
 Review

 Authority and Freedom:
 Reflections on the Recent
 Kos Collections

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In 2019 and then in 2022 Eric S. Kos edited two volumes of essays devoted to the writings of Michael Oakeshott (Kos 2019, 2022). They are both published by Palgrave, they are roughly the same length, and they share similar-sounding titles: *Michael Oakeshott on Authority, Governance, and the State* and *Michael Oakeshott's Skepticism, Politics, and Aesthetics*. As the titles make clear, the 24 essays cover a wide range of Oakeshott's ideas and each of them make for interesting and illuminating reading. However, instead of attempting to review both books in their entirety, the focus here is on two key themes. Commentators have often remarked that Oakeshott had a tendency to view things as binary; indeed, sometimes as antipodean. It would seem that two of Oakeshott's most important topics would be antipodean: authority and freedom, yet they are not, as it will be shown in the Concluding Comments of this review. The point of this review essay is to examine these two topics and to determine what many of the scholars writing in these two books believe Oakeshott to mean by "authority" and "freedom." One could argue that authority and freedom are the foundations for Oakeshott's philosophy of politics, but that will not be argued here. Instead, this review essay seeks to clarify what Oakeshott experts contend authority and freedom means. The fact that Oakeshott never provided a clearly defined account of these concepts hinders our understanding of his political philosophy. Nonetheless, examining the relevant essays in Kos' two collections will provide an understanding of Oakeshott's ideas concerning authority and freedom. This task is not only worthwhile for reconstructing Oakeshott's political ideas but is itself intrinsically rewarding.

This review essay has three sections. The first and larger section is devoted to the theme of authority whereas the second section focuses on the theme of freedom. While Oakeshott may have been more concerned with the latter idea; the essays in these collections are largely focused on the theme of authority within the frameworks of governance, laws, and the state. The third section is composed of some concluding comments and some final assessments.

AUTHORITY

In western history, if not history in general, the concept of “authority” has been connected to some entity: God, a Prince, and later, the state. But by the late nineteenth century the notion of the state began to fall out of favor. Plato, Aristotle, Hume, Hegel, and many others all spoke about the “state” as if it were a “natural phenomenon.” But as Agostino Carrino pointed out in his excellent “Michael Oakeshott Philosopher of Skepticism: Conservative or Liberal?” Oakeshott did not (2022, p. 40). In fact, “state” is mentioned only once more in *Oakeshott’s Skepticism, Politics, and Aesthetics* (Tremçev 2022, p. 19). However, the notion of the state is a major focus of several of the essays in Kos’ later collection. If one disregards the lectures that Oakeshott delivered on the history of political thought at the London School of Economics, Oakeshott’s concern is not so much with the history of political thought as it is with the history of modern political thinking (Oakeshott 2006). In his view, modern political philosophy began roughly four hundred to five hundred years ago. Therefore, he has little interest in the authority of the monarchy. Finally, despite Oakeshott’s early interest in religion and theology, he had little interest in it later in life. More importantly, he believed that the belief in God no longer had such an impact on modern political ideas, although he readily admitted that some of the tenets remained. Given that authority was neither divine nor hereditary, he inquired into the source of modern authority.

The notion of authority is found in three essays in the 2022 volume: those by Eno Trimçev, Agostino Carrino, and Attila K. Molnár. Trimçev’s essay is entitled “Under the Law of Ruin: Practice, Aesthetics, and the Civil Association” and he makes clear that his primary focus is on the related ideas of fear and progress. Yet, authority is present in this essay because it not only is important to Oakeshott for the past, but also for the present. Trimçev maintains that authority is “past-oriented” but that rulers seek to cultivate it. He claims this involves two things: the “quest for authority” is separate from the “quest for power” and that the rulers as “custodians of the law” differ from the rulers as “administrators” (2022, pp. 12, 18-20). He explains that the latter are forward looking and always seek to expand their reach and increase their power whereas the former regards authority as backward looking in the sense that the past provides the present with more effectiveness and more wisdom (2022, p. 21).

