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POLITEIA’S PLACE IN OUR PRACTICAL LIFE:
PIERRE BOURDIEU ON THE STATE


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1 Introduction

Legal philosophers do useful work when they make it possible for us to conceptualise law as a system. Hans Kelsen and Herbert Hart do this in their respective accounts of a legal system as a hierarchy of norms. Kelsen also makes the claim that the hierarchy he describes constitutes the state.¹ Here, Kelsen presents a picture of the state as a normative space. His analysis thus intersects with that of the sociologist Pierre Bourdieu (1930-2002) in On the State.² For Bourdieu describes the state as a space or field. But alongside this point of intersection between their respective analyses, we must set a striking point of difference. Kelsen’s account of law is highly schematic and acontextual. We find ourselves contemplating a hierarchy of norms and the force (legal normativity) that sustains it and invests it with practical significance. Bourdieu’s exposition is more concrete and presents the state as a contingent field of forces. This reflects, among other things, his interest in the history out of which the state (in its modern form) has emerged. The upshot is an analysis that complements the work of legal philosophers such as Kelsen. This is because it conveys a vivid sense of the texture of lived experience in the normative space in which Bourdieu, Kelsen, and many others share an interest.

Both the state as a normative space and the activity that unfolds in this context provide accessible entry points to Bourdieu’s analysis. Hence, we will begin with these matters before focusing on a feature of his exposition that illustrates its usefulness as an adjunct to jurisprudential contributions such as those of Kelsen. This is its ready applicability to operations of the state that have not attracted close jurisprudential attention. To this end, we will apply Bourdieu’s thinking to an institution that bulks large in the practical life of English-speaking countries such as Australia, Canada, and the United Kingdom: the public inquiry. This is an institution to which Bourdieu’s emphasis on the practical forces that manifest themselves in the modern state’s ‘beginnings’ has relevance (46). As we will see, these forces also loom into prominence as the state strives to counter the threat to its legitimacy regularly posed by the issues that public inquiries address. Here, we can find support in Bourdieu for the proposition that ‘the passionate task of the state [is] to hold on’ to its position of social primacy.³

More broadly, we will dwell on a feature of *On the State* that makes apparent its interdisciplinary orientation. This is Bourdieu’s interest in the legal, political, and economic impulses that find expression in the state’s operations. This is an aspect of his exposition that we will explore by reference to the concept of *politeia* (which identifies law, politics, and their economic underpinnings as means to the end of community). As well as exploring these matters, we will bring into focus a surprising feature of a text that is the work of a sociologist who dwells on the often grubby character of social reality.4 This is the presence in *On the State* of strands of argument that have affinities with the political philosophy of G.W.F Hegel.

2 Bourdieu on the State

Bourdieu argues that if we are to understand the ‘field’ that features in his exposition, we must attend to the behaviour of those who bring it into existence (20). Bourdieu categorises the members of this group as ‘law prophets’ or ‘ethical prophets’ (terms he takes from Max Weber).5 He identifies these law prophets as engaging in speech-acts that breathe life into the state as an impersonal institution that stands apart from those who participate in its operations. The speech-acts to which Bourdieu refers involve the use of the rhetorical device of prosopopoeia. To use this device successfully is to bring an ‘object’ into existence by ‘speaking in its name’ (45). Bourdieu does not, however, suggest that the law prophets he describes are able to usher the state into existence simply by making reference to it. Rather, he has in mind a more complex process that intersects with John Searle’s writings on the construction of social reality.6 This is because the law prophets who feature in Bourdieu’s exposition invoke not merely an institution (the state-in-the-making) but the community who will make it a practical reality by accepting its existence. This becomes apparent when Bourdieu describes the law prophets as ‘speak[ing] in the name of an ensemble’ that becomes a reality (and source of an institution-sustaining ‘consensus’) as a result of the declarations they make (10 and 45).

Bourdieu’s mention of an ‘ensemble’, in whose name the law prophets speak, alerts us to a crucial feature of his analysis. Drawing on Weber, he tells us that the law prophets are ‘the founders of a discourse designed to be unanimously recognised as the unanimous expression of [a] unanimous group’ (45). As a result of speaking in this way, they present their audience with a discourse that is at least incipiently egalitarian in orientation. For they seek to secure unanimous endorsement by making declarations that will elicit a positive response from their audience (the collectivity whose lives the state orders). The egalitarianism at work in the discourse Bourdieu describes is also apparent in the object to which it relates: the state. For the state is, on Bourdieu’s account, an ‘organised fiduciary’ (36-37). By this he means that its purpose is to secure the interests of all those who live within the space it constitutes.

Bourdieu roots his exposition in French history. He identifies the law prophets to whom he refers as a group of twelfth-century canon lawyers and argues that they ‘invented the modern

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4 P. Bourdieu, *Pascalian Meditations* (Cambridge: Polity Press, 2006), 5 (‘[t]he sociologist has the peculiarity … of being the person whose task it is to tell about the things of the social world, and … to tell them the way they are’).


state’ (46). Bourdieu adds that a prominent feature of the context in which they did this was a rich fund of ‘capital’. This capital took three principal forms: economic, ‘physical force’ (or military), and symbolic (197-198). In the context where the law prophets successfully made their declarations, there was clearly sufficient economic capital in existence to make the state a sustainable project. Likewise, there was sufficient physical force available to the state to enable those who wielded the levers of power to maintain the integrity of its borders and to levy taxes. While capital in each of these forms is a necessary condition of the state’s existence, Bourdieu identifies symbolic capital as the ‘foundation’ on which it rests (203). He tells us that symbolic capital has the power to draw those exposed to it into an ‘order of faith, obedience, [and] submission’ (202). The law prophets who breathed life into the modern state possessed symbolic capital in the form of technical competence and a grasp of the requirements of impersonal governance. Hence, they were able to engender in those to whom they made their declarations belief in the legitimacy of the practical arrangements they put in place. Bourdieu also describes the law prophets who feature in his account of the state’s emergence and development as the possessors of ‘noblesse de robe’ (218). By ‘noblesse de robe’ he means a commitment, on the law prophets’ part, to secure the interests of the collectivity in whose name they speak.

