Collective Rights and the Ancient Community

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A. Introduction

The principle of national self-determination asserts the collective right of the nation for self-government. This principle is now a cornerstone of modern political thought. The idea of "home rule" or the ideal of a self-governed political community is a very old one which originated in classical Greece. Yet the modern idea of the free self-governed community differs in some important aspects from the old one.

National sovereignty, or the community's collective right of "home rule", means today the right of the political community to its own State. The State, at least the modern liberal democratic Nation-State, is conceived as an instrument by which sovereignty is constituted and national interests are promoted. In this way antiquity poses an interesting problem, since the State is a product of the modern era and was hardly known in the ancient world. The absence of State was not accidental to the ancient community; it was accompanied by an adequate system of ideas concerning the nature of the political community.

In what sense was the ancient community free? Can we trace the idea of communal collective rights in the system of ideas which is associated with the ancient community? Those questions are dealt in the following. I will concentrate upon classical Greek political thought and upon the Aristotelian community, which can be taken as a fair representative of the Greek notion of the political community and which, after the recovery and translation of Aristotle’s Politics in the 13th century, had been influential throughout the later Middle Ages and at the dawn of the modern era. I will try to show that, unlike the modern nation, the ancient Aristotelian community was not sovereign, that it had no rights or interests, and that these characteristics were directly related to its being a non-State political system.

B. Sovereignty

A modern self-governed nation is said to be sovereign. What does political sovereignty mean?

Hobbes’ theory of sovereignty was perhaps the first complete theory of the State. Though it seems strange and remote to the modern liberal-democrat observer, it offers a simple embryonic model of the modern State. The Hobbesian state was primarily a coercive agency used by the sovereign to impose his rule upon his subjects. Hobbes himself did not acknowledge the collective right of the political community. His sovereign was not the community but the ruler, or the State or the government. Yet his concept of sovereignty, though not his sovereign, can serve as a good starting point to understand the modern idea of sovereignty.

One of the main features of ancient pre-Machiavellian political thought was the reduction of politics to ethics or to morality. Hobbes’ point of departure is the separation of politics from morality and the establishment of politics upon force and interests. Therefore Hobbes’ sovereign is the final authority within the political community and his authority is unlimited, either by law, or by religion or conventional morality: he is at once the source of the law and above the law. His sovereignty is marked by his freedom to legislate and by his ability to enforce legislation on one hand and by the stability and peacefulness of his political community on the other. Thus when we say that the Hobbesian sovereign is limited neither by law nor by conventional morality, we must add that he is limited by nature and by “reasons of state” to those laws which will keep his political community stable and peaceful.

Ever since Hobbes the concept of sovereignty cannot be separated from the concept of statehood. Hobbes identified the State with the sovereign. We no longer accept this. But we do accept the Hobbesian idea of the State as the distinct coercive mechanism by which sovereignty is constituted.

Hobbes insists upon the unlimited nature of sovereignty. He speaks of the “untied hands of that Man, or Assembly of men that hath the Sovereignty.”

More striking is the following passage:

The people of Athens bound themselves but from one onely Action; which was, that no man on pain of death should propound the renewing of the warre for the Island of Salamis: And yet thereby, if Solon has not caused to be given out he was mad, and afterwards in gesture and habit of mad-man, and in verse, propounded it to the People that flocked about him, they had had an enemy perpetually in readiness, even at the gates of their Citie: such dammage, or shifts, are all Commonwealths forced to, that have their Power never so little limited.

For Hobbes it is a matter of survival: a limited political community cannot survive. Tying the hands of the sovereign by any moral bonds may prove hazardous when there is a need to break these bonds in order to save the community.

Hobbes’ principle of (morally) unlimited sovereignty is usually rejected by modern liberal democrats, on the ground that there is no Hobbesian unlimited person or institute in a modern liberal democracy, and if there were, it would not be a liberal democracy. Those liberals advocate instead what they call the

"sovereignty of the constitution". Yet there are modern thinkers who maintain that this idea, the idea of unlimited sovereignty, is essential to the theory of the modern political community. Henry Maine points out three stages in the development of law. The last stage, the modern one, which he calls "Legislation", is characterized by the existence of a legislature, which is unlimited in principle. Maine says that even if the legislature seems to be limited by moral standards, it is only because it chooses to be limited, thus it may undo it whenever it wishes. A similar, perhaps more moderate, idea is suggested by F.H. Hinsley, who wrote an important book on the development of the concept of sovereignty. Hinsley says that before the modern concept of sovereignty could arise,

The law had to be clearly divided into divine (or natural) law and the positive law of the community; the law of God and the law of the community had to be consciously separated. And then, secondly, either the community itself or the ruler (the state) had to come to be regarded as being at least above the positive law, even if remaining subordinate to the divine or natural law.

