

Oakeshott on Freedom and Civil Association

By Ian Tregenza

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It's probably fair to say that the critique of rationalism that Oakeshott developed in the decade or so after the war is still what he is most well known for. But these essays, stylish and elegant as they are, principally offer a critique of contemporary politics. Though they are certainly connected with Oakeshott's broader philosophical outlook—as most systematically expounded in *Experience and Its Modes* (1933)—the polemical does tend to overtake the philosophical in these writings.

But the late work, *On Human Conduct* (1975), is his most considered, constructive work of political philosophy. It's here that he develops his theory of modern authority as well as providing a history of the modern state in terms of two ideal characters, civil and enterprise association. I will get on to comparing these rival understandings of the modern state and say something about their relationship to Oakeshott's conception of freedom. But first I want to give an account of how this understanding of the state develops over his career. As will be seen this provides a useful point of comparison with Collingwood.

Broadly speaking one of my central arguments is that Oakeshott's thought—particularly his theories of agency/freedom and on authority—moves away from a Hegelian/rational will formulation toward one that is in many ways closer to Hobbes. From a theory of the rational will (with its teleological overtones) to a theory of the agent that might be described as 'intelligent movement'. And the theory of authority that goes with it, also moves in the direction of Hobbes. One useful way of exploring these developments is to look at the way Oakeshott's attitude to Hobbes changes, since Oakeshott wrote substantially more about Hobbes than he did about any other political theorist or philosopher.

I don't claim that there is a break in Oakeshott's work from one formulation to another (as some have). There is certainly continuity, but there is also change. It's not as simple as a shift from Hegel to Hobbes. He never accepts the radical subjectivism of Hobbes. The later moral theory in fact bears some resemblance to a Hegelian view—the idea that all action takes place within the context of a set of moral practices which condition or shape our action. And these practices provide a kind of moral currency that enable us to accommodate ourselves to others. I'd also want to claim (as I will towards the end of this paper) that his theory of civil association and its relationship with the realisation of human freedom also reflects the influence of Hegel. Nevertheless, the movement is in the direction of Hobbes.

Before I get to the theory of civil association itself let me describe the broad movement of ideas—how does the idea of civil association and the conception of human freedom that goes with it form in his mind?

Even though Oakeshott was always sympathetic to Hobbes he does make some notable criticisms of Hobbes in the early writings, which tend to disappear in the later work. This is related to the way in which Oakeshott goes about contextualising Hobbes's thought—which, in turn, is related to broader developments in Oakeshott's thought itself.

What are the criticisms? Here's one example that comes at the end of his 1938 review of Leo Strauss's *The Political Philosophy of Hobbes*:

‘Although Hobbes set an example followed in one way or another by almost every later political thinker of starting with will instead of law, he never had a satisfactory or coherent theory of volition, and the whole Epicurean tradition to which he belonged did not bear fruit until this lack was remedied, and the remedy was, in fact, the union of a reconstituted natural law theory with Hobbes's Epicurean theory—a union indicated in such phrases as Rousseau's ‘General Will’, Hegel's ‘Rational Will’ and Bosanquet's ‘Real Will’. The most profound movement in modern political philosophy is, as I see it, a revivification of the Stoic natural law theory achieved by the grafting upon it an Epicurean theory; it springs from the union of the two great traditions of political philosophy inherited by Western Europe from the ancient world (*Hobbes on Civil Association*. 147,8)’

Here Oakeshott is drawing on a reading of what he terms the ‘philosophical past’. This entails a certain reading of past philosophy that he shares with other idealists (back to Hegel and including Collingwood). All of the Idealists had a strong sense of the evolution of thought and they all thought that present philosophical activity could only proceed through an appraisal of this philosophical past.¹ And the way that this past was constructed was in terms of a triadic framework (reminiscent of Hegel's dialectic). They all had slightly different versions of this, but the similarities are stronger than the differences.

The three broad traditions that Oakeshott identifies are: 1. ‘Reason and Nature’; 2. ‘Will and Artifice’; and 3. ‘Rational Will’. And he says that Plato, Hobbes and Hegel are the leading exponents of these traditions.