These points prompt Bourdieu to describe the modern state as giving expression to ‘the properly political’ (255). While he says that he ‘will not be able to explain’ what he means by the ‘properly political’, he clearly has in mind impersonal, egalitarian practical arrangements (255). This becomes apparent in his account of the role that lawyers play in the pursuit of the properly political. Bourdieu says of lawyers that their ‘particular capacity’ is to give reasons (270). He adds that this capacity makes it possible for them ‘to bring things from the order of fact – “that’s how it is”, “that’s not possible” … - to the order of reason’ (270). By this he means that they engage in a ‘process of transmutation’ (306). They do this by identifying those considerations that serve the ends of the state. This involves them in interrogating practical matters from a standpoint that is responsive to the requirements of ‘the properly political’. And in their responsiveness to these requirements, lawyers play a central role in the construction of the modern state. Consequently, they become ‘the driving force of the universal’ (270). Moreover, in going about their business in this way, lawyers reveal the state to possess ‘meta-capital’: power over capital in its simple forms (e.g., economic capital).  

As well as offering an account of the state’s emergence, Bourdieu argues that we should regard it as a ‘field’. This brings us to an ambiguity in his exposition. At an early point in On the State, he offers a general definition of a field according to which it is ‘a space structured according to oppositions linked to specific forms of capital with differing interests’ (20). This definition presents fields as contexts fraught with tension. However, Bourdieu’s account of the state as a field suggests something more integrated. For he says of the state that the space it constitutes is ‘unified theoretically and homogenized by the act of construction’ (214). Within this space, we find more particular spaces that are variously legal, political, economic, etc. Thus the state is a space of spaces, a field of fields (233). While Bourdieu presents us with these discrete spaces within the larger whole, he also says that the state accommodates what he calls ‘the field of power’ (197). This is a place where the possessors of capital (in its particular forms) ‘confront one another’ (197). He adds that

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their confrontations concern, among other things, ‘the rate of exchange between different species of capital’ (197). While this is a spur to reflection, Bourdieu fails to describe in clear terms how the political, the legal, the economic, etc, complement one another in ways that sustain the state. Thus we are left with no more than the vague sense that they work in tandem.

While vagueness afflicts this aspect of Bourdieu’s exposition, he sounds a definite note on what he calls ‘the double face of the state’ (220). He tells us that the state’s two faces are ‘integration’ and ‘domination’ (222). He also advances the ‘thesis’ that ‘integration … is the condition for domination’ (222). Insofar as the state promises ‘progress towards a higher degree of universalization’, it is an integrative and egalitarian force (222). But the state pursues the end of integration in ways that reveal it to be a dominant force. As it encompasses particular fields, it engages in ‘a process of establishing a unified and homogeneous space, such that all points of the space may be located in relation to one another and to the centre’ (223). Bourdieu also dwells on the state’s impact on individuals. Here, he makes an approving reference to Thomas Bernhard’s ‘fearful sentence’ that ‘[m]an today is only a state man’.8 Bernhard’s statement has obvious relevance to a prominent theme not just in On the State but throughout Bourdieu’s work. This is that objective circumstances shape the subjectivity of individuals – fostering in them ‘a practical sense’ that finds expression in ‘a feel for the game’ in particular contexts (241). Bourdieu uses the term ‘habitus’ when referring to what he calls the ‘objectivity of the subjective’.9 Moreover, he offers an account of the influence of habitus that has obvious relevance to law. He says of the people who inhabit the spaces he describes that they act ‘under structural constraint’ (137). By this he means that they have to act in ways that conform to the ‘implicit philosophy’ (or ‘logic’) that invests each of these spaces with its distinctive character (45).

As well as offering this account of the relationship between context and action, Bourdieu has much to say on the positions that people and institutions stake out in the spaces he describes. This is an aspect of his exposition that has great explanatory power in legal contexts. Among other things, he draws a contrast between the positions that become a feature of practical life (e.g., a legal norm) and the unrealised possibilities that sit alongside them. Bourdieu argues that these ‘lateral’ possibilities are apt to slip from view as a viable alternative to what rapidly becomes social bedrock.10 He explains this state of affairs by reference to what he calls the ‘objectivity of the subjective’.10 Moreover, he offers an account of the influence of habitus that has obvious relevance to law. He says of the people who inhabit the spaces he describes that they act ‘under structural constraint’ (137). By this he means that they have to act in ways that conform to the ‘implicit philosophy’ (or ‘logic’) that invests each of these spaces with its distinctive character (45).

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10 Bourdieu, supra n 2, 137 (drawing on R. Ruyer, L’Utopie et les Utopies (Paris: PUF, 1950)).
more than universalism and particularism in the state. We also find ‘the imperialism of the universal’: the state’s ambition to inscribe its agenda on the wider world (159).