Agostino Carrino’s title also does not hint that his essay has authority as a major theme. “Michael Oakeshott Philosopher of Skepticism: Conservative or Liberal?” suggests his chapter is on Oakeshott’s politics. Yet, anyone familiar with Carrino’s writings knows that law and authority are two of his favorite subjects. Carrino begins by pointing to Oakeshott’s interest in Germany philosophy—not just Hegel’s philosophy but that of the Neo-Kantian Emil Lask. Lask had been influenced by Heinrich Rickert but around 1910 he began to chart his own way—especially about categories and concepts. Lask was killed on the eastern front in 1914 so it is impossible to determine what his later thinking might have been. Carrino notes that Oakeshott was in Germany during 1923 when Lask’s collected works appeared (2022, p. 32). Carrino also points to Max Weber’s thinking, both in the Is/Ought (*Sein/Sollen*) distinction and in the category of the ideal type (2022, pp. 34-36). Although he does not mention Ferdinand Tönnies by name, he uses Tönnies’ contrast between “community” (*Gemeinschaft*) and “society” (*Gesellschaft*). It is interesting to note that Weber, Lask, and Tönnies were all interested in the philosophy of law. Carrino’s larger concern is how to categorize Oakeshott—whether as a liberal or as a conservative? Carrino argues that Oakeshott was not a conservative in the sense of having a conservative ideology. Not only did Oakeshott disapprove of ideologies, but he embraced scepticism. But Carrino adds that Oakeshott was a liberal because he was “open to listening” (2022, pp. 40-41). Carrino suggests that Oakeshott defies labels: he was conservative and he was liberal; he was a Hobbesian and he was a Hegelian (2022, pp. 42-45). Carrino’s suggestion seems to be that he may have been many things in many respects but he was always Michael Oakeshott.

Where authority was only one voice in the choirs of Carrino and Trimçev, authority is the soloist in Molnár’s essay. This is clearly shown by his title “Authority: Fragments of the Good Regime.” In Molnár’s opinion, authority was a major preoccupation of Oakeshott throughout much of his life. He does qualify this by suggesting that authority was connected to the concept of “good order” but that Oakeshott’s con-

cern with “good order” came mostly after *Rationalism in Politics* (1962). Molnár points out that order involves freedom but freedom generates “imperfections, conflict, and authority” (2022, p. 129). He emphasizes Oakeshott’s conception of human beings as being inherently imperfect which prompts conflict and the need for authority to help defuse those. Molnár does not mention this, but Oakeshott shares the notion of freedom with Hans Kelsen and both of them believed in pluralism and tolerance.¹ Carl Schmitt also insisted on order but his was authoritarian; it rejected pluralism and tolerance in favor of obedience and silence. For Schmitt, law is imposed and it is backed up by power; for Oakeshott (and Kelsen), law is the following of rules. The difference between Oakeshott and Kelsen on law is that the former believed that rules were a matter of practice and tradition whereas Kelsen insisted they were necessarily formal. If Kelsen followed Kant, Oakeshott followed Hobbes. Certainly, Oakeshott likened his early concern with epistemology to that of Hobbes and he always had a high regard for his thinking. But Molnár maintains that not only is Oakeshott’s notion of authority different than that of Hobbes, his is “more radical” because Oakeshott rejects the notion of sovereignty and insists that “final authority belongs to the beliefs of the subject.” However, two pages later he emphasizes “*Authority is not delegated from the subject to the ruler*” so it is difficult to reconcile these statements. Similarly, it is difficult to understand Molnár’s insistence that “Authority as such is absolute” (2022, pp. 133, 137).