1. The first tradition, which encompasses Plato, the stoics, and natural law (Christian or not) theorists claims that there is an objective/rational moral order external to the human mind, but it can be discovered through ‘right reason’. 2. The second tradition—‘Will and Artifice’—also goes back to ancient world. Oakeshott mentions Epicurus, the ancient Hebrews, and the Romans as important sources. But it was particularly strong in early modern Europe with the emergence of the individual. Its central claim is that humans (and indeed God) are primarily creatures of will (rather than reason) and we create order by imposing it on a world that is otherwise chaotic, much in the way that God created the world out of chaos. Order is a product of artifice. 3. The third tradition, that of rational will, involves a kind of dialectical

¹ This understanding of past thought should not be confused with history as either Oakeshott or Collingwood conceived it. Aside from Bradley's important work *The Presuppositions of Critical History* (1874) the British Idealists produced little on the nature of historical understanding until Collingwood and Oakeshott.

synthesis of these earlier traditions where reason and the will coincide. We can only have true personhood when we come to participate in the general/rational/real will which the political order is designed to encourage.

And it's from the vantage point of this third tradition that Oakeshott makes the judgment he does about Hobbes. Hobbes's theory is inadequate because his theory of the will is not yet a rational will. And it wouldn't be until the rational will tradition emerged that this inadequacy could be put right.

There is also an implied criticism of Hobbes in one of Oakeshott's early essays on authority ('The Authority of the State', 1929. Reprinted in *Religion Politics and the Moral Life*. Hereafter RPM). In this essay Oakeshott examined a number of competing conceptions of the state (the state as a piece of territory, the state as a collection of legal or economic persons, the state understood as a collection of persons for secular purposes, the state understood as the political machinery of government) each of which he found wanting. What he sought to do here was provide the grounds for (in a Hegelian manner) a more complete theory of the state than these conceptions provided. Each were considered inadequate and in need of supersession. This is how he ends the essay:

'The authority of the state is not mere government and law, nor is it founded upon a contract or any other form of the consent of the people, but resides solely in completeness of the satisfaction which the state itself affords to the needs of concrete persons. Apart from its completeness, the state has no authority, for that only is authoritative, in the full sense, which is itself complete. Of this authority, and no other, can it be said: *Non est potestas super terram quae comparetur ei*' (RPM 87).

Again Hobbes's theory is deemed inadequate and in need of supersession. Not only do notions of contract and consent fail to capture the nature of authority in the modern state, Oakeshott also says that a legal conception of the state is abstract and therefore less than adequate. The theory of civil association that he will go on to develop, however, is what he calls an ideal character. It is a theoretical construction derived from, but independent of, concrete experience. Its subject is not concrete persons, but *cives*, those who have an abstract persona by virtue of being united as members of a civil association.

Now Oakeshott's judgments about Hobbes at this early stage are in some respects reminiscent of Collingwood's approach to Hobbes as outlined especially in *The New Leviathan* (1943). Collingwood explicitly claimed that he wanted to update Hobbes in order to confront the crisis of civilization. Very briefly, Collingwood claimed that Hobbes's great insight was to recognise a distinction between the non-social and the social sphere and he aims to make the non-social sufficiently educated to become part of the social sphere (through the contract). But Collingwood's claim is that Hobbes's theory of what constitutes the social is inadequate and this stems from his inadequate theory of human volition i.e. will as equivalent to appetite. Hence Collingwood develops the idea of duty, which is a fusion of what Collingwood calls a 'regularian' (or rule based) and a subjectivist conception of the will.

I don't want to overstate the connections between Oakeshott and Collingwood here because they are quite different in many ways, but they do share an intellectual framework and they come to similar conclusions about Hobbes and very broadly about what the tasks of moral and political philosophy ought to be. However, after the war Oakeshott's view changes considerably and he comes to a view—on questions of freedom and individuality and on questions of authority - that is much closer to Hobbes.

How does this happen? Basically because he makes a shift in his interpretation of the past, from an interpretation of the entire history of western political philosophy towards a certain construction of modern European history and its reflection in ideas/theory. He develops a framework for understanding the broad course of European history, in particular the experiences that gave rise to the modern state.