Bourdieu observes that, whether one is focusing on France, the USA, or any other state with the same imperialistic aspirations, it is easy to be ‘critical’ (160). But he immediately adds that ‘[t]hings would be very easy if the imperialism of the universal did not contain at least a little bit of what it says and believes itself to be’ (160). Regrettably, Bourdieu does not develop this point. However, to the extent that he suggests that the ‘imperialism of the universal’ promises – if only ‘a little bit’ – to deliver on its large egalitarian promises, he sounds (albeit, mutedly) a note reminiscent of Hegel. For Hegel believed that reason is ‘the rose in the cross of the present’.11 This gnomic phrase gives expression to Hegel’s belief that a metaphysic of progress is at work in history.12 More concretely, it gives expression to the assumption that, while social institutions may be far from perfect, they provide clues as to how to move towards the egalitarian ideal of abstract right (Recht). This ideal enjoins those who embrace it to establish practices and institutions that justly accommodate the interests of all members of society. Hence, we find in Recht an unalloyed commitment to the universalism that Bourdieu detects in states with imperialistic ambitions. But this is not the only way in which Bourdieu’s exposition calls Hegel to mind. His thinking has affinities with that of Hegel when he identifies the state-as-fiduciary as shaping ‘the universe of the public’, including ‘manners’ and ‘morality’ (52). Hegel spoke in broadly similar terms. For he identified the state as embodying and sustaining Sittlichkeit: an ethical community in which manners and morality (as well as legal, political, and economic institutions and practices) are prominent elements.13

While morality and manners each have to do with behaviour and attitudes that people consciously embrace or, at least, acquiesce in, Bourdieu also focuses on a less obvious element in their practical outlook. This is what he calls (following Spinoza) the ‘obsequium’ (34). He describes this as ‘the most fundamental tacit demand of the social order’ (35). On Bourdieu’s account, it takes the form of a ‘constant will’ (385, n 13). He adds that this constant will arises as a result of ‘the constant conditioning through which “the state fashions us for its use”’.14 While the obsequium is a less obvious feature of our practical outlook than either morality or manners, Bourdieu places emphasis on it. This is because the ‘constant will’ it engenders lends support to his view that the state is ‘a principle of orthodoxy, of consensus on the meaning of the world’ (6). However, he recognises that the ‘field’ he describes is regularly the scene of practical difficulties that appear intractable – and in which members of society ‘no longer know[ ] what to think’ (45).

While this is the case, Bourdieu identifies the state as possessing the means to address such difficulties. To this end, it mobilises actors who take on the role of ‘official guarantors of the official’ (30). Bourdieu illustrates this point by reference to the French institution of the state commission. These commissions investigate and issue reports concerning ‘public problems’ (24). On Bourdieu’s analysis, they embody the state as ‘the viewpoint on viewpoints’ (28). By this he means that those who participate in commissions demonstrate the state to be attentive towards and interested in securing all relevant interests. Thus they lend plausibility

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14 Ibid.
to the view that the state is a ‘fiduciary’. But while conveying this reassuring impression, commissions may stake out positions that mark a departure from earlier practical arrangements. Moreover, they present these positions as ‘official truths’ in which the ‘totality of society’ recognises itself (28). In this way, these bodies (and others like them) enact ‘the spectacle of universality’ (28). Bourdieu describes the result of performances such as this as ‘the conforming transgression, a transgression within the proper forms’ (47). He adds that such performances enable the group ‘to … ‘sav[e] what is essential, the obsequium, that is, the recognition of ultimate values’ (47). Bourdieu closely scrutinises the abilities of those who can deliver performances of this sort. He includes jurists among their number and identifies them as ‘the masters of language’ and ‘poets’ (46-47). He also states that they have the ability to ‘invent within certain limits’ and locates them in the ‘field of power’ (46). Moreover, he identifies the members of this group as ready to engage in ‘pious hypocrisy’ (by, for example, downplaying departures from the ideals to which the state expresses commitment) (47).

As well as pointing up these features of the state, Bourdieu urges us to pay close attention to its ‘beginnings’ (46). He places emphasis on beginnings since the ‘taken-for-granted’ attitude that may later shape people’s understanding of the state has not yet reduced their ability to see it clearly (46). However, he adds that, while we should seek to understand the state’s beginnings, we must recognise that they are unavailable to us. Hence, his account of the emergence of the impersonal institution he describes is highly speculative. Thus it comes as no surprise to find him reaching back into classical antiquity for relevant writings (including those of Tacitus) (255). Bourdieu also traces Renaissance understandings of the ‘the constitution’ back to classical antiquity, arguing that it was a ‘Greek invention’ that later shaped Roman law (334). This is a feature of his exposition to which we will return. But we must now probe his account of the state as a field.

3 The State as a ‘Field’

The ‘field’ Bourdieu focuses on most closely is (as we have noted) the modern state. Hence, his concerns intersect with those of legal philosophers who have sought to capture the contours of a modern municipal legal system. Hans Kelsen provides an example of such a thinker. For he identifies the state with a system of law. Moreover, he describes such a system as a hierarchy of norms or norm-tree (Stufenbau) and presents an account of it as a normative space or field.15 A broadly similar picture emerges from Herbert Hart’s account of law as a system. Hart follows Kelsen in identifying an assemblage of norms (primary and secondary rules) that radiate down and out from the highest-order norm (the rule of recognition).16 And he, like Kelsen, identifies the highest-order norm within any such system as its test of validity. In each of these legal thinkers, we also find an emphasis on law’s normativity. Law, on their respective accounts, is a source of authoritative reasons for action. However, there are significant differences between Kelsen and Hart on the nature of the normativity at work within the fields that law establishes – and these differences have relevance to Bourdieu. Kelsen was emphatic on the point that we should strive to work up a ‘pure’ theory of law. For only such a theory enables us to see law as an institution whose normativity is always distinct – and, as such, not reducible to other action-guiding reasons

(most obviously those that make up morality).\textsuperscript{17} Hart shared with Kelsen the positivist view that there is no necessary connection between law and morality (the separability thesis).\textsuperscript{18} However, he took a more catholic view of the forms of normativity that may be at work within legal systems. While focusing on the question of how we should describe a legal system, Hart presents an exposition that emphasises the typically strong contingent relationship between law and morality.\textsuperscript{19} Likewise, he identifies the polysemous notion of ‘policy’ as a consideration relevant to law’s operations.\textsuperscript{20} Thus Hart, while a proponent of the separability thesis, encourages reflection on what we might call normative pluralism in actually-existing legal contexts.

