in this context can be summarised as emanating from notions of equality, autonomy, pluralism and reciprocity. These form the basis for familiar values in the liberal tradition such as individual rights, democratic participation, human rights, self-governance, justice and the legitimisation of authority. The problem of the dissonance between liberal values and the employment relationship does not seem to have been directly addressed in the literature despite the existence of research and discussion of many of the issues contained in this thesis. The Stoics and Epicureans of classical Greek city states addressed the question of human needs, as have Rousseau (1964), Marx (1975) and Doyal & Gough (1991).

⁵ This problem is of particular importance in a context in which individuals might be seen as moving from primarily citizenship status to employee status. Thus, organisations, rather than state, can be seen as the dominant political, psychological and social institution in people's lives. (Scott, Mitchell et al, 1981)

The question of human needs is also implicit in much of the Human Relations and neo-Human Relations literature stemming from Maslow's (1970) research. Industrial Democracy has a voluminous literature regarding issues of justice, democratic representation and power structures (Bay, 1977; Gorz, 1985; Coates, 1977; Clegg, 1960) and, Political Science addresses the question of power, authority and the institutions that are the governance facets of society (Bay, 1977; Pateman, 1975; Ellerman, 1975; Wohlin, 1961; Dahl, 1990).

The nature of the employment contract has also been studied in terms of its legal, psychological and industrial relations implications and, there are also the fields of Ethics and Business Ethics regarding our ideas of human wellbeing.

However, the literature invariably seems to start with an acceptance of the given context for the employee relationship and proceeds from this point. (Rowan, 2000; Bowie, 1998; de George, 1990; Clegg, 1960; Moberg, 1994) By given, I mean the acceptance of private property, the privacy of economic activity, contract and the master and servant relationship. Because of this, most discussion regarding the moral aspects of the employee relationship operate from within this arena and do not question its probity. This limits its ability to fully evaluate the moral nature of the employment relationship.

This research adds to this body of knowledge and understanding in two ways.

Firstly, it brings these disparate bodies of knowledge together to bear upon a consideration of the moral basis for the employment relationship. Secondly, it considers the employment relationship outside of its given status and construction i.e. as within the private realm of social activity and contained within a legal contract.

ARGUMENT DEVELOPMENT

The research approaches the problem by firstly, identifying the key characteristics of the employment relationship in private organisations and secondly by outlining the moral justification for the relationship. Chapter two examines the development of the employment relationship in England its exportation to the English colonies. It considers the comparative importance and influence of the statute law, common law and custom and, contract law upon the development and current form of the employment relationship. It considers aspects of the employment relationship in current practice and seeks to define the employment relationship's essential characteristics.

Chapters three and four examine these moral justifications by analysing the specific liberal arguments that are proffered in support of the employment relationship.

Specifically, these arguments regard economic organisations as private property, (and the consequent separation of economic activity into the private realm), the contractual nature of employment and the master and servant relationship as a necessary basis for the employment relationship.

Chapter five examines the employment relationship from the perspective of justice and democracy. Employment is considered from the perspective of liberal values regarding the legitimisation of authority, due process, participative and, representative democracy.

Chapter six considers the employment relationship from the perspective of an analysis of human needs. I argue that human needs can be regarded as universal and that the consequence of their existence is ownership of certain social and political rights of autonomy, plurality and democratic participation in society – all values in the liberal tradition.

LIMITATIONS AND DELIMITATIONS

The limitations of this chosen approach to the employment relationship are as follows. Firstly, it is general and theoretical.

In seeking to come to grips with the essential character of the employment relationship it generalises the concept. Such a generalization cannot be directly reflective of individual circumstance or the various ways in which the employment relationship may actually be conducted. My defence of this approach is to call upon the credentials of the 'Ideal Type' as a legitimate tool for academic analysis. Weber's use of the Ideal Type was an attempt to provide intellectual rigour to the meanings and concepts of social action that are diffuse and changing.

In essence it is an accentuation or exaggeration of the phenomenon studied in which the facts are given coherence by removing the ambiguity of its various manifestations. It is not an attempt to represent reality but, is a representation of reality from one point of view.

Thus, it is possible to construct an Ideal Type of what a motor car is or represents, that remains valid even though it may not be found in any of the exact forms that a motor car may actually take. Empirical research will be necessary for the implications of the Ideal Typed relationship to be validated.

The second limitation of this research is in its use (in part) of a needs-based analysis to determine the principles and conditions of human wellbeing. Needs analysis has a long history but the objections to it are also significant. For instance the questions of what constitutes human needs (as opposed to wants), how they are to be valued and how they are to be provided (i.e. what level of meeting a need is sufficient) are not entirely resolved (Gray, 1983; Nozick, 1974; Hayeck, 1960).

However, needs analysis does seem to come to the same ultimate conclusions regarding the basis for human wellbeing as other ethical approaches.

Donaldson, (1989) for instance regards autonomy, plurality and the Golden Rule as generalised conditions necessary for human wellbeing. This is commensurate with the needs analysis of Doyal and Gough (1991) and, I suspect that other ethical analyses would come to much the same general conclusion regarding what constitutes the basic conditions of human wellbeing.

RESEARCH METHOD

Ethics is a branch of Philosophy concerned with the understanding and, determination, of morality in human social relationships. Ethics is intrinsically concerned with the wellbeing, or welfare of human beings and, in pursuit of this, it concerns itself with what it is, in human relationships, that promotes or sustains human wellbeing⁶. Put another way, Ethics is the activity of examining the moral standards and actions of societies, institutions and individuals and determining a) whether they are reasonable and supportive of human wellbeing and, b) what alternative actions and standards would further the objective of enhancing human wellbeing.

“Ethics in general can be defined as a systematic attempt to make sense of our individual social moral experience, in such a way as to determine the rules that ought to govern human conduct, the values worth pursuing, and the character traits worth pursuing in life.” (de George, 1990. page 14)

Toulmin (1950) saw the functions of ethics as promoting human wellbeing through the promotion of fruitful and just intercourse between individuals and their social collectivity (‘seeking of harmony’) and the justification of those principles that promote harmony. In order to achieve this objective, Ethics is necessarily concerned with three tasks.

⁶ Business Ethics is the application of Ethics in the context of business activity and relationships.

Firstly, the determination of measures of morality (analytical ethics⁷) secondly, the observation of the forms of human activity (descriptive ethics⁸) and thirdly, the determination of what it is about that activity that is moral or immoral (normative ethics⁹).

Research in Business Ethics tends to be either descriptive or normative. Descriptive ethics provides the raw data that normative ethics must make moral sense of; material that identifies the moral structures of a society, relationship or action. Normative ethics attempts to make moral sense of this data through its analysis against principles of morality.

“Empiricists do not specify how people ought to act, but instead specify the conditions under which individuals are likely to act in certain ways. Normative ethics research is involved in determining standards of right and wrong, whereas descriptive ethics is concerned with describing and explaining what exists.” (Robinson, 1993. page 586)

Readers of research who have a background in the Social Sciences find an easy familiarity with the research methods used in descriptive ethics since they equate to those extant in the Social Sciences.

⁷(also referred to as ‘meta-ethics’), deals with the meaning of moral terms and the logic of moral reasoning. It is concerned with the source and nature of ethical theory itself; as in the derivation and justification of ethical principles, the resolution of conflict between theories and the consideration of issues such as the moral status of organisations vis-à-vis human status. In this, its central concern is with ontological and epistemological issues.

⁸ (not to be confused with 'Descriptivism' which is a particular theoretical, orientation), as the term implies, is concerned with the study and description of the moral behaviour and values extant in social relationships. The key objective here is to study and record, as opposed to normatively assessing such activity. This approach is essentially a data gathering and codifying exercise and is overtly neutral in that it does not seek to subject its data to normative analysis. In this respect its approach and methodology approximates that of the social sciences.

⁹ Concerned with the development and application of ethical theory to particular relationships, practices or systems, with the express intent of determining their ethicality i.e. to comment upon what ‘ought’, or ‘ought not’, to be occurring within these units of analysis in order for them to be considered ‘moral’.

However, social scientists often have difficulty in coming to terms with the prescriptive nature of research in normative ethics perhaps because their experience of research tends to be bounded by a 'scientific method' that eschews personal value judgements.

Such value-free research is arguably more of an ideal than a reality, for no matter how 'scientific' the method, scientific demonstrations are fundamentally acts of persuasion (Weizenbaum, 1976).

Values impinge upon empirical research at every level from the choice of phenomenon studied, the selection of research questions asked and the choice of method applied (Tseelon, 1991).

The presence of value judgements in Social Science research has been welcomed by some as a legitimate vehicle for social change.

Witness Hugh Willmott's contemplation of Habermas' theory of cognitive interests with its emphasis upon the role of science as a critical, emancipatory force against dogmatic knowledge in which

"...human beings continuously reconstitute social institutions and identities."

"The most basic challenge for contemporary scientific endeavour, Habermas contends, is to re-member the diverse cognitive interests released by the cultural break with nature; and to mobilise these interests in the emancipatory project of developing more rational social institutions." (Willmott, 1997. page 317)

However, research in normative ethics is not at odds with the scientific method, in fact its approach follows similar logic. For instance, a social scientist may observe human behaviour and seek to explain it by reference to theories of motivation, social mores or social status. In other words, the observed data is interpreted in terms of its fit with existing theory.

In a similar way, ethical theory provides explanations of 'what constitutes human welfare and the kind of conduct necessary to promote it'. Observed behaviour may be analysed in terms of these theories for their degree of conformity to such explanations. In this process we can say that if observed behaviour does not conform to these explanations, then it follows that the behaviour is not ethical (according to those theories exposition of ethicality). Moral standards are stated (e.g. all men are equal), factual information regarding the action, relationship or institution is evaluated for its 'fit' against these standards (e.g. 43 countries in the world practice forms of slavery) and a judgement is made regarding its moral rectitude (e.g. 43 countries treat some of their people immorally). What appears to be personal opinion is in fact analytical assessment.

Thus, normative analysis may even pass the replication test of scientific enquiry – given same or similar conditions.

Moral reasoning is similar to the scientific method in other aspects too. For instance there is the requirement of rational reasoning.

"First and primarily, moral reasoning must be logical. The analysis of moral reasoning requires that the logic of the arguments used to establish a moral judgement be rigorously examined...." (Velasquez, 1988. page 32).

Put another way; moral judgements are more than just statements of attitudes of approval or disapproval in that there has to be a reason for approval that rests upon an attribute of rightness (Mabbott, 1966) and analysis proceeds from accepted principles of what is right. Determining what constitutes a principle of 'rightness' is the source of at least two millennia of theorising in ethics.

For the Kantian, the touchstone of rightness is the intrinsic value of human beings as rational beings.

For the Utilitarian it is the wellbeing of the majority whilst for the proponent of Natural Law, it is a belief in the primacy of humanity.

Each has its appeal based upon a single insight, or belief, regarding the key to human wellbeing. Such principles are rivals to each other and often contradictory, for the utilitarian emphasis upon majority will necessarily downplay the interests of the minority individual upon whose wellbeing a Justice or Rights analysis concentrates. Furthermore, each system seems to present a different truth, or principle and each seems inadequate as a means of encapsulating the moral breadth of human relationships.

“After all, there is no more justification for expecting a single ground of rightness, than for expecting a single ground of goodness....” (Ross, 1939. page 83 - quoted in Donaldson, 1989)

[Such approaches may be identified loosely as belonging to three broad categories i.e. Teleological, Deontological and Egoistic. 10,11]

The difficulty in this approach should be immediately apparent, however. Appealing to accepted principles of what is right does not justify why they are right – unless one takes the approach of regarding consensus as a basis for justifying principles of morality. One may argue for or against the logic and/or the common-sense appeal of such basic principles of rightness but in the end, one either accepts or rejects them.

10 “Teleological theories: these assert that the basic criterion is some non-moral value to be brought into being. Examples are happiness, pleasure, avoidance of pain, power and knowledge.

Deontological theories (of various kinds) whose basis is found in rules expressive of duties, such as truth telling or promise-keeping.

Egoism (of various kinds), in which the ethical persons are seen as promoting what is good for themselves (which could be other people’s happiness for example).” (Donaldson, 1989. page 80)

11 Since the audience for this research is assumed to be an Industrial Relations one, a brief overview of rival ethical approaches is provided in Appendix A

However, it can be argued that a methodologically good theory of rightness is one that is consistent with common-sense beliefs, coherent (in that it fits well with surrounding data) and is capable of being made universal.

“...all ethical theories start from widely accepted moral beliefs about which actions are right and wrong; and to the extent that different philosophical approaches have justified such beliefs and second order moral rules, the rules have become that much more secure.” (de George, 1990. page 83)

Normative ethics has a social role since it may produce alternate arguments for assessing particular situations, relationships and institutions.

It also may formulate personal (and societal) codes and rhetoric for changing individual and social relations. If the welfare of humans is the central concern of ethical inquiry, then it may be acknowledged that a conception (and justification) of how it may be improved upon is a pre-requisite. Normative Business Ethics therefore, seeks to apply principles of human wellbeing to specific phenomena in business activity and to assess both its conformity with those principles and to identify alternative approaches that may facilitate and improve its conformity. In this research therefore, what is required is a statement of moral principles, an application of those principles and, a normative assessment.

Accordingly, this work derives principles for the support of human wellbeing through a needs-based analysis, normatively assesses this relationship against those principles and considers how the relationship to work might be structured so as to support these principles.

“Moral reasoning always involves two essential components: an understanding of what moral standards require or prohibit and, evidence or information that shows that a particular policy, institution or behaviour has the kinds of feature that these moral standards require or prohibit.” (Velasquez, 1988. page 30)

However, this normative approach to Business Ethics is not universally accepted. Relativists argue that Business Ethics be restricted to a descriptive function (e.g. a sociology of values). Their objection is founded upon the position that morality is a socially constructed phenomena that invalidates the concept of morality being derived from overarching, universal principles. This poses the question of whether morality is an artefact of personal values (and subsequent self-interested behaviour) or whether it is subject to general and universally applicable principles. Smith and Johnson (1996), in considering the post-modern epistemological and periodisation debates, argue in support of ethical relativism;

“Post-modern epistemology leads to the outright rejection of prescriptive [i.e. normative] approaches to business ethics, and sanctions ethical relativism, because all knowledge is perceived as being an outcome of variable social construction.” (page 275)

Therefore;

“...if all knowledge is socially constructed, there are no good reasons for preferring one characterisation over another.” (page 277)

This approach limits the field of Business Ethics to Sociological and Psychological analyses using only that data that is part of the process of subjective value construction and ethics is imply a means (or methodology) for resolving localised conflict or individual stress. This relativist approach is not adopted by this researcher for the following reasons.

Firstly, it does not seem to match our common sense understanding of (what might be called the moral experience) of being human. After all, people do make moral judgements about themselves and apply them to other people. People also make distinctions regarding change in their beliefs regarding right and wrong over time. Secondly, ethical relativism seems contrary to the reality of successful communal activity and accomplishment. Such activity requires both agreement over values and, continuity over time of such agreement – a social contract of values if you will. For instance, the activity of work requires co-ordination and, interdependence and trust and therefore co-operation. Such co-operation by definition implies shared, ongoing values. Thirdly, to argue for the supremacy of individual values sets is to allow for the universality of this argument i.e. it must be allowed that others may hold to the idea of universal values. Fourthly, the very notion of morality is rendered impotent by the relativist argument for if no values are better or worse than any others then what is to be considered right or wrong and how?

Therefore, whilst morality may well be understood individually in terms of subjective assessment, there does seem to be a continuing, unbroken acceptance of certain values over time and across culture (see discussion of reciprocity/ the Golden Rule above). Because of these objections to ethical relativism, this study locates itself instead within an objective orientation of moral realism in claiming that there are moral values that have a continuity unaffected by individual subjective experience. These moral values are rooted in our human condition and therefore universally, justifiable outside of individual experience.

The importance of the employment relationship in this research is that it poses a moral problem regarding the wellbeing of employees. As noted above, the study of human wellbeing is the study of Ethics.

“In essence, Ethics is concerned with clarifying what constitutes human welfare and the kind of conduct necessary to promote it.” (Bucholz, 1989. page 2)

But such an intent is easier to state than to apply. Giving it substance and form is problematic since the determination of what constitutes human welfare, has been the subject of conflicting views over, at least, the last two millennia-as has the debate over the necessary conduct to promote it. Over this time period, the guiding principles for determining human welfare have ranged through enlightened self-interest and natural law, to the optimisation of utility and the pre-eminence of meaningful relationships. Whilst some approaches emphasise the primacy of individual wellbeing, others emphasise that of the group. However, such differences in approach do not necessarily lead to fundamental disagreement in the results of their application. Neither does such divergence in views concerning primary principles mean that there is not also a great degree of convergence in terms of analysis and assessment, regarding specific instances of human interaction.

Slavery for instance, violates the principles of Utilitarianism, Ethical Egoism, the Categorical Imperative, Human Rights and Virtue theory. Additionally, it can be noted that ethical analysis of specific cases or instances of social interaction often make use of several ethical principles to arrive at a conclusion and some theorists argue that there is indeed a universality to moral values. For instance, it is difficult to think of a human society that does not place high value upon reciprocity, the sanctity of human life and familial relations.

In support of this approach Hodgson (1992) posits seven such universal values i.e. the Dignity of Human Life, Autonomy, Honesty, Loyalty, Fairness, Humaneness, the Common Good.

Similarly, Donaldson (1989) argues that the principles of Autonomy, Pluralism and the Golden Rule (or universalism)¹² are representative of the main thrusts of ethical theory regarding human wellbeing. They are also consistent with widespread and contemporary belief. Support for the acceptance of this argument might be found in their enduring presence in espoused social values. For instance, the last of these three (an ethic of loving others) has been regarded as a fundamental ethic for much of our western history. Thus, it has the authority of antiquity as well as almost universal religious acceptance. Confucius describes it as 'reciprocity', Hobbes in the 'Leviathan' (1651) as;

"Do not that unto another which thou wouldst not have done to thyself."

Kant in the 'Prelude to the Metaphysics of Morals' (1785) as;

"I ought never to act except in such a way that I can also will that my maxim should become a universal law."

The disciple Mathew records it from the Sermon on the Mount as;

"Thou shalt love thy neighbour as thyself."

And for further support, the same principle is expounded in Buddhism, Taoism, Hinduism and Islamic scripture.

¹² Autonomy: the right of self-government. Extended to mean that people are, or ought to be placed in, a position to be able to make up their own minds about moral issues.

Plurality: the view that there can be more than focus of loyalty for an individual, and that different institutions with opposing views and different opposing theories or beliefs are permissible or desirable. (Donaldson, 1989. pages xii-xvii)

Golden Rule: Do as you would be done by. That what one claims for oneself must be extended to all others.

CHAPTER 2: THE EMPLOYMENT RELATIONSHIP

AIM

The aim of this chapter is to arrive at an understanding of what the employment relationship is, by looking at its development since industrialisation in England. An attempt is made to isolate the character, structure and context of the employment relationship through an examination of its development from communitarian medieval serfdom to modern contract.

This chapter looks at the developing character, structure and context of the employment relationship and begins the process of identifying and examining its moral justifications.

HISTORICAL DEVELOPMENT

Australia, as a western, liberal democracy, is a creation of the British Empire. Its (white, European) history, traditions and institutions are the result of its two hundred years of essentially European history and culture. Thus, when considering the history and contemporary character of employment in Australia we must needs examine these same aspects from the British context. This is because the Australian and N. American colonies were initially run as a part of the British socio-economic structure and therefore their customs, laws and practices were British ones.

“The Australian worker must look to England to find the origins of her or his present status as an employee and the origins of the law governing that status.” (Macken, et al, 2002. page 1).

The transplantation of pre-existing social, political and economic institutions to the new colonies was part of an effort to make these new lands extensions of the mother culture.

Indeed, there was a prolonged and determined attempt to re-create the English social and pastoral context in Australia and N. America as the transplantation of fauna, flora and social prejudices regarding native people, social class and gender bear witness.

The current social institution that we refer to as the employment relationship has its roots in the medieval period following the decline of serfdom in Europe and its genesis in the gradual development of the concept of ‘free labour’ in the time since. Given this long historical development the exact nature of the employment relationship is not initially clear. It has its roots in the communitarian society of medieval Europe from which it obtains its social status and common law base.

It has been modified during the transition to modernity from which it obtains its contractual nature, an emphasis upon private property and individual action and, its removal as an institution from the public, social realm. Furthermore, there have been six hundred years of state legislation overlaid upon the relations enjoyed between the parties of employer and employee. This brief historical review seeks to resolve this lack of clarity by tracing the employment relationship's sources in common-law, the modernist project of the Enlightenment and the role of state legislation and assessing their impact regarding employment's content, structure and management. Because of this long and involved history, it is initially unclear as to whether the employment relationship should be regarded in essence, as one of common law, a master-servant relationship, a contractual relationship between equal parties or indeed, one of legislative determination (Quinlan, 2003. Merritt 1982. Linder, 1989). All of these elements are present in the social institution of employment and the disentangling of their relationship to each other is a necessary preparation of its consideration.

The relationship to work that was extant in Medieval society was different in character to the modern employment relationship.

Inherent in our modern concept is the notion of separateness of interests between the parties, hence its characterisation as a contract. In the absence of such a contractual agreement, the lives, and interests, of employee and employer would presumably have no reason to coincide. Outside of such an intentional agreement to come together the parties would live separate lives within the wider open community. Medieval social life however, supported an approach to work that was the antithesis of such separateness. The social activity of work operated within a closed society in which a system of mutual obligation operated between the landowners and the peasantry that worked the land.

A person was part of a community by accident of birth and enjoyed an invariable social status within that community upon the same basis of fortune. Work within the community was a member's obligation and not a matter of individual choice. It was both a designation and an outcome of social status. Indeed, our conception of the separateness of individuals from their immediate community as regards freedom of choice and activity, would have been a difficult one for our forebears to grasp. Instead, the society operated in a system of interlocking mutual obligations of service and duty that formed the moral and economic basis for the community's existence. In other words, work was performed for the community's benefit rather than for the individual's advancement. In twelfth century England this system of villeinage allowed villeins, or serfs, to render service to the land's lord in exchange for the right to work a portion of the lord's land. For this tithe of work the land's lord was obligated to provide security, justice and leadership. Work was not performed for pay or other consideration that contributed to the betterment or interest of the individual but rather, for the support and betterment of the community. This arrangement was not one of individual choice, and such obligations resulting from birth remained until death.

The enforcement of such obligations to the community were justified in much the same way as modern Australia justifies its restriction of individual freedom of action i.e. an individual must not be allowed to harm the community through his or her actions. In English medieval society therefore, serfs were limited in their ability to alter their social status, exercise any freedom of movement or control their work activity both because of the perceived necessity of their role and because of their moral duty to perform it. Pre-modern social theory aside however, it is clear that this social arrangement gave virtual ownership of the villein to the land's lord.

“The villein was very much under the control of the lord, who could recapture him if he ran away and compel him to observe the obligations which attached to him by reason of his tenure of the lord’s land.”

(Macken, et al, 2002)

This presented model of work in medieval society is a cartoon in the sense that it intentionally exaggerates a particular social form regarding work. There also existed, in this medieval context, a different model for the work relationship and, by the mid fourteenth century the system of social, political and economic relationships around work had already begun a transition in the direction of another form of work relationship; the master and servant. By the time of the Black Plague in 1348 labourers had for some time been freeing themselves of the duties and obligations of villeinage through the payment of monies or use of piece labourers in lieu of personal labour or service. The relationship of master to servant represented a variation upon the general serf-lord arrangement in the sense that it was a specific form of this arrangement. Whilst it can be said that the serf was in effect the lord’s servant, his relevance was primarily as a component of the communal fabric and socio-economic system. Personal servitude however, represented a relationship to work that differed somewhat from this general arrangement.

In many ways it ran parallel to the serf-lord model in that no pay was provided and the master had obligations to protect the servant but it differed in two important ways from the serf lord relationship. Firstly, the primary object of servant loyalty was to the individual master, rather than to the community, and secondly, it was the master’s personal interests, rather than the community’s that the servant served. This relationship of master and servant was embodied in the Common Law of the time that has been handed down to modern Anglo nation states. It clearly outlines the relationship as one in which the servant is morally and legally obliged in work to further the interests of the master.

Further, it clearly delineates the relationship as one of servitude which carries with it a subordinate social status in which furtherance of and, obedience to, the master's wishes and interests are enshrined. In the period since medieval times it is this work relationship that has become the dominant form in western, industrialised society.

The employment relationship's conditions and structure has always been closely tied to the economic interests of the community in which it occurs. This was never more so it seems, than in the medieval and post-medieval period to the early nineteenth century during which time the employment relationship was clearly administered for the control and coercion of those who provided labour. The advent of the Black Plague in 1348 hastened the demise of the villeinage system in England by removing somewhere between a third and a half of all available workers and it from this period onwards that the modern employment relationship began its development. The direct result of the calamity of the plague was a significant rise in labouring wages as landowners competed with each other for an inadequate supply of increasingly independent labour thus, increasing individual freedom from the ties of villeinage. Combined with a dearth of labour availability this meant that control of the work process passed for a time to those supplying labour.

Employment was in danger of becoming an institution in which agreement as to work content and remuneration was central. In a period in which social authority was vested exclusively in the hands of an elite, landowning class this represented a threat to the economy in general and the wellbeing of the elite in particular. Their response to this situation was to take back control by enacting national legislation in the form of the Ordinance and Statute of Labourers between the years 1349-1351. Its intent seems clear i.e. to control the ability of labourers to choose who they worked for, where they worked and at what wages. Significantly, it also removed from individuals the choice of whether to work or not.

It specifically required that anyone under the age of sixty was required to work (upon pain of imprisonment) at wages that were set at pre-plague levels. The effect of this legislation was to return the labourer to most of the conditions of villeinage, a process mostly completed by the amendments of 1388 which prohibited labourers from leaving their work locale before the end of their service without express written permission by their employer and compelling them to participate in the corn harvest.

The Statute of Artificers (1562) maintained this process of control and coercion by bringing up to date the provisions of the Statute of Labourers of two hundred years earlier. The actual setting of wages had been allocated to the landowners (in their role of justices of the peace) a responsibility that they had failed to live up to with the result that wages were so low as to cause hardship to the labourers that was unconscionable for even the sensibilities of that period. Not that the legislation that followed the Black Death was wholly to blame for the condition of the poor. The dispossession of the peasantry from their traditional access and use of common land for subsistence farming and grazing, brought about by enclosure and forcible confiscation by landowners during the sixteenth century onwards, is also a cause.

Such rural dispossession had the effect of rendering the peasantry completely dependent upon employed work whilst also lowering their standard of living drastically.

The statute mandated a one year hiring period, again exempted those with economic means, compelled all between twelve and sixty to work at wages mandated by law, imposed penalties for not fulfilling the full term and limited mobility outside of the immediate area by the need to have permission from a previous master or the local authorities (Linder, 1989). The provisions of this act were in place until the early nineteenth century.

In fact however, the intent and terms of the statutes were not completely successful in creating an army of immobilised workers in involuntary servitude. During the Stuart-Tudor period the increased population and enclosures had in fact created a situation in which large numbers of people moved around the countryside quite freely.

“Beneath the surface stability of rural England, then, the vast placid open fields which catch the eye, was the seething mobility of forest squatters, itinerant craftsmen and building labourers, unemployed men and women seeking work, strolling players, minstrels and jugglers, pedlars and quack doctors, gipsies, vagabonds, tramps: congregated especially in London and the big cities, but also in footholds wherever newly-squatted areas escaped from the machinery of the parish or in old-squatted areas where labour was in demand.” (Bush, 1993)

The ability of public legislation to exercise complete coercive control upon labour in terms of mobility, wages and conditions of employment was further reduced by the economic exigencies of the gradual industrialisation of England. Such industrialisation by the early nineteenth century occasioned significant social changes with the change from agricultural to an industrial economy.

Such changes meant that the towns were the centres of work and the labouring population tended to be urban rather than rural. And significant changes in the status and social integration of the labourer had also occurred. Here was the development of an employment relationship that placed the labourer outside of the community in which he worked in the sense that there was no communal constraint of belonging, loyalty and status.

This was in contrast to the medieval system where work and social activities were largely integrated and, some form of mutual commitment was understood. Now the worker had become independent of community ties, loyalty and status, outside of the arena of work.

These changes brought two particular problems to the regulation and exercise of employment. Firstly, the bonds that tied workers to the employer and the work did not generally extend beyond the wages expected.

Secondly, the effective social and disciplinary control that the medieval villeinage system had afforded was gone forever and public legislation was providing no substitute as industrialisation undermined its moral and judicial force.

“Neither the feudal system nor the guild system gave the courts any experience in regulating the type of relationship that developed as a result of the Industrial Revolution in England.” (Macken, et al, 2002. page 5)

Some aspects of the workforce regulation continued in the form of public legislation, notably the various anti-combination laws that were not repealed until 1824 and the various Poor Laws that controlled vagrancy and provided succour to the unemployed and destitute. However, the employment relationship had come increasingly to be regarded as contractual in nature and was therefore administered in the arena of the law of private contract.

A significant change had occurred in the way the worker was viewed since the fourteenth century when work was an obligation that arose out of social status.

Now, work was a consequence of a contract between private individuals.

However, whilst the law recognised contract law in various areas of commerce they did not contain within them the concept of 'service'. Something inherent in the nature of the employment relationship was missing from this area of private law. This was resolved by deeming the contract of work to be a contract to enter into a relationship of master and servant, or one of service - relationship that has its roots in the customs and tradition of medieval, common law.

The consigning of the employment relationship to the rules of the master and servant relationship ensured that the emerging relationship was subject to the discipline and servility that had traditionally been the lot of servants.

PRIVATE PROPERTY

Modern capitalist systems of economic distribution have four defining features. Firstly, there is private ownership of the means of production (by which is meant the expertise, technology, buildings, finance). Secondly, the economic system operates as a 'free market' within which firms (theoretically) freely compete with minimal regulation or interference by government. Thirdly, work is performed by employees who enter into a master-servant relationship with the employing organisation. Fourthly, the economic activity and relationships that occur within such capitalist systems are considered to be outside of the public domain.

Within the marketplace the ownership of capital, and therefore the ownership of the means of production, is held as private property. An individual may own a firm or, a group of individuals may own a firm through shared ownership. Their ownership of the firm is endowed on them by their ownership of the 'capital' required to operate that firm. The organisations that operate within this system employ workers who, as we have seen above, enter through contract, a relationship of master and servant.