It should be stressed that the past that he constructs here is not really the historical past (as he describes it in his writings on the philosophy of history). For a start it's an abridgment. The historian (in contrast) should aim at piecing together all contingent events into a seamless whole—or as stones in a stone wall as he puts it in *On History* (1983). The historian he says must seek 'to escape that gross abridgment of the process which gives the new shape a too early or too late and a too precise definition, and to avoid the false emphasis which springs from being over-impressed by the moment of unmistakable emergence. Yet that moment must have a dominating interest for those whose ambitions are not pitched too high' (*Rationalism in Politics*, 18. Hereafter RP). He says this in the course of describing the character of the rationalist which itself is an emergent historical identity. The past that Oakeshott develops here also contains (at times) strong moral judgements, which again is something that he claims the historian should avoid.

Here another triadic framework is employed, but it draws less on Hegel than it does on historians such as Burckhardt (on the rise of the individual in Renaissance Europe), Henry Maine (on the shift from status relations to contractual ones), and Tönnies (on the transition from *Gemeinschaft* to *Gesellschaft*). What Oakeshott wants to do in these post war writings is construct a reading of the rise of the individual in modern Europe. The emergence of the individual he describes as the 'pre-eminent event in modern European history' (RP, 370).² But the disposition to be an individual has also been threatened by the rise of mass society and ideological or rationalist politics. In this regard Oakeshott's reading of European history has something in common with writers such as de Tocqueville, Kiekegaard, J.S.Mill, Nietzsche, Ortega, and Hannah Arendt.³

All of these writers were interested in the grand sweep of history—with the events, movements, and ideas that made the modern world what it is. Likewise, Oakeshott is constructing his own narrative of modernity. He builds a vision of the past, providing

² The important writings where this 'history' is worked out include – 'The Moral Life in the Writings of Thomas Hobbes', 'The Masses in Representative Democracy', *The Politics of Faith and The Politics of Scepticism, Morality and Politics in Modern Europe*, and the final essay of *On Human Conduct* titled 'On the Character of a Modern European State'.

³ For further discussion of Oakeshott's reading of European history see, Luke O'Sullivan's, 'Michael Oakeshott on European Political History', in *History of Political Thought*, 21, pp.132-151.

him with a kind of text from which he develops his later moral and legal/political theory.

So how does he go about constructing this sketch of modern European history? Instead of talking about philosophical traditions he describes three moral traditions—these are ‘the morality of communal ties’, ‘the morality of individuality’, and ‘the morality of the common good’.

The first marked medieval life and thought where the individual as such did not yet exist since group life was very strong and people had strong communal identities: ‘what differentiated one man from another was insignificant when compared with what was enjoyed in common as members of a group of some sort’ (RP 365). Morality here appears more as ritual than as rules ‘what ought to be done is indistinguishable from what is done: art appears as nature’ (RP296). But spreading from Italy in the high middle ages (12thc.) these communal ties slowly but surely gave way to the experience of individuality: ‘it gathered to itself an appropriate understanding of the office of government, it modified political manners and institutions, it settled itself upon art, upon religion, upon industry and trade and upon every kind of human relationship’ (RP 367). In the morality of individuality separate selves are recognized as sovereign, independent centres of activity and choice, related to other selves in terms of this individuality, and morality, Oakeshott says, is the art of mutual accommodation.

In response to this experience of individuality there arose a third moral tradition—the morality of the common good. This third moral tradition is a post-individualist tradition. It also recognises the existence of separate selves, but here individual moral choice is subservient to the claims of the community. And the community is governed by a common purpose to realise ‘a single approved condition of human circumstance’ otherwise called ‘the good of all’ or the ‘social good’. Though ‘the lion and the ox are distinguished from one another There is a single approved condition of human circumstance for both: the lion shall eat straw like the ox’. (RP 296-7)

This ‘common good’ tradition was brought on, Oakeshott says, by a new character type who was threatened by, or resented the experience of individuality. Oakeshott refers to this new character variously as ‘the individual *manqué*’, ‘anti-individual’, or ‘the mass man’ who aims to undo the experience of individuality, and recover the feelings of communal warmth that he believes this experience had undermined. (this is how he discusses it in his essay ‘The Masses in Representative Democracy’).

So we have a new intellectual framework, and rather than identifying with the third tradition, he tends to affirm the second—‘the morality of individuality’. And he sees the third conception as something of a threat to this experience. His estimation of Hobbes also changes and the criticisms tend to disappear. He now describes Hobbes as ‘the first moralist of the modern world to take candid account of the current experience of individuality’ (RP 367).