Bourdieu engages with the issue of normativity less precisely than either Hart or Kelsen. However, he says much that repays close attention and that supports the view that we should categorise him as a normative pluralist. He speaks of the ‘public reason’ and the ‘public morality’ that find expression in the operations of the modern state (256). Given that he uses these phrases in the same passage, we might conclude that he assumes ‘public reason’ to be moral in nature. However, it is far from obvious that this is the case. Passages in his exposition suggest a normativity that is distinct from the fields that the state encompasses. Thus we find him referring to ‘a specific logic’ at work within the modern state (255). More particularly, he declares that, as the modern state begins to assume a definite shape, it gives expression to the form of normativity that he calls ‘the properly political’. As we noted earlier, he says that he is unable to explain what he means by the ‘properly political’. However, when we set his invocation of the properly political in the context of those strands of his exposition that are Hegelian in orientation, there are reasons for thinking that the field’s normativity is moral. For the properly political seems to have to do with practical arrangements that secure the interests of all relevant people adequately. If this analysis is broadly correct, the properly political concerns the pursuit of distributive justice (the ideal according to which we should strive to secure the interests of all members of society defensibly).\textsuperscript{21} These points support the conclusion that Bourdieu, like Hegel, assumes the normativity of the state (and more particularly law) to be moral. However, Bourdieu is less wedded to the idea of the state as an engine of moral progress than Hegel. For he observes that those who wield power within it must wrestle with ‘a temptation of regression’ that is always present (256). By this he means that, while the reasons for action yielded by the properly political are a progressive force, the impulse to advance particular interests may impede the pursuit of distributive justice.

Bourdieu does not, as we noted earlier, present us with a developed account of law as a system. However, he makes apparent the state’s systematicity when he describes it as integrating and dominating the spaces it encompasses. To the extent that the state operates in this way, it impresses on those who inhabit particular fields that it enjoys a position of primacy in the social whole. While this is the case, the agents who act within Bourdieu’s ‘field of fields’ are able to innovate (by, for example, elaborating a ‘distinct’ Western ‘inheritance’ with its roots in classical antiquity) (81). Here, Bourdieu’s concerns intersect

\textsuperscript{18} Hart, supra n 16, 185-186
\textsuperscript{19} Ibid, 185.
\textsuperscript{20} Ibid, 28.
with those of legal philosophers who have worked up nuanced accounts of innovation in legal contexts. Unlike Bourdieu, however, legal philosophers have typically focused on rather technical processes of elaboration. This is true, for example, of Ronald Dworkin’s account of the specification of legal norms in hard cases. Bourdieu offers nothing to set alongside analyses of this sort. However, he has much to say on the lived experience of those who participate in or who are affected by processes of legal development.

4 Populating Normative Space

Bourdieu tells us that those who argue for and stake out positions in the spaces he describes act ‘under structural constraint’. They have to be attentive to the fact that the state-as-fiduciary should act in ways that are ‘properly political’. This means that the positions they propose should express a commitment to an egalitarian philosophy of government. Such a philosophy places those who embrace it under an obligation to take account of and seek to secure all relevant interests defensibly. But while this philosophy is a guide to action, it is underdeterminate: i.e., open to range of plausible interpretations. This means that while an enduring commitment to the properly political is a feature of the field Bourdieu describes, it is a site of conflict. Moreover, there are reasons for thinking that conflict within this field may, on occasion, have no obvious stopping point. This would be the case where, for example, two or more positions are incommensurable (resistant to ranking on a common scale).

While Bourdieu’s field is a site of conflict, he offers an account of circumstances in which a particular position may become, in the minds of relevant actors, a settled feature of the practical scene. He tells us that this is the case where ‘[t]he realised possibility has a … destiny effect’ of the sort we noted earlier. In such circumstances, the likelihood of conflict diminishes because ‘lateral possibilities’ cease to have the appearance of viable alternatives. This is an analysis we can explore (and in a number of ways refine) by drawing on the political philosophy of Michael Oakeshott. In his account of the emergence and development of the modern European state, Oakeshott argues that those who have wielded power within it have given shape to two models of human association. The first of these models is ‘civil association’. This model takes the form of a modest rule-governed framework within which people enjoy broad freedom to live according to their own lights. The second model is what Oakeshott calls ‘enterprise association’. Here, those who wield political and legal power use it to pursue a goal or end-state that they consider socially advantageous. For this reason, they use the power at their disposal to co-opt all members of society into their plan for social betterment. This is, on Oakeshott’s account, a context in which the interests of the individual are (unlike civil association) under constant threat.

As well as describing these two models of human association, Oakeshott argues that neither of them has succeeded in driving the other from the practical scene in the European context.

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he describes. Thus we might describe the modern European state as having sustained a condition of (more or less stable) equipoise as between civil and enterprise association. If equipoise is, indeed, a feature of the context Oakeshott describes, we might identify it as sitting between two simpler lateral options: civil association and enterprise association. Moreover, we might argue that to embrace one or other of these options, to the exclusion of the other, would bring with it at least the possibility of destroying an institutional legacy. In such circumstances, equipoise would cease to be a feature of the practical scene. One or other of the two lateral positions would fill the horizon and exert ‘a kind of destiny effect’. In these circumstances, we might take the view that previously imaginable possibilities are (to use Bourdieu’s word) ‘dead’. But this seems overstated. For the possibility of equipoise would continue to exist. So too would the possibility of civil association in the context of an enterprise association – as would that of enterprise association in a society operating as a civil association. However, if these possibilities remained in a state of abeyance over a lengthy period of time, they may become less and less imaginable.