Three of these four features of the capitalist economy (private property, the public-private divide and the master and servant relationship to employment) define the context of employment.

There has long been criticism of this system in terms of economic distributive justice and the restriction of individual democratic rights for employees in the fields of Industrial Democracy, Industrial Relations, Political Science and Ethics. (Sewell & Wilkinson, 1992; Sinclair, 1993; Tannenbaum, 1951; Winstanley, 1973; Webb, 1902)

In particular, the subordination of employees to unelected authority and the restriction of normal civil rights in the employee relationship fall short of the ideals of participative and/or representative democracy that are commonly accepted as desirable within industrialised, western societies. (Stohl & Cheney, 2001, Yates et al, 2001, Ruskin, 1986; Pateman, 1974, 1975; Werhane, 1985; Werhane et al, 2004)

Therefore it seems meet to identify and consider the grounds upon which the nature and structure of the employment relationship is morally justified. As noted above, the employment relationship within the capitalist system is based upon three foundations; The rights that attach to private property, the separation of private matters from public control and the necessity for a master and servant relationship in order that such private property rights are protected.

The concept of private property is well established in our society and we have commonly held ideas about the rights of people to dispose of their property as they see fit and to control and/or restrict others from affecting it - including those who work upon it.

“First, property is one of the bases of free enterprise. That we have rights to buy, sell, trade, and inherit property allows the accumulation, development, sale and transfer of capital, stock, and properties necessary to build industries, create capital markets and, trade.”

(Werhane, Radin et al, 2004. page 14)

The owner of an automobile has the right to instruct the mechanic regarding what work may, or may not, be done.

The rights over one's property can take a negative or a positive character¹³. Justification for this right to hold and control private property has, as a usual starting point, the invoking of the theorising of John Locke who

¹³ Preventing others from affecting your property is a negative right whilst telling others what to do is a positive right.

proposes that everyone has an inalienable right to the results of their own labour.

“..every man has a property in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his.

Whatsoever then he removes out of the state that nature has provided and left it in, he has mixed his labour with, and joined to it something that is his own, and thereby makes it his own property.” (Locke J.)¹⁴

The foundation for this proposition of inalienable property rights over goods and self was the seventeenth century political theory of ‘possessive individualism’ that conceived of equal, rational and essentially autonomous individuals entering into agreements with each other as the means of carrying out social, political and economic activities. Since individuals have ownership of their own property they may dispose of it as they will. Their disposition of their own property is their own private business. Ownership and disposition of capital, expertise and machinery for the production of goods is likewise an exercise of this private property principle. One man may own such property or several men may own such property through the device of shares in the property – the important point is that such shares are held privately as property making them private property.

Similarly, Locke saw an individual’s labour as being his own private property to dispose of he wished.

To Locke a man’s labour is so unquestionably his own property that he may freely sell it for wages.

¹⁴ Locke J.; ‘Second Treatise of Government’. Quoted in Steinfeld R.; ‘The Invention of Free Labour’, 1991. page 80.

A freeman may sell to another

“for a certain time, the Service he undertakes to do, in exchange for Wages he is to receive” [Locke, section 85]. The labour thus sold becomes the property of the buyer, who is then entitled to appropriate the produce of that labour.” (Macpherson, 1962. page 215)

Locke's arguments might be seen as the theoretical basis for the notions of liberal democracy upon which our present political systems are based since it allows us to flesh out his arguments to encompass many forms of social relating. Since natural (or God's law) is inviolable individuals may claim both freedom from interference by others and the means of living a fully human life. Since the law is by nature universal, it places all in a state of equality in which others rights must be respected. Furthermore, the rights to ensure equal liberty and political participation follow on from the basic premise. The Lockean concept of property states that one's property is for one's own private use, which may be enjoyed in private without outside interference. This exclusionary right is the basis behind the idea of trespass. The concept of private property extends to ownership of oneself similarly, one may enjoy or dispose of such property as one wishes. It is a private matter.

This brief review then, provides the classic justifications for the private property basis of the capitalist system within which the employment relationship is posited. It is a matter of the inalienable right of all to self-ownership and personal property. Further, or alternate justification, may be found in the competing proposals of first occupation of ownerless property or as a result of a social contract. In fact these arguments have often been used together to justify ownership of property.

For example, the colonisation of Africa and Australia was initially justified by the right of first occupation - native inhabitants being considered not fully human or at least not civilised enough to warrant prior ownership. This occupation was then defended by invoking the rights to personal property and further endorsed through the social institution of law.

THE PUBLIC-PRIVATE DIVIDE

Where the means of production (finance, expertise equipment etc) are owned privately they are held as private property. Thus, their ownership through organisations, either in total or through share(ed) ownership, is an example of the ownership of private property by individuals.

In western, liberal democracies the corporation is also considered (although it is acknowledged as a legal fiction) to be a 'person' with all the attendant rights that are attached to personhood e.g. to own property and enter into contracts. Because of this status the activity of a corporation represents the management and disposition of private property. This also designates corporate economic activity to the private sphere through property ownership (Pateman, 1975. Rhenman, 1968. Arendt, 1965). Thus, owners of private property manage their own private property (in the manner of a citizen managing his house or estate) in the person of the corporation. The owner of a house property may direct and control the work done upon it without let or hindrance from others since it is his property to enjoy and dispose of as he pleases. In the same way, the owners of production property may direct and control the work in production as an example of the rights and freedoms attached to private property ownership. Work done upon the property (i.e. production property) is engaged upon against the background of property rights and the interests of ownership. Logically therefore, work as employment is a private matter between the owner and another in which the rights and freedoms of property ownership are the predominant values.

This means that employed work is work entered into with the objective of realising the intents and wishes of the property owner. Such a relationship subordinates the interests of one party to the other and is one of service.

Employee relationships to work are thus contained by the master-servant relationship that is predicated upon an assumption of superiority/subordination between the parties in terms of rights and preferred interests. This places employed work within the realm of private contractual arrangements and the master servant relationship.

This approach to employed work reflects the econo-political division within western liberal democracies referred to as the public and the private realms (Rhenman, 1968. Arendt, 1965).

This separation of social life into a public realm of government institutions, laws and democratic relationships and a private realm of property and personal freedom outside of governmental purview is central to our concept of western, liberal economics and politics. The government has no place in our bedrooms, gardens and other areas of our private life – assuming that we do not encroach upon the privacy and rights of others or threaten the public good in these activities.

“We consistently take for granted that there is a both a public realm and a private realm. In the private realm we assume that we operate within a protected sphere of autonomy, free to make self-willed individual choices and to feel secure against the encroachment of others.....In contrast, the public realm is a world of government institutions, obliged to serve the public interest rather than private aims. For the most part the public realm is accountable to the private and obligated to limit its intrusion into the world of private choice.”
(Freeman & Mensch, 1987. page 237)

This separation as enunciated, for example, by Locke and Mill was originally intended to protect the individual from the powers of the state at a time when nation states extended their involvement in social and economic activity.

It was an argument to preserve the autonomy of the individual and to protect his property from the intrusion of government (Werhane, Radin et al, 2004).

The actual practice of such control over property (including the labour of employees) is problematic since it relates to issues of distinction between work and labour, instrumentality and motivation, socio-psychological needs of self-fulfilment and the ethicality of the relationship between the employee and the organisation. Thus, the employment relationship is an enacted in an essentially political process. Such a perspective follows the analysis of several writers in the field of Industrial Relations (Salamon, 1992; Keenoy & Kelly, 1998; Bratton & Gold, 1999).

Keenoy & Kelly characterise the conflict as being centred around struggles over interests, control and motivation;

- “-most of us want more money for the work we do
- most of us resist being ordered around and controlled at work
- most of us perform work which is essentially unsatisfying and places few demands on our abilities” (1998, p.64)

They see the tension over interests or money as a result of what is an essentially market relationship in which one party seeks to obtain the maximum return whilst the other seeks to minimise costs. The second tension over control is due to the essential vagueness of the employment contract with regards to how the work is to be done and at what pace.

This includes pace of work and exact job duties, which leads to the opportunity for differential interpretations of what is expected or reasonable by either party. The principle resource of management in this regard is the authority posited within the hierarchy of the organisation, which contains a variety of controls and mechanisms.

“It means that, in addition to being a market relation, the employment relationship involves superior-subordinate authority relations. ...employees do not always recognise or accept that the employer can do as he or she likes. They challenge and argue about the limits of such managerial authority.” (Keenoy & Kelly, 1998)

The third tension emanates from the instrumentality of the employment bargain. With the need to reduce costs and consequent de-skilling of employees due to the division of labour, they identify a lack of satisfying work and the alienation of the employees as demotivating. A similar conclusion is reached by Etzioni regarding the inherent conflict within the employee relationship.

“Nowhere is the strain between the organization’s needs and the participant’s needs – between effectiveness, efficiency and satisfaction – more evident than in the area of organisational control.” (Etzioni, 1964.p.58)

Fox echoes this intrinsic conflict by noting that;

“...the emphasis brought to bear upon work design...is an emphasis upon the practical outcome of work, as against the value of the work experience itself for those who do it.” (Fox, 1980. P.141)

This tension originates in the inability of the authority system to ensure the necessary co-ordination and co-operation of the workforce in meeting organisational objectives (Salamon, 1992; Anthony, 1977; Thompson, 1989).

In surrendering the actual performance of work to the employee, management seeks for the employee to exercise discretion in the interests of the organisation and not himself.

Clearly therefore, organisations find themselves in the position of trying to control employees inasmuch as it requires them to act and make choices in a way that they would not ordinarily choose to. In other words management requires employees to internalise organisational imperatives of economic rationality and subordination to systems and hierarchical authority (Fox, 1971; Nichols, 1980).

As noted above, the employment relationship is one of structural conflict over issues of economics, control and motivation and, whilst management has consistently sought to manage these conflicts through the use of ideologies, employees have sought to engage in the politics of this conflict.

Thus, the performance of employed work might be characterised as an ongoing struggle in which the contest is one for the dominant paradigm around which the work relationship is centered. Circumstances of economics, social and legal conditions all have their part to play in providing temporary, or apparent, leverage to the parties in this struggle which often centres around the relative dependency of the parties and the ability of one, or the other, to successfully apply sanctions.

Management has at its disposal an array of resources that Etzioni (1964) characterises as physical, remunerative and normative. Resources that closely correlate with the notions of hierarchical power, reward systems and the allocation of status and esteem in the workplace. Conversely, employees have the value of their labour or knowledge and the bargaining power of withdrawal.

Given the systemic nature of conflict within the employee relationship the manner in which that conflict is played out will, of its nature, be political.

'Political' in the sense that whatever influence, leverage and power that is available to the parties will be used whenever possible to gain ascendance and/or advantage with regard to the issues contested. In this sense the power exercised is relational.

"They [employees] have leverage to realise some of their own ends, even when these conflict with those of the master. Employees are not passive, even if they are not formally or informally organised to resist authority; they can contest authority and, to a minor degree, shape the premises of superiors and, to a still more minor degree, affect organisational goals." (Perrow, 1986. p.200)

And, as Robbins argues, politics is an integral aspect of relational activities in organisations;

"Politics in organisations is simply a fact of life. Those who fail to acknowledge political behaviour ignore the reality that organisations are political systems." (Robbins, 1991.p.415)

Clearly, an organisation that seeks to persuade its employees to work towards objectives which are not shared by them must find a means of motivating them. Shaping the attitudes and behaviour of employees has been addressed by the employer seeking to control the meanings that are attached to work.

"Dominant groups or classes, are likely to agree therefore, on what general approach to work should be encouraged, fostered and promoted among the members of society, for it is plainly to their advantage that this should match the general approach they embody in their construction and administration of work arrangements." (Fox, 1980. P.143)

The moral context in which work is performed is subject to manipulation by other interested parties such as; governments, trade and professional associations, political parties and those involved in management research and education (Nichols, 1980). Additional influence is discernible from the public statements of trade unions and in the context of industrial agreements insofar as they relate to the manner in which management and employees relate and, to the concepts of rights, justice and due process contained within the terms and clauses of those agreements.

As noted above, such ideologies of work were and are, intended to bring about changes in employee work values that better suit organisational requirements e.g. time-keeping, subordination, co-operation. Pollard (1965) supports this view by arguing that an ideology was needed in 19 century Britain which could justify conditions of work and provide reasons for work in order to motivate the employee to work enthusiastically.

Child (1969) recognises this need for authority legitimisation by differentiating between the technical and legitimacy functions of management; with the latter primarily concerned with securing recognition and acceptance of managerial authority. These moral appeals to the employee are exemplified for example, in the past the protestant work ethic (Weber, 1967) and its adaptation to promote 'morally uplifting' (Smiles, 1908).

Thus, in its attempts to make real the requirements embodied in the master and servant relationship (of subordination, diligence, service, duty, loyalty and faithfulness) employers have promulgated ideologies of work that potentially influence the social, psychological and moral meanings that employees attach to work.

Ideologies of work, then;

“...are attempts by bodies of enterprises to justify the privileges of voluntary action and association for themselves, while imposing upon subordinates the duties of obedience and obligation to serve their employers to the best of their ability.” (Bendix, 1956, quoted in Anthony 1977. P.2)

Ideologies of work promulgated by employers clearly have two intended functions; firstly, to elicit the moral acquiescence of the employee and secondly, to legitimise, defend or disguise the authority of management. Organisations might be characterised then, as being driven by rational/efficiency imperatives, relying on work designs (which reflect these values) and seeking the support of work ideologies that legitimise their authority and provide a source of employee motivation i.e. give reality to the master and servant relationship.

This pursuit of control over employees through control and assumed ownership of the ‘morality of work’ discourse, has contemporarily reached a point of organisational sophistication with the advent of Human Resource Management (HRM). Characteristic of the HRM approach is the imposition of employer value systems that are intended as a replacement for the more overt methods of coercion and control (Legge, 1966. Sinclair, 1993). The emergence of the HRM approach to managing the employment relationship . Its methods it can be argued, constitute a direct attempt to control the subjective moral construction of work values by employees through a control of ‘meaning’ in the work milieu. Thus, by organising the work relationship around the rational efficiency imperatives of flexibility, quality and commitment, HRM places the management of employees within an ideological context. HRM can be seen then, as the most current form of ideology utilised by management in its ongoing struggle for the control and motivation of the workforce.

Indeed, with its emphasis upon organisational objectives of rational efficiency it might be argued to be but the most recent formulation of Taylorism and Fordism. Bratton and Gold define HRM as:

“That part of the management process that specialises in the management of people in work organisations. HRM emphasises that employees are critical to achieving sustainable competitive advantage, that human resources practices need to be integrated with the corporate strategy, and that human resource specialists help organisational controllers to meet both efficiency and equity objectives.” (Bratton & Gold, 1999. P.11)

Essentially, this definition outlines the need to control employee activities and maximise (through motivation) their contribution to achieving corporate objectives.

The emergence of HRM is usually explained in terms of a confluence of social, economic, political and legislative factors that came about in the late 1970's and early 1980's – an influence reinforced by the globalisation process of the 1990's. The rising competitiveness of Japanese firms, the resultant western recessions and the globalisation of labour and finance markets forced both corporations and governments to re-assess their orientation to the management of work (Goss, 1994. Keenoy & Kelly, 1998). Such re-assessment in the face of recession usually took the form of attempting to find ways of improving competitiveness through leaner and fitter organisations. This was alongside a particular interest in the work methods of the Japanese competition, which seemed to regard the management of people as a central strategic issue and, competitive advantage was seen as requiring a flexible, committed and quality conscious workforce (Goss, 1994).¹⁵

¹⁵ Another significant factor illustrating the political nature of HRM is the political milieu of the 1980's. Thatcherism and Reaganism (with their belief in the freedom of the market

The HRM approach addresses the issues of control and motivation by seeking to create a situation in which employees become self-governing and self-motivated. This is achieved through the internalisation of organisational goals by those employed to pursue them (Anthony, 1977). This internalisation is sought through an attempt to manage culture within the organisation and through the alignment of systems of reward and control with the promulgation of organisational values.

“Systems of reward, selection, appraisal, structures, physical spaces, rituals and ceremonies, should all be designed to reinforce organisational values and norms.” (Sinclair, 1993.p.66).

To a greater or lesser extent, this involves the exchanging of a private identity for one provided by the organisation and the attachment of one's decision-making prerogative to a greater power. (Kanter cited in Johnson & Gill 1993) And, as Johnson and Gill point out, this;

“..draws our attention to the processes that can disengage the individual from prior social and ideological attachments by re-directing his or her beliefs and norms towards those predominate in any organisational context-whatever those might be.” (Johnson & Gill, 1993.p.36)

In terms of Guest's exposition of theory the logic of HRM runs as follows;

The integration of employee activity with the organisation's strategic objectives require the internalisation of values of flexibility, commitment and quality by employees. Careful selection and training ensure consistent exhibition of these values in work activity. Commitment to the organisation is seen to be of central importance because it engenders high motivation, which ensures high performance.

and rights of corporations) combined to bring a level of self-confidence to managers that found them asserting a strong 'right to manage' stance. (Goss, 1994)

Such commitment encourages autonomous control removing the need for supervision and such 'mutuality' between employee and employer obviates the need for trade union representation.

The purpose of this review of HRM has been to show that its promotion of managerial values in the employment relationship is representative of an ideological approach. This it achieves by individualising the relationship (thus denying the inherent conflict) and managing the 'meaning' of work through attempting the control of cultural artifacts.

Thus, the exercise of control over property within the employing organisation is characterised by hierarchies of authority that exercise these ownership rights over employees. Every employee is subject to this hierarchy since it is the embodiment of the right to obedience that the master has from a servant.

However, the contract does not mandate the commitment, compliance, co-operation and motivation of the employee - only what work must be done. Given the differing social circumstances of the two parties and their reasons for entering into the contract there is a necessary divergence in their interests. This provides the underlying justification for the importation of the master and servant relationship into the employment relationship i.e. it goes to the manner in which the work is performed and the moral relationship between the parties. The master and servant relationship inherent in the contract of employment expressly provides the owner/employer with rights to obedience, good faith and diligent performance. It goes beyond what must be done and addresses the manner in which it must be done. Thus, if the contract of employment is concerned with what, how and when work is done and, with the remuneration paid - then the master and servant relationship is concerned with the social, psychological and moral relationship that exists between employer and employee.

Put another way; the contract is an agreement to perform specific work at an agreed wage, time and place that does not address the commitment, compliance, co-operation and motivation of the employee.

These attitudes and their resulting behaviour are addressed by the master and servant relationship that mandates a psychological and moral relationship of subordination, duty and loyalty. The master and servant relationship therefore requires an employee to make of himself a self-less instrument in the furtherance of the employer's interests. To say the least this is problematic for both parties. Problematic, in that it is difficult to require (against an individual's wishes and beliefs) that an individual be motivated or that he places your interests above his own. This problem is referred to as the 'three great struggles' by Keenoy & Kelly (1998) i.e. the struggles over interests, control and motivation in the workplace.

The social, political and economic context in which this struggle has been played out over the years since industrialisation has obviously been a changing one – as have the strategies employed by the two parties. However, it seems clear that in the struggle for control and motivation of employees, the use of the master and servant relationship as a means of defining the moral the character of employment has been a necessary element in ensuring that the interests of the employer remain the dominant ones.

THE MASTER AND SERVANT RELATIONSHIP

With regard to employed work, the effect of this public-private distinction in the affairs of its citizens, has been to place employment within the private realm of personal property and the autonomy of its owners. Thus, private employment is an agreement (in the form of a contract) between free, rational adults regarding private property – the means of production and the labour of the worker. This places it substantially outside of public conventions and arrangements regarding public citizenship duties, rights and freedoms.

“The separation of the ‘political’ and political concepts and practices, from everyday life enables theorists to identify liberal democratic voting and consent, and, at the same time (and with no sense of incongruity), allows them to regard as illegitimate the question whether obligation in other social institutions should not also be constituted through voting.” (Pateman, 1979. page 132)

Rather, employees are governed by the terms of their employment contract (under the auspices of the private law of contract) and the implied terms of a master and servant relationship. The terms of this contract confer a status of servant upon the employee in which the exercise of rights and freedoms, such as privacy, speech and movement, are considered trespasses against the property rights of the employer.

Outside of specific legislation regarding employment, the nature of the master and servant relationship is one of implied duties and rights that underline its servile character. However, the basic relationship of service and obedience inherent in the master and servant relationship remains the legal basis of the employment relationship today. The legal interpretation of its implications remains unchanged from the late nineteenth century to modern times.

Thus, in 1886 Lord Esher observes;

“Where a person has entered into the position of servant, if he does anything incompatible with the due and faithful discharge of his duty to his master, the latter has the right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully....”¹⁶

Whilst in 1964, Lord Reid observations provide much the same interpretation;

“The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for specific reason or for none.”¹⁷

In both cases the law lords are considering the relationship existing between employee and employer.

The Australia experience since colonisation follows a similar pattern with the emergence of contract as the vehicle for entering into a relationship of servant to a master. A relationship primarily of service with attendant legal implications of duties, rights, loyalty and obligations. Various Master and Servant Acts were passed in the various Australian colonies, as in England, that provided specific regulation of this contract as to discipline, terms and remuneration.

¹⁶ *Pearce v Foster* (1886) 17 QBD 536. Quoted in Brooks B.; ‘Contract of Employment: Principles of Australian Employment Law’, 1992.

¹⁷ *Ridge v Baldwin* (1964) AC 40. Quoted in Brooks B.; ‘Contract of Employment: Principles of Australian Employment Law’, 1992.

The concepts of personal freedom and private property rights endow the owner of property with a right to determine what may happen to his property and, what may not. This means that a right of control and non-interference exists with regard to the disposition of this property.

In the context of employing workers to engage with that property, the owner must exercise and retain control of the worker in order to enjoy these rights of property. The abrogation of these requirements entitles the employer to cease the contractual arrangement. This provides security to the employer/owner with regard to control over his property.

SUMMARY

By looking at the employment relationship historically in England since industrialisation, the employment can be seen to have developed from the interplay of common law (giving us the master servant relationship), the individualist political ideas of the enlightenment (such as equality, freedom) that were used to justify private property, the private domain of economic relations and, the implementation of statutes over time that modified these factors. Thus the employment relationship, it is argued, is based upon;- private property, the employment contract, the common law conception of master and servant and the commonly accepted separation of social relations into public and private spheres.

Several other conclusions can be made from this analysis. The decline of serfdom brought about a situation in which work ceased to be a communal obligation and became instead an individual arrangement. As a result of this, work was now deemed to be by contractual arrangement and therefore a matter of individual choice-even though the choice of whether to work or not was withheld until relatively recently. Thus, labour came to be the property of the individual rather than the community. However, it was noted that the social status of those who performed work in pre-industrial society (i.e. dependence) was retained as the defining element of employment after the onset of industrialisation. This was achieved through the retention of the common law status of 'master and servant' as the relational basis for employment. It was also noted that the master and servant and contractual terms of employment were also affected by legislation.

Still central are the central roles of private property, contract, the master and servant relationship and the accompanying notions of individualism and the public/private spheres.

However, the manner in which the employment relationship is enacted demonstrates that it is a 'political' relationship in which struggles over power and autonomy are more defining of its reality than the subordination and loyalty to corporate interests that are inherent in the master and servant relationship. This indicates that, at least on the employee's part, the moral relationship of master and servant is neither accepted nor enacted.

From these defining characteristics of the early employment relationship we have a model that is essentially unchanged with regards to the employment relationship that we find in the United Kingdom and Australia today.

Inadequate though this brief review of employment history is, in terms of the delineation and discussion of social, economic and political movements over the six hundred year period, it does allow for some important though broad generalised conclusions to be made.

Firstly, work in medieval times was not employment in the sense that we understand it today or have done for several hundred years. For the medieval serf, work was something that was attached to one's status in society. In a community of reciprocal rights and obligations, every fixed status had its attendant rights and obligations. Work was the contribution that the serf made to the community's well being just as responsibility for the community's security was that of the lord. Each man's work was indivisible, in this sense, from the others.

The sweeping away of the system of villeinage and its replacement by statute's governing employment with their attendant punishments meant that each man's employment was a matter, not of his obligations of community membership with its social control systems but, of individual

agreements of set terms. Thus, employment moves from one of social status to one of contract.

This process was a gradual one that took place in the five hundred year period following the Black Death in the fourteenth century - the process being accelerated by the urbanisation and mobility resulting from the industrialisation of England. The development of the employment relationship as an extension of the common law and the law of contract is generally believed to have consolidated itself in the nineteenth century, both in England and Australia.

Secondly, the governance of the employment relationship moved from primarily public law, as in the Statutes of Labourers and later the Statute of Artificers, to the private law i.e. the law of contracts.

Thirdly, whilst the agreement between employer and employee regarding work was considered to be a contractual one, the social relationship within which this work was to be conducted was considered to be that of master and servant.

“The courts had developed a large body of rules.....and those common law principles were readily adapted to govern the relationship of master and servant then emerging, or employer and employee, as it is now more commonly known.” (Macken, et al, 2002. page 6)

Fourthly, the terms of the contract and their enforcement were the subject of public legislation as in the various master and servant laws passed in England and Australia during the nineteenth century.

Common law is created by judges in their interpretation of contract law with regard to customs and traditions. However the inherent inequality that common law posits by the master and servant relationship has, from

time to time, been mollified by statutes that limit the terms and application of the employment contract.

Thus, the modern employment relationship is neither contractual, nor common law nor legislated – it is instead an amalgam of these.

It might be described in this manner;- Employment is a contract between individuals regarding work, remuneration and conditions. Entering into a contract of work places the parties in a service relationship of servant and master with its implied common law rights and duties. The terms and conditions of the contract are subject to legislative enhancements and/or restrictions.

Work might now be seen as a matter of contract subject to the development of contract law and contemporary legislation. But, this contract will always (by definition) contain the implied rights, duties and obligations implied by the master and servant relationship. Contracts for work that expressly exclude, modify or resist the inherent rights, duties and obligations of the master and servant relationship are deemed not to be contracts of employment but rather, another form of relationship e.g. a contract for services.

Thus, the arrangement of work is contractual but, the relationship within which that work is conducted is that of servant to master.

“It is possible indeed to view the so-called ‘implied term’ not as a term of the contract of employment but rather as a result of the creation of a master-servant relationship which, while it is entered into by contract, ripens into a status relationship with a consequent bundle of rights and duties reposing on the employer and the employee.” (Brooks, 1992. page 45)

The implied terms of the contract of employment resulting from that relationship are understandably to do with the character of an obedient and diligent servant providing service to a master viz;

“Thus, it is implied by law that the worker will provide the service personally, will obey orders, will display due competence and care in the discharge of tasks and will perform his or her function in good faith.” (Brooks, 1992. page 45)

Because the work done by employees is entered in to by contract it is reasonable to talk of a ‘contract of employment’. But, to regard the employment relationship as entirely contractual is blinkered given the moral tenor of the master and servant status that is inherent (by legal assumption) in every employment relationship. This relationship returns to employment something of the social status found in the medieval villeins’ relationship to work.

CHAPTER 3: EMPLOYMENT AND PROPERTY

AIM

Chapter 2 identified the commonly accepted moral foundations of the employment relationship. These are;- private property, the employment contract, the master and servant relationship and the public/private schism in social relations. Briefly, the private ownership of a corporation places it outside of the public realm since it is private property. The freedom to dispose and manage one's private property without interference from the state or others is in turn the justification for the master-servant relationship through which the employment contract is interpreted. Thus, each is a cornerstone of the employment relationships' essential character. The employment contract is a legal aspect of economic activity that, because it is concerned with the disposition of private property, is considered to be a private act that takes place outside of the public sphere. The employment relationship itself is also bound by the moral rights that attend private property in that it is bounded by the common law master-servant relationship.

The aim of this chapter, and the following two chapters, is to examine the arguments that may be used to legitimise these moral foundations. This chapter examines the public/private schism and private property whilst chapter 4 examines the employment contract and the master and servant relationship. Chapter 5 examines organisational authority, its legitimation and the prevalence of democracy within private, employing organisations.

LIBERAL THEORY AND THE PUBLIC-PRIVATE DIVIDE

Our societies and its institutions are in many ways the product of the ideas that emanated from the Enlightenment – ideas that we generally refer to as ‘liberal’. These ideas and beliefs are familiar to us as common parlance in our everyday relations.

They are, for example; equality, individual freedom, due process, individual rights and others that we reference when speaking of liberal democracy. These ideas and values seem in many ways to form the foundation upon which society, and its institutions, are formed. Certainly, when issues are debated publicly and privately, these are the ideas and values that are referenced when determining the moral issues at hand.

The question of the employment relationship is no different from any other issue that might be debated in that its characteristic cornerstones of private property, contract, and the master-servant relationship are all justified in terms of these same liberal values. Indeed, the question of economic relations in general is conducted in just these terms.

“...the antagonists of left and right and north and south have all concurred in treating economic relations as normative structures playing a key role in the constitution of a just society.” (Winfield, 1988. page 1)

For example, the debate between landed aristocracy, Winstanley and the Diggers was about what was morally right and just and, the dialogue amongst Communists, Socialists and Social Democrats has been about how the economy might be organised to produce a just society. Current debates centre round the ability of free trade and globalised economies to enhance the wellbeing of the world’s citizens.

When it comes to questions of how the economy is to be organised and how workers should relate to the organisations within which they work, these same liberal values are brought into play by both sides of the economic democracy debate. It seems reasonable therefore to examine the characteristic features of the employment relationship in terms of the same liberal values that are used to provide its justification.

Central to such an analysis is the issue of property, specifically private property. Indeed, it is central to a consideration of employment since economic activity is conducted in a private realm, rather than the public. It is considered to be a private matter since it involves the disposition of private property. Since economic activity concerns private property, the rights of ownership dictate that the master-servant relationship is the appropriate relationship for employment since a person may not dispose of another's property except as directed by that person. The employment contract may have written into it clauses that usurp or weaken these ownership rights, therefore the employment contract is interpreted within the moral and practical confines of the master-servant relationship by manager and courts alike.

The significance of placing employment within the private realm is that it entitles the holders of this private property to privacy with regard to organisational activities in the same way that an individual may claim privacy for his activities at home and/or with other individuals. This econo-political division within western liberal democracies is referred to as the public -private schism. (Rhenman, 1968. Arendt, 1965)

“....a separation of social life into two ‘autonomous’ spheres, the political or public and the private.” (Pateman, 1975)

The public realm relates to social institutions of governance and communal interest whilst the private realm relates to the private activities of individuals.