Oakeshott is also at pains to counter some of the dominant modern readings of Hobbes’s individualism—the view that says Hobbes’s individualism is a bourgeois individualism (Leo Strauss, Hannah Arendt) or a possessive individualism

(C.B. MacPherson). This hinges on the relative emphasis that is given to the motives of pride and fear in Hobbes. Strauss and Arendt claim that what drives Hobbes's theory is the passion of fear – fear tames us and makes us compliant, makes us fit for civil society. Pride is dangerous and unpredictable and it fuels the conflict of the state of nature. Oakeshott says that Hobbes is often critical of the passion of pride, but there is another understanding of pride in Hobbes that can be channelled in a constructive direction—in the direction of a noble or aristocratic individuality which is contemptuous of injustice and does not lead us to see ourselves as competitors with others. Oakeshott says that Hobbes 'felt constrained to write for those whose chief desire was to 'prosper' [ie. To seek material security *a la* the bourgeoisie]' even though he 'understood human beings as creatures more properly concerned with honour than with either survival or prosperity' (RP 344).

So Oakeshott makes much of those aspects of Hobbes that are in keeping with his own 'moral' reading of the rise of individuality. He also says that what Hobbes did was to theorise an historical experience. And this is very much what Oakeshott himself is doing. Oakeshott's conception of the relationship between theory/philosophy and history is still quite Hegelian in so far as he subscribes to the view that philosophy is its own time apprehended in thought. But the framework itself is quite different, and it's much closer to history than was the earlier conception which was a strictly philosophical past.

So how does this bear on the later theory of authority?

These different moral experiences gave rise to different conceptions of the state. The state, Oakeshott thinks, is not a monolithic entity. It has an ambiguous character, and can be understood as moving between or combining elements of two ideal characters—civil and enterprise association.

Ideal characters are not unlike Weber's ideal types—they are abstractions from historical experience. The construction of an ideal character is a theoretical exercise, and it involves identifying and putting together in a composite picture the central features of the phenomenon one is trying to understand.

Very briefly, civil association can be understood as association governed by non-instrumental rules, or association devoid of an extrinsic purpose. Enterprise association, in contrast, is association governed by a specific purpose—and it contains instrumental law, law which aims to realise this purpose.

Most actually existing states are in fact a combination of the two, though some more nearly approach one or the other. Examples of states that come close to approximating enterprise association include, Soviet Russia, Calvin's Geneva, modern Iran (indeed theocracies of all hues – the distinction between church and state is important to his construction since the church is a classic example of an enterprise association).⁴

⁴ At one point Oakeshott suggests that his reading of the relationship between civil and ecclesiastical authority (or more broadly 'the authority to rule and the authority to educate') 'owes much to Ranke and such Neurankean historians as Lenz who held that the dominant 'theme' of modern European history is the tension between religious and civil association, continuously transformed' (OHC, 286n). Hobbes's powerful argument against the idea of the church as a corporation with its own independent jurisdiction obviously makes him a key player in this story.

As John Liddington points out, though Oakeshott doesn't give examples of states which closely approximate civil association, one possible instance that he has in mind was 18th and early 19th century Britain.⁵ But the lack of examples stems from the fact that Oakeshott thinks there is much in modern politics that works against the state coming to be understood in terms of civil association.⁶ It is a form of association he thinks, 'as excellent as it is rare'.

But he thinks the distinction between civil association and enterprise association (or *societas* – association, and *universitas* – corporation) has its origins in medieval life and thought, expressed in the distinction between rulership and lordship. A ruler is one who is the custodian of a set of rules who is indifferent to the purposes of his/her subjects, unlike the lord who manages his estate in order to make it yield a profit.

So any actual state is in fact a combination in practice of these two ideal characters. It's a mistake to think that Oakeshott was a defender of the minimal or nightwatchman state or indeed the free-enterprise state. Civil association is, he says, not a free-enterprise state but a no-enterprise state. He's describing the state understood as the rule of law and it has nothing to do with economics. Here there's an important difference from von Hayek, for example.