Molnár devoted several pages to Oakeshott’s 1929 essay “The Authority of the State” but it was Carlos Marques de Almeida who used the phrase in the title of his essay in Kos’ earlier collection. In “The Authority of the State and the Traditional Realm of Freedom” he discusses the opposition between the need for authority and the desire for freedom or as he also describes it as “the pole of civil association” and “the pole of enterprise” (2019, pp. 112-113). De Almeida provides more than just this definitional opposition; he also offers a brief overview of the history of authority. Beginning with the divine authority that kings claimed, he moves quickly through history before addressing authority in the modern European state. While he agrees that governments exercise “power, force, and even violence” he adds that “to rule is to enjoy authority” (2019, pp. 118-119). De Almeida emphasizes Oakeshott’s contention that authority does not suddenly appear but is developed over time. Oakeshott rejected a foundationalist conception of authority and insisted that it was based upon tradition. Similarly, freedom is not an abstraction but “a way of living” (2019, pp. 120-121, 123). This is similar to what Jordan Rudinsky says about authority. Much of his “‘Anarchic and Antinomian’ Oakeshott and the Cambridge School on History, Philosophy, and Authority” is spent on topics other than authority, Rudinsky does offer a brief account of Oakeshott’s conception of authority. He maintains that it is fundamentally Hobbesian in that authority is determined within an original system of laws. Rudinsky suggests that setting out the first part would be rather easy but giving an account of the second part would not be. What he does suggest is similar to what de Almeida has indicated—Rudinsky writes “The foundation of authority, then, is simply everyone’s recognition of it” (2019, p. 136). What Rudinsky and de Almeida do not address is the foundations which provide authority with legitimacy and that is one topic that David D. Corey takes up in his essay.

In “The Problem of Liberal Political Legitimacy” Corey notes that one of the most basic and most critical questions in modern democracies is the question of “*political legitimacy*.” This is the question “Who or what gives *you* the right to rule me?” and Corey adds that Oakeshott was “deeply concerned about political legitimacy” (2019, pp. 45-46). Since Oakeshott considered this a moral question, it could not be answered with “by success” because that would be an immoral answer. Force and authority are not the same thing. But Corey’s concern is not so much with Oakeshott’s concept of legitimacy as he is with providing an historical account and then offering his own theory. He discusses John Locke’s “consent theory”, John Rawls’ “hypothetical consent theory”, Joseph Raz’ “benefit theory” and Christopher Wellman’s “benefit theory”, and finally “procedure theory.” Corey returns briefly to Oakeshott in the conclusion in which he suggests that Oakeshott’s theory that civil association provides legitimacy but adds that that theory is neither very clear and nor ideal (2019, p. 69). There is no doubt that the issue of legitimacy is one of the thorniest problems in modern political thought and there is little question that it preoccupied almost all defenders of

modern democracy. It is to Corey's credit that he wrote this essay but it is unfortunate that little of it is devoted to Oakeshott.²

The first and third sections of Timothy Fuller's "Taking Natural Law Seriously Within the Liberal Tradition" seems to follow Corey's focus on scholars other than Oakeshott. The focus in the first section is on Ronald Dworkin and that in the third section is on John Finnis. However, the second section is devoted primarily to Oakeshott. Fuller contends that some defenders of the rule of law look to the notion of utility to provide a justification; he notes that Dworkin is one who rejects that account. Fuller maintains "The most uncompromising defense of the rule of law on non-instrumental grounds is to be found in the writings of Michael Oakeshott" (2019, p. 94).

In Fuller's interpretation of Oakeshott's notion of law, the basis is neither abstract reasoning nor practical applications; rather, it is a matter of "practices." Fuller then devotes six pages to outlining Oakeshott's conception and he bases it on *On the Human Condition*. There are neither theorems nor programs, but an understanding of what it means to be a citizen and to live within a civil association. These people are neither coerced nor bribed; nobody has the power to force them and no one has the means to entice them. Rather, people have been raised to function within the civil association. Fuller admits that Oakeshott's account is rather "ideal" but he insists that this must not be taken in the sense of progressing towards some ideal end. Fuller concludes the second section with a quotation from "The Rule of Law": Rule "in respect of the recognition of their authenticity" (2019, p. 100; Oakeshott 1999, p. 161). If nothing else, Fuller's account should prompt serious readings of "The Rule of Law" if not *On Human Conduct*.