The logical basis for this division is derived from the principle that individuals have a right to enjoy private property without interference from the state. Since organisations enjoy the legal status of individuals then, so the argument runs, they have a right to operate privately without the interference of the public realm. The significance of this arrangement for the employee is that when he enters into an employment contract, he enters into a private agreement that places him outside of the relationship with the community that he enjoys as a citizen in the public realm.

Employment is a private, contractual arrangement outside of the full range of public freedoms, rights and restraints. Employees then, are subject to the control and governance of the organisation with which they contract with minimal interference from the public governmental institutions and their attendant rights, obligations and freedoms.

[the employment relationship is] "...the principle of one individual working for another and accepting superior authority which has given rise to the complex arrangement of economic and social divisions within a modern society." (Salamon, 1992. page 11)

This is brought about by an arrangement in which the privacy of the contractual, employment relationship provides the organisation with internal powers of governance. These equate to those held by those institutions that govern the public sphere i.e. powers of control of activity, status, discipline, participation, power and wealth distribution.

This represents a central feature of liberal democratic theory, namely

"...the separation or autonomy of the political and public spheres."
(Pateman, 1975. page 6)

Such a separation, Pateman argues, is not consistent with other central arguments of liberal, democratic theory.

Pateman contends that liberal democracy has always been linked to the market economy with its values of efficiency and private profit. The theory of representative democratic government designates the voter as a private individual who must hand over his sovereignty to representatives who wield that sovereignty on his behalf.

There is at the heart of liberal democratic theory a separation of the private individual from the public ordering of affairs. Furthermore, there is an assumption that;

“....the non-democratic nature of the organisations in the private sphere is unrelated to the realisation of the theoretical claims made for democratic voting.” (Pateman, 1975. page 10)

However, the logic of liberal democratic theory itself argues against such a normative separation. To support this contention Pateman cites the influence on government of lobby groups who have become part of the governing apparatus and process and the growing power of corporations over the decisions made by government.

Pateman however, points out that the privateness of the individual is central to liberal democratic theory;

“.....in the liberal democratic conception the citizen is, in one crucial respect, like the liberal, democratic individual, a private animal.” (page 15)

This poses a problem in that government is expected to keep the private sphere of freedoms and rights separate from its activities.

Thus, the government regards the relations of employment as a private matter and seeks only a restricted involvement by legislating minimal standards of working conditions, safety, pay, contractual frameworks and the upholding in law of the master-servant relationship¹⁸. The flaw in this approach seems to be that in upholding and promoting the freedoms and rights of one private citizen (the corporation), liberal, democratic theory seeks to do so at the expense of the rights and freedoms of other private citizens (the employees). This means that a social relationship, central to most people, falls outside of the political rights and freedoms of liberal values.

The relations between employee and employer then, seem to be at odds with liberal values of equality, due process and democracy.

Some writers (Wolin, 1961. Dahl, 1990) have argued that the designation of economic organisations, and their power and influence in the public realm, have created a situation in which liberal, representative democracy is subverted. They see organisations as the creation of self-governing, political states within the public realm in which there is;

“....an appropriation of public authority by private rulers...” (Dahl, 1990. page 97)

To characterise such ‘corporate leviathans’ as private is, to Dahl, absurd.

“Power has gravitated to the American corporate giants. They exercise it with some restraint, but realize that their future lies in forming a partnership with a government which need not be greatly feared as a regulatory policeman.” (Barber, 1970. page 184)

For Dahl, the institution of democracy within ‘private’ corporations is a way to end such undemocratic behaviour.

¹⁸ Indeed its greatest involvement seems to be in those areas that directly challenge the master-servant relationship i.e. industrial relations.

In a society that puts forward values such as representation, equality, and the accountability to the public of power and authority, the designation of economic organisations to the unaccountable realm of private property seems anomalous since the institutions of the public realm are obliged to serve the public interest whilst those of the private realm are obliged only to serve their private interest. This separation of social life into the public and private realms has its roots in a desire to protect the individual's private life from intrusions of the state-an attempt to safeguard the freedom and autonomy of the individual through a limitation of state power.

Such ideas are promoted vigorously by philosophers such as John Locke and J.S. Mill in an effort to constrain the ability of the state to intrude upon the private activities of the individual citizen. (Werhane & Radine, 2004)

“The essence of the public/private distinction is the conviction that it is possible to conceive of social and economic life apart from government and law, indeed that it is impossible or dangerous to conceive of it in any other way..... Denying the role of politics - the processes by which communities organise and institutionalise their self-directive capacities - in constituting the forms and structure of social life is a way of impeding access to an understanding of the role of human agency in constructing the world.”
(Atleson, 1985. page 841)

The validity of the public/private divide can be challenged therefore on several counts. It is seen as a selective extrapolation of arguments regarding individual private property and freedoms (i.e. to corporations but not to the citizens employed by them).

Additionally, it is an extrapolation across time and circumstance in that the freedom of individuals to enjoy their personal beliefs and property from interference by the state takes place in a different circumstance from the rural, non-corporate world of the 16th. Century.

It would seem to have little application in our present economic circumstances in which many corporations exceed governments in their power and wealth. Justifications regarding personal property in such circumstances seem inappropriate in an economic environment in which more than half of the world's largest ten economies belong to private corporations. It can also be seen as contrary to the liberal democratic values upon which it is based in that it allows neither equality, personal freedom nor accountability of power and authority to that majority of 'private' citizens who enter into employment.

The freedom from democratic accountability that the public/private divide confers upon corporations subverts the purpose and practice of public, democratic governance by appropriating power (through governmental lobbying, involvement in governmental administration and deliberation and accessing of public money through governmental subsidy) that constitutes non-accountable, private power that is wielded in the public domain.

There remains another objection to this separation of economic activity from the institutions of public governance.

PRIVATE PROPERTY

Clearly, the foregoing underscores the importance of private property within this debate. Private property is the cornerstone upon which arguments regarding the public/private divide rest. The justification of the holding of private property is the key element in the justification of the public/private debate. If the probity of this public/private division is to be examined then the justification for private property itself must be engaged with. The theory and justification of private property draws its arguments from liberal theory surrounding the justification of private property, specifically those of John Locke. However, the debates regarding the manner and means of the justification for holding property as 'private' have a long pedigree from Aristotle and Plato in classical Greece through to the 20th. Century's American academics, Nozick and Rawls.

Dworkin (1979) classifies arguments that attempt to justify private property as being rights-based, duty-based and goal-based. Waldron (1988), on the other hand, classifies arguments as being utilitarian or rights based with a further division of rights-based arguments into special-rights and general-rights groups. A different grouping is proposed by Dodds (1993) in which self-ownership, liberty and autonomy are used as organising categories.

However, this is not an ethics thesis per se, and since the intended audience is an Industrial Relations one, I shall limit my consideration of such arguments to those from the Natural Law and Liberty-rights approaches. Justification for this restriction is offered by the fact that arguments from natural law revolve mainly around the theories proposed by John Locke that form a necessary part of any consideration of private property rights. Such a review necessarily covers arguments regarding justification based upon considerations of need, labour appropriation, first occupancy and improvement through labour.

These, when combined with liberty-rights e.g. personal freedom and embodiment) cover most, if not all, of the key arguments regarding the justification of private property.

NATURAL LAW RIGHTS TO PRIVATE PROPERTY

Waldron (1988) characterises Locke's theory of property (Locke, 1960) as an historical entitlement in that such rights emanate from actions that individuals have taken.

"...it is the argument that when a man labours on a resource, he puts something of himself into it, something which gives him (roughly) the same sort of entitlement to the resource as he had originally in respect of himself, his person, and his actions." (Waldron, 1988. page 140)

Locke's theory of property then can be seen (if his opening premise of God's intended laws and the state of nature are set aside) as dependent upon arguments regarding 'self-ownership', 'first appropriation' and 'mixing of labour' in a resource. 19

Locke's theory begins with his major premise that the earth and its assets are created by God and given to men as common resource. However, such resources may be transformed from common resource to private property in several ways. The manner in which common resources become private property are justified by natural law by which he means not rights that are naturally accorded by being borne but, rights that are acquired by action and need. Such rights are not given by governments, society or its institutions but are moral rights resulting from his self-ownership and actions emanating from his self-ownership. This is important since it establishes private property rights outside of the public realm of government and makes them inviolable-outside of God's intervention.

19 Wood (2002) makes an interesting observation on the contemporary milieu in which Locke wrote his 'Second Treatise on Government' noting how fortuitously it fitted in with the advance of agrarian capitalism through confiscation of common land in England in the 17th. Century. A process justified often as 'improvement' to land that was otherwise wasted i.e. not developed.

Self-ownership. Man owns himself, his body and his thoughts. If such 'ownership' is to have any meaning he will need to attend to the subsistence (at a minimum) needs of his body for food. Thus for instance, he argues that a man has a right to appropriate food for himself.

"Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this nobody has any right to but himself." (Locke, 1976. page 27)

Harris (1996. page 189) encapsulates the manner in which this argument runs thusly;

"If I am not a slave, nobody else owns my body. Therefore I must own myself. "

This is Locke's doctrine of self-ownership and it is the foundation upon which he builds his justification for private property viz. entitlement arising from labour through appropriation or improvement.

Thus, the full doctrine runs;

"1. If I am not a slave, nobody else owns my body.

Therefore,

2. I must own myself.

Therefore, I must own all my actions, including those which create resources. Therefore, I own the resources, or the improvements I produce." [italics added]

Harris (1996. page 189)

Locke himself, puts it this way;

“The labour of his body and the work of his hands we may say are properly his. Whatsoever, then, he removes out of the state that nature has provided and left it in, he hath mixed his labour with and joined it to something that is his own, and thereby makes it his property.”

(Locke, 1976. page 27)

Here Locke is arguing that property rights are natural rights for human beings in the same way that access to the means of survival are natural rights – a position that is echoed in the “life, liberty and the pursuit of happiness” phrase in the American constitutional document. The constituent premises of Locke’s approach need spelling out if the theory is to be examined. First, Locke states that everyone enjoys self-ownership of their person. Secondly, he contends that such created property should be created without wrong to others. Creation of property may be due to need – a rational outcome of owning one’s person is that one may appropriate those things that are necessary for subsistence. Or it may be from the creation of improvements to resources as in the combination of resources or farming of land.

It may also occur where resources are not owned by others may be appropriated by a person – with the caveat that such appropriation is subject to labour or improvement.²⁰

Locke’s theory of private property provides the essential justification for private property within western, industrial, free market economies. It is the basis for our individual, and corporate, accumulation and disposal of property. It has at its heart the doctrines of self-ownership and creation without wrong – from which all of his premises follow.

²⁰ This doctrine of labour appropriation is akin to the doctrine of ‘first occupancy’ that confers private ownership where land is unimproved or not claimed in a private property sense. A doctrine used in the British land enclosures and the claiming of colonial land.

An examination of this doctrine therefore requires that we consider what it means to 'own' our person and the fruits of its activities. The formulation that one 'owns' one's body is dependant upon the absence of other's claims to owning the body in question (i.e. 'I am not a slave, therefore...') and seems to suggest that others can own one's body which seems to weaken the proposal of self-ownership as an outcome of a universal, natural law. But the logic of Locke's derivation of self-ownership is itself problematic. Harris (1996) refers to it as "the spectacular non-sequitur" (page 196) inasmuch as the fact that I am not a slave does not, of itself, establish self-ownership. Locke is at pains to establish a doctrine of freedom and liberty yet 'ownership' is restrictive and exclusive – it seems to view the human person as a thing to be possessed rather than as an end in itself. If we own ourselves are we then at liberty to sell ourselves into slavery? It seems reasonable to discount this possibility if, as Locke argued, the natural law required equality and freedom between men.

J.S. Mill, for one, considered human beings to be above the concept of property ownership, contending that slavery had no place in a just society. When we speak of self-ownership therefore, it seems more likely that we are speaking of rights regarding freedom of self-use and/or freedom from interference rather property ownership.

It seems reasonable also to contend that claims regarding equality, liberty and autonomy do not require a prior right of self-ownership. (Knowles, 2001) Locke predicates ownership of private property upon the idea of self-ownership i.e. a need for subsistence causes man to labour to provide for himself and since his labour is his own he makes the fruit of his labour his own. But as Waldron (1988) points out, there is nothing in the production of food that requires that man owns either the food or the means of production. The idea of private property in fact seems to be culturally based.

For example, cultures such as those found amongst the indigenous peoples of the Americas and Australia would have found the concept of land ownership foreign.

The need for subsistence does not ipso facto necessarily entail the exclusive use and control of natural resources. The self-ownership concept then is a problematic one in that it is 'foundational' requiring no other proof but an acceptance of the natural law for its justification. If one does not accept Locke's premise of a natural law then it has no rational basis – at least in the Lockean argument.

The theory of appropriation by labour, that emanates from the concept of self-ownership, is similarly problematic with regard to a justification of private property. Locke proposes that in a state of nature a man may take what is common (first occupancy) and make it his own (through his labour that improves it) provided that he leaves enough of the resource for others to appropriate in the same manner and does not take more than he may use. But the argument is problematic on two counts. Firstly, it assumes a state of natural, unending abundance and secondly, it is not clear how such action justifies private property. By reserving land, or a fruit tree or a cow as his own he prevents others from using it. Given that the world and its abundance has been given to all mankind in common (by God) it is not clear how owning oneself entitles one to extinguish the common property or access rights of others. Clearly, drinking milk or farming land prevents others doing so, but how does the need for sustenance require that the resource be 'owned'?

And it follows that that creating an exclusive use to commonly held property prevents it from being held in common.

Since making use of the resource, or producing the resource does not require individual exclusive property rights then there remains the need for a justification of the creation of personal property. Self-ownership and mixing of one's labour are insufficient.

“So Locke faces the challenge, which as we saw earlier, was posed by Samuel Pufendorf: he has to explain ‘how a bare corporal act’ such as labouring on an object ‘should be able to prejudice the right and power of others’ without their consent.” (Waldron, 1988. page 176)

Perhaps Locke²¹ has been made too much of in the sense that the purpose for which he proposed his theory and the terms in which he expressed were not intended for the justification of private property in the sense in which we conceive of it. Certainly, his writings are concerned with the individual living a simple life, his examples concerned with food and labouring and barter. There does not appear a conception of buildings, shareholding or even land beyond that which an individual (and his family) may need for sustenance. The use of his theory to justify our present free market, capitalist system therefore seems inappropriate in its glossing over of the tenor of his writing and the milieu in which he wrote.

²¹ Similar issues are taken up with regard to Locke by other writers, as noted in this text viz; Dworkin , Waldron and Dodds, page 75; Harris page 75 & 80; Knowles page 80;Hegel page 83.;

LIBERTY RIGHTS TO PRIVATE PROPERTY

The foregoing discussion does not seem to provide us with an argument for a clear right to ownership or property rights from a natural law perspective. However, this does not exhaust the possible arguments for individual private property that might be advanced. Property rights arguments based upon the concept of individual liberty have also been put forward - Hegel and Nozick being two exponents of this approach.

Basic to this approach is the assertion that there exists a moral connection between private, individual property and the notion of individual liberty.

Either a person has a right to private property as an extension or materialisation of his liberty or private property in some way makes that person free.

Hegel is a recognised proponent of the latter approach. Waldron (1988), for instance sees Hegel's approach as a statement of the developmental, psychological needs of the individual in the sense that it provides a means for the person to become real, to 'embody' himself to effect himself upon the world and those surrounding him. This comes about because the ownership and management of private property constitutes an expression of personality and individual will. Harris (1996) however, sees this as a misconception of Hegel's intended analysis in that Hegel talks not of the individual person but of the will and conscious existence.

"Hegel's starting point for the analysis of abstract right is not the natural human entity but '[t]he will which is free in and for itself, as it is in its abstract concept.'" (Harris, 1996. page 234)

Harris' summary of Hegel's argument contains the following propositions;

- that the concept of freedom itself contains the concept of the ability of individuals to make choices.
- the greater the range of possible choices open to individual's the greater the degree of freedom.
- the institution of property provides individuals with a greater range of choices than they would otherwise have.
- the kind and range of choices that property makes available to individuals have prima facie value, this in turn renders property inherently justifiable.

A moment or two spent considering this approach makes apparent that in this set of propositions we are returning to some of the propositions that we encountered in Locke and the natural law approach. For instance, caught up in this analysis is the concept of 'self-ownership'.

"He [Hegel] does so by committing the same spectacular non-sequitur shared by those writers. Hegel speaks of a human being becoming 'his own property as distinct from that of others' ". (Harris 1996. page 237)

And, as discussed above, this idea of the 'owning' of bodies and/or selves is a problematic one.

A logical outcome of Hegel's approach is that such a fundamental need on the part of individuals, when viewed as a right, must be available to all. Thus, the argument that; property is a right as a condition of being human. However, this raises similar problems of distribution and exclusion as the Lockean argument in that a) there are not inexhaustible resources and b) that every claim to ownership, since it is an exclusionary claim, weakens the rights and abilities of others to enjoy the same.

In the same way that the Lockean argument does not address the issue of distribution, the Hegelian argument only concentrates upon acquisition for the individual – the needs, rights and well-being of the community or group are not addressed.

Problematic too is the idea that; only through the exclusionary ownership of private property can an individual exercise his will and manifest his personal existence and freedom. Presumably the argument would run thusly; my ownership of property allows me to impress my will upon others through my ability to exclude others (trespass), demand their engagement with me where use or disposition of the property is concerned and thus my rights manifest me as an embodied will. The unspoken proposition is that only the ownership of property may confer this however, this seems to be an unreasonable proposition.

After all, rights of control and need for engagement have also existed in forms of property other than individual private property – especially with regard to such property being the fount of self identity and a locus of engagement with the world. Hunter gatherer societies such as the Australian aborigine and the traditional occupiers of the N. American plains take both their personal and cultural identity from the land they occupy whilst speaking of the land owning them rather than their owning the land. Individual private ownership of property does not seem to be a pre-requisite for such human society in order that they are manifest as individuals in their societal context i.e. their individual self-assertion against other men.

Inter-tribal conflicts over land may suggest otherwise unless we recognise that what is to be fought over is not the ownership of land (individual or communal) but rather the rights of access to it.

This is reflected in our western, contemporary society in the institutions of communal property that green parks and roadways that all have 'rights' over in terms of access, enjoyment and use - what might be seen as a modern cultural rendering of the medieval social institution of common land.

There is also a sleight of hand about this argument in that individual ownership of property is not the same thing as the right to individual ownership of property. This seems particularly apparent when it is argued that actual ownership creates freedom or liberty. Whilst one may claim a right to own property it is not the ownership that confers the right or creates the freedom.

There is also a logical unhappiness with the approach that claims that self-manifestation is obtained through private property. It suggests for instance that those with most property would be the most self-realised and that those without any personal property would in a sense be socially opaque or unrealised'.

Does it also lend itself to an argument that since self-realisation is an individual developmental right that renders one 'free', an individual is morally authorised to gather as much of the available resources to himself as he can? Such suggestions run counter to our other liberal ideas of equality, freedom and social justice.

There is an element to the ideas and arguments, so far considered, that seems to bring them together. As noted above, arguments seeking to justify private property are acquisitive in nature.

In this they necessarily revolve around the interests and needs of individuals rather than the contributory and distributional needs of a community or society.

They are concerned therefore with the difficulties encountered by the individual to enact any condition of autonomy or freedom. Clearly, the greatest obstacle to manifesting individual autonomy can be found in the desires, preferences and actions of others.

In social relationships these often run counter to an individual's personal preferences. Therefore, as well as being acquisitive, private property can also be seen as exclusionary. By creating a sphere of space or ownership of resources, the individual effectively removes these countervailing desires, preferences and actions. But in order to do so the individual effectively removes others from those spheres of his existence. Ownership of land gives, in the first instance, an area free of others' rights and/or presence. Ownership of resources, such as money, effectively removes the needs, desires and preferences of others from its disposition. When looked at from this aspect it would seem that arguments seeking to justify private property are not so much a resolution of man's relationships with other men but a removal of the individual from the effective presence (in one sense or another) of others. The institution of private property therefore, seeks not to resolve the tension between individual and society that ethics must address but instead, to deny it. A justification of a social institution, such as private property (that is based upon the exclusion of others and their interests) is not a justification that has moral weight.

Since it is difficult to conceive of the notion of ethics or morality for a society of one (the concept renders itself quickly meaningless), such arguments for private property must therefore lose their moral weight.

PROPERTY, PERSONS AND THINGS

There is another sense in which arguments about private property are problematic when applied in the context of the employment relationship and that concerns the notion again of self-ownership. This is of particular importance when the rights attached to ownership regarding control, disposition, transfer and sale are concerned. With regard to this issue, the liberal values, or ideas, of autonomy (self-government) and property are, it seems, in direct conflict. Ellerman's (1988) observation of this conflict, and his analysis of the Kantian categorical imperative and the labour theory of property, illuminate this apparent conflict. His argument provides an analysis of the moral aspects of regarding employees firstly as 'owning' themselves (and therefore their labour) and, secondly as regarding them as autonomous individuals in the Kantian perspective. As Ellerman points out, Kant distinguished between persons and things.

"Rational beings, on the other hand, are called persons because their nature already marks them out as ends in themselves-that is, as something which ought not to be used merely as a means-and consequently imposes to that extent a limit on all arbitrary treatment of them (and is an object of reverence)." (Kant I. quoted in Ellerman, 1988. page 1110)

Which gives us the familiar imperative to;

'Act in such a way that you always treat human beings as persons rather than as things.'

This may be read as an argument for rationality, equality and individual autonomy. Such an argument creates an obstacle for the idea of waged employees under the control of and, acting in the interests of an employer.

As we have seen, in the employment relationship the employee is deemed to be acting primarily in the interests of the employer. This renders him a

means rather than end and, runs counter to the morality inherent in the categorical imperative.

As Ellerman points out, slavery is the classic example of the use of people as things or merely as means. Ownership of the person becomes the property of another and autonomy is lost. Employment is not slavery however, despite the popularity of references to wage slavery.

Employment does not confer ownership of the employee to the employer. But in one important regard it does seek to transfer ownership of a form of property from the employee to the employer. This transfer relies upon the idea that an employee 'owns' (in a property sense) his labour or the actions of his body and/or mind. Thus, a person may voluntarily sell or rent his labour to another. Such sale or rental agreement often involves the transfer of control and ownership of the body or mind that is providing this labour for the agreed time frames contained in the contract. Thus, the moral justifications concerning private property are employed to justify the status of employee contained within the master and servant relationship. In this relationship, a man's thoughts, ideas, body and the product of his labour are placed at the service of others, to serve their interests primarily.

For the moment however, it is sufficient for the purposes of this chapter to argue that sufficient problems have been identified in the major arguments normally proffered as justification for private property that the reader will accept that the 'private property' as a fundamental aspect of and, justification for, the employee relationship may not be taken as given.

SUMMARY

This chapter examined the moral probity of justificatory arguments regarding the public/private schism and private property with regard to the moral acceptance of the employment relationship.

The separation of social relations into a public sphere of liberal democratic institutions and intercourse and a private sphere of private, contractual relations, is found to be problematic.

Whilst there is general agreement that economic relations play 'a key role in the constitution of a just society' (Winfield, 1988), the character of economic relations within it (such as the employment relationship) fails to meet these same standards of justice. Private, employing organisations are non-democratic in their structure and social relations are based upon hierarchy and subordination. This is seen as a 'selective' application of liberal democratic values in which principles of freedom are applied to corporations whilst employees are effectively disenfranchised from them. It is noted that the circumstance in which this public/private schism between social institutions was established have little in common with twentieth century commerce or society in which many corporations exceed the wealth and power of most governments. It is also noted that the separation of the economic and political spheres is largely theoretical since 'private' corporations appropriate public power through participation in government administration, receipt of public monies through grants and subsidies and lobbying of officials. The separation is also breached through the enactment of legislation regarding employment standards, terms and limitations. This creates a situation in which private corporations wield public power with no requirement for the accountability that liberal democracy requires.

The justification of the public/private schism is based upon the moral importance of individual freedom and the ownership of private property.

However, it was noted that individual freedom is selectively extended in the private sphere (i.e. not to employees) and that the Natural Law and Liberty Rights justifications for private property can be challenged on several grounds.

CHAPTER 4: EMPLOYMENT, CONTRACT & STATUS

AIM

Chapter 3 examined the liberal theory relating to the public/private schism in social relations and the role of private property.

It was argued in chapter 2 that employment in a capitalist system is a composite relationship of the common law idea of master and servant, entered into by contract, modified (sometimes one way, sometimes the other 22) by contemporary statute law and grounded upon the institution of private property.

The role of the contract of employment is worthy of examination since it is regarded an example of freedom and autonomy in the employment relationship, although for some writers it serves more as a mantle of moral respectability than as a source of moral probity. (Ellerman, 1992)

The aim of this chapter is to examine the literature regarding the moral justifications for the other cornerstones of the employment relationship namely; the employment contract and the social status particular to the master and servant relationship.

22 witness the liberality of employment legislation of the U.K in the early 1970's and the illiberal tenor of 1990's legislation with regards to;- sick pay, working hours, union power & membership, right to strike etc.

CONTRACTS

As a starting point it is useful to identify, in legal terms, just what is meant by a contract.

It is possible to argue that the legal concept of a contract is an exemplar of liberal ideas of freedom, autonomy and reciprocity. It is a voluntary agreement between equals that seeks to benefit both and provide mutual satisfaction-neither parties interests are considered to be of pre-eminent importance.

Not surprisingly therefore, for a contract to be legally valid it must satisfy the following conditions;-²³

- it must be between equals
- there must be no coercion
- there must be mutual consideration
- there must be full disclosure of relevant information

[N.B. as in the employment contract there is no requirement that it be written]

Clearly the intent of such requirements is to ensure that it is indeed a voluntary agreement between equals that seeks to benefit both and provide mutual satisfaction. The requirement of 'no coercion' is an elaboration of the equality provision since coercion necessitates inequality for its efficacy. Similarly, the mutual benefit provision goes to the same issue, as does the full disclosure requirement, since exploitation and ignorance necessitate a condition of inequality. The source of this

²³ Not all features of a valid contract have been enunciated however, those omitted are neither supportive nor injurious to the argument presented in the context of the employment contract.

insistence upon contract as being between equals has its roots in the development of liberal democratic theory.

"Classic social contract theory and the broader argument that, ideally, all social relations should take a contractual form, derive from a revolutionary claim. The claim is that individuals are naturally free and equal to each other, or that individuals are free and born equal."

(Pateman, 1988. page 39)

THE SOCIAL CONTRACT

Despite Sir Henry Maine's description of the move from traditional society into modern society through the industrial revolution as a;

“....movement from status into contract” (Maine, 1917. page 100),

status remained (and remains) prominent in the fabric of social interaction.

What this statement actually amounts to is a reference to the changes in political justification for civil subordination that were necessary to accommodate the changed economic and political landscape brought about by the industrialisation of England. The ideas that swept away the older justifications for civil subordination (such as divine right or tradition) during and after the enlightenment were those centred upon notions of freedom and equality. The organic nature of pre-industrial society in which the community is central and work is performed for the community against a web of mutual obligation had been left behind as industrialisation progressed.

Characteristic of intellectual and civil society of traditional England, was an acceptance of a 'theory of dependence' here referred to by J. S. Mill;

“It is the duty of the higher classes to think for them [the poor], and to take the responsibility of their lot, as the commanders and officers of an army take that of the soldiers composing it. This function the higher classes should prepare themselves to perform conscientiously, and their whole demeanour should impress the poor with a reliance on it, in order that, while yielding passive and active obedience to the rules prescribed for them, they may resign themselves in all other respects to a trustful *insouciance*, and repose under the shadow of their protectors.

The relation between rich and poor should be only partially authoritative; it should be amiable, moral, and sentimental; affectionate tutelage on the one side, respectful and grateful dependence on the other". (Mill, 1848. vol. 11, page 319-20)

However, industrialisation made it necessary to re-visit the basis for civil subordination, or political obligation (Bendix, 1974).

The question posed was; how, in an economy in which inheritance, land, tradition and divine right were ceasing to be the source of economic power, was civil control and political power to be justified? Much of the subsequent development of liberal thought can be regarded as stemming from the idea of 'possessive individualism' in which the individual replaces the community as the prime social and political unit and, 'social contract' ideas that see social order and government as resulting from agreement.

Since the traditional bases for social order and political power were falling away, new foundations and justifications were needed.

Possessive individualism is a theory that identifies the individual as the basic moral and political unit in society and has been argued to be a foundational concept in the development of liberal democratic theory (MacPherson, 1962). Its roots have generally been located in Hobbes' writings and its development through Locke, Rousseau and Bentham (Jaggar, 1993. MacPherson, 1962).

"Discarding traditional concepts of society, justice, and natural law, he [Hobbes] deduced political rights and obligation from the interest and will of dissociated individuals" (MacPherson, 1962. page 1).

In a society of individuals, rather than a community of mutual interests and obligations, the moral foundation for forming a society of civil administration required new form. No longer is the individual to be made real by his belonging to a community but rather, the community is made real by the individual.

“Classic social contract theory and the broader argument that, ideally, all social relations should take a contractual form, derive from a revolutionary claim. The claim is that individuals are naturally free and equal to each other, or that individuals are free and born equal.”
(Pateman, 1988. page 39)

This new form incorporated the theory of individualism as it developed from theories based upon the idea that free and equal individuals come together in the form of a social contract i.e. in a society of free equals, agreement to be ruled by others must be voluntary.

Social contract theory starts with the conception of the individual as born free and equal to others. Any abrogation of this freedom and equality must therefore be voluntary. Civil administration requires that a social contract be agreed to in which freedom and equality are voluntarily surrendered to the extent necessary to allow for governance to take place – a social contract in fact.

This creates a problem, because continuous surrendering of such freedom and autonomy would be necessary. Social contract theorists argued therefore, that an original civil agreement had taken place, in order to circumvent the need for continuous re-establishment of this voluntary attribution of sovereignty.

This could be attributed to a state of nature argument (Locke), the dictates of reason (Kant, Rawls) or conquest or consent (Hobbes). (Pateman, 1988)

Possessive individualism' designates the possession of an individual's body and its attributes, to that individual. Such ownership of 'property', besides consolidating the free and equal status of individuals, also confers upon them the moral right to dispose of their property as they see fit. In any event the key ideas here are those of *property ownership* and *voluntary disposal* of such property.

Thus, individualism, combined with the withering away of mutual obligation and the loss of community for protection and identity, isolates the individual. Security and protection are therefore obtained by entering into covenants with other free and equal individuals.