Henry Maine’s idea of modern legislation means that it is possible to maintain both modern liberal constitutionalism and the idea of unlimited sovereignty. The sovereign can willingly impose upon itself a constitution (which it can revoke whenever it chooses). This idea of modern constitutionalism is different from that which suggests that constitutionalism means that there are some given moral principles or constitutional rights, such as the protection of human rights, to which the sovereign is committed no matter what. The first idea means that the sovereign is above the constitution while the latter means that the sovereign is under the constitution. (The difference between the two kinds of constitutionalism will become clearer when the ancient idea of sovereignty is discussed below.) Again, it might be argued against Maine’s idea of constitutionalism that in the modern liberal democracy there is no person or institution that is above the law or if there were such a person or institution, then it would be unlikely that it would take upon itself any constitutional restraints. Both objections are valid, especially if one assumes a Hobbesian sovereign. However, there is another possibility, namely that the sovereign is the nation. For Hobbes sovereignty resided in the State (or the government). Thus the principle of unlimited sovereignty meant that the State, which was also the legislature, was unlimited. However, with the impact of John Locke and the liberal tradition, sovereignty had passed from the State to the society, or to the people, and, later, to the nation. Thus the liberal tradition has separated the sovereign, namely the people or the nation, from the tool by which sovereignty is constituted, namely the State. This separation makes it possible to limit the State, or the legislature, or the government, without limiting the sovereign, i.e., the people. Here, unlike the case of a Hobbesian sovereign, it is clearly in the interest of the sovereign, the people, to put constitutional restraints upon the State.

5. Hayek, supra, note 2, and see A.D. Lindsay, The Modern Democratic State (London: Oxford University Press, 1943) c. IX.
Thus it is possible to maintain both the principle of unlimited national sovereignty and constitutionalism. It is possible to maintain, for example, that while every citizen and institution within the American nation is bound by the American constitution, the American people are not: they are above the constitution. Nevertheless, if one accepts the principle of national unlimited sovereignty, one must admit the possibility of legislation against that which is considered, in the modern liberal democracy, as inalienable or basic human rights. Perhaps, here, we should distinguish between the unlimited nature of sovereignty and modern legislation on one hand and the moral principles which we would like liberal democracy to follow on the other. Unlimited sovereignty means that these moral principles should never be totally binding.

C. Collective Rights and Collectivism

In what sense can a nation be sovereign? Collective rights have been a rather problematic issue within the framework of the liberal tradition. One of the main reasons for this has been the impact of methodological individualism which underlay both Hobbes and the classical liberalism tradition. Methodological individualism is the theory which asserts the existence of individuals only and denies that collectives are real entities. It is reflected in Jeremy Bentham's words:

The interest of the community is one of the most general expressions that can occur in the phraseology of morals: no wonder that the meaning of it is often lost. When it has a meaning, it is this. The community is a fictitious body, composed of the individual persons who are considered as constituting as it were its members. The interest of the community then is, what?—the sum of the interests of the several member who compose it.9

Thus Hobbes' (personal) sovereign is easily understood within the framework of methodological individualism, which cannot be said of a nation-sovereign. How can a fictitious entity be sovereign?9

Yet this important question, whether a collective has a real existence or whether it is a fictitious entity which can be reduced to its individual components, lies outside the scope of this paper.10 The question that I am concerned with is the extent to which, if any at all, the rights and interests of the political community are recognized. Even within the framework of methodological individualism, a political community has interests (which are the sum of the interests of its members, or the interest of the majority) and that the first modern theories of ‘home rule’ were introduced in the eighteenth

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10. This problem has been dealt with extensively in Joseph Agassi, *Towards a Rational Philosophical Anthropology* (The Hague: Martinus Nijhoff, 1977) at 290-319. This book is an overall attack upon reductionism, and both schools—methodological individualism, or psychology, and collectivism—are rejected as reductionist (at 304). Agassi suggests that instead of reducing society to its members, like psychologists do, or deriving the individual from society, as collectivists do, to accept both individual and society as ‘real’ and to speak of the interactions between two ‘real’ non-reducible entities (305-06).
century within the framework of methodological individualism.

The absence of adequate epistemology concerning collectives was not the only reason for collective rights' problematic place within the liberal tradition. There has been also a tendency to identify collective rights with collectivism or with romanticist nationalism, i.e., with a theory which asserts the ultimate right of the collective against the individual. This has caused a rejection of collective rights on the ground that they are a danger to human rights.