Fuller's discussion of the rule of law is related to the notion of political realism, which is the central theme of Gülçen Seven's "Michael Oakeshott's Political Realism." Seven begins by discussing the various senses of political realism and his main claim is that the realist distinguishes between the "is" and the "ought" whereas the idealist dreams about the world as it should be while the realist accepts the world as it is (2019, pp. 151-154). Like Corey and Fuller, Seven discusses different theories but in the third section he turns to the discussion regarding the most appropriate label to put on Oakeshott. This discussion is related to the one given by Carrino, but unlike him, Seven is reluctant to offer a definitive label. Instead, Seven notes the difficulties in determining where Oakeshott should be positioned and he suggests that some of that is due to his ambiguity and some of that is due to his binary thinking (2019, pp. 160-161). She points specifically to Oakeshott's distinction between the politics of faith and the politics of scepticism and she argues that Oakeshott's dismissal of the former is not so much based upon the idea of perfectibility as it is with the concept of telos. But Seven also points out that in contrast to many other political realists, Oakeshott was convinced that "theory has *nothing* to offer to real politics" (2019, p. 163). That is also an indication of Oakeshott's "anti-absolutism" but Seven contends that *The Politics of Faith and the Politics of Scepticism* may be the best work to provide an account of the role that understanding plays in his political thinking (2019, pp. 164, 166). Seven does not rue Oakeshott's claim that political thinking cannot provide guidance; rather it achieves its purpose of offering understanding (2019, p. 168).

The concept of the state appears again in three other essays but the three authors approach the notion from differing points of view. James Alexander argues that Oakeshott was following in the tradition of modern politics to provide "the key to any theory of the state" (2019, p. 11). This key is indicated in his title: "The State is the Attempt to Strip Metaphor Out of Politics" and that entails providing a theory of the state "as if it is written on a blank slate." The question is what is a state and Alexander repeats Oakeshott's repeated claim that the state is not a government (2019, pp. 12-13). He maintains that Oakeshott conceived of the state in two ways: in a bold and Hegelian way and in a subtle and original way. The first one is that the state is the condition of all action and the second one is as an entity that grows out of the conditioning. Alexander admits that these two are in tension but he insists they are "remarkable concepts" (2019, p. 14). Alexander also indicates that this conception is a later one and he discusses two other ones: the early one from the 1920s in which "The State is the whole of moral and social experience." This is Hegelian and far different from Weber's theory that the state possesses the "legitimate monopoly of violence." The second one seems to come from Oakeshott's time at LSE in which he thought of a state as a territory with its inhabitants be-

ingf governed by an authority. It is the third one that is late and is found in *On Human Conduct*. Alexander points to Oakeshott's duality of *universitas* and *societas* but his larger point is that Oakeshott thought of the state in terms of "standing" ("estate") and that the state has several meanings. It is original and that it has always existed—"It is not so much an idea as the cause of our ideas" yet it has "no independent origination". What it does have, and has had for the last five hundred years is "conceptual confusion". Oakeshott came to realize how difficult it is to say what a state is; he recognized that "it was a riddle for the understanding" (2019, pp. 32-33). It is one of Oakeshott's great achievements to recognize the confusion regarding the notion of the "State" and to understand that the attempt to "strip metaphor out of politics." Because "Language makes it impossible. Politics makes it ridiculous" (2019, p. 36). This brief discussion does not do justice to Alexander's essay which is rich, informative, and challenging.

Much the same can be said regarding Gary Browning's "Oakeshott on the State: Between History and Philosophy." Browning notes that Oakeshott was a philosopher and an historian and that history and philosophy are fundamentally different (2019, p. 75). He insists that Oakeshott recognized that they complimented each other and that both had value. Browning emphasizes that Oakeshott "blends historical and philosophical expertise" and that "his account of the modern state" "is at once philosophical and historical" (2019, p. 84). If Alexander looked to the Greeks for helping to understand Oakeshott's conception of the state, Browning looked to Hegel (2019, pp. 80-81, 83, 84-85).