"Individual self protection is the problem that has to be solved in the state of nature – and the solution is contract". (Pateman, 1988. page 55-6)

The significance of contract theory for this research is that firstly, it forms the basis for liberal democratic ideas regarding freedom and equality. Secondly, it provides a basis for a moral assessment of the employment contract and thirdly, it stands in contrast to the master-servant status of the parties to the employment 'contract'.

"The individual, it was thought, is free inasmuch as he is proprietor of his person and capacities.....Society consists of relations of exchange between proprietors.....Political society becomes a calculated device for the protection of this property and for the maintenance of an orderly relation of exchange." (MacPherson, 1962. page 3)

In summary therefore, liberal democratic theory argues that society is the voluntary creation of autonomous, free and equal individuals. Individual liberty is the cardinal value and any restriction upon this liberty may only result from voluntary, contractual agreements.

The implications of this set of social and political values can be seen in a growing movement towards emancipation from the constraints of traditional authority and social institutions. Immediately to mind are the Chartists, Levellers, Diggers, Suffragettes and the subsequent democratisation of social institutions during the nineteenth and twentieth centuries.

More recently, the extension of the vote to women, changes in the law regarding homosexuals and the disabled and the removal of exclusionary laws regarding particular religious groups come to mind. All such emancipatory changes have been promoted and justified upon the basis of freedom and equality.

“Contract theory was the emancipatory doctrine *par excellence*, promising that universal freedom was the principle of the modern era.”
(Pateman, 1988. page 39)

Arguably then, the movement towards social and political emancipation that began with the disruption of traditional society by industrialisation can be seen as a logical response to the replacement of dependence and mutual obligation with independence and individualism. If individuals are to be responsible for themselves as the price for freedom then they can now demand equality within the political sphere. A desire for emancipation is the direct, and inevitable, outcome of the recognition of free and equal individuals. Emancipation from arbitrary, divine, traditional or inherited authority requires that an acceptable authority must be one that these individuals have agreed to accept through social contract. Furthermore, such civil authority must be minimal for good order and for the purposes of maintaining freedom, equality and property. However, the employee in effect loses his freedom and equality in order to protect the employer's property interests.

Therefore, it seems reasonable to regard the employment contract as failing to meet the moral requirements of a contract in that it does *not* serve the purpose of maintaining the employee's individual freedom and equality, nor does it serve to protect his property.

Full and open negotiation of employment contracts to the satisfaction of both parties does not occur and is unlikely to be acceptable to the employer.

“...the damaging implication of pure contract doctrine for the employer would have been that it could not allow him to be the sole judge of whether his rules were arbitrary or exceeded the scope of his authority”. (Fox, 1974. page 183)

Neither does the subordination required of employees go to the requirement for equality between the parties and, the lack of choice for the vast majority in needing to accept wage labour furthers this inequality.

“The essential point to note is that the law on employment removes from individuals their legal right to control themselves. Inside the legal employment environment individuals are prohibited from behaving as they would as consumers. An individual legally defined as an employee is prohibited from exercising free choice. In fact, it is assumed by the law that an employee is incapable of exercising self-control. The only choice an individual has in work is to enter into an employment relationship or not enter the employment relationship. The choice in not entering into employment is to become an independent contractor or to be without work.” (Phillips, web reference 2003)

FREEMAN, SERVANT & SLAVE

Given the above, it seems reasonable therefore, that this examination of the employment contract should be conducted against the backdrop of the legal, political and philosophical ideas from which we derive our understanding of contract. However, such an examination might also demonstrate that to characterise the employment relationship as a 'contract' is mistaken since the rules of legal validity do not apply to employment contract in the same way.

This provides an example of the way in which the foundations of the employment relationship (private property, and contract) are invariably interpreted within the over-riding moral requirements of the master and servant relationship²⁴. In fact, the mere centrality of the master and servant relationship to the employment relationship brings into question the possibility of the employment relationship being valid when measured against the requirements for a contract in the legal sense. If these legal requirements are indeed intended to ensure that the parties are autonomous, equal and free then the moral and legal insistence that the employer's interests remain paramount, that the parties remain unequal in terms of power and discipline and the necessity for the employer to receive more (economically) than he gives the employee, render these requirements impossible to meet. In fact it seems clear that, because of the legal requirement that the contract of employment be contained within the master-servant relationship (a relationship of inequality), such 'equality is not only impossible but manifestly *unintended*.

²⁴ Reference to the employment relationship was until the last few decades invariably made to the 'master and servant relationship' and is often made in these terms in the courts of law. The change from a term that manifestly defines the relationship i.e. master and servant to one that simply states that a relationship exists, serves to mask the real nature of the phenomenon.

(In a similar way, reference to civilian casualties in modern warfare is now referred to as 'collateral damage')

Because of this clear impediment many writers criticise the reference to a 'contract' as being a misleading one. (Pateman, 1988. Ellerman, 1975, 1988, 1992. Gorz, 1985. Anthony, 1977. Bendix, 1974. Dahl, 1990. Phillips, 1988)

"Support for these principles [legal characteristics of contracts] should not be confused with the 'employment contracts' which are currently and commonly attempted but which are really a bastardisation of commercial contractual undertakings. 'Employment contracts' by their nature, describe agreements within the structure of master and servant, delineating legal relationships between non-equals." "These 'contracts' frequently contain hidden and undisclosed requirements and most often give the 'employer' the right to change the contractual terms without agreement from the 'employee'. These are not really contracts, but master-servant control agreements written in a modified language." (Phillips, 1988. page 7)

Contracts are agreements between people. The immediate exception that comes to mind, is the 'legal fiction' that gives human status to corporations for the purpose of holding contracts valid. However, the law is not upfront in the 'legal fiction' of designating employees as 'things', where contracts of employment are concerned. This view is put forward by Ellerman (1992) in his analysis of the contract of employment which is dismissive of its claims to the status of 'legal contract'. His analysis begins with a consideration of what the employment relationship entails and comes to the conclusion that it is 'labour rental' .

"From an abstract econo-legal viewpoint, the employer-employee relation is the rental relation applied to persons. What do you buy when you rent something? You buy its services, the right to employ or use the entity within certain limits for a given time period. When one rents an apartment or a car, one buys not the apartment or car itself but some of its services."

“Similarly, when one rents a person for eight hours, one buys the labour services of eight man hours (or person hours), i.e. the right to employ or use the person within the limits of the contract for an eight hour period. The labor market is the market for the renting of human beings”. (Ellerman, 1992. pages 94-5)

A view echoed by Samuelson (1976):-

“By outright purchase you might avoid ever renting any kind of land. But in our society, labor is one of the few productive factors that cannot legally be bought outright. Labor can only be rented, and the wage rate is really the rental”. (page 569)

Ellerman’s analysis finds fault with the conception of the contract of employment on several counts. Firstly, it violates the Kantian imperative, not to treat human beings as means rather than ends. There seems little doubt that a ‘rental contract’ treats employees as ‘things’ rather than persons. Secondly, that the voluntary aspect is suspect and, thirdly that coercion, rather than consent, is the prevalent nature of the contract or relationship. Fourthly, he argues that having designated a person as a ‘thing’, for the purposes of validating the contract, the employer then expects the employee to carry all the responsibilities of a ‘person’ as regards his actions.

These claims require some un-packing. Firstly, the idea that the contract of employment (or self-rental) necessitates the designation of an employee as a thing rather than a person.

Its essence lies in the Kantian (categorical) imperative that persons are morally required to be treated (always) as ends in themselves rather than as merely means to an end.

“Rational Beings, on the other hand, are called *persons* because their nature already marks them out as ends in themselves – that is, as

something which ought not to be used merely as a means-and consequently imposes to that extent a limit on all arbitrary treatment of them (and is an object of reverence)".

(Kant I. quoted in Ellerman, 1988. page 1110)

Such a position is in congruence with the liberal theory of the inalienability of human rights i.e. the idea that basic rights such as autonomy and freedom are not alienable, even by consent. Whilst this moral viewpoint provides an argument of general acceptance for the exclusion or abolition of slavery, Ellerman extends its application by arguing that the same principle applies to the institution of employment since renting part of one's labour still amounts to treating the person as a thing – an analysis that he designates the 'labor theory of property'. (Ellerman, 1985)

"If a contract selling a lifetime of labor involves treating a person as a thing [i.e. a slave], what about a twenty year contract or any contract for any shorter period?" (Ellerman, 1988. page 1113)

Those supportive of the capitalist mode of work relations do not agree. Nozick (1974) for instance argues that all rights are alienable *by consent* of their owners. Thus, as he is willing to contemplate the moral acceptability of self-sale into slavery, he has no problems with the idea that labour rental is partial slavery – as long as it is voluntary.

"The comparable question about an individual is whether a free system will allow him to sell himself into slavery. I believe that it would."
(Nozick, 1974. page 331)

This is problematic on several counts. Firstly, the idea that a man can 'own' himself needs re-consideration.

A man may have rights over his person in the sense of equality, freedom or autonomy but in what sense are these 'owned'? As remarked above, the

fact that someone else does not own him, does not establish that he owns himself – or indeed that anyone owns him. Rights are not synonymous or equivalent to ownership where human beings are concerned. Therefore, there seems to be no basis for assuming the existence of ‘ownership’ where human beings are concerned. Even if such ownership were to be acknowledged in the manner that Locke proposes, it remains problematic. Locke talks of man having a natural, moral right to that which his labour produces – yet no moral argument for the divesting of his rights is provided. His argument is not qualified with the statement that ownership exists *except* where the moral right is sold, given away or denied. It exists presumably, as a consequence of a man’s status as a human.

Can a man lose or sell this moral right and not have it impact upon his status as a human being? Neither does the idea of a person being able to alienate his self ownership in fact stand up to scrutiny for such an action renders the person a thing under someone else’s control and responsibility. A thing such as a car cannot be held responsible for killing someone on the road – it is the driver of the car that is held responsible. And yet employees are routinely held responsible for their actions as if they revert from the status of thing back to that of person when blame is to be apportioned. A person hired to commit a crime for his employer cannot claim that he has alienated his right to autonomy and passed over control of his actions to his employer.

However, his actions are normally considered to be the ‘property’ of and, under the control of, his employer where his work is concerned. This state of affairs has no moral logic according to Ellerman (1988)

“The legal role of a slave still has the characteristics of being a chattel, a non-person or a thing-independently of whether the legal condition of being a slave was acquired voluntarily or involuntarily. In spite of a

legal contract to take on the legal role of a thing, the individual *in fact* remains a person. Being a person is not an alienable condition or characteristic; person-hood as a factual status is unchanged by consent or contract. Since person-hood is not factually alienable by consent, any contract pretending to legally alienate personhood would be an institutionalized fraud. Any legal system, such as Nozick's "free system", which validated such contracts, would be authorising the legal treatment of persons as things in violation of the Kantian principle." (page 1113)

Putting these ideas together then, allows for the concept of voluntarily selling, renting or otherwise contracting of one's property (in the body and its actions) to others. For social contract theorists (Nozick apart), such 'contracts' are distinguishable from slavery, since slavery is not voluntary.

Ellerman argues convincingly that such a distinction fails to prevent the contract to voluntarily rent oneself out (i.e. the employment contract) from being considered (like slavery) a juridically invalid contract, seeking support from distinguished writers in the field. (Ellerman, 1992)

"Since slavery was abolished, human earning power is forbidden by law to be capitalized. A man is not even free to sell himself: he must *rent* himself at a wage". (Samuelson, 1976. page 52)

"no man is a slave 'by nature' and that a slave should be treated as a 'labourer hired for life'". (Sabine, 1958. page 150)

"The only difference is in the mode of purchasing. The owner of the slave purchases, at once, the whole of the labour, which the man can ever perform: he, who pays wages, purchases only so much as he can perform in a day, or any other stipulated time". (Mill, 1826. chapter 1, section 11)

Whilst private property and contract are key structural aspects of the employment relationship, it is apparent that it is the traditional relationship of 'master and servant' that characterises employment.

"In the English legal tradition, the law's definition of employment is found in common law, not in statutes. The legal definition can only be sourced through the reading of multiple legal judgements however any law student will learn early that the common law definition is based on the medieval master and servant relationship in which the employer has a legal 'right to control' the employee." (Phillips, web reference 2003)

DEPENDENCE, SUBORDINATION & INFANCY

In his seminal book 'Work and Authority in Industry', William Bendix (1974) outlines the transition from a traditional, rural society to an industrial urban one. A traditional, pre-industrial society of mutual dependence, with an idealised notion of *noblesse oblige* in which the poor and property-less stood in subordinate social and political status to a landed, ruling elite. Thus, the poor stood in a state of dependency and service to this elite whilst receiving their protection as payment for their service.

This theme of dependence is taken up by Pateman (1988) and Fraser (1997) in their separate discourses upon the interplay of (social) contract, marriage and employment and by Bendix (1974) in his discussion of the transition to modernity. 'Dependence' in this context refers to a social and political status – a subordinate status that one was born into and accepted as the price for belonging to a community.

"In pre-industrial useage, the most common meaning of the term 'dependency' was subordination". (Fraser, 1997. page 124)

'Dependence' emphasised an individual's subordination, a political counterpoint to the freedom of 'citizenship'. To a meaningful extent, such relations were analogous to the relations between parent and child.

"The rich should be in *loco parentis* to the poor, guiding and restraining them like children. Of spontaneous action on their part there should be no need." (Mill, 1848. vol. 11, page 319-20)

With the moral obligations of mutual responsibility requiring that the ruling elites took care of those who were unable or ill-equipped to determine their own best interests.

Since the initial structures of industry in England were based upon the family unit, the master might view his wife, his children, his servants and his employees as holding the same status and relationship to him. Hobbes' characterisation of a family underscores this political attitude;

“...[a family] consists of a man and his children; or of a man and his servants; or of a man and his children and his servants together; wherein the father or master is the sovereign” (Hobbes. Ch.XV11, page 154)

In early family industrial enterprises the master would regard his wife, children, servants and employees as enjoying essentially the same status and role as regarded the performance of work. (Bendix, 1974) This attitude retained the mutuality of traditional society since the master's responsibility for their obedient hard work was to feed, clothe and guide their moral development as well as be responsible for their general well being. The theory of dependence that encapsulates this approach was gradually superseded by the theory of individualism and gradually the mutuality of traditional dependence is replaced by a requirement that employees regard themselves as 'independent'.

“Towards the end of the eighteenth century, however, two new ideas were introduced which were clearly exemplified in the everyday practice of employers.... One was that people must depend upon themselves. The other was that the 'higher classes' are not and, in fact, cannot be responsible for the employment of the people or the relief of the poor”. (Bendix, 1974. page 73)

As the notions of emancipation based upon individualism became more central to political and economic society, so too did the mutuality of the work relationship fall away. Workers were now free and equal citizens with their employers – outside of the employment relationship.

But the much talked about move from status to contract, dependence to freedom cannot really be accepted as reality for employees since the eighteenth century. As 'servants' to the employing 'master' they retain the status of dependence since they are required (by common law) to offer the service, obedience and subordination of their historical counterparts. However, the reciprocity of the traditional work relationship on the part of the employer is discarded. Or as Andre Gorz states it;

"On the margins of civil society, with its formal liberties, there....persists behind the gates of factories, a authoritarian society....which demands of the workers both unconditional obedience and active participation in their own oppression". (Gorz, 1967. page 30)

It is interesting to note how feminist theory with its emphasis upon dependency, subordination and oppression echoes much of the more critical political science literature regarding work. The conclusion reached by many feminist writers is that women are to a large extent 'infantilised' by the relations with a patriarchal society.

"Her infantilised body must take up as little space in the world as possible, this when women are demanding more entry into and control of public space; her infantilised face must not betray the marks of strong emotion or deep thought".(Bartky,1998. page 328)

As an employee an individual seems to parallel the social and political status of children. Children's social status as non-rational adults does not afford them the autonomy of adults. Typically, they are dependent upon adults for control and direction regarding where to be, what they do, how they do it, who they speak to, what they wear, whom they can associate with, what they may say and how much information they need to know.

Similarly, employees under the strictures of the master-servant relationship must obey instructions regarding what work is done, how it is done, where it is done, where they may go or not go, what they must wear, whom they may associate with and what information they should receive regarding their workplace and whom they may divulge it to. Thus, the retention of subordinate, dependent status in the employment relationship seems apparent.

This intentional arrested development of the individual employee on the part of the employer has been noted by Social Psychologists. (Faunce, 1968)

“Chris Argyris has said that as a person develops from infancy to mature adulthood, he attempts to move: from passivity to *activity*; from a state of dependence to adult *independence* and *control* of his own behaviour; from having a short, here-and-now time perspective to a *longer perspective* which takes into account both past and future; from having a subordinate role in family and society to having an *equal* or *superordinate* role” (Blumberg, 1968. page 130)

The status of dependence that arises from the employment contract (as restricted by the master-servant relationship) is thus likened to the exercise of parental authority.

Perhaps it is worth considering again what values and ideas the liberal democratic view of the citizen comprises. The right to freedom is considered elementary and authority is something that must be justified to be morally acceptable. All citizens are equally entitled to this freedom and therefore equal in this right. Where authority is constituted, it is intended that it be the result of voluntary choice and consent. Institutions of governance therefore are created with the express intention of serving the welfare and benefits of those who comprise the community.

Its authority may not be used for any other purpose and, there are limitations on the manner in which its authority may be exercised to ensure this.

Additionally, the ability of the citizens to change the authority given to the institution of governance and to change those persons who hold office in it are fundamental. Thus, the freedom that is given up is limited to that necessary to allow for the proper functioning of the institution to benefit all. Several principles of justice flow from this form of democracy. Citizens are entitled to due process inasmuch as any restriction of their freedoms from alleged wrongdoing or investigation of complaints must be open and subject to a process of evidence, argument and counterargument. Their ability to associate with others and their rights to discuss issues, form and give to their opinions and assessments are, in the main, unrestricted. This is particularly important with regard to comments upon the institutions authority and the exercising of it. Privacy, free speech, due process, rights of association, the questioning of authority and the choice of those who hold it are all constituent rights within this liberal democratic form of representative government. These are often referred to as the civic rights of citizenship.

The employment relationship does not sit comfortably within this framework. Rather, it echoes instead a view of authority justification and social relationship that are pre-industrial. Prior to the acceptance of the ideas of the enlightenment from which possessive individualism developed, the justification of political obligation was of a more 'hierarchical' nature rather than the 'consent' based approach outlined here. Either it was a justification of de facto power relations as natural since some were capable of ruling and others to be governed or, more usually, a justification based on a natural order that flowed from divine will. Such an approach provided justification for both the executive and moral dimensions of feudal society.

Those whom God had chosen to exercise his will were immune from control or questioning by those they commanded. However, this divine and natural source of authority was built upon the concept of mutual obligation.

Those who exercised authority on God's behalf, were morally bound to exercise it in the interests of those they governed; whilst those subordinate to the authority were morally bound to obey. To a large extent, the responsibilities of noblesse oblige were paternal. Still, at centre was the idea of community as the basic social unit rather than the individual. Work within this social order was conducted as a moral duty rather than a contractual obligation. Indeed, the portion of the work that the individual gave to the lord was theoretically work for the community. With industrialisation, and the ideas of possessive individualism, the social unit was now considered to be the individual, free and equal. Thus, employment was now argued to be the result of voluntary contract between equals. However, because the employment relationship retained the socio-legal basis of the common law master and servant relationship, the 'contract' was in fact a formalisation of this dependence-subordination relationship.²⁵ Built into a 'contract' between free and equal persons therefore is a moral obligation to further the new community that the organisation represented. The morality of feudal morality that is community based is superimposed upon the individualist contract of work. And such moral obligation (if based upon the master-servant relationship) brings with it a social status of dependence that mirrors the paternalism of feudalism.

²⁵ The key aspect of the master-servant common law is the subordination requirement that allows for control of the employee's 'labour'. Since it is difficult to comprehend how a man's labour might be meaningfully separated from his mind and his person, this amounted to a control of the person.

Speaking at a later time Mill encapsulated this credo;

“The rich should be in *loco parentis* to the poor, guiding and restraining them like children. Of spontaneous action on their part there should be no need.” (Mill, 1848. vol. 11, page 319-20)

Like the child therefore, the civic rights enjoyed by citizens do not extend to the employee.

Authority is not conferred or capable of being withdrawn. Nor may it be questioned. Activities, association, open speech and/or comment, privacy and clothing are determined for him by those in authority over him.

“The main thrust of the autocratic organisation is to drive the mature adult back into his childhood. The mature individual strives to take an active part in his world, but the chain of command at work renders him passive. He seeks to be independent and to control his own behaviour, but as an employee, he is rendered *dependent* and essentially lacking in control over his own behaviour. The mature individual strives for the long time perspective, but as he does not possess or have access to necessary information at work which would permit this, his *time perspective* is consequently *shortened*. He seeks to achieve relationships based on equality, but as a *subordinate*, he becomes just that, once again as in childhood. At every turn, the psychological needs of the mature individual are at odds with the autocratic organisation.” (Blumberg, 1968. page 130)

However, parental authority is only morally legitimate because the child is an undeveloped, non-rational adult incapable of making important decisions for himself. Secondly, it can only be justified if the authority is exercised with the welfare and benefit of the child in mind. Neither of these justifications are applicable since employees are rational adults and the private, corporation is confessedly self-serving.

SUMMARY

Here then is a situation in which the same liberal values are used to justify apparently antithetical proposals. On the one hand, the contract is held to demonstrate the enjoyment of freedom and autonomy i.e. it is an agreement between equals, whilst on the other hand the 'contract' of employment is used to consolidate the intentional inequality of the master-servant relationship.

Thus, the celebration of equality (entering a contract) creates inequality (the master-servant relationship). An individual enjoying equality, may exercise his freedom and autonomy to place himself in a legal relationship of inequality beneath his (newly created) superiors.

The employment contract is problematic therefore, as regards the liberal democratic theory that is used to justify it.

"Modern marriage and employment are contractual, but that does not mean that, substantively, all resemblance to older forms of (unfree) status have vanished. Contract is the specifically modern means of creating relationships of subordination". (Pateman, 1988. page 118)

The depiction of contract as defining the employee as a free and equal party run counter to the reality of limited choice, unequal factual and economic power. Additionally, it emphasises the subordinate status of the employee through the imposition of the master-servant relationship upon the contract.

"Hence, it is argued, when one is born with little or no inherited capital (financial or otherwise) and with only one's labour to sell, then the 'choice' to be a wage-worker is no choice at all. It is, for all intents and purposes, an inherited status." (Ellerman, 1992. page 110)

This apparent contradiction in the moral significance of the employment relationship begs further examination for both claims (equal and free and, subordinate servant) cannot be valid in the same relationship.

Clearly, the legal definition of the 'contract' as an exemplar of equality and, the legal definition of the master-servant relationship as (intentionally) one between non-equals, make strange bedfellows.

With apologies to Proudhon²⁶ then, we seem to have a paradox where the employment contract is concerned i.e.

'Contract is freedom. Contract is subordination'.

There is indeed a contradiction then, between the nature of contract and the purpose to which it is sometimes put. Some writers claim that its emphasis upon freedom and equality make it unsuitable for some social relationships.

"Contract, one critic has commented recently, 'is a device for traders, entrepreneurs, and capitalists, not for children, servants, indentured wives, and slaves' ". (Baier, 1986. page 247)

However, as Pateman points out it is indeed regarded as suitable for employment and marriage despite the seeming contradiction;

"The central claim of contract theory is that contract is the means to secure and enhance individual freedom". (Pateman, 1988. page 62)

"However, Cole's point is that critics of capitalism – and contract – focus on exploitation and thus overlook subordination, or the extent to which institutions held to be constituted by free relationships resemble that of master and slave" (Pateman, 1988. page 9)

²⁶ 19th. Century, French anarchist writer, Pierre Joseph Proudhon's famous paradox stated as: 'Property is Freedom. Property is theft'.

It is also argued that the essential relationship of dependence that characterised the poor in pre-industrial England is carried over into the industrial and post-industrial employment relationship.

Dependence being a social and political status of subordination. This, it was argued is analogous to the relations between parent and child in the sense that a master in the period of early industrialisation might view his wife, his children and his servants as holding the same status and relationship to himself.

It was also argued that the reality of subordination and abbreviated freedoms paralleled that of the child in society.

CHAPTER 5. EMPLOYMENT: AUTHORITY, JUSTICE & DEMOCRACY

AIM

The aim of this chapter is to examine the moral basis for the exercise of authority in the employment relationship, its nature and its justification. The chapter also aims to assess the level of justice and democracy that is possible within the master and servant relationship.

These three aspects of social relating (authority, justice and democracy) emanate directly from the liberal notions of equality and freedom which makes them central liberal democratic values.

Since much of this thesis is a review of the liberal democratic justification of the employment relationship, such an examination allows for a moral assessment of the employment relationship against these same liberal democratic values.

AUTHORITY & JUSTICE

Within western, industrial democracies the enlightenment ideology of freedom and equality is generally accepted without very much discussion. However, when these ideas are linked to the institution of a national state with attendant governmental authority, the discussion becomes a little more complicated. The question that must be addressed is; if everyone is free and equal then how is this state to be reconciled with the existence of government that, by its nature and intent, restricts freedom and has a superordinate relationship to its citizens?

Citizens of a community may voluntarily agree to undertake certain actions, dispose of property and allow for others to make decisions upon their behalf through un-coerced agreement or contract between themselves. But the key words here are 'voluntarily' and 'contract'. But neither of these seems to apply to the relationship between citizens and government. Governments regularly require involuntary actions from their citizens regarding property, social freedoms and even physical incarceration. Nor is it clear that citizens have entered into a contract with the government since there is no apparent act of voluntary choice on their part. After all the institution of government and its attendant powers is a given aspect of life in community. A person is born a citizen, he does not create the polity by voluntary act-its acceptance is not an option –one is born a citizen.

The involuntariness of this social relationship does not relate well to the liberal democratic ideas of free and equal citizenry supposed to comprise the social contract or the intended voluntary nature of agreement between free and equal parties to a contract.

The question needs to be asked therefore, as to what moral compunction there is for citizens to subordinate themselves to this authority with its attendant restrictions on equality and freedom?

This is an important question for political scientists to answer for it goes to the heart of liberal democratic theory. However, it is also of importance in regard to the employment relationship.

This is because the employment relationship, as we have seen, is justified by the same theory and attendant values. The 'free and equal' citizen subordinates himself to the state through the vaunted social contract whilst the 'free and equal' citizen subordinates himself to the employer by 'voluntarily' entering into the employment contract. Recourse to the same liberal theory and values is made in justification of both forms of contract by those seeking to establish their moral justification. This is because the tenor, process and intent is regarded as analogous between the two contracts i.e. both contracts are regarded as resulting from the voluntary actions of free and equal citizens who may dispose of their property as they see fit²⁷. This liberal theory has been examined in the preceding chapters with regard to private property, the nature and validation of contracts and the public and private spheres. However, the inherent problem in liberal democratic theory is how to justify a process in which a system of governance (the liberal democratic state) that is ostensibly for the benefit of its citizens and that also claims to protect their equality and freedom results paradoxically, in a diminution of individual freedom and equality. Addressing this question of political obligation with regard to social governance should therefore provide a means of addressing the self-same question with regard to organisational and managerial authority.

²⁷ The 'property' of the employee being his labour which, under possessive individualism, is regarded as alienable from his self.

Both the social contract and the employment contract are justified by the same arguments, i.e. free and equal individuals voluntarily contracting into a relationship. Both are examples of social relating and both place one of the parties in a superior person to the other.

Therefore, if the relationship between employee and employer within the institution of an organisation is considered to be an example of a 'political' relationship (as has been argued by Keenoy & Kelly, 1998. Bendix, 1974. Anthony, 1977. Shamir, 1991. Salamon, 1992), then it seems reasonable to regard the arguments for the justification of political obligation to be appropriate arguments for a consideration of the legitimacy of the superordinate authority of the employer within the employee relationship.

"In a democratic society the economic system, like the political system, should be the result of a social decision. If we acknowledge that all people have a right to a voice in whatever affects them seriously, then they have a right to a voice in the way in which the society's resources are to be used and allocated." "Private, as well as social, ownership is a social relation, socially authorised." (de George, 1985. page 170)

In any event, this separation of social life into public and private spheres has been argued to be artificial since private corporations wield public power (Dahl, 1990. MacMahon, 1994). Thus, given the public nature of the power that organisations possess and the political nature of economic relations, it seems reasonable to argue that the arguments that relate to political obligation are equally valid when applied to an employee's obligation to obey. At first glance this may seem an inappropriate approach since duties attached to a position within an organisation may not, in themselves, be sufficient grounds to establish a moral obligation to perform them. However, as Simmons (1979) points out, this does not mean that there may be no moral grounds to require their performance, only that they do not exist because of the existence of organisational rules and roles.

Such grounds may be found in the claim that employment is contractual and voluntary, and that someone has made a commitment to honour the contract. The authority of the employer is based in part upon this claim and may therefore be argued to have moral force – assuming the contract be valid and reasonable. Secondly, the employment relationship makes moral requirements of the employee to serve the interests of the employer, to obey his authority and to be loyal. Such requirements depend for their force upon moral arguments, as discussed in chapters 2, 3 and 4. Therefore, the employer at least would argue that there are moral grounds for employee obedience to his authority.

Simmons (1979) provides a critical analysis of political obligation that summarises the approaches to this problem and addresses the problems contained in these approaches. In his analysis Simmons identifies four categories of justification for political obligation, that of obligation being based upon arguments regarding; consent, fair play, a natural duty of justice and a reciprocal notion of gratitude, or repayment. These may be examined with regard to the political authority of the employer and the moral obligation of the employee to obey.

There are three major strands in the consent tradition; historical consent, personal consent and majority consent. The historical consent approach has major difficulties inasmuch that it holds that only the consent of the first generation, i.e. an original contract, is required to bind future generations. It is hard to bring to mind such a circumstance and the approach has within it some logical difficulties. Given that voluntary agreement is required to enter a contract it is difficult, as Simmons points out, to imagine how succeeding generations could provide such consent to their ancestors.

Consent as a deliberate and voluntary act on the part of the individual has more substance.