A recent development in British politico-legal life lends some plausibility to this view. When Britain acceded to the European Economic Community (EEC) in 1973, the doctrine of Parliamentary sovereignty kept open the possibility of what we now refer to as ‘Brexit’. Britain’s sovereign legislature could enact a statute (at some point in the future) that would carry the country out of what has become the European Union. Such a development would involve Parliament in bringing a politico-legal possibility out of abeyance and breathing life into it. However, in the decades following Britain’s accession to the EEC, the prospect of such a development became, for many Britons (and Continental Europeans), less and less imaginable. While this was the case, British law stood in a state of gravid arrest: pregnant with the possibility of legislation that would bring ‘Brexit’ about. In 2016, many Britons and Continental Europeans expressed shock at the decision (reached in a referendum) to leave the European Union. The vehemence of their reaction gave powerful expression to what Bourdieu calls the ‘destiny effect’.

As well as spurring reflection on law as a system and the adoption of positions within the field he describes, Bourdieu’s analysis has relevance to less obvious matters with legal and political significance. This is, for example, true of an institution that has long occupied a rather awkward place in Britain’s politico-legal culture, the public inquiry.


Public inquiries (either statutory or ad hoc) are a ‘conventional response on the part of British state to the revelation of a major disaster, accident or scandal’. On one account, they provide a means of ‘organising …controversy into a form more catholic than litigation and less anarchic than street fighting’. But pinning down their position in the politico-legal context of which they are a part is no easy matter. A former Lord Chief Justice, Lord Thomas, has described these bodies as ‘a firmly established aspect of [the UK’s]

31 S. Sedley, ‘Public Inquiries: A Cure or a Disease?’ (1989) 52 Modern LR 469, 472.
While this is true, the proceedings of a public inquiry are not ‘legal’. Thus, while they are instruments of political and social management, they form an institutional ‘outcrop’ that resists precise classification. Nonetheless, it is possible to describe the work they do in straightforward terms. Public inquiries seek to establish the facts relating to matters of ‘public concern’. They also make recommendations. This means that they often stake out positions that, while not a reform agenda, point the way towards improved practical arrangements.

These points present the public inquiry in a benign light. For this institution exists to gather information as a basis on which to learn lessons that will redound to the benefit of the public and thus restore confidence in the state. However, when we set the public inquiry in the context of its own history, it takes on an equivocal appearance. On many occasions, public inquiries have published reports that have prompted critics to throw the brickbat ‘whitewash’ at their authors. On these occasions, the view has gained currency that the central purpose of the public inquiry is not to address practical problems in constructive ways but, rather, to still criticism. But we must set alongside responses of this sort the fact that government has sought to ensure that public inquiries operate in ways that respond effectively to matters of public concern. In 2005, Tony Blair’s New Labour administration made the most recent effort to do this. The Inquiries Act 2005 confers on ministers the power to establish public inquiries and places emphasis on ‘the requirement of impartiality’.

While Bourdieu does not examine British public inquiries in On The State, he does, as we noted earlier, devote close attention to French state commissions. Much of what he says has ready applicability to public inquiries. He describes state commissions as ‘stagings’ (25). By this he means that they are ‘operations’ that involve a group of people in ‘play[ing] out a kind of public drama, the drama of reflection on public problems’ (25). But while he makes this point, Bourdieu is at pains to emphasise that it is not his aim to offer a reductive ‘theatrical view’ of the work done by state commissions (25). He recognises the difficulty of the work that those who engage in these ‘stagings’ undertake. On his account, the state commission often finds itself having to address questions that do not yield clear answers (e.g., because of ‘antinomies’ between competing values) (30). This leads him to argue that the public commission presents challenges of a sort that call for the skills of the ‘law prophet’. For the ‘law prophet’ is able to combine ‘the benefits of conformity to the official with those of transgression’ (46). He or she is thus able to transgress the official while preserving what is socially essential: the obsequium (47). Moreover, the law prophet can do this in circumstances where ‘no one knows what to think’ (30).

These features of Bourdieu’s exposition, and his notion of an ‘implicit philosophy, provide a basis on which to relate his thinking to the work done by public inquiries in Britain. In Britain, an implicit philosophy to which we can apply the label ‘welfare consequentialism’

33 Blom-Cooper, supra n 29, 64 (‘a public inquiry does not constitute legal proceedings (whether civil or criminal) against any person’).
34 Inquiries Act 2005, section 1(1).
35 Thomas, supra n 32, 228-230 (on, inter alia, the criticism that Lord Denning’s inquiry into the Profumo scandal attracted).
36 Sedley, supra n 31, 478.
has long exerted influence over the state’s operations. This philosophy has to do with the pursuit of generally – but not universally – beneficial outcomes. If we take the view that human errors are inevitable in the social systems that government establishes, this philosophy makes sense as a guide to action. However, in a strongly egalitarian context such as Britain, the influence that this philosophy exerts is problematic. For the state (in its role as fiduciary) holds itself out as seeking to secure the interests of all members of society. Welfare consequentialism recognises that this may not be possible. Moreover, so pervasive is its influence that it has become more a species of ‘prosaic sanity’ than a philosophy. Hence, when a public inquiry’s investigations throw light on the state’s welfare consequentialist character, the person who leads it must seek to close the gap between general and universal benefit. To this end, he or she stakes out positions that point in the direction of benign change (lessons that public bodies can learn, more intense regulation, etc).