But more importantly he says that civil association is not a complete conception of the modern state. States have to pursue purposes—most obviously in times of war. States also have to address a variety of domestic purposes. He says quite a bit about this in the *Politics of Faith and the Politics of Scepticism* (only published a few years ago but written in the 1950s). Here he articulates different views about the role of government in modern European history. One is sceptical about the role of government and sees its role primarily as a defender of the peace. This leads to a rule of law conception of the state. The other is more optimistic about government's role in the pursuit of purposes. Oakeshott no doubt has a preference for limited government, or the politics of scepticism, but he points out here that both scepticism and faith are needed in modern politics. And he thinks that the attitude of the trimmer is needed, harking back to Lord Halifax in the 17th century, who, when criticised for changing sides, said he saw himself as a trimmer trying to keep the ship of state on an even keel. (cf. Oakeshott's very famous image in *Rationalism in Politics* about there being no harbour or destination in politics but the point is to keep the boat on an even keel—unlike political rationalists who are so keen to take the state to their chosen destination).

So states do need to pursue purposes, but he no doubt thought that modern states had principally become enterprise associations, and that there was a need to restore the balance. Specifically he thinks there is a threat to individual freedom if we think of the state exclusively in terms of enterprise association.

⁵ 'Oakeshott: freedom in a Modern European State' in Z. Pelczynski and J. Gray (eds) *Conceptions of Liberty in Political Philosophy* (New York: St Martin's, 1984), 295. Even this example is doubtful as at this time Britain, and Europe generally, was engaged in various colonial adventures and, for Oakeshott, colonialism provided a major impetus to the shaping of a teleocratic understanding of the state.

⁶ '(T)he circumstances of modern Europe', Oakeshott says, 'have always made it impossible for any state (except, perhaps, Andorra) to achieve this condition without qualification' ('The Rule of Law', in *On History*, 1983).

Why is this? The answer goes back to the way that he constructs his account of morality in the first essay of *On Human Conduct* (hereafter OHC). Basically the argument goes something like this. Human beings make choices in the context of various moral practices. And moral practices, he says, do not tell us what to do or say—rather, they impose conditions on the way in which we make choices and pursue our desires. This depends on a distinction between the substance and the form of an action which are united in practice, but are analytically separable.

The substance of our action is the choice that we make—we choose to do this rather than that, to realise one aim or purpose or another. These choices are always contingent, particular choices—‘I don’t *want* happiness, what I want is to idle in Avignon or hear Caruso sing’ (OHC 53). This is not unlike Hobbes for whom felicity describes a process by which we move from one particular desire to another (*Leviathan*, ch.11).⁷

So our choices are always particular, contingent choices. But a moral practice conditions the way in which we go about pursuing our aims. Morality provides the form of our action, but it doesn’t determine the substance of what is chosen. Oakeshott uses the example of a vernacular language to illustrate his point. A language doesn’t tell us what to say it merely stipulates formal rules that must be adhered to if what one says is to be intelligible. These rules aren’t external to the language but are embedded in the language itself, and they’re recognised as authentic rules whenever the language is spoken.

So Oakeshott thinks of moral practices in similar terms. They are non-instrumental, and we learn morality in much the same way as we learn to speak a vernacular language.

Civil association is an association of this sort—it is a moral association. So Oakeshott is not a legal positivist, if this is taken to mean that law and morality are distinct. To the extent that it matches the features of civil association, law has a moral character. But the difference between civil association and a moral practice as it is ordinarily understood is that in civil association rules are made explicit. In a moral practice you might have moral theorists who make rules explicit or in relation to a spoken language you might have grammarians who identify the rules of the language—but the practice isn’t dependent on making these rules explicit. In civil association, however, there is a recognised body of law with an office of authority whose task it is to interpret, enforce and make law. Civil association is a body of rules that do not determine human action, rather, these rules specify conditions that must be subscribed to in making choices.

⁷ Here there is another important similarity with Hobbes as well as a contrast. The similarity is that both Oakeshott and Hobbes have very expansive notions of human freedom. Hobbes says that humans are free whenever they have unrestricted movement. To have no external barrier to inhibit your movement is to be free. In a similar vein, Oakeshott says that there is an inherent freedom in human agency. Whenever we choose between contingencies we are acting freely. The important contrast lies in the fact that Hobbes claims that everything and every action in the material world is caused, including human action (known as compatibilism – free will and causation are compatible – a view shared with Hume). In contrast, Oakeshott argues that human conduct is the exhibition of intelligence, it is an exercise in understanding, as opposed to it being the manifestation of a natural process. Conduct is free because it is not caused.