Nevertheless, even if we accept the nation as a real entity which has its own interests, which cannot be reduced to its individual components, it does not necessarily mean adopting the nineteenth century romanticist mysticism of the "National Spirit", which puts the State above the nation. A liberal democratic nationalism would insist upon the State as subordinate to the nation and being used to materialize national interests. In this sense a modern nation is sovereign when it makes its State respond to its interests.

Thus we can also speak about a nation as an unlimited sovereign without accepting nineteenth century collectivism. The modern concept of the law means adapting it, at least in the long run, to a changing public opinion. In a modern liberal democracy the will of the people is expressed through its national liberal-democratic institutions. While each of these institutions might be limited by the law, public opinion is not. It is spontaneous; more importantly, it is imbued with the idea of progress that characterizes modern political thought. We believe in progress and in making things better. In this sense, public opinion and national interest are open and unlimited. Thus collectivist support for national rights is only apparent. Collectivism, or romanticist nationalism, rejects the right of the real nation to express its will democratically, and advocates the replacement of this concrete democratic will by apparent mythical will: "The National Spirit". This so-called "spirit" exists only in the minds of the collectivists, who advocate imposing it upon the real nation, thus violating its rights. Thus the romanticist, collectivist, historicist idea of predetermined "national fate", or of laws of history which guide the nation, or the nation's universal mission on earth—all those so-called laws—are not indications of a free unlimited nation, but on the contrary they are indications of a severely limited sovereignty which Hobbes would have never accepted.

D. The Ancient Community as a Non-State Political System

The purpose of the present paper is to explore the relations between concepts like sovereignty and statehood on one hand and collective communal rights and interests on the other. National sovereignty, or the right of the

11. I took the idea of liberal nationalism from Joseph Agassi, Religion and Nationality: Towards an Israeli National Identity (Tel Aviv: Papyrus, 1984). The book which, unfortunately, has not been published yet in English, distinguishes clearly between the idea of liberal democratic nationalism and the idea of romanticist collectivist nationalism. While the former sees the State as an instrument which ought to respond to national interests which are determined by liberal-democratic institutions, the latter put the state above the nation and above democracy.

12. Supra, note 1 at 44.
political community for self-government, means the right to its own State. In this sense the ancient community poses a real problem since it was a non-State political system. Was it sovereign? Did the theory of the ancient community, or the system of ideas which are associated with the ancient community, acknowledge collective or communal rights? Before discussing these questions I would like to introduce shortly the idea of a non-State political system.

The State is a product of the modern era and was hardly known in the ancient world. Most of the political systems of the ancient world, including the Greek polis, the Roman Republic (but not the Roman Empire) and the Christian society of the Middle Ages were stateless. A political system which is stateless lacks a distinct coercive administrative apparatus which is constituted for the purpose of ruling, and thus it lacks an organ, separated from society, which is responsible for the public realm.

The absence of a state-coercive apparatus in the ancient city-state and especially in the Greek polis has been noted by M.I. Finley: the polis had neither police force nor standing army. Finley says:

Neither police action against individual miscreants nor crisis measures against large-scale 'subversions' tells us how a Greek city-state or Rome was normally able to enforce governmental decisions through the whole gamut from foreign policy to taxation and civil law, when they evidently lacked the means with which, in Laski's vigorous language, 'to coerce the opponents of the government, to break their wills, to compel them to submission.'

Athens combined statelessness with an impressive democratic system, while Sparta remained a closed, tribal, stateless community. Athens, with all its impressive political institutions and Empire, had virtually no bureaucracy. Athenian political institutions were popular, i.e., they were not differentiated from society or from the community. The various offices in Athens, with the exception of the generals (strategoi), were designated by lot for one year. Appointments to political offices by lot for short periods of time was a way to prevent the differenting State from society. Thus there was, no doubt, a strong connection between Athens as a direct democracy and its statelessness.

Political philosophy was invented in classical Greece as a philosophy of and
about the *polis*; hence it is quite plausible that Greek political thought would reflect the statelessness, or the non-State character, of the classical *polis*. This possibility has been overlooked by modern philosophers who tend to treat Greek political thought as if it were about the State. The following citation by M.B. Foster is most untypical:

If we ask, What is the object of political philosophy? or What is political philosophy about? the answer is in one sense simple. We can say at least that Greek political philosophy is concerned with the Polis and that modern political philosophy is concerned with the State.