While public inquiries often succeed in conveying the impression that they will spur processes of reform, the assumption that this will happen is often questionable. This is not because those who lead them are duplicitous. Rather, it is because they regularly grapple with forms of social activity and institutional arrangements where harmful outcomes are, for the reasons we considered earlier, inevitable. But if a public inquiry is to convey the impression that change is in prospect, the person leading it must go about his or her business with assurance. In this context, ‘assurance’ is not reducible to a display of technical prowess. It also embraces the capacity to engender confidence in those who participate in the inquiry’s operations and ultimately in the consumers of the report it produces. Much can go wrong in the course of seeking to elicit such responses. The inquiry may find itself addressing an inordinately broad range of considerations. The issues it addresses may be a standing invitation to meditate on the culpability of individuals rather than address institutional and/or systemic matters. And a lack of grip on relevant law and other significant detail may erode the inquiry chair’s authority. These are points that we must bear in mind when we consider the relevance of Bourdieu’s law prophet to the operations of a public inquiry. While Bourdieu does not hold this figure out as an ideal, he does present us with an individual who has the capacity to make constructive responses to the problems that such a body faces. Moreover, the law prophet (as a possessor of noblesse de robe) may be able to act in ways that add to the state’s stock of symbolic capital.

These points throw light not just on the effectiveness of public inquiries as ‘stagings’ but also on their failings. Two examples will serve to illustrate this point. In 1998, Tony Blair’s New Labour government established the Saville Inquiry to investigate the ‘Bloody Sunday’ shootings of January 1972 (during which British troops, in Northern Ireland, shot twenty-eight unarmed civilians, of whom fourteen died). This inquiry attracted criticism on a variety

39 Ibid, 37.
42 See, for example, the Report of the Mid-Staffordshire NHS Foundation Trust Public Inquiry (London: Stationary Office, 2013) (recommending, in response to failures in publicly-funded health care delivery, more effective complains management, improved medical education and training, and greater openness).
43 Blom-Cooper, supra n 29, 65.
of grounds, including an undue emphasis on questions of individual culpability rather than systemic or institutional failure. More recently, the third chair of Britain’s Inquiry into child sex abuse, Dame Lowell Goddard, resigned from her position following what some reports described as a ‘terminal’ loss of confidence in her effectiveness. Bourdieu provides a basis on which to explain why inquiries such as these cause widespread concern. They present us with performances (or ‘stagings’) that threaten to unravel. Performances of this type are an ever present danger in the context of a public inquiry. The task is fraught with difficulty. This would be the case, where an inquiry has to wrestle with the tensions that arise between the pursuit of universal benefits (e.g., in health care delivery) and a welfare consequentialist *modus operandi*. If the performance is less than assured, the inquiry may attract criticism on grounds of ‘pious hypocrisy’. In such circumstances, the *obsequium* (the bottom-line of politico-legal order) could come under strain.

While alerting us to this possibility, Bourdieu emphasises the state’s capacity to endure. This capacity is embodied in the law-prophets he describes. However, its most potent resource is meta-capital in the form of the state’s commitment to the properly political. To this resource we must add a broad base of expertise (legal, political, and economic) that facilitates the pursuit of the properly political. Given the prominence of legal, political, and economic considerations in Bourdieu’s account of the state’s operations, it seems worth examining their relationship more closely. To this end, we will use the concept of *politeia*.

6 Politeia

*Politeia* (a concept fashioned by the ancient Greeks) refers to a context in which legal and political practices work in tandem in ways that give expression to and sustain the life of a community. The presence of this concept in the practical life of ancient Greece reveals those who made use of it to have been thinking in ways that we can describe as ‘politico-legal’. However, when we examine the works of, *inter alia*, Plato and Aristotle, there are reasons for thinking that *politeia* is not reducible to law and politics. In *The Republic*, Plato assumes a community that is able to sustain itself. In making this assumption, he stakes out a position on community that encompasses economic, as well as legal and political, considerations. A broadly similar (if less obvious) assumption informs Aristotle’s *Nicomachean Ethics*. For human flourishing (*eudaimonia*) as he describes it cannot proceed in a vacuum. Along with law and politics, economic activity forms part of, and plays a part in sustaining, the context in which *eudaimonia* takes on the appearance of an eligible ideal. *Politeia* as it features in ancient Greek philosophy thus emerges as an admixture of political, legal, and economic considerations. To the extent that this understanding of *politeia* is correct, Bourdieu’s concerns intersect more extensively with those of ancient philosophy than he seems to have recognised. For we find in his account of the state as a ‘field’ the same admixture of political, legal, and economic considerations and, likewise, the impulse to bring them into a fruitful relationship. While this is the case, Bourdieu gives more emphasis to

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economic considerations than do Plato and Aristotle. This emphasis on the economic (alongside the political and the legal) is anything but surprising when we view it in light of his introduction of the category of ‘the properly political’. For this category has to do with the effective pursuit of ends that are not simply egalitarian but emancipatory – and wealth creation is a necessary condition of emancipation on the model that appears to inform Bourdieu’s thinking. Thus we find him placing emphasis on ‘the economic conditions of access to the rights of the citizen’ (358).

These points raise questions about the relationship between law, politics, and economics on which Bourdieu, while suggestive, could have been more illuminating. We can explore these questions by drawing on Twentieth Century British jurisprudence, political philosophy, and economic thought. As we noted earlier, Herbert Hart, like Bourdieu, presents us with an account of normative space in the form of his analysis of a legal system as a union of primary and secondary rules. However, Hart’s account of the activity that unfolds in this space is sparse. We can supplement it by returning to Oakeshott on civil and enterprise association. The legal context Hart describes can accommodate either of these models of human association or some congeries of the two. We can add further complexity to the context we are contemplating by drawing on Isaiah Berlin’s account of value pluralism. Among other things, Berlin enables us to argue that civil association attaches importance to freedom of action (or liberty) while enterprise association on a welfarist model identifies security as a matter of pressing practical concern.