The personal consent approach to political obligation makes four basic assumptions (Simmons, 1979. page 69); that man has a moral right to freedom, that any loss of freedom must be voluntary, institutions that acquire authority in this way cannot harm the governed unless they are acting ultra vires and fourthly, that authority acquired by institutions may only be exercised for the benefit of those who give the authority.²⁸ Such requirements for the legitimacy of governments, would it seems reasonable to suppose, contain the ability to withdraw such consent where the requirements are abrogated or not met.²⁹

“Since being born into a political community is neither an act we perform, nor the result of a decision we have made, we feel that this should not limit our freedom by automatically binding us to the government of that community.” (Simmons, 1979. page 69)

The personal consent approach provides the moral basis for the moral obligations we acquire through agreements and promises that we make. Insofar as these obligations limit our personal freedom they are acceptable since they are a voluntary and knowing act. The moral obligations that arise from contractual agreements are just such obligations insofar as they are concluded between free and equal individuals who knowingly and voluntarily commit themselves to an agreement.

As far as political obligation to a government is concerned, consent theory is wholly in the liberal democratic tradition and provides the most widespread defence of the institution.

Applied to the contract of employment and the obligation to obey the employer, it is problematic however.

²⁸ This seems familiar and is found in the popular notion that governments that are not chosen, or agreed to, by those they govern are illegitimate or tyrannical.

²⁹ As Simmons notes, the emphasis upon freedom over happiness is what makes consent theory a liberal theory.

Chapter 4 outlined some of the difficulties that adhere to the employment contract as an agreement between free and equal individuals who voluntarily agree to an employment arrangement. Summarising those points it might be argued that; employment contracts do not meet the criteria for contract validity inasmuch as agreement to the contract might be seen as involuntary rather than as the result of a negotiated process, full disclosure does not occur and it is not an agreement between equals. Furthermore, it was argued that a contract of employment (or self-rental) requires that the person to whom the labour is attached be designated a thing rather than a person – in Kantian terms the employee becomes a means rather than end.

“Rational Beings, on the other hand, are called *persons* because their nature already marks them out as ends in themselves – that is, as something which ought not to be used merely as a means-and consequently imposes to that extent a limit on all arbitrary treatment of them (and is an object of reverence)”. (Kant I. quoted in Ellerman, 1988. page 1110)

As noted in chapter 4 this was explained through the theory of possessive individualism that argued for the separation of labour and the self of the labourer i.e. the labourer retained juridical equality but his ‘possession’ of the property of labour allowed him to sell it. Thus the subordination attached to the labour not the person. The idea that the person can be separated from his actions, thoughts and knowledge (all of which require his active presence) is problematic. It is difficult to conceive of how the muscle power or intellectual problem solving ability of a worker can somehow be separated from his personage.

“By alienating the whole of my time, as crystalised in my work, and everything I produce, I would be making into another’s property the substance of my being,....my personality.” (Hegel, 1952. page 67)

As an approach, consent theory emphasises three key features; that there must be consent to be governed, that the individual has a choice of political allegiance and that authority that is acquired by an institution be held and exercised for the benefit of the individual. These features are at odds with the employment contract that enshrines the authority of the employer over the employee. However, consent to such authority cannot be said to be given, if the prospective employee has little choice concerning his source of income or support.

“We are born into an economic system just as we are born citizens, and...so must we work in order to live.” (Wertheimer, 1972. page 229)

In such cases, employer authority is something that is submitted to or accepted rather than expressly consented to. Whilst it is true that some people are of independent means and do not need to work to sustain themselves, this is not true of the majority of those who work. Nor is it reasonable to suppose that the employment contract is unproblematic for most who work. In fact, resistance to wage labour has been enduring for most of the industrialisation of society. Pateman argues that such resistance can be seen in the popular concept of wage labour as unfree labour in the United States during most of the nineteenth century since it clashed with the notion of the autonomous individual. Similarly, she notes that writers in the twentieth century began to comment upon the effect that wage labour had upon the ‘character and capacities’ of workers.

“They argued that subordination fostered servility and stunted capacities, thus creating workers who were not fitted for free citizenship.” (Pateman, 2003. page 19)

It is interesting to note also, that difficulties were encountered during the transition from medieval serfdom in coercing labourers to work where a source of sustenance was available in the use of common land for the growing of food, rearing of livestock and obtaining of natural materials.

Indeed it was noted in chapter 2 that the laws enacted immediately subsequent to the Plague required everyone to work. Perhaps it is not unreasonable to argue that the forced enclosure of land that made the poor dependent upon wage labour was a necessary pre-requisite to the satisfactory development of wage labour. The removal of independent sources of sustenance, that was the result of the enclosures, removed from all who did not own land any choice regarding employment. Neither is the second feature of consent theory unproblematic, namely choice of political allegiance. If such a feature relates to where one works, or rather for whom one works, this also has difficulties since the decision regarding whether a worker is employed is manifestly made by the employer. True, a worker may choose which employers to offer his services to but, the decision to accept his offer is made by the employer. Often it is the case that there are limited options for work in the vicinity that the worker resides. Where a worker has no choice but to enter work and is dependent upon the employer's agreement to accept him, it cannot be said that choice of allegiance is apparent. It is analogous to the necessity to join the 'Party' in former communist bloc countries i.e. there is no formal requirement but difficulties (from not joining) in personal and work life may render the worker helpless. The third feature of consent theory is clearly at odds with the contract of employment i.e. that authority be held and exercised on behalf and, in the interests of, the individual.

The overriding feature of the master-servant relationship (through which the employment contract is interpreted) is that the employee serve, and further, the interests of the employer alone. Indeed, the contract of employment requires that the employee obey the employer.

The organisation is extant *manifestly* for the purposes of furthering the interests of the employer i.e. where costs of employment are in conflict with profit and revenue it is considered prudent to cease the employment contract though firings and/or layoffs and the measure of an organisation's successful operation is found in the balance sheet rather than the individual interests of the employees.

These are not controversial statements but rather the generally accepted operating principles for private, employing organisations. It might be argued that by accepting the contract for wage labour, as drawn up by the employer, a worker has provided tacit consent to accept the employer's authority. Simmons notes three requirements for such an argument to be forceful; it must be clear that consent is necessary, that a period of time be available for discussion/negotiation, that a time limit be set for the provision of consent and that the consequences of consent must not be extremely detrimental to the consenter. Arguably, it might be said that a prospective worker may view the requirement to relinquish personal autonomy as a necessary evil to be endured if paid work is to be obtained. Such acceptance is manifestly not tantamount to consenting to the moral requirements to obey. Indeed, it has been argued that the absence of consent has always been the characteristic of wage labour.

"Each of these features requires further elaboration, for the employment relationship is characterised by the three great struggles to which these social locations give rise: the struggle over interests, the struggle for control and the struggle for motivation.what this implies is that labour markets, organisational hierarchies and the division of labour are all sources of potential tension, competition and conflict." (Keenoy & Kelly, 1995. page 64)

As to the requirement that consent not be extremely detrimental to the consenter, much depends upon the value placed upon autonomy.

Another approach to the justification of political obligation is found in the theory of 'fair play' exemplified in Rawls (1971).

Simmons summarises the key features of the argument thusly;

"There must be an active scheme of social cooperation."

"Cooperation under the scheme involves at least a restriction of ones liberty."

"The benefits yielded by the scheme may be gotten in at least some cases by someone who does not cooperate when his turn comes..."

(Simmons, 1979. pages 104-6)

In other words, where people voluntarily co-operate for mutual benefit and agree to forgo some part of their personal autonomy, then the right of others to expect conformity from an individual is morally justified by their own commitment (or promise) to conform. At the centre of this approach lies the *raison d'être* for the existence of such a social institution i.e. to provide a circumstance of benefit to those who co-operate with each other. That different interests may exist between the co-operating members makes necessary the application of justice within its operation.

Thus;

"A person is bound to do his fair share in supporting a cooperative scheme only if he has been allocated a fair share of the benefits of the scheme." (Simmons, 1979. page 111)

A person's obligations within such a scheme would presumably only extend to the extent that its purpose, operation and distribution of benefits were just.

It is difficult to conceive of government as a 'socially co-operative scheme' in a meaningful senses (outside perhaps of the council of a small village) and, it is even more difficult to construe of a private, employing organisation as one. This is because of the means, manner and intent of the creation of the organisation itself.

If one considers the employer and the employees to be members, then it is demonstrably not the case that its creation and intended purpose are the result of participation on the part of the employee group. If, because of this, we do not consider the employee group to be members then the question of moral obligation to accept and obey the employer's authority is simply answered;

"We must remember that where there is no consciousness of co-operation, no common plan or purpose, no co-operative scheme exists."
(Simmons, 1979. page 141)

Even should wage labour be somehow regarded as being part of a socially co-operative scheme, it fails the tests of 'fair play' legitimation of employer's authority. This is so because the purpose of the scheme and the distribution of benefits are required to be just for the fair play legitimation to be appropriate. Private, employing organisations manifestly fail to meet the implications of these requirements for they imply a condition of justice and democracy.

However well and humanely the employment relationship is administered it cannot be said to be democratic. Employees are paid to obey and, as has been demonstrated, are in an inferior and dependant relationship to the employer whose interests must be loyally and dutifully furthered. There exists no right or entitlement on the part of the employee to confer, restrict or negotiate the extent of employer rights and authority.

The manner in which the employer conducts the employment relationship does not alter the essential master-servant relationship of inequality and restricted freedoms. Similarly, no matter how well or humanely a master treats his slave, the relationship is at heart still that of slave and owner.

“One limitation on this account, of course, is obvious from the start. Only political communities which at least appear to be reasonably democratic will be candidates for a ‘fair play account’ to begin with.”
(Simmons, 1979. page 136-7)

Neither are the benefits of the enterprise distributed on the basis of equality or fairness. Indeed, the basis for capitalist production is that there exist a difference between the product value of employees’ work and the cost value of that work. The difference in these values is regarded as dividend and profit and is only distributed within the employer group.

The fair play approach to the justification of moral obligation to employer authority clearly fails to stand up.

Rawls himself later concluded that the fair play approach failed to provide a justification of obligation in the political community and argued instead for a justification based upon a justice approach. His argument centred upon two key propositions; that there is, what he called, ‘a natural duty of justice’ that requires the members of a political community to firstly, further and support the just institutions within it and secondly, to assist in the creation of just institutions where they are not in existence.

The key element in this approach is in the ‘just’ nature of the community and its institutions. As Simmons points out this approach skips over the issue of how one becomes part of a community in the first place in that it suggests that accident of birth (i.e. its geo-political location) is sufficient for a community to apply to one.

Missing from this approach would seem to be the issue of voluntarism and choice (except where the community and its institutions were unjust).

Leaving this aside however, it may be that the just nature of a community and its institutions are sufficient practical reason to support it but, this a practical reason (as Simmons points out) rather than a moral one. Leaving aside these criticisms however, the application of a 'natural duty of justice' as a legitimisation for employee obligation to accept and follow employer authority fails for the same reasons that the fair play approach failed i.e. the undemocratic and unjust structure and purpose of private, employing organisations.

“Once actual relationships in the workplace are considered, the abstractions of ‘fair play’, ‘cooperation’, ‘accepting benefits’ and ‘obligation’ are put into perspective. A more accurate characterisation of the social relationships in economic production is – ‘workers are paid to obey’”. (Pateman, 1979. page 131)

The inequality between employee and employer in terms of authority and the absence of rights regarding the creation of processes of justice regarding power and benefit distribution on the part of the employee seems to render the argument inapplicable.

MacMahon (1994) tackles the issue of employer authority in an analysis that he refers to as ‘the thesis of the moral unity of management’. He follows the argument that is normally presented regarding the moral legitimacy of the employer’s management of a private organisation (i.e. that private property rights confer legitimacy upon management of capital and personnel) but disputes its conclusions. The ‘right to manage’ does not, he argues, extend to a right to direct the activities of others.

“This can be seen as follows. What is in some respects the central incident of ownership, the right to possess, is the right to exclusive physical control of something.” “Ownership thus gives the owner of an item the right to control the uses to which others put it in the sense that he may veto any use of it proposed by someone else. But it does not give him the right to tell anyone to put that property to the use that he wants. It is not a right to command labour.” (MacMahon, 1994. page 16)

MacMahon is not arguing that employers do not have the moral right to instruct employees regarding their activities, only that this right does not emanate from the private ownership of property (be it capital or labour).

Such a right comes instead from the wage labour contract that stipulates that employment constitutes the employee as agent of the employer³⁰.

These are issues that have been addressed in previous chapters and argued to be problematic and it seems that MacMahon fails to recognise the legal and moral weight given to the common law master-servant relationship by the courts.

³⁰ Such a moral right would be dependant for its validity upon the moral validity of the contract and those arguments that claim that the employee's labour is separable from his person and therefore a 'property' that may be sold.

INDUSTRIAL DEMOCRACY

Liberal democratic values hold that the individual is autonomous and any incursions into this autonomy or giving up of freedoms must needs be voluntary. Social institutions, such as government, are created for the express purpose of serving the needs and furthering the benefits that may flow from social co-operation to the individual. The power and authority that governments wield are conferred and limited according to the express intent of its citizen creators. The holders of office in such institutions are appointed by the citizenry and may be replaced by them. Putting aside the problematic division of social relations into public and private spheres (on the basis of the argument that private organisations hold and wield public power that rivals that of governments) we might consider how such liberal democratic values are implemented within economic relations.

If the western, industrial state is regarded as an example of liberal democratic values, then the private corporation (as part of the key social institutions of that state) must be considered as something less. Its authority is neither given, conferred nor open to comment or question by those upon whom it is exercised. Neither may they choose the offices or officers within the hierarchy.

Citizens of this mini-state do not have freedom of movement, speech or association and, their activities are determined for them.

They are open to punishment, reward or dismissal without rights to due process. The existence of a trades union may contain some of the ways in which these powers are exercised but not the rights of management to hold them.

Given this, it seems reasonable to state that democracy, participative or representative, is not an integral feature of the institution of the private, employing organisation.

From a political point of view therefore, employed work can be seen as an alienating activity, as it can from the socio-psychological and developmental perspectives. That such alienation reduces co-operation and tends to demote managerial authority to the status of effective power has been discussed above. There are two issues here that are of *separate* importance; one is the political and democratic authoritarianism of the employment relationship with all its moral implications and the other is the effect that alienation (and its resultant resistance and apathy) has upon the productive efficiency of the organisation's efforts. It is important to make this distinction because the arena of industrial democracy often fails to distinguish between them. The work done in this area is motivated by one or the other of these concerns. On the one hand political scientists and philosophers (Pateman, 1975, 1999) have grappled with the moral issues regarding the non-democratic nature of employed work whilst on the other hand Sociologists (Anthony, 1977; Fox, 1971, 1974, 1980) and psychologists have addressed the difficulties of reducing the alienation that it produces and improving the satisfaction inherent in employed work. The moral-political approach is concerned with the re-structuring of political, economic and social relations in order to make the experience of work a morally acceptable social institution. This requires the consideration of some of the issues discussed above i.e. private property, social status, power relations, legitimation of authority and their attendant baggage of rights, freedoms and obligations.

"We are interested in the question of participation as it bears on the larger sociological and philosophical issue of the alienation of labour, and we are prepared to follow wherever this research leads." (Blumberg, 1968. page 129)

On the other hand, the production-efficiency approach considers what needs to be altered in the way in which social relations around work occur

in order to raise the satisfaction quotient of employees' thus reducing alienation and increasing effort and co-operation.

"If the employee can expect gratification of some of his important emotional needs through participation in the organization, he can to a degree become morally involved in the organization; for its part, the organization can then expect a greater degree of loyalty, commitment and identification with organizational goals." (Schein, 1965. page 60)

The increase of the level at which the worker, or employee, participates is however a common theme for both approaches³¹.

Referring below to Chapter 6 we note that there are socio-political pre-requisites conditions to the access and achievement of needs in the individual and his subsequent well-being. These needs for physical and mental health and, autonomy were able to be met only where participation in the community social, economic, cultural and political life occurred. Such participation, to be meaningful, required that such participation came from a position of *critical* autonomy, i.e. not just non-interference but, the ability to control, question, debate, contribute and change the structures, rules and operation of the institution. That is, to operate not just as a free person but, as an *equal* person in this milieu.

On the other hand, the production-efficiency approach places emphasis and importance upon participation because it reduces alienation to work and the organisation in the individual employee and engenders commitment to the thus easing the burden of control on the part of the organisation's hierarchy.

Thus, responses to the de-humanizing aspects of work have had two distinct orientations.

³¹ It must be noted with caution that the 'participation' that each refers to does not compare across the two approaches.

On the one hand it is possible to detect a socio-political response that concentrates upon the political structures of the firm, with a view to humanising the workplace through democratisation (Bowie, 1998; Pateman, 1970). On the other, there is the managerial orientation in which the increase in participation is seen as a means to exercise control and enhance efficiency³². That an increase in participation should be effective in improving a worker's satisfaction (and hopefully therefore, his efficiency and co-operation) can be accepted on a common-sense level.

"Having the power of participation implies to workers that they are equal partners, collaborators in an enterprise, rather than passive, coerced, or unwilling subordinates. Participation strengthens the belief, or creates it, that they, the worker are worthy of being consulted, that they are intelligent and competent." (Blumberg, 1968. page 130)

Participation then, is ostensibly concerned with the increase (or apparent increase) of autonomy and individual freedom in the workplace for both approaches.

It is critical to note however, that the manner and content of participation in the workplace is important (as noted above) if it is to be adjudged meaningful.

³² The latter of these approaches can be seen in the Human Relations movement of the 1930's and the later neo-Human Relations movement. From the Hawthorne experiments of the 1930's through to the more recent in the fields of developmental and behavioural psychology (Maslow, 1954; Argyris, 1964; McClelland, 1988; Herzberg, 1966; Aldefer, 1972; Likert, 1967) Behavioural Psychologists sought to find ways to humanize the workplace and the work experience. Symptomatic of this approach were the quality of working life (QWL), job satisfaction and autonomous work group movements that entered the workplace in the 1970's. Indeed, since the 1980's work organisation has been viewed as the critical factor in productivity and efficiency - as opposed to the 1970's when it was regarded as primarily important in regard to worker job satisfaction. (Ozaki, 1996)

Participation can occur within an organisation at many different levels and forms; in decision making, power distribution, strategic direction determination, punishment and reward, distribution of benefits, creation and amendment of rules and discussion of morality and ideology. In short it may cover the gamut of social relations between individuals.

The forms that participation actually take and are suggested for introduction do not necessarily cover the range outlined.

Reviewing the approaches to increasing participation in the work setting can be accomplished by categorising them as either; accepting or critical of the employment contract and the master-servant relationship.

Thus, those status quo approaches operating from within the master-servant paradigm may take the form of works councils, employee representation (through works councils or trade unions), neo-human relations based Human Resource Management programs of participation and employee empowerment (sometimes referred to as E.I. or, employee involvement).

Those approaches to industrial democracy that are critical of the employment contract and the master-servant relationship attempt rather, to introduce structures and relations of representative or participative democracy into the workplace. These are represented by the former (communist) industrial structure in Yugoslavia in which self-managed factories operated in a market economy, co-operative organisations and various industrial management and ownership arrangements to be found over the last 30 years in South America.

Do attempts to increase the level of participation within the paradigm of the master-servant relationship actually make the employment relationship more democratic?

One means of assessing this would be to follow the path suggested by Kettner (1990) for assessing the moral probity of decision making in the public domain. He says that five constraints should apply;

1. Generality constraint. "Practical discourse over an issue ought to be open to *all* competent speakers whose interests are or will be affected by regulations adopted to resolve the issue."
2. Autonomous evaluation constraint. "This implies a principle of non-paternalism. Practical discourse starts with the very terms in which the participants themselves construe the issue in question, their respective interests and their moral commitments."
3. Role-taking constraint. "To be capable of taking an interest in each other's interests, and to be prepared to let one's own interests be radically questioned, calls for what Kohlberg (1990) and others have termed 'ideal role taking'."
4. Power-neutrality constraint. "...means that existing power differentials between participants have to be bracketed or neutralized in some way so that they have no bearing on an issue within the cooperative pursuit of rational agreement through argumentation."
5. Transparency constraint. "Strategic action is success-oriented action by an agent who treats others as limiting her conditions of operation or merely as means to the agent's ends. As strategic action, overt or covert, is incompatible with unreservedly cooperative pursuit of rational agreement, strategic action has no place in practical discourse." (Kettner, 1990. pages 34-35)

Not a great deal of analysis or head scratching is required to determine the incompatibility of this test upon the participative approaches that are enacted from within the master-servant relationship.

In fact the very terms of the employment contract (as interpreted within the master-servant relationship) render such an approach incompatible with the test. The subordination of the servant to the master removes the right and ability to speak upon work issues except as requested and within the terms of reference imposed. Whilst discussion may occur within organisations about issues regarding work they are at the discretion of the employer, on the topics delineated and are engaged with at the employer's discretion. A freedom and right to question, comment upon and propose alternatives on the part of the servant clearly goes to the heart of the master-servant relationship in a manner destructive to that relationship. The first two requirements of the test are effectively failed therefore.

Similarly, the absence of internal coercion that is the requirement of the third test is rendered problematic by the necessity to obtain employment and the enjoyment of that employment at the employer's discretion. Adding the inequality of the power relations emphasises this. Thus the requirements 3 & 4 of the test are not met. The final test of open sharing of interests and values rather than the strategic pursuit of self-interest is also problematic since the master-servant relationship does imply the loyal pursuit of the master's interests.

Bowie provides another approach by applying Kant's ethical writings to employment. These he distils into a list as follows;

- "1. Meaningful work is work that is freely entered into.
2. Meaningful work allows the worker to exercise her autonomy and independence.
3. Meaningful work enables the worker to develop her rational capacities.
4. Meaningful work provides a wage sufficient for physical welfare.

5. Meaningful work supports the moral development of employees.
6. Meaningful work is not paternalistic in the sense of interfering with the worker's conception of how she wishes to obtain happiness."

(Bowie, 1998. page 1083)³³

Unfortunately Bowie contains the effectiveness of these requirements by placing them within the master-servant relationship.

This reduces its equalitarian and humanitarian requirements to nothing more than an exhortation to treat employees well – much as one might exhort a slave owner to treat his slaves well. In short he does not see its requirements as necessitating any change to the subordination, secondary status and primacy of the master's interests in the employment relationship.

If the spirit of the requirements that he derives from Kant were indeed implemented then these matters would have to be addressed.

"Our people objective : To help HP people share in the company's success, which they make possible; to provide job security based upon their performance, and to recognize their individual achievements, and to insure the personal satisfaction that comes from a sense of accomplishment in their work". (Quoted in Bowie, 1998. page 1089)

Note however, the paternalistic tone and careful retention of source and primacy of action in the mission statement from Hewlett-Packard on their 'treatment' of employees³⁴ that emanates once the social and legal realism of the employment relationship (as that between master and servant) is introduced.

³³ Clearly this echoes Maslow's 'Hierarchy of Needs' and Doyal & Gough's (1991) needs-based approach to social justice and moral wellbeing.

³⁴ Bowie champions this company's approach as supportive of Kant's requirements.

‘Our people objective [i.e. the master’s objective]: To help HP people [people who are defined as the master’s people] share in the company’s success [i.e. the master’s definition of success], which they make possible; to provide job security based upon their performance [i.e. reward the diligent servant with continued employment], and to recognize their individual achievements [a paternalistic approach], and to insure the personal satisfaction that comes from a sense of accomplishment in their work [i.e. work in the master’s interest].’ (*My notations added [.....]*)

Others assessments of the ‘increased participation to improve efficiency approach’ approach also come to the conclusion that they fail to meet the objectives of the moral-political approach since they fail to enhance autonomy and democratic participation. Stohl et al (2001) argue that empowerment contains problematic paradoxes; those of structure, agency, identity and power.

Claydon et al (1996) argue that;

“...the structural antagonism which characterises the capitalist employment relationship is reflected in a contradictory ethical position with respect to employee empowerment.” (page 13)

Research by Harley, (1999) on the link between empowerment practices and worker autonomy failed to show any association between the two variables. However, correlation was found between worker position in the hierarchy and their levels of control over their work³⁵.

From the moral-political point of view that this research is concerned with there needs to exist a worker power over work decisions and changes to authority and its distribution.

³⁵ A finding that echoes the work of the Epidemiologist Marmot (2000) with employees in the British civil service where general physical and mental health was correlated to the level of control over their work lives (and therefore position in the hierarchy).

“....., *industrial democracy* may be defined as the exercise of power by workers or their representatives over decisions within their places of employment, coupled with a modification of the locus and distribution of authority within the workplace.” (Poole et al, 2001. page 491)

A significant amount of research indicates that participation and employee empowerment do not in fact increase worker power of decisions and work context to any significant degree and in the sense that they create such a belief are seen as ‘trojan horses’ (Yates et al, 2001)

“The role of management is to set up these structures and processes within the organization that would result in the organization behaving at the level of integrity at which it would be most effective. It is not a question of what actions would be ethical in a particular circumstance, but what business should do to achieve the required level of integrity.” (Claydon et al, 1996. page 14)

Such efficiency-production approaches do not seem therefore, to lead to an increase in workplace democracy despite their nomenclature of participation, involvement, discretion, consensus, self-directed and consultation. A study of participative decision-making in Japan concludes;

“However, they deny workers the authority to make decisions.”

“In general, strategic, non-programmed, organization-wide decisions tend to be made at higher levels, whereas authority to make routine, programmed, sub-unit, and individual-level decisions is delegated to lower hierarchical levels.” (Marsh, 1992. page 250)

The capacity of these programs to enhance employee autonomy by a reduction or removal of subservience and dependency has been negatively assessed above.

They are manifestly not designed to address democratic values of authority legitimation, representation and due process that emanate from the liberal emphasis upon freedom and equality. Rather, it would seem that their purpose is to create the *belief* that such conditions have been introduced to the workplace.

This is because increases in the level of participation do not bring about a situation in which any form of *critical* autonomy is enjoyed.

And this is understandable, for the capacity to question, disobey or counter the employer's directives or wishes is fundamentally destructive of the master-servant relationship in that it creates (or suggests) effective equality of interests, rights and freedoms. What price the good and loyal servant paradigm that rests at the heart of the employment relationship then?

It might be argued that the counter weight of effective economic and political power that can be created in the existence of trade unions provides a meaningful opposition to the employer providing a voice to the employee's interests and a power base that provides effective negotiation.

However, the trade union movement is essentially non-critical of the fundamental social relations of the employment relationship-however much it may improve the pay and conditions of the employee it will not, or cannot, bring about a change in the moral character of that relationship. This is not entirely true for as Ruskin (1986) outlines, there appeared in the industrial democracy field, in the late 1970's and early 1980's, an Australian movement that tackled the issue head on. The Amalgamated Metal Worker's Union developed and attempted to implement a policy of direct intervention in all aspects of management prerogatives and, the A.C.T.U. presented a policy on Industrial Democracy in 1985 that directly challenged the essence of the employment relationship.

Viz;

“This means that the trade union movement should no longer accept the concept of the ‘master-servant relationship and the inequalities that the ‘master-servant’ relationship implies.”

For whatever reason, the policy has not since been pursued. Despite the radical (in the sense that it goes to the heart of the issue) nature of this proposal, the proposal was unlikely to resolve the problem of ‘the inequalities of the master-servant relationship’. This was primarily due to their insistence that the trade union become the main form of democracy in the workplace substituting representation for participation.

This would necessarily be so, for with direct participation would presumably obviate the need for an oppositional body. What was to happen to management and the private property of the owners? Was this an advocating of social revolution and social nationalisation? Or, was the extant economic structure to remain? If so, what was to be the role of the employer’s agents i.e. management? If the intent was ‘socialise’ the economy by taking up some form of worker ownership, what was to be its form? If the trade union was to be the sole agent for industrial democracy, what form was it to take? Indeed what was the new role of the trade union to be now that it’s role of ‘permanent opposition’ (Clegg, 1960) had been dissolved?

As a policy statement it hit the right equalitarian note but its formulation seems not to have been developed. Certainly, if the model in mind was the socialised Taylorism practised by the Soviet Union, then little gain would have been achieved in terms of autonomy and democracy.

Other approaches to increasing participation that accept the employment relationship also fail to alter the reality of employment.

Worker's representation on organisation councils and financial participation are far removed from the workshop and office and may not have a meaningful effect upon the alienating reality of employed work. They are analogous to concessions made to an inferior class of membership in the community (since they are at the discretion of the employer) rather than the full rights of citizenship that would destroy the foundations of employment with its cornerstone of a master and servant relationship. Interestingly, there does appear to be one facet of employment that by accident or intent does proceed towards a partial fulfilment of equalitarian values within the employment relationship-that of Occupational Health and Safety. To a significant extent it stands outside of the employment relationship's emphasis upon the priority of the master-servant relationship in that extant legislation mandates the equality of the employee's interests in the enjoyment of a safe workplace.

Absent is the subordination of the employee's interests in a safe workplace to the productive-efficiency interests of the employer. Employees have a right to raise issues of safety, meet with the employer on technically (at least) equal terms on safety committees and are to a significant extent protected from the privacy and obedience aspects of employment where safety is concerned. However, when the safety issue is resolved there is a return to a subordination to the organisation's hierarchy and interests - a factor that inevitably plays a part in the intercourse around safety. But it is a curious fact that the seemingly non-controversial, 'co-operation between equals' that the Occupational Health and Safety legislation enacts, has not been found emblematic of the possibility of a different form of worker-organisation relations by the parties.

Those approaches that are critical of the employment relationship attempt rather, to introduce structures and relations of representative or participative democracy into the workplace.

These are represented by the former industrial structure (under communist state rule) in which self-managed factories operated in a market economy, co-operative organisations and various industrial management and ownership arrangements to be found over the last thirty years in South America. In these ventures, 'participation' is intended (at least in theory) to enhance the wellbeing and moral status of the worker by ensuring (or at least enhancing) the freedom and equality of its participants by founding their autonomy upon their *critical* participation. Whether these approaches are a moral or commercial success is not at issue here. What is important for the purposes of this research is that their structure and intended moral and social relationships are intended to meet the requirements of those enlightenment values of equality and freedom brought about by the sort of critical participation that intends a moral commitment to the community that they comprise. A brief review of the political and moral structure should suffice to distinguish them from the private, employing organisation and the absence of an 'employed', and therefore 'subordinated', relationship to work.

Whilst organisations may be economically successful or not successful, well run or badly run, economically viable or doomed to failure the key assessment to be made here is the extent to which they allow for, promote and/or enhance liberal values of equality and freedom.

Appendix A provides three elucidations of generally accepted principles for the formation and running of co-operatives that appear to meet these requirements in principle and intent at least. However successful, or well run, these organisations may be, it is the moral values and the interests that they promote for the individual that are issue here. Co-operatives have the specific intent of being for the member's and community's interest primarily – there is equality in the interests they pursue and the political structures that they use to organise themselves.