Agostino Carrino's 2019 essay is also rich, informative, and challenging not the least because he approaches Oakeshott's notion of governance from the vantage point of a jurist. In "Global Governance and the 'Clandestine Revolution'" Carrino notes that the term "governance" has acquired a new sense, one in which old concepts such as "sovereignty", "authority", and "decision" have been replaced with a "new liberal revolution" in which human rights would lead to a peaceful and rational world (2019, pp. 191-192). However, this "anti-political utopia" has been collapsing on itself and Carrino notes that Oakeshott was one of its main critics—focusing on the twin difficulties of teleology and rationalism. Although Carrino's focus is more on the issue of governance than on Oakeshott, his comments about the differences between faith and scepticism are important as are the differences between *lex* and *jus*. He suggests that Oakeshott was not always clear about these terms but he underscores the shift from the rule of law to the notion of natural law. He also stresses the modern movement from the "Legal State" to the "Judicial State" and he warns that the state loses its authority (and its legitimacy) (2019, pp. 196, 199). Carrino does not mention here that this was something that occupied Oakeshott but he does stress that this type of "judicial activism" and "human rights imperialism" not only undermines the rule of law, but "limits more and more the individual's freedom" (2019, p. 199). That is, according to Carrino, "the postmodern judge" is in possession of "this universal reason" and dispenses with the concrete rule of law. This is the inverse of what Oakeshott thought was best: the rejection of some abstract, universal reason by the acceptance of "positive rules" and tradition. Carrino regrets that this process from a legal state to a judicial state may not be stoppable. He laments that the activist judge relies on what his social consciousness tells him what is right rather than relying of the laws to tell him what is legal. Carrino speaks in a most Oakeshottean voice when he insists that "we have at least the moral duty to understand and expose what is going on" (2019, p. 205).

FREEDOM

Given the importance of the idea of freedom over the past three hundred years and given Oakeshott's interest in it, it is somewhat disappointing that it is not pronounced in these essays. Much of that can be explained by the concepts included in the titles of both collections: "Authority", "Governance", "State", and "Politics." It is also true that only de Almedia's essay includes the word "freedom." Yet, the notion is in the background of several other essays. The starting point will be a return to de Almedia's essay but now with the emphasis on "freedom" instead of "authority."

De Almedia's concern in his third section is on individual freedom and he notes that Oakeshott was more than happy to admit that his conception of human freedom was not exactly novel but belonged in the

lengthy tradition of inquiries into its nature and its purpose. But de Almedia maintains that Oakeshott's conception was neither an abstraction nor a dream but was "a way of living" (2019, pp. 120-121). He suggests that Oakeshott believed that there are a number of freedoms: the freedom to choose, the freedom to associate, the freedom to assembly, but the greatest freedom is the freedom from coercion (see 2019, pp. 114, 121). De Almedia maintains that there are two conditions which need to apply in order for the individual to enjoy freedom. The first is what he calls the "Burkean Clause" which is the freedom from domination. The second is what he calls the "Lockean Clause" which is the freedom to live within a diffused government. There is little difficulty in understanding the "Burkean Clause" but the "Lockean Clause" needs some clarification. De Almedia indicates that Oakeshott's conception of such a state is one in which power is not centralized but is diffused or shared among a number of actors. He clarifies further that it is not a single authority which determines right and wrong but the rule of law and he insists that the removal of the threat of centralized power is "the greatest single condition for the enjoyment of freedom" (2019, p. 122). Much of Oakeshott's concept of freedom mirrors many other proponents of freedom; however, his idea lacks the notion of end or purpose. That is, in his view, there is no final goal for humans; there is simply the activity of being free. De Almedia also notes that Oakeshott's conception also lacks an origin; there was no single point in time when humans suddenly discovered freedom. Rather, there has been a long movement towards freedom and that traditions helped provide for the steady rise of freedom. Again, this should not be taken to mean that there is a planned road to freedom; rather, that there are times and places in which some individuals have enjoyed the various types of freedoms that other individuals have enjoyed at other times and places. De Almedia maintains that there are four principles for freedom: 1) the principle of *continuity*, 2) the principle of *consensus*, 3) the principle of change, and 4) the principle of identity. The first is the notion that society will continue in much the way it has and the second is that the members of society are mostly in agreement in how the society has functioned and should continue to function. The third principle is the recognition that change is inevitable and the fourth one is the need to strike a balance between change and stasis (2019, p. 123). De Almedia's account of freedom is necessarily brief but is an accurate and an impressive account of Oakeshott's idea of freedom.