Illuminating as the respective contributions of Hart, Oakeshott, and Berlin are, they throw little light on economic life within the space we are contemplating. This is a task to which John Maynard Keynes’ writings (most obviously, his General Theory of Employment, Interest and Money) have relevance. Keynes saw economics (his central area of expertise) as part of a larger institutional whole. This is apparent in his account of what he called ‘the political problem of mankind’. On his account, this problem involves the effort ‘to combine three things: economic efficiency, social justice, and individual liberty’. Moreover, he recognised that law, politics, and economics afford means by which to respond constructively to this problem - with democratic political institutions exercising ‘central authority’ by legal means in pursuit of benign economic outcomes. More particularly, Keynes fashioned a range of tools that had the purpose of fostering a humane (because economically buoyant and egalitarian) model of human association in spaces of the sort Hart describes. ‘Demand management’ was one such tool. In circumstances where economic depression and a high rate of unemployment afflicted society, Keynes argued that government should use taxation, interest rates, and public expenditure to stimulate growth. A welfarist agenda informed this macro-economic strategy: to create employment opportunities. More generally, Keynes argued that all economic strategies should serve the end of a ‘good life’. This is an end that intersects with Bourdieu’s understanding of the properly political since it is not merely egalitarian but emancipatory.

50 Skidelsky supra note 41, 530-531.
51 Ibid, 528-529.
52 Ibid, 529.
When we draw the respective contributions of Hart, Oakeshott, Berlin, and Keynes together, we find ourselves contemplating a politico-legal-cum-economic admixture. ‘Politeia’ gives us a convenient shorthand term for this complex whole, and Bourdieu’s interest in it is plain to see. It is apparent when, for example, he argues that lawyers (while being ‘the driving force of the universal’) exercise ‘disproportionate influence’ in the construction of the modern state (270 and 331). In support of this point, he identifies them as exercising ‘power by way of words’ (331). For their ability ‘to bring things from the order of fact … to the order of reason [or social value]’ makes them the gatekeepers of an order with egalitarian aspirations. This is a point Bourdieu could have made more powerfully with apt examples. He might have done this by, for example, considering circumstances in which judges develop the law in ways that give individuals access to educational opportunities and thus bolster the state’s claims to be distributively just. While open to criticism of this sort, Bourdieu nonetheless makes an important point about lawyers as gatekeepers. Moreover, it is a point that gains strength when we relate it to his account of the state as an engine of integration and domination. Lawyers play a part in the process of integration when they identify norms, arguments, goods, and other considerations that pass muster as ‘properly political’. When they go about their business in this way, they pick out considerations (legal, political, economic, etc) that have instrumental value in the context they are fashioning. Bourdieu’s decision to emphasise this aspect of the work lawyers do also makes it possible for him to forge a tight link between their ‘disproportionate influence’ and the ‘domination’ of the state.

While this is the case, talk of ‘domination’ seems overstated. For the considerations that the state embraces become components in a project that is not merely egalitarian but emancipatory. ‘The properly political’ state is a context in which people have some prospect of living freely. Moreover, the process of institutional development that features in Bourdieu’s exposition tells the story of efforts to raise the probability of this being the case. However, we must set against this point in the modern state’s favour what Bourdieu has to say about the imperialism of the universal. A state of the sort he describes offers a particular route to the universal. The particularity to which Bourdieu draws attention reflects the fact that the state, while being informed by a commitment to the ‘properly political’, is a site of struggle. Actors mobilise the capital (legal, political, economic, etc) at their disposal with the aim of advancing a particular agenda. Bourdieu illustrates this point when he describes the jurists responsible for the modern state’s emergence and development as simultaneously promoting ‘the idea of universalism’ and ‘juridical competence’ (a particular form of capital) (267 and 343). By emphasising the practical significance of the capital in their possession, they underwrite their place in the context that they play a central role in fashioning. This point throws light on the practical outlook internal to Bourdieu’s field of fields. This standpoint places those who take it up under obligations to exhibit fidelity towards the state’s core normative commitment: the pursuit of the properly political. However, the properly political is, as we noted earlier, underdeterminate. Thus it is possible to meet its requirements in a range of defensible ways. For situated actors (in possession of particular forms of capital), the most obvious way to do this is to make use of the capital in their possession in the contexts where they find themselves.

This is a point we can explore by relating Bourdieu’s thinking on the specification of positions in normative space to Ronald Dworkin’s account of the way in which judges should

53 See, for example, Brown v Board of Education, 347 US 483 (1954).
decide hard cases. Dworkin makes his response to this issue vivid by introducing a fictive (and idealised) judge, Hercules J. Hercules attends to ‘institutional history’ with the aim of drawing authoritative reasons for action from the politico-legal system and tradition in which he works.\(^{54}\) Dworkin adds that Hercules extracts a ‘background morality’ from this context.\(^{55}\) Moreover, he uses this morality to make sense of the various legal norms and other considerations (rules, principles, policies, etc) relevant to the cases he must decide. Hercules finds in this background morality a basis on which to work up what Dworkin calls ‘the soundest theory of law’.\(^{56}\) Dworkin tells us that such a theory affords a basis on which to ascribe due significance or weight to the various considerations relevant to the disputes that he must resolve.

On Dworkin’s account, the responses that Hercules J makes to hard cases are a consummate professional performance. He responds impartially to each of the sources of normative pressure (rights, principles, policies, institutional history, and background morality) that bear on the decisions he must make. But at this point, Bourdieu might object that Dworkin has missed matters that we cannot afford to ignore. Bourdieu might argue that when Hercules adverts to institutional history, he enters (at least in his imagination) the field of power. This is a context that (on our earlier analysis) we can only understand from a pluralist normative standpoint: i.e., a viewpoint that finds in law, politics and economics distinct reasons for action. To an argument along these lines Bourdieu might add the further point that Hercules J’s investment in law (a distinct form of capital) limits his attentiveness to many of the impulses at work in this space. Moreover, he could find support for this point in Hercules J’s efforts to extract from (pluralist) institutional history what Dworkin calls the soundest theory of law. Dworkin might respond to such an argument by pointing out that Hercules J’s institutional role requires him to act in precisely this way. There seems to be no basis on which to gainsay this point. Nonetheless, Bourdieu gives us grounds for thinking that a significant element of particularity (rooted in the possession of certain sorts of capital) may play a part in the specification of positions in normative space. Moreover, his talk of ‘imperialism’ has relevance not just to power struggles within but beyond the borders of a particular state. This is a point we can develop by reference to a critique of Dworkin offered by the political philosopher, John Gray. On Gray’s analysis, Dworkin seeks to judicialise politics by arguing for the practice of constitutional judicial review on the model we find in the USA.\(^{57}\) Gray also criticises Dworkin for making the large assumption that judges in other jurisdictions (e.g., the United Kingdom) should adopt judicial review on the model he favours.\(^{58}\)