Their executive authority is given voluntarily by their members and may be curtailed and withdrawn by the members; those in office who wield such executive power are at the service of those who elect them and may be replaced at the membership's will. Participation is of an almost mandatory nature in the hope of creating the sort of participatory democracy that sets democratic theory aside from the more representative nature of liberal democratic theory. Interestingly, since participation is the keystone of both of the approaches to industrial democracy outlined, some research indicates that the issue of 'ownership' (and therefore the moral and social relationships within the organisation) has a direct bearing upon the level of satisfaction (and therefore commitment) achievable.

Wetzel & Gallagher's (1990) study of private sector and co-operative organisations in Saskatchewan, for instance, concludes that;

"...this study indicates that type of ownership is related to organizational commitment. Employees of retail co-ops were found to be more committed than employees of private sector corporations. The relationship between co-operative ownership and commitment remains significant even after other possible correlates of commitment were simultaneously considered. This may reflect workers' feelings of a sense of ownership in particular co-operatives, that they are part of a movement whose values they share, and/or that the treatment they receive from the organization reflects coop principles. Retail co-ops may create an ambience which engenders commitment." (page 103)

The question of authority legitimation precedes that of industrial democracy, and is contained within the same chapter, because they are inextricably related where justice is sought. As noted above, obligation to an authority (be it Political or political, as in an organisation) renders an individual less free and less equal. It is therefore difficult to justify.

This is especially so in very large organisations and in state governmental institutions because of the difficulties surrounding the issue and/or withdrawal of consent.

Sheer size is what renders the issue problematic. Size also makes meaningful participation problematic making full, critical participation impossible in a centralised state of many millions. This is so even where the 'state' (such as in local government) may number in thousands. The liberal democratic theory resolution of this problem has been to promulgate the institution of a form of 'representative' democracy that effectively requires an individual to hand over sovereignty to another who will 'represent' his interests (along with the interests of many thousand others). In organisation's this may be performed by trade unions on behalf of their members or by worker representation on works councils.

However, this separation of the individual from the power centre amounts to an effective disenfranchisement of the individual from the decision-making process.

"In contemporary political science, low voter turnout, citizen apathy, the triviality of political campaigns are often cited as consequences of the failure of modern democracies to include citizens in meaningful action." Winner, 1992. page56)

Democratic theory (as opposed to liberal democratic theory) on the other hand, argues for the institution of 'participative' democracy in which individuals actively and directly enter upon person-to-person discourse on issues that are immediate and important to them. There is,an extent to which the interests of the individual will be subsumed into the interests of other individuals and that of the group; however, in such a group the individual may well choose to withdraw 'consent' thus preserving the 'social contractual' nature of the obligation to authority. Such authority, in

a participative situation, may more truly be termed 'self-imposed' and consensual.

Such a vision (reminiscent of Guild Socialism and Anarcho-Syndicalist theory, as well as Co-operative principles³⁶) has had its champions in the past for those for whom the meaningful participation of a community's members rated more highly than the efficient centralisation of power.

Arendt, (1977) approvingly notes Thomas Jefferson's concern that central government should remove the capacity of citizen participation and his vision of small-scale 'elementary republics' that might function in the lives of citizenry in the newly founded Republic of the United States of America.

"What he perceived to be the mortal danger to the republic was that the Constitution had given all power to the citizens, without giving them the opportunity *being* republicans and *acting* as citizens." [author's italics] (page 56)

That liberal democratic theory should have arrived at such difficulties where the justification of political obligation and the interests of the community are concerned is not unintelligible since the theory is firmly and inextricably located around the notion of individual freedom. This is the origin of its difficulties, I believe, in dealing with these moral issues. This is because, where moral issues are concerned, the enduring tension seems always to be between the interests and freedoms of the group and those of the individual. And this must necessarily be so, for while morality's subject of focus might well be the individual, its context must also always be that of the group. This is almost tautologically true for, to talk of the freedom, property, autonomy or equality of one person in the absence of others seems a meaningless exercise.

³⁶ See Appendix A

Thus when Locke justifies the existence of private property his terms are necessarily exclusionary. Exclusion of others is after all the root sense of privacy³⁷.

Thus discussions of private property, freedom and equality fail to adequately resolve or mollify this tension (between individual and group) because the scales are already weighted in favour of the individual perspective. Thus some legerdemain is required to justify the private sphere, economic contract in which the alienation of a man's labour (and its 'fruits') is positioned alongside the public sphere moral ideal in which each man has a natural, inalienable right to 'the fruits of his labour'.

³⁷ The Microsoft XP Australian dictionary lists 'privacy's' synonyms as:- "solitude, time alone, space to yourself, seclusion, isolation, retreat", and its antonym as:- "company".

SUMMARY

This chapter addressed the issues of authority and democracy within the employment relationship. It noted that the legitimation of authority is problematic within social institutions that exercise power because the exercise of such power mitigates against the essential condition of the citizen in liberal theory i.e. that of the free and equal individual. This generalised problem of political obligation, it is argued, is applicable to the question of obligation to accept the authority of the employer in an employment relationship. Additionally, since liberal theory argues that the employment relationship is a voluntary contract between free and equal parties then it has the same essential nature as the social contract in which political obligation operates.

It was argued that the literature on political obligation generally fails to accept the various justifications of liberal democratic theory and that the same justifications, when applied to the employment relationship fall even shorter of an acceptable argument.

It was argued that the employment relationship does not allow for any meaningful dimension of democratic relations when measured against the liberal democratic notions of free and equal individuals, voluntarily ceding authority in a democratic relationship to those exercising authority over them.

Attempts to increase the level of participation in management of work activities are motivated by a desire to increase the level of individual satisfaction in order to enhance commitment and therefore control over worker subjects. Meaningful measures of participation in authority structures run counter to the spirit and intent of the employment contract and the master-servant relationship that mandates subordination and the primacy of employer interests in these social relations.

Additionally, it was argued that participation in the form of representation (through trade unions, work councils and financial investment/profit sharing) did not enhance democracy since they did not increase the autonomy of the individual. It was argued that participative democracy was the most meaningful form of democratic participation since it allowed for the individual to participate meaningfully in democratic relations with others.

The co-operative structure was presented as the closest to this set of requirements since it was; based upon equality of membership, was voluntary, consensual and encouraged meaningful participation.

CHAPTER 6. EMPLOYMENT: HUMAN NEEDS & RIGHTS

AIM

The purpose of this chapter is to consider the question of human wellbeing from a needs perspective. Previous chapters examined the moral justifications that are put forward in liberal democratic theory for the extant nature of the employment relationship. This chapter reviews the literature on needs and seeks to determine its impact upon a consideration of the moral aspects of the social, economic, political and status aspects of the employment relationship. The review considers the fields of inquiry in which 'needs theory' is discussed and looks to identify a community of agreement as to the nature of these needs. It is intended to discover whether the field supports or challenges the structure and moral tenor of the employment relationship or instead, suggests an alternative moral emphasis and structure.

This task is easier stated than accomplished for the question of human needs is a contentious one requiring the separation of needs from wants, determining a level at which needs can be said to be met. However, an acceptable argument for the existence of objective, universal needs can be adduced from a review of the literature if it can be shown that there is a respectable body of academic opinion supporting that position. The chapter concludes with a proposed model of these needs.

THE CONCEPT OF HUMAN NEEDS

Discussion of the concept of needs has received attention in various fields of enquiry including Ethics (Kohlberg, 1981; Shea, 1988; Dworkin, 1988; Braybrooke, 1987). In the fields of Political Science and Industrial Democracy, writers (Pateman, 1975, Dahl, 1970; Burawoy, 1985; Werhane, 1985) concerned with the presence of human rights in social institutions view such rights as being derivative concepts of human needs.

Some sociological approaches (of a structural-functionalist orientation) consider that societal groups require a set of pre-requisite right and values that are necessary for harmonious and meaningful social interaction. (Barnsley, 1972)

Thus it may be argued that; if there are certain needs that are universal to human existence, then the welfare of humanity is dependent upon the attainment of these needs.

Inevitably, the attainment of these needs will be determined by the political and social relations of the individual within the group. Therefore, these political and social relations (if they are to promote human wellbeing) ought to be arranged so as to promote the attainment of these needs. This raises the question of whether there is a moral right to have one's needs be attainable in society - an issue that will be returned to later in the thesis. Thus needs theory, through its linkage with human rights analysis, becomes a basis for normatively evaluating socio-political institutions and relationships.

The consideration of needs has a long history (Aldefer, 1972. page 1; Rousseau, 1964. pge 37) that stretches back to classical Greece and it is possible perhaps, to argue that a concept that has engaged philosophers and social scientists for at least two thousands years has academic credibility, if only because of its lineage.

If such an enduring interest is a measure of the concept's legitimacy, then considering human needs as a basis for determining human welfare and social relationships, certainly has that legitimacy. Perhaps the question of human needs has been so enduring because it seems to go to the heart of the human experience.

“Long before behavioural science developed in the twentieth century, social philosophers, theologians and thoughtful men of many disciplines asked themselves about the nature of man. What were his primary wishes, his most fundamental needs? What motivated the human animal?” (Aldefer, 1972. page 1)

Central to a consideration of the human condition is the question of how we may distinguish between ‘needs’ (as essential to a fully human existence) and ‘wants’ (as desires which are merely wishes, desires or gratifications).

Or, to put it another way the separation of ‘true’ from ‘false’ needs. This matter has a long pedigree and there are several themes that accompany its consideration. Responses to this question can be traced back to Hellenic philosophers³⁸ who argued that the distinction between wants and needs is essentially historical in that there are true needs that are natural and, artificial wants that inculcated through social progress. The Stoics regarded the matter as one in which subjective desires were symptomatic of the un-enlightened man.

Unenlightened, because men did not comprehend that the simple, frugal life, was one in which nature provided universal laws of human behaviour. Thus, real or, objective, needs were realized by bringing the will back into line (through the simple life) with the dictates of nature.

³⁸ For example the Stoics and Epicureans.

Arguing along similar lines, the Epicureans suggested that it was enlightened hedonism (what we might call ethical egoism) that provided the route for distinguishing between desires and needs.

For if men are motivated by their own self-interest they argued, then a sufficiently long term view of those interests would cause their desires to coincide with their real needs i.e. an enlightened self-interest. For the wise man therefore, the temptations of desires or pleasures do not arise since the personality is controlled, or managed, by the will. This theme of 'natural' needs unsullied by artificial, culturally induced subjectivity is continued in the writings of Rousseau. For him the technological progress of society alienates man from his natural needs by creating un-natural wants. And, in line with Rousseau's concentration on political aspects of social ordering;-

"The increase in the quantity of wants, interacting reciprocally with the acquisition of new techniques (wants and techniques producing each other), is the motor of the long transition from natural to civilized man. It is at the same time a change in their pre-dominant quality – from natural wants, that are consistent with equality and freedom, to artificial ones, that bring inequality and unfreedom." (Rousseau, 1964. pge 37)

For classical, political economists and the utilitarians however, such distinctions are meaningless. For them there is no meaningful distinction between needs and wants, which are numberless and insatiable.

".....this liberal theory, and liberal-democratic theory insofar as it accepts the capitalist market society, makes no distinction: every want is as good as every other. So there is no place in the liberal theory for a distinction between 'needs' as more essential and 'wants' as less essential." (MacPherson, 1977; page 30)

Marx seems to be in general agreement with Rousseau when he argues that in a capitalist society, men's wants are reduced to a sense of procurement and empty gratification. However, he rejected the orthodox economist notion that wants and needs are inseparable and of equal value.

For him, the creation of illusory needs in the worker was symptomatic of a society in which men are alienated from themselves, each other and the fruits of their labour. In some ways Marx echoes the thinking of the Epicureans and Stoics in that he postulates the existence of true needs, the attainment of which allows man to 'realize' himself.

" In the 1844 Manuscripts and elsewhere Marx distinguished between 'true' and 'false', 'real' and 'artificial'. Marx claimed that 'real' needs were objective and that man only realizes himself when his true needs are satisfied and his 'false', unreal and artificially created needs (especially for money and possessions) are rendered redundant."
(Fitzgerald, 1977. page x)

In this century, consideration of human needs has been popularised by the work of Maslow. Indeed, his work seems to be the basis for much of the theorizing that has been made in the field of Psychology. Maslow also believed that human needs were 'objective' and determinable, if only in an 'ideal type' sense.

From a psychological point of view, this belief in the objective nature of human needs is shared by Fromm (2002), referring to a 'universal ethics' tuned to the universal needs of man. The importance of their approaches for this thesis is their intent to derive moral values from the identification of these universal, objective human needs. If there exist fundamental and universal human needs that can be identified as necessary to a fully human physical and psychological health, then it may be argued that there exists a moral right to have these needs met. What constitutes universal human needs is a question that requires consideration.

Whilst some practical aspects of human existence may be unproblematic (i.e. animal survival needs³⁹), those concerned with the social, psychological and developmental aspects of human existence are not. This in turn requires a conception of what it is to be human. A model of fundamental human needs requires or rather, implies, a statement of value regarding the nature and meaning of human existence.

Maslow, Fromm, Marx and Rousseau start from a similar conception of what it is to be human but, their model is not shared by all. This is clearly shown in the approach taken by orthodox economics where the objectivity of human needs is seen as highly suspect.

“Against the background of disagreement among consumers and producers about who needs what, ‘preferences’ and ‘demand’ are regarded as sufficient for the purposes of much positive and normative economic theory. So just because a majority might rank their preference for food higher than, say, that for fashion does not mean that a clothes-conscious minority might not legitimately make the opposite choice. Such choices have the same ontological and moral status – they are consumer demands that either can or cannot be acted upon through the expenditure of income. The idea of need signifies no more than a preference shared by many people.” (Doyal & Gough, 1991; page 9)

Clearly, orthodox economics rejects the idea of needs as either objective or universal and such an approach carries with it a moral dimension. That this is so can be seen by reference to the writings of political conservatives such as Gray, Hayek and the libertarian Nozick for whom the ‘market’ is the sole arbiter of what is morally superior.

³⁹ Normally considered to be air, food, shelter, security.

“The objectivity of basic needs is equally delusive. Needs can be given no plausible cross-cultural content but instead are seen to vary across different moral traditions...” (Gray, 1983. page 182)

The major outcome of this particular view of humanity is that if needs cannot be seen as either objective or universal, it follows that there cannot be a basis for an objective or universal agreement regarding what needs should be met or indeed, how they should be met. The moral element thus becomes political since ‘needs’ for humans begin with those necessities for sustaining life such as food, water, shelter and continue on to education, health and the like.

For these writers, such needs are presumably no more than individual preferences for the manner in which (their supposed) wealth and/or income is disposed and, in their conception of the essential nature of a capitalist system, this is to the ultimate good of all.

However, both Nozick and Hayek have also argued that some basic level of state maintenance of living standards should be in effect. (Nozick, 1974. Hayek, 1960) This begs the question of whether some concept of objective, universal moral standards is the generating force behind such a requirement. Surely then, there are some needs that all humans have and, to which all are entitled?

The field of needs theory then, has a long pedigree and contemporary research has moved from the theological and philosophical into the empirical. Whilst approaches and background values differ there are some conclusions that might be extracted from this review.

Firstly, there is a need to distinguish between ‘needs’ and ‘wants’. How one distinguishes between them seems to depend upon one’s view of what it is that characterises the human condition.

Some may consider it to be the loss of the natural state and an estrangement from the natural law, yet others may see it as the alienation of the individual from a sense of control over meaning and value.

For yet others it is the identification of those needs that contribute to personal (actual and/or perceived) freedom and autonomy or a sense of personal control and development of one's life. Secondly, the concept of needs may be taken beyond the idea of those materials and conditions necessary to the survival of the individual and species (such as food, water, shelter) to aspects of personal development and social relating if it is accepted that social and psychological well-being are necessary to being human. Thirdly, the concept of needs as something that must be met in order to exist as a human carries with it an automatic normative imperative.

That is, if humans need water and food to exist as human animals then these needs must be met if humans are to exist. To carry over this normative effect into the discussion of higher level needs (in a Maslovian sense) requires empirical data or an argument that establishes that such needs are necessary to the human condition.

Whether one accepts such empirical evidence or arguments may depend upon the reader's particular viewpoint of what is the essential nature of being human. Fourthly, the concept of fundamental human needs thus seems inextricably connected to the concept of human rights, for reasons given above.

This means that the discussion of needs is often rendered in moral terms with i.e. needs are unavoidable and carry moral implications for our political relationships and the forms and institutions through which they occur. In other words, by making a statement about needs we are unavoidably making a moral statement as well.

It is necessary therefore to identify the particular concept of what is to be human in order to identify what human needs are. A brief review of the literature on this matter follows.

NEEDS & WELLBEING

Whilst the consideration of needs has a long pedigree, from classical Greeks, through the enlightenment to the utilitarians of a century ago, most recent work is to be found in the fields of developmental and behavioural psychology (Maslow, 1954; Argyris, 1964; McClelland, 1988; Herzberg, 1966; Aldefer, 1972; Likert, 1967, McGregor, 1987; Shamir, 1991).

To locate the recent contributions to the discussion of needs we need to look at the development of thought in organisational approaches.

The research conducted in the American Western Electric company in the period 1927- 32 suggested to the research community that concentrating upon formal structure, specialisation, hierarchies and principles of management failed to address other important elements of the work relationship. Namely; the informal relationships that were pervasive and influential in the work place. The major result of this insight was the development of a movement in research known as the Human Relations movement.

Researchers working within this orientation concentrated upon the study of aspects of the non-formal organisation seeking knowledge regarding people's social and psychological needs. This 'behavioural' approach also engendered the Neo-Human Relations group of researchers for whom the relational elements between individuals, the organisation and groups were the key factors of interest.

Much of the work in this field of behavioural and developmental psychology seems to be based on the work of Maslow and his seminal theory of a universal, human 'hierarchy of needs' expounded in 'Motivation and Personality' (1954).

In this work he brought together his behaviourist insights regarding human motivation, articulated in a theory of a 'Hierarchy of Needs'.

Maslow contends that there are only five sets of needs that can be regarded as basic needs.

These are; physiological, safety, love, esteem and self-actualisation.

Physiological needs are those needs that are necessary for the human organism to survive and are those that we would expect to fit into this category i.e. food, water, shelter, air, sleep and, arguably, sex. Safety needs are those necessary to the continued survival of the human animal i.e. freedom from physical damage or pain and presumably a measure of organisation in daily functioning.

These 'lower order' needs are the least problematic of those postulated by Maslow as they are, to a large extent, self-evident. Love needs (in most textbooks referred to as 'social' needs) are concerned with man's nature as a social animal and the need for a sense of belonging and the positive personal results of meeting this need. Esteem needs were regarded as being composed of external self-esteem and internal self-esteem since the source of self-esteem is both self and others.

Thus, it can be seen as a need to be regarded as valuable by the group as well as a need to feel good about oneself. Self-actualisation addresses the need to become fully realised in terms of potential, ability and expression. The arts, and other forms of self-expression, including self-development, are examples of the way in which this need may manifest itself.

Maslow clearly states that he views these needs as arranging themselves in a hierarchy of pre-potency i.e. the emergence of one need depends on the prior satisfaction of another need with greater potency. The potency hierarchy is from the physical through to self-actualisation. Thus, once a need is satisfied it is no longer a motivator.

Summarising then, Maslow sees the tension resulting from ungratified needs as the primary motivating factor in a person's behaviour.

The intent of a person's behaviour is thus, the reduction of this tension and, only ungratified needs provide a source for this tension.

His method of studying this tension-behaviour phenomenon was to theorise these needs as belonging to five groups of needs arranged in a hierarchy of potency.

The tension resulting from an unsatisfied need driving the individual to behaviour that will satisfy it – once the need is satisfied, it becomes submerged as the next most potent group of needs in the hierarchy comes to dominate his behaviour⁴⁰. The more basic the need (i.e. the lower in the hierarchy) the stronger the influence on behaviour. Thus, if a lower order need is threatened; higher order needs are abandoned in preference to the more potent need. Imminent physical danger to self takes immediate (if temporary) precedence over the need to gain group membership.

Some misunderstandings of Maslow's theory of human need and motivation need illumination here. Firstly, Maslow is not claiming that this hierarchy is representative of each individual but rather, that these are the drives which form a general background to the actions, choices experienced by individuals who differ from each other in personality, predilections and social context. Secondly, much has been made of the pre-potent nature of the needs hierarchy with its seemingly rigid requirements for prior satisfaction. In fact, Maslow argues that the hierarchy is not necessarily of a fixed order and, that individuals may experience reversals within the stated sequence. Such examples, he argues, are often the result of aberrant experiences or situations and do not invalidate the general process of pre-potency.

⁴⁰ Interestingly, reaching the level of being able to address gratification of the self-actualisation need occasions a reversal in the usual diminution of motivation due to gratification. Maslow's contention is that unlike the other needs in the hierarchy, gratification of the self-actualisation need tends to increase motivation for that need rather than decreasing it. Indeed, the tendency in people who operate at the level of self-actualisation, is for there to be a reduction in the potency of lower level needs.

Examples given are; extended deprivation from chronic unemployment that may lead an individual to fixate on physical and safety needs; people with strongly felt values who may sacrifice physical safety by acting upon them or, particularly creative individuals for whom self-actualisation and expression may render physical, social and esteem needs impotent. (Maslow, 1954) Thirdly, Maslow makes an exception for the highest need regarding the rule that a gratified need becomes a submerged need.

Gratification of the need for self-actualisation, he contends, results in a strengthening of the need for further gratification rather than its dissipation. (Maslow, 1965)

Maslow's Hierarchy of Needs

Self-actualisation

Esteem

Group/Love

Safety

Physiological

In keeping with the idea of the hierarchy as representing an 'ideal type' of human needs, Maslow is not suggesting that these represent extant needs in all people or even that these are the sum total of needs that any person may have at a particular or indeed any time. What he is suggesting is that the hierarchy represents the needs that all people potentially have. With regard to the higher level needs this potential may not be activated if particular social or psychological circumstance do not allow, encourage or enhance the need.

In fact Maslow separates the hierarchy into two levels of needs. Lower order needs (physiological, security and social) for physical survival and, higher order needs (esteem and self-actualisation) for personal satisfaction and development.

Maslow's concept of human beings therefore conceives of them as animals firstly with survival needs and secondly as beings of potential self-development whose ability to realise that potential is predicated upon the satisfaction of primary survival needs being met.

The potency of Maslow's theorising is marked by its enduring popularity amongst behaviourist researchers, who continually return to its propositions for both theoretical and empirical work. Aldefer's empirical study, for example, simplified the theory reducing it to three core needs; existence, relatedness and growth. Existence needs correlate with Maslow's physical and safety needs, relatedness needs correlate with the social and esteem needs and, growth needs with self-actualisation. However, he believed that a strict progression through a hierarchy was not universal, preferring to view needs as a continuum rather than a hierarchy.

Thus, higher level need tension could be activated in the absence of lower level gratification. It is clear however that Aldefer's work represents a development or, as he termed it, a re-formulation of Maslow's essential insights rather than a major divergence. Other behavioural psychologists have based their research and theorising upon Maslow's theory of basic needs. Herzberg for instance, proposed a two-factor theory of motivation at work that seems to mirror strongly Maslow's basic conception of motivation (Herzberg, 1966). Diverging from the approach to motivation at work as representing a continuum from dissatisfaction to satisfaction, he proposed instead that satisfaction and dissatisfaction are two separate continuums.

A proposition that follows closely the Maslovian division between higher and lower order needs. Whilst elements in the workplace that create dissatisfaction may be met or, removed (i.e. status, salary, interpersonal relationships and supervision), their removal does not create a state of satisfaction but rather, a state of not being dissatisfied. For satisfaction (or motivation) to occur, a particular set of needs must be met i.e. achievement, recognition, responsibility, growth, advancement.

This position tends to support the tendency identified by Maslow for higher order needs to be freer from the gratify-equals-submergence character of the lower order needs.

MOTIVATING FACTORS

Achievement

Recognition

Responsibility

Advancement

Growth

HYGEINE FACTORS

Status

Salary

Interpersonal Relationships

Supervision

Working Conditions

NEEDS MET	NEEDS NOT MET	NEEDS NOT MET	NEEDS MET
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Satisfied-----Neutral

Dissatisfied-----Neutral

Whatever inferences may be made regarding Herzberg's position on the hierarchical nature of needs and their pre-potency, the parallels are clear.

Like Maslow, Herzberg separates his factors into two groups (motivators and hygiene factors) which co-respond with Maslow's higher and lower order groupings. If physical and security needs are supplied through salary and working conditions then social needs are met in interpersonal relationships status and supervision.

Similarly, internal/external esteem and self-actualisation needs are analogous to the achievement, growth, recognition, advancement and responsibility factors.

Support for Maslow's basic theory can also be found in the work of McGregor (1987) whose 'Theory X/Theory Y' approach argues, that people are motivated by esteem, affiliation and self-actualisation needs which manifest themselves in a willingness to acquire and accept responsibility, exercise creativity and self-control. Again we see a concentration on the higher order needs as being the prime engines of motivation – assuming of course that lower order needs are met.

Similarly, McClelland's Achievement Motivation theory was originally needs based research from which he identified four motivating forces; achievement, power, affiliative and avoidance motives. From McClelland's discussion of these factors, there would seem to be a strong correlation with Maslow's self-actualisation and esteem needs (McClelland, 1988).

Achievement he discusses in terms of a need for challenge, personal responsibility, the opportunity for creativity and clear feedback regarding success or failure.

From all of these behavioural psychologists we see a consistent reference to the higher order needs in terms of the underlying importance of the role of growth, personal and external esteem as factors which provide motivational direction and energy in people.

Maslow and Aldefer argue for 'man' having basic needs as a necessary function of being human.

These can be roughly summarised as physical, social and psychological.

Herzberg argues along the same lines by grouping needs in roughly these terms however he does not ascribe positive motivational attributes to the 'physical' needs. McClelland's theory X/Y approach supports the above approaches by emphasising the motivational aspects of the social/psychological needs⁴¹.

This research has at its centre a particular concept of what it is to be human. Consistent to their approach is a conception of people of seeking to be free from immediate survival needs in order to pursue a sense of self and self-development. Central to this approach is the essential nature of these needs. They are at the centre of human existence and thus fundamental to being human. At this point it can be seen that general agreement seems to exist in terms of the nature of people's needs and motivations, at least from the point of view of the neo-human relations researchers.

MASLOW ALDEFER HERZBERG MCCLELLAND MCGREGOR

Low Order

Physiological	Existence			Theory X
Safety		Hygiene factors		
Love/Social	Relatedness		Affiliation	

High Order

Esteem		Motivators	Power	Theory Y
Self-actualisation	Growth		Achievement	

⁴¹ Refer to pages 169-172 for a fuller discussion.

Another line of research that supports the concept of human needs as both objective and universal can be seen in the work of Jean Piaget and Lawrence Kohlberg.

Piaget's work was focused on children's development over time in an educational context (Piaget, 1997). He categorised children's development in six stages in which movement to each stage is facilitated by the learning that occurs as children develop social skills and ethical sentience. For example, Piaget conceptualises children as starting from a stage of moral realism in which rules are received (usually from parents) and to which adherence is unthinking and uncritical. As social learning occurs, the child begins to understand that rules are variant in that they are sourced from individuals who may change the rules at will and graduates to what Piaget terms the morality of co-operation stage in which behaviour and punishment/reward become variable and contextual.

Kohlberg extended this theory of learning and development to explain how people formulate ethical positions and decisions (Kohlberg, 1981).

Like Piaget, Kohlberg believed that morality is a learned process and theorised six stages of maturity in people's moral development.

Punishment/obedience in which behaviour is instrumental (in the sense of obtaining reward and avoiding punishment) i.e. no internal moral values are extant in this stage. Personal reward orientation in which behaviour centres upon the maximisation of pleasure i.e. if an action brings pleasure it is, ipso facto, 'good'. Group norm orientation is based upon social interaction and the norms of the primary group for the individual. What is 'good' or 'bad' is a received norm from the group.

Law and order orientation is again based upon social interaction as a reference point but now the reference point becomes those rules or norms sanctioned by the wider society, although the morality is still a received morality.

Principled morality orientation is the point at which the individual takes personal responsibility for behaviour and decisions.

The basis for behaviour becomes an internal process in which personal values provide the basis for determining 'good' from 'bad'.

Universal ethical principles orientation is the stage at which the individual seeks integration of personal ethics with the society in which he or she operates. This is a process of universalisation in that there is an attempt to incorporate the idea of universal wellbeing, with personal wellbeing.

At first glance there may not seem to be a direct link between Kohlberg's explanation of a developmental process that takes people through different levels of ethical maturity and Maslow's exposition of human needs. However, Maslow is essentially talking about human wellbeing in the sense of meeting needs and, human well-being is the territory of ethics. A comparison of the Maslow's hierarchy and the Kohlberg stages should serve to illustrate this.⁴²

The first stage of punishment/obedience is an instinctive one in which uncritical response to external requirements is the norm.

This equates directly with the Maslow's physiological needs in that people do not choose to need warmth, food, water and air. That is to say, people do not choose to breathe or not to breath, eat or not to eat – it is an instinctive response to the animal condition. Similarly, Maslow's safety/security needs equate with Kohlberg's personal reward orientation stage in that the person in question is operating at a level of attempting to maximise 'good' things and minimise 'bad' i.e. if obtaining water is good, then obtaining a reliable supply is also 'good'. Maslow's social needs level in the hierarchy equates directly with the group norm and law and order orientation stages, since belonging to a group requires at least a degree of

⁴² Refer to pages 169-172 for a fuller discussion.

conformity in order for acceptance to occur. Being part of a group means that it is the group's values that take precedence.

Self-esteem and principled morality are also analogous inasmuch as they both represent a return to personal values in determining that which is 'right' (Kohlberg) and that which is 'good' (for personal well-being, (Maslow)).

The universal ethic orientation and self-actualisation need are even more clearly analogous in that they both represent a synthesis of personal needs/orientation with social needs/orientation. A sort of attempt at attaining equilibrium between self and group, in which outcomes are universally beneficent.

MASLOW et al	PIAGET/KOHLBERG
Physiological	Pain/pleasure
Safety	Instrumental morality
Love/Social	Group norms/Law and order
Esteem	Principled morality
Self-actualisation	Universal ethic

Clearly, it would seem that, whilst the terminology differs, both Kohlberg and Maslow are describing the same essential insight. This work of the neo-Human Relationists and the moral psychologists (represented here by Kohlberg and Piaget) represent a shared conceptualisation of what it is to be human.