Other comments on freedom appear in both books but in the earlier collection they tend to be in conjunction with the notion of the collective. For example, in "Three Different Critiques of Rationalism: Friedrich Hayek, James Scott and Michael Oakeshott" Shekhar Singh compares Oakeshott's notion of freedom with that of Hayek. Both believed that there was freedom from the central authoritarian state but emphasizes that what is important for Oakeshott is the matter of freedom of choice (2019, pp. 210, 212, 217-218). The notion of the freedom to choose is also found in Browning's essay. There, he insists that it is imperative that people are "free agents" who undertake "freely self-chosen individual actions" (2019, p. 83). The notion of "free agents" is also emphasized by Seven in the 2022 essay: that a "free agent" is self-reflective and understands one's self and has the capacity to act based upon that understanding. The "free person" lives according to one's own powers and limitations (2022, pp. 204-206). Molnár addresses human limitations and freedom in his 2022 essay as well. For Oakeshott, conflict was an inherent part of human interaction: "freedom and conflicts are elements of imperfection" and that the world is opaque but is free (2022, pp. 129-130). Thus, Oakeshott believed in human freedom; the freedom from the despotic domination of reason and the freedom for the opportunities to associate, to speak, and above all, to choose.

CONCLUDING COMMENTS AND FINAL ASSESSMENTS

In the introduction above there is an allusion to the binary, if not antipodean, contrasts which are often found in Oakeshott's writings. Perhaps one of the clearest is his contrast between the politics of faith and the politics of scepticism. In the "Introduction" to *The Politics of Faith and the Politics of Scepticism* Oakeshott referred to the two types of politics as being "poles" (Oakeshott 1996, pp. 19, see also 90, 112, 127). Oakeshott argued that one pole may be dominate but it is never able to demolish the other; hence, there has been a process of change between the two poles. It is similar with respect to Oakeshott's opposition between authority

and freedom in that there have been periods in which one side dominated. In this case, authority of various kinds ruled throughout much of history; it was only with the dawn of the modern age that freedom had more strength. But where Oakeshott came down squarely on the side of politics of scepticism, he believed that freedom needs authority in order to exist. It is beyond the scope of this essay to set out a defense of this claim; instead, here it must suffice simply to suggest that in Oakeshott's view, authority without freedom is despotism and that freedom without authority is anarchy. The politics of faith demands full control but as Oakeshott reminds us "The sceptical style of government is not anarchial: the extreme here is not 'no government', or even government reduced to the smallest dimensions" (Oakeshott 1996, pp. 105, see also 114-115). Oakeshott's insistence that the two types of politics "are not merely opponents, but partners" applies equally well to "authority" and "freedom."

There is no substitution for reading an author's works and this is true regarding those by Michael Oakeshott. His writings have the additional benefit of his style and wit. In contrast, much secondary literature is written in a dry and pedantic style and often confuses more than they clarify. Happily, the essays in both of Kos's collections are exceptions to this general rule: they have some of Oakeshott's wit and they serve to clarify a number of Oakeshott's key concepts. Anyone wanting to gain a clearer understanding of Oakeshott's notions of "authority" and "freedom" would do well to begin with these two collections.

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