Aside from its imperialistic tendencies, particularity of the sort Gray finds in Dworkin may pose a threat to the pursuit of the properly political. This is because it may encourage the possessor of one form of capital to adopt a chary or dismissive attitude towards those who can mobilise it in other forms. Consider Keynes. On any reckoning, Keynes was a denizen of the field of power. Moreover, he regularly occupied roles in which government entrusted

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\(^{54}\) Dworkin, supra n 22, 87 and 126.  
\(^{55}\) Ibid. 156.  
\(^{56}\) Ibid, 112 and 326  
him with the state’s meta-capital (e.g., while working in the Treasury). The trust government reposed in him makes sense in the light not just of his prodigious ability but also of his commitment to an egalitarian philosophy of government (or, in Bourdieu’s terms, ‘the properly political’). However, it is easy to find an element of particularity in his thinking. It is apparent in his attitude towards lawyers. He declared that ‘generally speaking, I do not like lawyers’ and complained that they ‘too often … make common sense illegal’. Keynes also described politicians (at an early point in his career) as ‘awful dregs’. In statements such as this, Bourdieu might detect a tendency towards ‘regression’ that is always (on his analysis) a live possibility in what we have been calling politeia.

7 Conclusions

Bourdieu’s concerns in On the State clearly intersect with those of lawyers. As we have noted, his account of the state as a field or normative space exhibits similarities to the analyses of Kelsen and Hart. Bourdieu also shares with legal philosophers a keen interest in the specification of positions in normative space. While Bourdieu’s analysis lacks the precision that we find in, inter alios, Kelsen, and Hart, he succeeds in populating the field he describes in a way that is rare in legal philosophy. He alerts us, among other things, to the way in which universal and more particular concerns bear on and shape the behaviour of those who act in the fields he describes (e.g., ‘the temptation of regression’). Thus we find ourselves in the company of cross-pressured agents rather than, say, an idealised judge, such as Dworkin’s Hercules J who scrutinises the norms relevant to a hard case from an impersonal standpoint. Lived experience is also very much to the fore when, for example, Bourdieu dwells on the ‘destiny effect’ exerted by legal norms that become settled features of the space he describes.

A particular strength of Bourdieu’s exposition is its wide applicability. This made it possible for us to gain analytic purchase on the work done by public inquiries (a tool of governance that, while in regular operation in many English-speaking countries, receives surprisingly little theoretical attention). Bourdieu is also a spur to reflection on the forms of normativity at work in the spaces he describes. Given the wide range of these impulses we can classify him as a normative pluralist. However, we should treat this classification with some caution. It has clear relevance to Bourdieu the sociologist who, in his efforts to describe what he sees, is resistant to the idealisation of institutions. But what of Bourdieu’s normative position on the state? Here we need to press our analysis further if we are to pin down the position he stakes out. To this end, we explored the affinities between Bourdieu’s thinking on the state and that of Hegel. Among other things, we noted that Bourdieu, like Hegel, contemplates the possibility that we may find hints of the universal at work within the actually-existing state. Moreover, the law prophets who feature in On the State go about their business in ways that, again, call Hegel to mind. For they seek to turn facts (e.g., features of the practical scene that become the stuff of legal, political and economic argument) into values (authoritative positions) that give expression to ‘the properly political’ (universal morality). Here, Bourdieu presents us with a deliberative process that looks much like that in Hegel’s account of ethical community (Sittlichkeit). In one further respect, Bourdieu’s thinking is strongly reminiscent of Hegel. Just as politeia enables us to point up the relationship between law,

60 Davenport-Hines supra n 49, 134.
politics, and economics in On the State, so too we can use it to pick out prominent elements in Hegel’s wide-ranging account of Sittlichkeit. Politeia also brings into focus an underdeveloped component of the exposition in On the State that, again, savours of Hegel. This is its interest in continuities in the Western politico-legal-cum-economic tradition that extend over millennia.

Finally, it seems worth considering how prominent legal positivists such as Kelsen and Hart might respond to Bourdieu’s account of the normativity at work within the state. We might expect Kelsen to say that his project is different from that of Bourdieu since he focuses on law’s distinctive normativity and is thus a monist, not a pluralist. However, we might expect a rather different response from Hart. In ‘The Postscript’ to The Concept of Law, Hart entertained doubts about the separability thesis. Moreover, had he had the resolution to act on these doubts, they might have carried him in the direction of normative pluralism on a model not unlike Bourdieu. Thus it seems likely that he would have been attentive to Bourdieu’s analysis. Hart would doubtless have been uneasy about Bourdieu’s readiness to entertain the possibility that ‘a little bit’ of ‘the universal’ may be at work within actually-existing law. In Hart’s ears, talk of ‘the universal’ would have had a troublingly metaphysical ring (as would a Hegelian understanding of the properly political). However, Bourdieu is amenable to a more earth-bound reading. He invites us to attend to the bundle of practical impulses that we have placed under the heading of politeia. Likewise, he encourages reflection on ‘the space of spaces’ in which we seek to bring them into a socially useful relationship. Thinking along these lines may prove more fruitful than getting hung up on the hint of Hegel that we have detected in Bourdieu or, for that matter, on the separability thesis.