This conception is fundamentally humanitarian in perspective. However, wider reading suggests that their perspective on human existence is a borrowed one.

A review of the world's great religions shows that the idea of human beings as enmeshed in needs for animal existence and their lives as journeys to escape the physical, social and psychological strictures of existence, has been recognised and accepted for several thousand years. Buddhism, (when viewed as an atheistic religion i.e. an attempt to create a philosophy of living life, rather than a 'faith' or belief in the supernatural) takes as its starting point this very conception.

Note that the content of the basic philosophical argument ('Four Great Truths' and the 'Eightfold Path') can be seen as reflections of the levels of the hierarchy of needs and Kohlberg's levels of moral development.

The 'Four Great Truths' contend that;

Existence is unhappiness (food, death, loss, desires, wants, needs)

Unhappiness brings selfish cravings (wants, needs, desires)

Selfish craving can be overcome (through moral development)

Destruction is found in the 'eightfold path' (moral development)

The 'Eightfold Path' is followed by developing:-

Right understanding, right purpose, right speech, right conduct, right vocation, right effort, right alertness and right concentration.

This is directly analogous to the Maslovian hierarchy of needs. i.e. the Four Great Truths are concerned with the dangers, difficulties and necessities of survival just as the 'lower order needs' of Maslow's hierarchy are concerned with food, shelter, clothing, water and social involvement/acceptance. For those human beings for whom life is mainly concerned with these requirements, life is indeed unpleasant. Such people, we might surmise, are at the lower levels of poverty.

Equally, for those (at the 'higher order' needs level) who are able to escape the clutches of deprivation, life can be made pleasant, meaningful and purposeful as self-esteem rises and full development of self potential is possible. It is this mode of existence that is referred to in the 'Eightfold Path'.

Perhaps a clearer presentation of the common philosophy between these theories of human existence, is contained in the 'Six Roots of Good and Evil'. Again, we might view the first three roots as equivalencies to the lower order needs and the second three as representing the higher order needs.

They seem particularly common if the moral development overlay of Kohlberg's theory is borne in mind.

Lower Order Needs equivalencies:

Greed represents - a state of need and want, seeking fulfilment (Maslow's Physical needs)

Hatred represents - a state of insecurity/despair/dissatisfaction/anxiety (Maslow's Security needs)

Delusion represents - an emphasis on rules/rigidity (Maslow's Social needs and the acceptance/support of 'given' social norms)

Higher Order Needs equivalencies:

Non-Greed represents - an ethic of sharing/renunciation

(Maslow's Self-esteem needs, coming from within and without, a conception of self as part of a larger whole, a renunciation of self oriented ego)

Non-Hatred represents - a reaching out to others/kindness/compassion (Maslow's Self-esteem needs in which empathy and principled morality (Kohlberg) becomes the norm)

Non-Delusion represents - a state of wisdom/knowledge/understanding (Maslow's Self-actualisation needs i.e. full development of intellectual and moral potential).

Just as in Maslow and Kohlberg we see a pre-occupation with self and personal survival needs growing through a process of social integration to a universal view of the world, we also see in Buddhist philosophy the same journey from self to universality through understanding of self.

Similarly, Taoism talks of 'The Way' as a journey from psychological Egoism towards a universal morality in which there is perfection of action, thought and being.

Hinduism, that oldest of religions, advocates the same path for its devotees. The described Ashrama (life cycle) passes from:

Studentship - harsh conditions of discipline and continence (Maslow talks of physical, security needs. Kohlberg talks of a obedience morality)

Householder - entry into society/social/family (Maslow's Social needs and Kohlberg's group morality)

Semi-retreat - rising above worldly issues (Maslow's Psychological needs and Kohlberg's principled morality)

Renunciation - autonomous, enlightened individual (Maslow's Self-actualisation and Kohlberg's universal ethic)

The Purushartha (Human Ends) a similar process of escape from physical needs through to social involvement, psychological development and self-actualisation:

Artha - material interests

Kama - affective fulfillment

Dharma - Social and individual duties

Mosha - liberation.

This view of the human condition with its attendant needs thus can be seen to be an enduring one and has sufficient, academic and philosophical support to be accepted for the purposes of this research. It is adopted therefore as a basis not only for the identification of human needs but also, an indication of human wellbeing.

Much has been made of Maslow's lack of an empirical basis for his theory and whilst it is widely accepted and contained in most, if not all, books on organisational behaviour that deal with motivation; it is generally dismissed as 'theorising'.

"Unfortunately, however, research does not generally validate the theory. Maslow provided no empirical substantiation for his theory, and several studies that sought to validate it found no support." (Hall & Nonghaim, 1968. pages 12-35)

However, such dismissal seems unreasonable in the light of the fact that several researchers, who based their work on the hierarchy, sought validation from empirical data. Aldefer (1972) arrived at his modified version of the hierarchy through collection of empirical data as did Herzberg (1966), Likert (1967), McClelland (1988), McGregor (1987) and Kohlberg (1981).

Further, there is a wealth of Psychological literature that provides support to Maslow's proposition that (in the higher order needs) social acceptance, human company and self-esteem are necessary pre-requisites for psychological and physical health. For example, John Bowlby's Attachment Theory (1979, 1989) argues that affiliation is essential to the mental health of human beings, identifying it as a fundamental form of instinctive behaviour. Fromm (2002) bemoans the deleterious effect on physical and psychological health of social and psychological alienation in modern society. Renshon (1968) uses Maslow's hierarchy of needs theory to argue that it is necessary for individuals to have a measure of self-government or personal control of their lives.

Renshon argues that freedom and autonomy are necessary conditions for human well-being and proceeds to the consideration of physical, social, economic and psychological consequences of their absence. This proposition is given support in recent work in social epidemiology.

Marmot's (2000) study of British civil servants concluded that the degree of personal control enjoyed at work (which related to levels within the hierarchy) was a greater determinant of physical and mental health than all the standard health risk factors⁴³ combined.

In any event, it has to be said that empirical studies designed to test Maslow's hierarchy theory have not been without some success.

For instance the Lawler et al (1972) study did find;

"..that increased satisfaction of lower order needs tends to lead to decreased importance of those needs. They have also found that
⁴⁴workers at lower organisational levels tend to be more concerned

⁴³ Diet, exercise, alcohol and tobacco.

⁴⁴ Quoted in (Petzall et al, 1991. page 54)

with satisfying lower order, while managers express more concern for satisfaction of higher order needs”.

This is supported by Twinn (1977)⁴⁵ who observed that;

“...many apparently unambitious and acquiescent workers were transformed into imaginative, creative and independent people, who sought self-actualisation (in Maslow’s terms) in their weekend leisure activities”. (Petzall et al, 1991. page 55).

That the state of empirical validation of Maslow’s theory is incomplete is not entirely surprising.

“There have been many attempts to test Maslow’s theory empirically. Such attempts have mainly involved the use of statistical, factor analytic techniques to evaluate the responses of experimental subjects to questionnaires about needs, designed to Maslow’s scheme”. (Petzall et al, 1991. page 55).

It is not surprising because, in my view, there seems to have been a fundamental misunderstanding of both the intent and nature of Maslow’s theorising. His intent was not to provide a theory of behaviour but instead, to describe the human condition in general. Some misunderstandings of Maslow’s theory of human need and motivation need illumination here.

Firstly, Maslow is not claiming that this hierarchy is representative of each individual but rather, that these are the drives which form a general background to the actions, choices experienced by individuals who differ from each other in personality, predilections and social context.

In this sense he advancing a sort of Weberian ‘ideal type’ that is representative of people in general rather than individuals in particular. And as an ideal type its purpose is solely to inform and provide a

⁴⁵ Quoted in (Petzall et al, 1991. page 54)

theoretical structure around which research may be modelled and social actions analyse or explained. Sociologists would consider misguided research that concluded that Weber's ideal type theory of bureaucracy was invalid because organisations do not conform to its model. An ideal type is designed to describe the essential elements of an institution, relationship or condition not to describe the many ways in which they manifest themselves in various contexts. It is an explanatory or analytical device not a reflection of particular reality. Its purpose is to characterise rather than designate reality. In Weber's view the use of the ideal type in the historical method is concerned with determining meanings and involves the selective exaggeration, or highlighting, of aspects of the phenomena studied. It is not an attempt to represent reality, but is a representation of reality from one point of view. Thus, Maslow is trying to provide meaning to the human condition in a generalised sense rather than describing actual behaviour.

The exigencies of context, predisposition and circumstance for individuals mean that any one person, or group of persons, may actually behave outside of the model. In keeping with the idea of the hierarchy as representing an 'ideal type' of human needs, Maslow is not suggesting that these are the sum total of needs that any person may have at a particular or indeed any time. What he is suggesting is that the hierarchy represents the needs that all people potentially have. In respect to the higher level needs this potential may not be activated if particular social or psychological circumstance do not allow, encourage or enhance the need.

In fact Maslow separates the hierarchy into two levels of needs. Lower order needs (physiological, security and social) for physical survival and, higher order needs (esteem and self-actualisation) for personal satisfaction and development.

Maslow's concept of human beings therefore conceives of them as animals firstly with survival needs and, secondly as beings of potential self-development whose ability to realise that potential is predicated upon the satisfaction of primary survival needs being met. This being the case, seeking the validation of the theory in the subjective activities of individuals or groups is misguided because it becomes prescriptive.

This is not a theory on the motivations that are common to all people; rather it is a theory explaining the potential motivations that all people have in common. Therefore it is a theory about the general condition of being human not a predictor of individual or group personality and behaviour.

Further, in the absence of any more succinct theory of human motivation and the needs that drive it, Maslow's theory seems to be the most widely accepted and useful.

“Whether such a framework can be rendered ‘empirical’ is, in this sense, beside the point. Further, this approach throws more light on the use of rhetorical language and argument than on the validity of Maslow's hierarchy. Christian Bay for example, along with Davies, Knutson and Renshon, suggests that up to now, Maslow's hierarchical system provides the most fruitful point of departure for theorising about human needs in relation to politics and human problems”. (Fitzgerald, 1977).

One issue remains to be tackled, and that is Hume's ‘is/ought’ distinction, which points to the logical distinction between statements about ‘facts’ and statements about ‘values’.

As Hume would have it, statements of facts do not imply or require values in themselves. For instance the statement ‘the cat is drowning’ does not

indicate that this is a bad thing or a good thing. Nor does it indicate that we are obliged to help or hinder the process.

Such a distinction obviates the logic of arguing: 'people are starving. Therefore, they ought to be given food'. One statement is a statement of apparent fact, the other a statement of value. However, the fact that one cannot logically derive a normative value from an observed need does not prevent us from expressing such a value or making such a connection by stating our beliefs regarding the value of human life.

And this Gordian knot of the 'naturalistic fallacy' might be cut because the very concept of 'need' carries with it normative elements. The normative element is contained in the application of needs to humans since the concept of human being has moral values attached that are inseparable from our conceptualisation of what it is to be human. i.e. the concept carries within it the idea of 'needs' as a defining aspect.

To say that a person has human needs is to say that the object of comment (the person) would cease to be a 'person' (as we conceive of them) if the needs are not met. In fact, one could argue that the very concept of 'human person' carries with it the necessary meeting of fundamental needs – since to not meet the needs of food, water and social involvement renders the person non-human i.e. dead or malfunctioning as a human.

There seems no reason therefore why the process of deriving rights from needs may not be pursued – assuming that the particular model of humanity posited is accepted. i.e. that human beings, in order to exist and to function as human beings, need not only the means of physical survival but also, social involvement and psychological development.

The discussion so far suggests a model of human needs that would conform to the following;

NEEDS

Physical needs

Security needs

Social needs

Psychological needs

Self-actualisation needs

GOALS

Avoidance of serious harm

Social participation

Critical participation (meaningful)

If we accept this conception of what it is to be human along with its taxonomy list of needs and attendant motivations then the next task for this thesis is to consider its moral implications. Firstly, if this represents the breadth of the needs that human being have, then it must also represent what is necessary for human wellbeing.

Secondly, if the meeting of such needs (or at the least, conditions which allow for them to be met) is necessary for human wellbeing, then the socio-political conditions in which individuals exist must promote them if human wellbeing is to be attained. What then are the implications for social interaction if these two premises are accepted?

NEEDS, RIGHTS & EMPLOYMENT

This chapter has considered the case for the existence of human needs and attempted to formulate support for conceiving of such needs as fundamental to the human condition and therefore universal.

If we accept this conception of what it is to be human along with its taxonomy of needs and attendant motivations then the next task is to consider its moral implications i.e. an argument that all humans, irrespective of culture, have a right to have their fundamental needs met - in other words, to establish a moral right to need-satisfaction.

The term 'rights' is a common component of everyday parlance and is used in several different manners. For instance we might talk of human rights, of having a right to drive a car, a right to drink alcohol or a right to vote. Such usage does not necessarily refer to moral rights however. Common parlance use of the term rights may only refer to concessions or even licensed activities, rather than rights. Furthermore, where the usage does qualify as a reference to rights, we can identify different kinds of rights such as legal rights as opposed to moral rights. An important task therefore, is to clear up the issue of nomenclature by identifying the various meanings of the term and delineating specific kinds of rights.

When talking of moral rights it is important also to be clear of the sense in which the term is used. Moral rights may refer to the social mores that emanate from a particular society or cultures accepted notions of the rights that people enjoy and, in this sense the term refers to a consensus of opinion, belief or practice.

Alternatively, the term moral rights may be used in the manner of an ethical analysis in which the objective is to determine what rights people are entitled to and on what basis. In other words, the term can be used in either an empirical or normative manner.

When the objective is to determine the actual rights enjoyed within a group it is more difficult to separate the notion of moral rights from legal rights since, law can be a codification of cultural beliefs about moral rights.

Indeed, ethicists often find themselves borrowing from the standard legal analysis of rights when discussing moral rights.

There are various approaches to the state and, history, of rights theory.

Singer (1999) sees contemporary rights theory as emanating from three main sources;- Natural Law (incorporating Christian tradition), the Enlightenment theorists (liberal-democratic) and Legal theory (i.e. Hohfeld). To this might be added the Communitarian emphasis on group or community as a reaction to the individualism of these approaches (Singer, 1999, Howard, 1995) and the more relativist Intuitionism of Rorty (1993) that limits rights discussion to a form of social constructivism.

A review of the different approaches to rights is important for this work since a basis must be found for the assertion that human rights are universal. As mentioned above the justification of human rights requires ethical analysis and the range of justifications used for this purpose is varied.

Natural Law has the longest pedigree with its roots in the Stoic philosophy of classical Greece. Stoics observed that laws were dependent upon cultural and political location and considered that this variation might incorporate laws that were in fact unjust. They hypothesised the existence of a 'natural' law that was universal and invariable - law that could be engaged with by communing with one's conscience.

Such a law would provide a measure against which the justice of any particular man made law could be judged. The medieval western church was also engaged with the concept of individual conscience and the existence of natural law. Simply put, natural law, from a Christian

perspective, reflects the natural order of the universe according to God's intended plan.

Crucial to this concept is the intentionality of this creation in which everything was created to a plan with a specific purpose. Nothing is to be found that is erroneous or accidental since everything has a purpose within a pre-ordained order. It follows therefore, that the rules (or laws) by which the constituent parts of the universe live or exist, are intended and determined by God. This applied as fully to the motions of the planets and stars within the universe as to the shape, size, activity and longevity of trees and animals.

With God as the source of these laws and their necessity for the continued functioning of the universe, they are therefore regarded as 'natural' in the sense that they are both necessary and unquestionable i.e. God creates nature and the laws for its prescribed existence, therefore it follows that such laws can be regarded as 'natural' laws. None of the things to be found in God's universe have a choice as to whether to follow these laws. However, since God is a human concept (one assumes that trees, rabbits, mountains and planets do not entertain divinity beliefs) it is not entirely surprising to find that mankind has reserved an exceptional relationship for himself with God and the divine laws by which the universe functions. The theological take on these laws is that mankind is provided with reason by which he becomes both aware of the existence of God and the free will that allows for choice as to whether the laws are followed.

From an ethics perspective therefore, this natural law;

“...provided the basic rules that man needed to structure his relations with his fellow human beings during his earthly life”. (Jones, 1994. page 75)

Societies also have laws that regulate the relations between people and the state but, natural law provided a template against which ‘man-made’ laws might be considered as just or un-just. It is in this role as an arbiter of the justice of man-made laws and the responsibilities and actions of the state that natural law becomes political and ethical rather than primarily religious.

If nature is accepted as ‘given’ and no importance is attached to its origin then ‘nature’ becomes the source of justification rather than God. Thus, we see a shift from Divine authority to political authority in the discussion of the natural rights of mankind.

The next significant source of rights theory can be found in the wealth of socio-political writings of the enlightenment. John Locke’s claim to life, liberty and property was a continuation of this natural rights tradition (1963) that was echoed in the writings of Thomas Paine (1969) and the leveller Gerrard Winstanley (1973). For them the rights that they claimed were natural in the sense that they were the entitlement of humans by virtue of their human state, not deriving from position, caste, class, gender, government, king, religion or any other facet of socio-economic position.

The Lockean concept of natural law and human rights does not stray far from the theocratic approach but differs in the emphasis that it places upon the role of government. Governments were to be guided by the strictures of natural law that set limits to what they could require of their citizens. Indeed, the upholding of man’s natural rights was seen by him to be the primary function and purpose of government.

The very legitimacy of government was determined by its ability to uphold and protect those rights that Locke identified as life, liberty and property. This has the essence of Rousseau's 'social contract' inasmuch as failure to protect and respect these natural rights invalidated the right of government to rule.

Such ideas formed the central theme of seminal documents regarding governments in this period witness the American Declaration of Independence of 1776 ('life, liberty and the pursuit of happiness'), the publication of a Declaration of the Rights of Man and of the Citizen' following the French revolution 1789.

These same theories of natural rights are expanded upon in more recent documents such as the 1948 'Declaration of Human Rights' by the United Nations, the 'European Convention for the Protection of Human Rights and Fundamental Freedoms' in 1950 and, the United Nations' 'International Covenants on Economic, Social and Cultural rights and on Civil and Political Rights' in 1976.

Contemporarily, rights are referred to more commonly as human rights rather than natural rights. The justification for their acceptance is no longer predicated upon a natural law, be it cosmic or religious. The existence of human rights is recognised by virtue of being human rather than upon a concept of a state of nature. But the difference is not great in that human beings are still the product of nature and there is at base of human rights a universalised concept of what it is to be human.

But natural/human rights are not the only source of rights for people; they may also acquire rights, duties and obligations by choice as in a legal contract.

In the field of legal rights it is recognised that the term 'rights' is an umbrella for different kinds of entitlements.

Reference is normally made to Wesley Hohfeld's (1919) analysis which identifies four types of jural relations;-

'Claim Rights' in which one party (for instance to a contract) has a claim upon another.

'Liberty Rights' in which the right refers to freedom to act or think as one wishes.

'Power Rights' refers to areas in which the law empowers an individual such as in the area of will-making or voting.

'Immunity Rights' that provide immunity from the powers of others be they an individual, group or government.

These are specifically legal rights, whereas this research is concerned with moral rights. However, the two are not unrelated since there are similarities in the types of legal rights identified and the types of moral rights that can be identified in theoretical analysis.

It must be borne in mind however, that legal rights are a matter of justification by reference to legislation whilst moral rights are established through moral analysis or by empirical review of a particular societal group or culture.

What then constitutes a moral right? Gewirth (1996) provides a definition that highlights the similarities in analysis between the two approaches.

“What, then, is the nature of a right? In briefest compass, a right is an individual’s interest that ought to be respected and protected; and this ‘ought’ involves, on the one side, that the interest in question is something that is due or owed to the subject or right holder as her personal property, as what she is personally entitled to have and control for her own sake; and, on the other side, that other persons, as respondents, have a mandatory duty at least not to infringe this property.” (page 9)

His justification for the importance for the importance of rights follows.

“The importance of rights stems for the need for and value of such protection, from the claim that this protection is justified as being owed to persons for their own sakes (so that rights go beyond mere interests as such), from the mandatory-ness of this protection as thus owed and as grounding strict duties, and, especially when they are human rights, from the great value of the objects or interests that need to be protected: interests ranging from life, physical integrity, and economic security to self-esteem and education.” (page 9)

This justification is informative, for whilst there seems to be fairly wide agreement rights as a concept, there is widespread disagreement regarding what rights persons are entitled to and, the basis upon which rights ownership/entitlement may be justified. Here, Gewirth refers to social, economic, psychological and physical bases for such justification by assigning them ‘great value’.

Justification approaches to the assignment of moral rights to humans seem to reflect the different value systems of different theorists indicating perhaps, the reason for their assertion of human rights in the first instance.

Thus, political scientists tend to assert the existence and importance of rights as a means of limiting the authority of and, identifying the duties of, the state. Alternatively, theologians relied upon natural law (and therefore God's law) as a means of consolidating divine rule and order.

To propose that people have inalienable rights as humans begs the question 'why?'

Justification is a necessity if the statement is not to be relegated to the status of opinion or prejudice. Various approaches to the justification of human rights as a moral entitlement have been taken in the past.⁴⁶

The social contract approach of Locke, Hobbes and Rousseau has been further elaborated upon by John Rawls in his book 'A Theory of Justice' (1971).

Rawls posits the imaginary situation in which members of a community may plan out and choose the nature of the community prior to their involvement in it. To this extent they are entering upon a social contract as 'rational contractors'.

But importantly Rawls places a 'veil of ignorance' over their knowledge of their wealth, status and role in this community.

Rawls argues that given this uncertainty, the contractors would give themselves at least an equal chance of a good life as everyone else and insist upon basic conditions of liberty and a qualified equality – the basic conditions of human rights. However, there is something problematic about the social contract approach to grounding the existence of human rights in a negotiated bargain with others. The problem is that human rights start to take on the character of citizenship rights that are subject to law and/or consensus. This weakens the concept of human rights as being universal and inalienable.

⁴⁶ Refer to the methodology section of the thesis for a fuller discussion of this matter.

The 1776 U.S.A. Declaration of Independence asserts that 'we hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness'. Claiming that human rights are self-evident is an appeal to a fundamental position regarding moral beliefs. All forms of ethical justification are an appeal to fundamental moral standards but, each moral standard tends to be based upon something even more fundamental.

It is a process that must cease at some point and the appeal to the self-evidence of human rights is a statement that this is a fundamental belief that relies upon no other proof or support. But since the justification stands upon a personal belief it lacks force.

Alan Gewirth (1982) rests his justification of human rights upon the capacity of people to be morally responsible for their actions i.e. their moral agency. He argues that to function as moral agents they need to display autonomy in their choices and therefore necessarily possess the right to freedom and wellbeing. In other words, without freedom and wellbeing an individual loses his/her capacity to function as a moral agent and the question of morality becomes irrelevant.

However, it could be argued that human rights are a necessary outcome from the value that we place upon human status.

This is the position taken by Vlastos (1984) who argues the distinction between merit and worth in individuals. Whatever the differences between individuals we assign all of them equal worth because they are human beings. If equal worth is assigned to each individual then equal entitlement to rights is a logical outcome of this belief.

This is another argument that claims a sort of self-evidency in that it rests its case on the belief that all humans are of equal worth – with no basis, except fundamental belief, to support the position.

More directly promising is the approach that seeks to establish human rights as a necessary result of the universal needs that humans have. There are practical and theoretical difficulties attached to this approach however.

These are due to the difficulties inherent in distinguishing needs from wants and, in determining what is required to satisfy a need.

Needs can be surmised and universalised from the general human condition i.e. what it is to be a human being. At a basic level all humans 'need' the basic requisites for life – food, shelter, water and safety. However, the wants of people can and will vary over time and context. They are neither central nor crucial to a person's existence. It is difficult to separate out needs from wants, especially since common parlance readily substitutes the one for the other. This problem might be overcome if it were possible to generalise a set of universal needs based upon a generalised concept of what it is to be human.

If it is possible to successfully identify universal needs there still remains the problem of degree i.e. if all humans have a need for food then what sort of food and how much, may be the question begged. Is the barest minimum necessary to sustain life a meeting of this need whether it be unappetising and insufficient to quell the pangs of hunger? If health is considered necessary for human existence should this be limited to basic first aid or should it extend to heart replacement surgery – irrespective of social ability to fund the treatment?

This question is gruesomely present in many states in Africa during the present AIDS epidemic.

These are major obstacles; however the approach of Doyal and Gough (1991) and the similar perspective of Thomson (1987) go some way to obviating these problems.

SOCIETAL PRE-CONDITIONS FOR MEETING NEEDS

Regarding needs as indivisible from the reality of human existence, in itself, provides an argument for their promotion to the status of rights. Certainly, it can be argued that to function as a human, the basic needs of physical health and autonomy need to be met on a consistent basis. A dead being is no longer functioning, as a human or anything else.

Therefore food and water are first on such a list of what people can be argued to have a right to obtain closely followed by intermediate level needs of food, shelter and clothing. But these are needs that do more than ensure physical survival and the conceptualisation of humanity presented above extends into community life with its social and psychological dimensions. The meaningful social participation, psychological and moral development that such a concept of humanity presents can arguably only be attained where the individual has received sufficient education of laws, customs, mores and other necessary skills and knowledge.

Moreover, such participation if it is to ensure the attainment of higher level needs (such as self-esteem, group membership and self-actualisation), would arguably need to be conducted from a position of equality and autonomy in order that an equitable distribution of benefits and obligations of community life was to escape the control of the powerful. This amounts to a fulfilment of moral agency and reciprocity amongst humans in a community. Full and meaningful participation if based upon such a position of equality and autonomy would necessarily entail a *critical* participation in order to maintain that status. Meeting needs in a community, it is argued, require the sort of civil and political rights that emanate from a status of freedom and equality.

If meeting human needs equates to human well-being therefore, there is at least the basis for a moral argument that socio-political status (freedom and equality) is a necessary pre-requisite to their attainment.

SUMMARY

The stated aim of this chapter was to consider the question of morality from a 'needs' perspective and to determine whether the literature supports or challenges the structure and moral relations of the employment relationship.

It was argued firstly that there is a sustainable argument for the existence of universal human needs that are intrinsic to human existence and latterly, that their indivisibility from humanity gives them a moral significance. The conclusion was reached that there existed an enduring and ubiquitous conceptualisation of humanity that might be generalised in Maslow's 'Hierarchy of Human Needs' formulation. General support for this was noted in the Sociological, Developmental Psychology, Behavioural Psychology and major religious philosophies.

This literature supported the contention that, needs are a necessary corollary of human existence and, noted general agreement upon their nature, range and importance.

This amounted to; a concept of what it is to be human - a conception of people seeking to be free from immediate survival needs in order to pursue a sense of self and self-development. It was further argued that such needs constitute a human right to need satisfaction. Following the Doyal & Gough approach it was argued that a 'right' to the attainment of such needs meant that social pre-requisites (in the form of rights) were necessary. These were; critical participation in social and political institutions and relations in order to ensure that higher order needs (such as self-actualisation) would be met as well as safety, social and psychological needs.

CHAPTER 7: CONCLUSION

EMPLOYMENT, LIBERAL DEMOCRACY AND HUMAN NEEDS

This research commenced with the proposition that the employment relation is at odds with the moral values inherent in western democratic society.

These values were identified as part of the liberal tradition that grew out of the Enlightenment. At their simplest these values are ones of individual equality and freedom. It is from these that we derive our understanding of a democratic society in which are found the secondary notions of due process, pluralism, full participation (socially and politically) and the justification of authority.

“The basic notion from which I begin is that as autonomous and responsible agents capable of entering into significant social relationships with others we are entitled to political institutions which reflect the moral right that each of us has to be treated as an individual with the capacity to shape and pursue his or her conception of the meaningful life.” (Sartorius, 1984. page 196)

It was argued however, that such values do not extend to the ‘private’ economic sphere in society where the social institution of employment takes place. The consequence of this is that private, employing organisations are not subject to the democratic constraints and obligations that such values place upon our public social institutions. Typically, a corporation’s power and governance structures are not subject to election or control by those whom they are set up to govern. Their operation and management has no legal or (recognised) moral requirement to proceed upon an assumption of equality or freedom between their employees, the owners and the agents of the owners (i.e. managers)⁴⁷.

⁴⁷ Some restrictions are placed upon organizations through legislation and/or trade union contracts regarding discrimination and procedure but these do not attempt to inculcate a moral state of equality and individual freedom.

Neither is there a legal, operational or (recognised) moral entitlement on the part of the employees to due process, a pluralism of interests or the exercise of control or justification of the authority exercised upon them.⁴⁸ This was seen as a situation worthy of research for two reasons. Firstly, because employment by these organisations constitutes a social relationship that is in tension with this liberal tradition and the values that it espouses. Secondly, because justifications of the employment relationship are often made in terms of the very values with which they seem to be in a contradiction of i.e. democratic values in the liberal tradition. (Hayek, 1960. Nozick, 1974. Friedman, 1970)

That the employment relationship requires justification is apparent from a consideration of the tension between it and those democratic values that define the liberal tradition - values such as equality, autonomy and pluralism. And also, those values that emanate from them such as; individual rights, due process and democratic participation. That this dissonance exists has been widely observed within the literature, as was observed in the text. If the moral probity of the employment relationship is to be accepted therefore, it was considered necessary to examine these moral justifications with a view to determining whether they conform with and/or meet the liberal standards put forward. An additional consideration of the employment relationship in terms of its 'fit' with the liberal democratic tradition is also made in terms of the derived (from equality and freedom) values of authority justification, justice and democratic process. As a further test of the moral probity of the employment relationship, a consideration is also made of the demands that a 'needs' analysis places upon the requirements of social intercourse.

⁴⁸ As regards 'due process', the reader may claim that laws regarding unfair dismissal have been enacted. However, these are discretionary on the part of governments or contracts and as such are examples of how employment may be organized i.e. they do not alter the moral nature of the *fundamental relationship itself*.

It was argued that private employing organisations were non-democratic in their structure and, conduct political and social relations based upon hierarchy and subordination.

Additionally, the central values of equality and freedom were found to be selectively applied since employees are effectively disenfranchised within them.

Simply put, if western liberal states may be characterised as democracies, then the private, employing organisation constitutes an autocratic state within that democracy. Ironically however, such autocracies enjoy legal and moral rights that extend beyond those afforded to the human citizens of those democracies.