An enterprise association is different. It's an instrumental organisation, established to achieve a particular goal—a church, a business, a trade union, an environmental organisation, an army. Enterprise association contains laws, but its laws are instrumental to the achievement of a purpose or set of purposes. Members of an enterprise association are related in terms of the common purpose, rather than in terms of a set of formal rules.

Oakeshott claims that there is an inherent freedom in a moral practice that isn't there in an instrumental practice or an enterprise association. This is because moral practices don't prescribe substantive actions and they therefore leave individuals free to pursue their aims. The freedom that enterprise associates enjoy, in contrast, is the freedom to join or to leave the association. If I cease to believe in the church's teaching, or feel that a trade union no longer represents my interests then I'm free to leave that organisation and join another, or not join any. Because a civil association doesn't specify goals or purposes this issue doesn't arise.

Oakeshott is not against the idea of enterprise association *per se*—indeed the existence of a plurality of such groupings is one of the hallmarks of an open, free society.⁸ However, the problem comes when the state—which is for all intents and purposes a compulsory organization—becomes an enterprise association. What occurs then is that certain particular purposes—which are by nature non-necessary or contingent—become compulsory. We are forced to subscribe to purposes that we could have rejected. In Oakeshott's words: 'to make enterprise association compulsory would be to deprive an agent of that 'freedom' or 'autonomy' which is the condition of agency' (OHC 181). In contrast the freedom of *cives* 'is not tied to a choice to be and to remain associated in terms of a common purpose: it is neither more nor less than the absence of such a purpose or choice' (OHC 158).

Even though Oakeshott wants to argue that civil association is purposeless this doesn't neatly fit with what he elsewhere says about its role in protecting the modern experience of individuality. For instance, in describing the emergence of the individual in European history Oakeshott says that 'what has to be reckoned with is a historic disposition to transform this unsought 'freedom' of conduct from a postulate into an experience and to make it yield a satisfaction of its own, independent of the chancy and intermittent satisfaction of actions achieving their imagined and wished-for outcomes' (OHC 236). Elsewhere he talks about the disposition to be an individual, to be self-directed, as a response to 'the ordeal of consciousness' (OHC 243).

I think Oakeshott's residual Hegelianism comes to the surface here. Full human subjectivity, to put the matter in more Hegelian terms, involves self-conscious individuality and this is what civil association encourages. Because civil association doesn't require us to have any particular purposes what it effectively does is to privilege the experience of individuality. It encourages the idea that agents are agents

⁸ In the essay 'The Political Economy of Freedom' in *RP*, Oakeshott identified freedom of association as one of the hallmarks of the British libertarian tradition.

with the capacity to be self-directed, to make choices between contingent ends. This can be understood as its implicit purpose.⁹

The state that has become an enterprise state, in contrast, encourages an altogether different response to the 'ordeal of consciousness'. 'The member of such a state', says Oakeshott, 'enjoys the composure of the conscript assured of his dinner. His "freedom" is warm, compensated servility' (OHC 317).

I referred earlier to Oakeshott's use of the image of the lion and the ox to illustrate the morality of the common good. There's another image with an animal theme that Oakeshott draws on, this time to illustrate the nature of civil association. I'll end with this:

There was once, so Schopenhauer tells us, a colony of porcupines. They were wont to huddle together on a cold winter's day and, thus wrapped in communal warmth, escape being frozen. But, plagued with the pricks of each other's quills, they drew apart. And every time the desire for warmth brought them together again, the same calamity overtook them. Thus they remained, distracted between two misfortunes, able neither to tolerate nor to do without one another, until they discovered that when they stood at a certain distance from one another they could both delight in one another's individuality and enjoy one another's company. They did not attribute any metaphysical significance to this distance, nor did they imagine it to be an independent source of happiness, like finding a friend. They recognized it to be a relationship in terms not of substantive enjoyments but of contingent considerabilities that they must determine for themselves. Unknown to themselves, they had invented civil association. (RP 460,1)

⁹ I have discussed this at greater length in *Michael Oakeshott on Hobbes. A Study in the Renewal of Philosophical Ideas*, ch.3. See also David Mapel's 'Civil Association and the Idea of Contingency', in *Political Theory*, 18, 392-410 whose argument I am indebted to.