Chapter two reviewed briefly the employment relationship from an historical perspective with the intent of identifying its defining characteristics. Employment, it was argued, developed from the interplay of common law, 'possessive individualist' theory⁴⁹ and the implementation of statutes over time that have modified, extended or contained these. This led to the conclusion that the employment relationship can be defined as primarily a master and servant relationship emanating from property rights⁵⁰ that is modified to some extent through contract and legislation. This conclusion is of central importance to the research but, it is also one that conflicts with the more commonly held view that the employment relationship is primarily a contractual one. It is an important conclusion because it allows for a moral perspective to proceed beyond a legal framework to one in which employment is seen as not just an organisational, legal; or economic arrangement. Rather, it is argued that it carries with it the social and political baggage of its origins in medieval society. However, this research concluded that property rights and contract are not defining features of the employment relationship.

⁴⁹ Resulting in values regarding private property and the separation of private life from the public domain

⁵⁰ The property rights at issue are the property rights pertaining to ownership of the means of production on the part of the employer and, the property rights over supplied labour on the part of the employee.

Rather, they are the basis for the moral arguments with which liberal democracy seeks to portray employment as reflective of liberal democratic values.

In essence, the liberal democratic tradition de-emphasises the medieval 'status' character of the master and servant relationship and instead justifies the employment relationship by arguing that its key moral components are those of the contract, private property and the private nature of economic activity. These, it is argued, are all solid exemplars of the liberal, democratic tradition⁵¹.

That they are exemplars of the equality and freedom of the liberal tradition is undoubtedly true. Contracts are by definition, voluntary agreements between equals who are free to act without coercion and which benefit both parties equally. Certainly, the concepts of privacy and private property also promulgate values of autonomy and freedom from coercion by others or the state. However, it was argued in the research that these arguments have either limited application to the employment relationship or, are non-sustainable arguments from a moral perspective.

These defences, or justifications, for the moral rectitude of the employment relationship are examined as are those secondary notions of authority, justice and democracy.

Chapters 3 and 4 consider the nature of these arguments and examine their sustainability and application to the employment relationship, firstly, to the question of the essential character of the employment relationship. The research argues that it is the master and servant relationship that defines the essence of employment. This is held to be the case because employment contracts are subject, by law, to the requirements of the common law master and servant relationship.

⁵¹ i.e. The rights that pertain to private property take moral precedence over the shortcomings of the master and servant relationship and, that the employment relationship should not be subject to the 'democratic' requirements of civil intercourse because it occurred outside of the public domain.

It is argued that employment 'contracts' are not in fact contracts at all, in the accepted legal sense. Further, their subordination to the master and servant relationship⁵² violates the assumption of 'free and equal' parties. The parties are patently not equal in terms of bargaining power, knowledge and need. Furthermore there is an element of disingenuousness in the argument that an agreement to render one's self unequal and unfree is an example of the exercise of freedom and equality. The liberal concept of the contract as an exemplar of freedom and equality was found to be inappropriate when applied to the employment relationship because it failed the tests of non-coercive, informed agreement between equal parties.

That it was considered to have failed was highlighted by the established legal insistence that the employment not contradict, or weaken, the institution of the master and servant relationship.

The master and servant relationship mandates inequality through subordination, the primacy of the master's interests over those of the servant and the moral imperative of loyal furtherance of the master's interests. Therefore, the claims for equality between the contracting parties is considered to be effectively neutered. The master and servant relationship, it was argued, supported a social status of inferiority through dependence and eradicated many of the civil rights otherwise enjoyed by employees in their status as citizens. On the one hand, the employment contract is held to demonstrate the enjoyment of freedom and autonomy (i.e. an agreement between equals) whilst on the other hand the contract is used to consolidate the intentional inequality within the master and servant relationship.

⁵² At law the employment relationship is referred to as a master and servant relationship in which subordination and the loyal furtherance of the *master's* interests are defining features.

The argument that liberal democratic values of freedom and equality are met by the use of contracts⁵³ in the employment relationship was held therefore, to be unsustainable.

The separation of social life into private and public spheres was seen to be an artificial separation and largely theoretical. It is based upon the notion of an individual's right of non-interference from others that is derived from *an eighteenth century context*. It is difficult to see how it bears any meaningful relationship to twentieth century commerce and society⁵⁴ 'since many private corporations effectively appropriate public power through participation in government administration, receipt of public monies through grants and subsidies and, lobbying of government officers'. The separation is also breached through the enactment of legislation regarding standards, terms and conditions of employment. The role of private property and the rights emanating from its possession are central to the justification of the public/private divide between the public polity and private economic activity and social relations. It is also central to the (liberal) moral justification of the employment relationship.

The arguments regarding the general justification of private property rights and their specific application the employment relationship are considered from two main approaches – the 'natural law' argument and the 'liberty rights' argument. For the first of these approaches we look to John Locke. For Locke, private property rights were something derived from acting upon the natural state in which the fruits of the earth were given as common resource by God. These rights were acquired by action and need by the individual. It is based upon the doctrine of self-ownership i.e. a man owns himself, his body and his thoughts.

⁵³ i.e. represent a private arrangement between equal and free citizens.

⁵⁴ In which many corporations exceed the wealth of all but five or six nation states and participate in the process of government through committees and financial cost sharing.

Property may be acquired through need (for survival), improvement of land or resources or by taking land that is unused by others. As long as no one is wronged, the property so acquired becomes his private property. It has at its heart the doctrines of self-ownership and creation without wrong – from which all of his premises and conclusions flow. These presented several problems however. Firstly, Locke's logic for self-ownership (I am not a slave, therefore nobody else owns my body, therefore I own my body) has at its heart an illogicality, inasmuch as the fact that no one else owns my body does not, of itself, establish that *I* own my body. It was also found to be problematic in that it has a rather curious view of the human person i.e. human existence can be meaningfully separated between body and mind, with the body as something that can be 'owned' in the way that a wheelbarrow may be owned. It seems to suggest that a person can be a thing to be possessed rather than an end in itself. It seems more meaningful to consider 'self-ownership' in terms of self-use and/or freedom from interference, rather than possession. It was also argued that there was nothing in the acquiring or production of food that required ownership of either the food or the means of its production. Indeed it was argued that the concept of property ownership may well be culturally based since several indigenous peoples would have found the idea of land ownership distinctly foreign or strange. Clearly, the need for subsistence does not necessarily entail the exclusive ownership of resources. It was argued that the foundational nature of Locke's reasoning required that one accept the reality of a 'natural' law. If this premise was not accepted then the argument has no rational basis.

Similarly, Locke's argument of ownership through 'appropriation' through labour (i.e. whatever I can take and improve becomes mine) has difficulties. It requires an assumption of a state of unending natural abundance for it to be practically possible and secondly it is unclear how the act of labouring creates private property. By its very nature it reduces the rights of access and freedom of others.

By reserving land or an animal (as private property) one presents others from enjoying or accessing them. Since he starts from a premise of a common resource given by God it is not clear how owning oneself entitles a man to extinguish the common property or access rights of others to this common resource. In a sense also, it was argued that Locke presented arguments that went against the idea of a moral community. Morality is essentially concerned with the interaction of individuals and the well being of a community. The concepts of self ownership and acquisition of private property are inherently exclusive of others and do not attempt to address the issue of community well being in terms of property rights. Private property rights have also been argued for on the basis of its necessity for the creation and preservation of individual liberty i.e. that there exists a moral connection between private property and the notion of individual liberty. Either a person has a right to private property as an extension or materialisation of his liberty or, private property in some way makes that person free. Hegel's position on the latter approach was that the obtaining of private property to embody himself, to become real through an outward effect upon the world and those around him. The greater the range of choices a person has, the greater the degree of freedom – with property extending the range of possible choices. It was argued that this approach suffered from the same 'self ownership' difficulty as Locke's approach.

“Hegel speaks of a human being becoming ‘his own property as distinct from that of others’.” (Harris, 1996. page 237)

Additionally, the same problems of exclusion and distribution arise as in Locke's analysis since there are not inexhaustible resources and, every claim to ownership (since it is an exclusionary claim) weakens the rights and abilities of others to enjoy the same 'freedom'. From another perspective this is a troubling approach since at its heart is the idea that freedom can only be conferred, or acquired, through the ownership of private property. This seemed to be an unreasonable proposition.

Presumably, the indigenous peoples of the Americas and Australia could not have been considered to be 'free' in any meaningful sense because, they enjoyed only access or custodianship of land rather than ownership of it. Following through this argument provides uncomfortable conclusions viz. the only route to self-actualisation is through private property; that he has the most property is the most free; that an individual is morally obliged to acquire as much property as possible?

The conclusion from the consideration of these justificatory arguments concerning private property is that there does not seem to be a position of justification that is not problematic. For something that is so accepted politically and culturally there is no firm moral grounding. In fact an acceptable argument for the justification of private property was not found by this researcher nor was one reported in the literature.

There is another application of these arguments that has particular relevance for the employment relationship and, it concerns the concept of self ownership. Central to the idea of a contract between employee and employer is the idea that an employee's labour is somehow a) separable from a person's existence and b) is owned as private property by that person. These are necessary premises for the defence of the employment relationship. It allows the preservation of the fiction that since labour is not the person then its sale or rental to an employer does not render the seller of the labour into an unequal, subordinated state.

Just as one may sell a car without including oneself in the bargain so, one may sell one's labour without compromising one's freedom and equality. Such an idea, it was argued, is problematic in the extreme. It is in direct contravention of Kant's imperative that we 'Act in such a way that you always treat human beings as persons rather than as things'. To argue otherwise is to argue that a person is separable from their knowledge, skills and physical actions.

Employment is clearly concerned with not only the physical activities of the servant but also their moral state - as in motivation, loyalty and commitment. It is difficult to understand how a human being may be disassembled in this manner. Slavery may be seen as the ownership of one person by another.

Employment may be seen as the control of one person by another for limited and set periods of time. One cannot legally own labour (except Locke would argue, one's own) you may only rent it. Thus employment is not considered to be of the same tenor as slavery and employment does not confer ownership of the employee upon the employer. However, this is a misleading argument since in employment; a man's thoughts, ideas, body and the product of his labour are placed at the service of others, to serve their interests primarily. Renting out one's life's labour might be seen as equating to slavery. The question might be asked therefore; what then does a week's labour equate to? (Ellerman, 1988. page 1113)

Since a man is indivisible from his thoughts, ideas and body (i.e. the concept of self ownership is rejected) it was argued that it was meaningful to regard becoming employed as a state of moral diminishment (in terms of equality and freedom). Its essence is that it treats people as things.

This idea of moral diminishment was explored through a consideration of the way in which employment carries with it a social and political status of dependency. Dependency being defined as a subordinate status that is the price paid for membership and participation in a community - in this case the employing organisation.

This fits intuitively with the relationship we would commonly expect a servant to have vis-à-vis his master's household whilst in 'service' i.e. the master and servant relationship. This status of dependence, it was argued, essentially preserves the socio-political status of the servant, the wife and the child in medieval society. As an employee, an individual enjoys a status not significantly different from that of a child in modern society.

Children's status as non-rational adults does not afford them the equality, freedom or autonomy of adults. Typically they depend upon the direction, control and discretion of adults.

Just as a child receives direction in terms of where they may be, what they may do, when they may do it, what their values should be, what they may say so; an employee is legally required to be subordinate to the master in terms of what work is done, how it is done, where it is done, what they may wear and what time they should attend. In addition, they do not enjoy the civic rights and freedoms of 'free and equal' citizens in terms of what they may say and to whom or entitlement to privacy in speech and physical activity. In summary, it was argued that the relationship of servant to master is directly comparable to that of child to parent in significant ways that have important moral dimensions.

Chapter 5 examined the issues of authority legitimation, justice and democracy within the employment relationship. It was argued that the necessity for the justification of political obligation⁵⁵ in the public sphere apply also to the exercise of authority in the private sphere of employment. The position taken is consistent with that of the liberal democratic tradition in that a society of free and equal persons requires moral justification for any reduction in that freedom and equality through the ceding of personal sovereignty to a central governing body. Much as governments in the public sphere relate to their citizenry, organisations restrict the freedom and have a superordinate relationship to their employees. The power of government requires moral justification because it impinges upon the equality and autonomy of its citizens and in part, this justification comes from the 'voluntary' entering of a social 'contract' by these citizens to cede part of their personal sovereignty to government.

⁵⁵ By 'political justification' is meant the legitimation, through moral justification, of the restriction of individual freedom by government or governing bodies and their arms of enforcement (e.g. government, army, police, law courts).

Since the social contract (that empowers governments) and the employment contract are both characterised in the liberal democratic tradition as the actions of free and equal citizens voluntarily entering into contract for mutual benefit⁵⁶ it does not seem unreasonable to assume that the justification of political obligation will provide, or not, a moral justification for organisational intrusion upon employee's freedom and equality.

"In a democratic society the economic system, like the political system, should be the result of a social decision. If we acknowledge that all people have a right to a voice in whatever affects them seriously, then they have a right to a voice in the way in which a society's resources are to be used and allocated." (de George, 1985. Page 170)

Four categories of justification were examined; consent, fair play, a natural duty of justice and a reciprocal notion of gratitude or repayment. These constitute the central moral justifications for political obligation.

(Simmons, 1979)

There are three major strands in the consent tradition; historical consent, personal consent and majority consent. The historical consent argument hypothesises an original population forming a social contract to cede sovereignty to government – a contract that is held thereafter to bind all succeeding generations. The difficulties with this are quite apparent since it is clear that no such 'original' population can be identified and in any event, the argument does not provide any reason why succeeding generations should be morally bound to honour such a contract.

⁵⁶ This research takes issue with the idea that labour can be regarded as 'property' that is divisible from a person, that the employment contract is an exemplar of freedom and equality in action and, that the choice to become an employee is entirely a voluntary one.

Whilst the (hypothetical) original generation may have voluntarily entered into such a social contract, this would certainly not be the case for succeeding generations. Applied to the employment relationship, it would be necessary to argue that medieval serfs voluntarily created the master and servant relationship and intended to bind all their descendants to it. This might be argued from the point of view of common law as a reflection of social mores and values perhaps but, it fails for that whole period of modernity in which (apart from approximately the last hundred years) those who worked toiled in the fields, the kitchens, the offices and the factories had no participation in the process of democratic representation. The personal consent approach to the justification of infringement upon individual equality and freedom by centralised authority proceeds upon the basis of four assumptions; that an individual has a moral right to freedom, that any loss of freedom must be voluntary, institutions that acquire power through such voluntary acts must not harm the individual and are required to exercise the authority only for the benefit of those who have ceded it to them. In other words; there must be consent to be governed, the individual has a choice over political allegiance and the exercise of such power must be in the persons interest rather than that of those who exercise it. Putting aside the difficulties in determining whether citizens actually have an option of individual consent (i.e. are they able, meaningfully, to withdraw it?) the consent approach is particularly problematic as a justification for organisational power over the individual. It was argued that most people need to work in order to survive if only because the independence that common land provided has been forcibly removed. They are dependent upon employment in order to obtain the necessities of life i.e. it is not generally true that people are in a position to make a choice as to whether to work or not. Since this is the case it was argued that employer authority was something that must be submitted to or, accepted as a necessary price for obtaining work.

Similarly, it was argued that it is not the case that employees may, for the most part, choose the organisation for which they work due to availability of work locally or other economic restrictions. Consent to the loss of individual freedom on the part of employees is thus problematic. It was also strongly argued that the requirement of personal consent theory, that power is exercised on behalf of those upon whom it is exercised, is not met within the employment relationship. The master and servant relationship, by law, requires subordination to the interests of the employer *in whom authority is situated*. Organisations are expressly created and operated to further the interests of the master (owners) rather than the servants who are employed and upon whom the master's authority is applied. Nor, since private employing organisations are governed only by the will of the owners, is there a basis for arguing majority consent. Clearly, 'consent' is not a viable argument for the justification of organisational power to remove from employees the trappings of civil equality and freedom such as equality, autonomy, due process, privacy of speech and movement. Indeed, the manifest absence of consent has been the hall mark of employment since the beginnings of the industrial revolution.

"Each of these features requires further elaboration, for the employment relationship is characterised by the three great struggles to which these social locations give rise; the struggle over interests, the struggle for control and the struggle for control...." (Keenoy & Kelly, 1995. page 64)

Chapter 5 also examined the alternative approach to the justification of any obligation to submit to political control on the part of the individual – the 'fair play' approach. This based upon the simple idea that people may agree, voluntarily, to forego some of their personal autonomy in order to co-operate with each for their mutual benefit. This formulation places a moral requirement on such co-operation in that an individual is only bound to contribute or submit to the scheme as long as its purpose, operation and distribution of the benefits remained just.

However, this is a description of a co-operative activity for mutual benefit, a description that does not resemble the characteristics of the privately owned employing organisation. The lack of democratic structure, process and acquisition of authority within such organisations bar them from being considered 'co-operative' and the lack of such democracy makes problematic the idea of 'fair play' – a term which implies democracy. Neither are the benefits of the social activity distributed on the basis of equality. Thus, the 'fair play' approach to political justification was considered to have failed as regards the employment relationship. The 'natural duty of justice' approach was also considered within Chapter 5 as a possible basis for the moral justification of the loss of freedom and autonomy on the part of employees within the employment relationship. The key element in this approach was the just nature of an institution, its operations and distribution of benefits. This argument was also argued to be unsuccessful in providing justification for the loss of autonomy and freedom (civic rights and freedoms) on the part of the employee. It was argued to have failed for the same reasons that the fair play approach failed namely; the undemocratic structure, lack of just procedures and restricted private purposes of private employing organisations.

With the (argued) failure of established justifications for political obligation, any justification of organisational authority must fall back on the moral rights attached to the ownership of private property i.e. private property confers legitimacy upon owners to manage capital and control that property. But, as noted above, this justification requires that the concept of self-ownership (and, importantly, its attendant ability to both separate from ones 'self', and own one's labour) be accepted without modification. It requires that a person's labour may be bought or rented by another so that it becomes another's private property. If this is not accepted, then it is not possible to view the labour that an employee provides as being the property of the employer – bought and paid for.

This, it was strongly argued, is not a supportable position. The employment relationship then, is seen to rest strongly upon this self-ownership proposition. It proposes that a free and equal citizen may separate from himself his knowledge, motivation, labour, experience and skills (perhaps as a person may remove his boots) and sell or rent it to another as a piece of property may be sold or rented. If such a process is not accepted as possible, then the concept of employment as a voluntary action that does not trespass against the concepts of freedom and equality is plainly unsustainable.

Attempts to enhance the democratic aspects of employment, it was argued, through increases in employee participation were found not to be meaningful since they did not address the power structure, subordination and primacy of employer interests central to the master servant relationship.

Those approaches that proceeded upon a basis of equality, autonomy and critical participation (such as Co-operative structures) were found to be anti-thetical to the employment contract and the master and servant relationship. In order to be meaningful to the tenets of democratic theory (as opposed to liberal, democratic theory) participation, it was noted, required participative relations to democratic structures rather than the representative structures and relationships of representative democracy. This was argued to be a necessary condition if, conditions of voluntary, consensual and meaningful exercise of individual autonomy were to occur.

Chapter 6 put aside the liberal, democratic tradition in order to examine the employment relationship from the perspective of 'needs'. The chapter argued that an enduring, and ubiquitous, concept of human needs could be adduced from various literatures that supported a contention that needs that are intrinsic to the human condition may be viewed as human rights.

Such rights to the attainment of human needs logically concluded that social and political pre-requisites were necessary conditions for the meeting of these rights. Such necessary pre-conditions mandated the possession of those values central to the liberal, democratic tradition i.e. freedom, equality and critical participation in social relations. From a needs perspective therefore, the employment relationship fails to meet these basic needs.

The conclusion of this research is that the employment fails to meet the standards of equality and freedom that are inherent in its moral justification through recourse to the liberal, democratic tradition.

Furthermore, from a needs perspective it similarly failed to meet the requirements that are basic to a fulfilled and meaningful existence i.e. freedom, equality and critical participation in social relations.

It is argued that employment can be seen as a relationship based upon a contract that does not meet the requirements for its contractual validity, whilst mandating subordination, inequality and the suspension of liberal, democratic rights. The research also concludes that the introduction of democracy into relations to work must address the inappropriateness of the master servant relationship within the liberal democratic tradition. It further concludes that meaningful democracy must needs be of a participative orientation in order for meaningful and consensual participation to occur. Meaningful participation, in a political and social sense, is necessarily limited to the number of people with whom a person may meaningfully interact. The significance of this, for the structuring of our social relations to work, is that the size of our socially organised units in our work institutions must be such as to allow for this to occur.⁵⁷

⁵⁷ The position argued is that 'meaningful participation' is limited by the number of people with whom it is possible to meaningfully interact with.

IMPLICATIONS FOR RESEARCH

The employment relationship has been argued to be indefensible from the perspective of those liberal values of equality and freedom that we consider our western democracies to be based upon. Such a conclusion presents us with the moral requirement to render a newer and more sustainable means of liberal democratic justification. This research however, makes the case that whilst our relation to work remains based upon employment within the master and servant relationship, then it will remain fundamentally anti-thetic to these liberal principles.

The remaining option is to consider the form in which alternative relations to work, that are supportive of these values, might take. Certainly, previous approaches to humanise and democratise the experience of employment might now be viewed with moral suspicion. The Human Relations and Neo-Human Relations approaches to the management and experience of work do little to remove the fundamental moral difficulties with employment i.e. subordination to another's authority and interests and the damage that they render to the principles of freedom and equality. They might be argued to proceed in the same manner as the master who provides a life of comfort, appreciation and luxury to his slaves – life for the slaves is infinitely more pleasing yet, they remain slaves nonetheless. Programs to consult, motivate, engage, interest and provide opportunities for creativity amongst employees may make the work experience more humane but it does nothing to restore the loss of equality and freedom to employees. Industrial democracy that is dependent upon the activity and membership of trade unions is similarly problematic – as long as the essential nature of the master and servant relationship remains unchallenged by those institutions. A union may be equal in power and freedom to act vis-avis the employer but the individual employee remains subject to a subordination to the interests and authority of the employer.

This research points firmly in the direction of the co-operative as the moral ideal for work relations and it is in this direction that I feel further research is warranted. The study of the concept, organisation and structuring of co-operative work arrangements highlights several important areas for research. However laudable the moral principles upon which the ideology of co-operation may be based, operational difficulties remain.

For instance, co-operatives are conceived as participatory rather than representative. (Craig, 1993. Giles, 1977) Such an ideological conception raises three areas of potential research interest. Firstly, participation requires that members of co-operatives both understand and subscribe to the principles and values of co-operation. Secondly, for those principles and values to be upheld and enacted within a co-operative, all members must participate in a meaningful way. Thirdly, the concept of meaningful participation needs to be explored. These issues might be approached from the consideration of these secondary questions.

How for instance, is an understanding of co-operative values and principles to be achieved amongst the membership? Should members be recruited based upon their existing affinity to these values or should these values be inculcated subsequent to membership? If participation is a central defining concept then the question needs to be asked regarding what constitutes 'meaningful' participation and, what administrative and governance structures allow for and support this objective? Should a co-operative organisation have responsibility and engagement beyond that of its membership? For example should it include the interests and objectives of the community within which it is based?

According to the 'Degeneration Theses' proposed by the Webbs (1902, 1914) co-operatives are believed to transform when they get rich and fail when they lack funds.

Is this in fact the case or is there a natural limit to the organisational and/or membership size that a co-operative may attain if it is not to lose its ability to retain participation? Also, what organisational or administrative structures best promote these egalitarian and participatory values? The question also arises as to the effect that size, face to face engagement and physical separation of membership within the co-operative have upon the ability of the membership to meaningfully participate?

What the foregoing demonstrates, is that from an administrative perspective, administrative and structural issues transcend the ideological structure of the work institution. Whether the relationship to work is found as an employee within a master and servant relationship or, whether it is found in the membership of a co-operative; issues of size, structure, purpose and values remain. To some extent it may be argued that, given the relatively short history of the employment relationship since the industrialisation of the west, change and development continues. New forms and patterns of administering the relationship continue to occur with reductions in hierarchy, extension of autonomy to individuals and groups, increased levels of participation and even the physical separation of the employee from the workplace. Given the difficulty that co-operatives experience as they grow and become more successful (see above), it may be that these disparate forms of social contract are already moving towards a common ground. One development in particular shows fertile ground for further research. There seems to be a growing interest on the part of organisations and workers in some sectors of the economy (notably I.T.) that posits a work institution in which workers engage not as employees but as professional contractors. Whether this embryonic development develops into an arrangement of 'employees' stripped of legislative and trade union protection because of a contractual status or instead becomes a more egalitarian work arrangement, in the manner of professions such as medicine or law, remains to be seen.

APPENDIX A

The Rochdale Principles (I.C.A., 1966)⁵⁸

Co-Operative Principles (Watkins, 1986)⁵⁹

Co-operative Basics (Book, 1992)⁶⁰

⁵⁸ International Co-Operative Alliance, 1966 Congress.

[Quoted in ; Fairbairn B.; 'The Meaning of Rochdale: The Rochdale Pioneers and the Co-Operative Principles', 1994. University of Saskatchewan, Centre for the Study of Co-operatives, Occasional Papers. <http://www.usaskstudies.coop/books/occpapers.html>. Accessed: 17/11/03]

⁵⁹ Watkins W.; 'Co-operative Principles Today & Tomorrow', 1986. Holyoake Books, Manchester, U.K.

[Quoted in ; Fairbairn B.; 'The Meaning of Rochdale: The Rochdale Pioneers and the Co-Operative Principles', 1994. University of Saskatchewan, Centre for the Study of Co-operatives, Occasional Papers. <http://www.usaskstudies.coop/books/occpapers.html>. Accessed: 17/11/03]

⁶⁰ Book S.; 'Co-operative Values in a Changing World: Report to the ICA Congress, Tokyo, October, 1992. Eds. Prickett & Treacy, Geneva, International Co-operative Alliance.

[Quoted in ; Fairbairn B.; 'The Meaning of Rochdale: The Rochdale Pioneers and the Co-Operative Principles', 1994. University of Saskatchewan, Centre for the Study of Co-operatives, Occasional Papers. <http://www.usaskstudies.coop/books/occpapers.html>. Accessed: 17/11/03]

The Rochdale Principles (I.C.A., 1966)⁶¹

1. Membership of a co-operative society should be voluntary and available without artificial discrimination or any social, political, religious or racial discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.
2. Co-operative societies are democratic organizations. Their affairs should be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies should enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration should be conducted on a democratic basis in a suitable form.
3. Share capital should only receive a strictly limited rate of interest, if any.
4. Surplus or savings, if any, arising out of the operation of a society belongs to the members of that society and should be distributed in such a manner as would avoid one member gaining at the expense of others.

This may be done by decision of the members as follows:

provision for development of the business of the co-operative.

provision of common services, or

distribution among the members in proportion to their transactions within the society.

⁶¹ International Co-Operative Alliance, 1966 Congress.

[Quoted in ; Fairbairn B.; 'The Meaning of Rochdale: The Rochdale Pioneers and the Co-Operative Principles', 1994. University of Saskatchewan, Centre for the Study of Co-operatives, Occasional Papers. <http://www.usaskstudies.coop/books/occpapers.html>. Accessed: 17/11/03]

5. All co-operative societies should make provision for the education of their members, officers and employees, and the general public, in the principles and techniques of co-operation, both economic and democratic.
6. All co-operative organizations, in order to best serve the interests of their members and their communities, should actively co-operate in every practical way with other co-operatives at local, national and international levels.

1. Association (or Unity)

Human solidarity is an end in itself. 'Co-operators not only accept the associations-family, community, nation-into which they are born, but also seek other associations, deliberately and purposefully for the sake of the material and spiritual advantages they offer.'

2. Economy

Members join for economic advantages. 'The essence of Co-operative Economy is the assumption by an association of the functions of ownership, organisation and risk-bearing' – counter to modern trends towards specialization and division of labour.

3. Democracy

'Rules, although indispensable, are not by themselves sufficient' to ensure democracy. Democratic structures must express the 'general will of the members...not the sum of their individual wills...but their will when they are seeking their common good as members of their society and considering its affairs from that standpoint...Members...must be active rather than passive.'

4. Equity

Equity is an 'ethical' concept related to the 'distributive aspect of justice'.

⁶² Watkins W.; 'Co-operative Principles Today & Tomorrow', 1986. Holyoake Books, Manchester, U.K.

[Quoted in ; Fairbairn B.; 'The Meaning of Rochdale: The Rochdale Pioneers and the Co-Operative Principles', 1994. University of Saskatchewan, Centre for the Study of Co-operatives, Occasional Papers. <http://www.usaskstudies.coop/books/occpapers.html>. Accessed: 17/11/03]

Equity is important in two ways: striving to achieve a more equitable distribution of wealth and power in society, and equity within the co-operative in treatment of different groups and individuals.

4. Liberty

Liberty consists not only of the freedom of 'individual men and women...to join or leave [co-operatives] at will, but also their freedom of thought and action while they are members'. Also, the movement must advocate 'the freedom, individual and collective, required by co-operative organisations' to function effectively.

6. Responsibility

'A Co-operative society serves its members by performing functions in their interests, but it cannot do so effectively or even at all unless they in turn faithfully fulfil their responsibilities towards it.' A co-operative is an association of people and an enterprise. The concept of membership is the vital connection between the two.

7. Education

'There can be no Co-operation without Co-operators and Co-operators like poets, are not born but made...[Education is] the sum-total of acts and experiences which promote the mental and moral growth of the individual Co-operator and the development of his or her capacity for working with others...[Co-operators] have to be not simply educated....they have to be continuously re-educated in Co-operation.'

Co-operative Basics (Book, 1992)⁶³

Basic Values

Equality (democracy) and Equity (social justice)

Voluntary & Mutual Self-Help (solidarity and self-reliance)

Social & Economic Emancipation

Basic Ethics

Honesty

Caring (humanity)

Pluralism (democratic approach)

Constructiveness (faith in the co-operative way)

Basic Principles

Association of persons

Efficient member promotion

Democratic management and member participation

Autonomy and independence

Identity and unity

Education

⁶³ Book S.; 'Co-operative Values in a Changing World: Report to the ICA Congress, Tokyo, October, 1992. Eds. Prickett & Treacy, Geneva, International Co-operative Alliance.

[Quoted in ; Fairbairn B.; 'The Meaning of Rochdale: The Rochdale Pioneers and the Co-Operative Principles', 1994. University of Saskatchewan, Centre for the Study of Co-operatives, Occasional Papers. <http://www.usaskstudies.coop/books/occpapers.html>. Accessed: 17/11/03]

Fair distribution of benefits

Co-operation, nationally and internationally

Basic Global Values

Economic activities for meeting needs

Participatory democracy

Human resource development

Social responsibility

National and interna

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