The difference between the two is sometimes expressed by saying that Greek political philosophy dealt with the City-State, whereas modern political philosophy deals with the Nation-State. I wish to avoid that terminology, because it suggests that the State differs from the Polis only by the accident of its geographical extent. That suggestion is false. The Polis was not a miniature State; and it will be one of my objects to show that it lacked, or exhibited at most imperfectly, the characteristics which essentially constitute what we call a State, and to derive from these deficiencies those peculiar characteristics of ancient political philosophy which distinguish it from its modern counterpart.20

Thus, as a reflection of the non-State character of the ancient community, and as an antithesis to Hobbes's theory of the political community, stood the image of the Aristotelian community, which can be taken as a fair representative of the Greek concept of the political community, and which had also been influential at the dawn of the modern era when the first theories of the State were introduced by theorists like Machiavelli, Hobbes, and Spinoza, mainly as an attack upon Aristotelianism.21

The Aristotelian community was conceived as a natural non-violent harmonious society, ruled by consent rather than by force. The ideal community was the free community and the free community was that which was not ruled by tyrant, or by force. When Machiavelli first introduced the idea that every government was a tyranny, he shocked his contemporaries because he was setting against a long established truth. To the ancient Aristotelian mind, the Hobbesian State and even a modern liberal democracy, if it could comprehend such systems at all, would have seemed a form of tyranny.

The absence of a State as a distinct organ responsible for the public realm meant that its burden fell directly upon the community and the citizens, and the political community was, consequently, highly dependent upon wide and devoted political participation by the citizen-body. This was reflected in the Aristotelian definition of a citizen as a "man who shares in the administration of justice and in the holding of office."22 In other words, a citizen is one who takes his share in the government and the government is identical with the political community. Thus the Aristotelian community lacked some important distinctions that are usually made in a modern liberal democracy, namely the distinction between "State" and "Society", or between government and citizens.

and of course the distinction between private and public.  

In the absence of a State as an institution which was responsible for the public realm, and in the absence of coercive State-force for purposes of law enforcement, the community had no means of dealing with the exceptional and it was highly dependent upon the correct behavior of each of its members. Thus the Classical Greek concept of the political community resembles that of a modern exclusive club, namely where law and order are preserved due to the correct behavior of each member, unlike the modern State where law and order are preserved due to the force of the State. Hence the Greek emphasis on morality and education. Using the words of Ernest Barker:

The polis was an ethical society; and political science, as a science of such society, became in the hand of the Greeks particularly and predominantly ethical.

From a philosophical point of view, it meant the reduction of politics to ethics or morality. Thus Socratic ‘self-restraint’, which was expressed in the famous Socratic saying that one should not harm even those who harm him, was not only an expression of a moral principle “very similar to Christian teaching”. It was also an expression of a political principle of a society whose stability, in the absence of State-coercive apparatus, was always threatened by individuals or parties seeking redress whenever they felt their rights were violated. From a sociological point of view, Socratic ‘self-restraint’ meant the existence of what Radcliffe-Brown calls a “public sentiment” which turns into an effective tool for preserving law and order. The consolidation of such strong public sentiment was complementary to the fact that the polis was a small ‘face to face’ community or what is sometimes called a ‘shame community’. Thus it was not the force of the Leviathan that was meant to keep the polis stable, but it being what Ernest Barker calls “ethical society” or “moral association”, or what Giovanni Sartori calls a “compact community unified by converging religious, moral and political ethos”.

The reduction of politics to ethics which characterizes Greek political

26. African Political Systems, supra, note 14 preface at xvi. The consolidation of such public sentiment distinguishes the Greek polis from the contemporary primitive stateless societies which are discussed in African Political Systems. These societies are based upon self-help, that is on individuals who seek redress whenever they think their rights are violated (see introduction by the editors at 14). These private actions are supposed to be regulated by custom but, as Evans-Pritchard points out, the situation could easily get out of hand: see E.E. Evans-Pritchard, “The Nuer of The Southern Sudan” in African Political Systems at 283-84. Thus, in its extreme form such society is on the constant verge of a civil strife. See also Lucy Mair, Primitive Government (Baltimore: Penguin Books, 1962) at 36-60. It is obvious that the classical Greek polis, or at least Athens and Sparta which were stable for two hundred years, had managed to decrease the amount of private violence in favor of a strong public sentiment. Nevertheless the amount of self-help which was exercised in the ancient stateless city-state was considerable when compared to the modern nation-state. See Andrew Lintott, Violence, Civil Strife and Revolution in The Classical City: 750-330 BC (London: Croom Helm, 1982) at 26.
27. Supra, note 15 at 28.
28. Supra, note 1 at 6.
29. Sartori, supra, note 13 at 253.
thought was inevitable in the absence of a concept of the State as a distinct agency which was responsible for the public realm; while the emergence of the concept of the State at the dawn of the modern era was accompanied by the separation of morality from politics, which is reflected by Hobbes’ principle of unlimited sovereignty, and the establishment of politics as the science of the State and later also as a science of the public realm. Thus the reduction of politics to ethics in Greek political thought meant that the principle of unlimited sovereignty was unacceptable to the Greeks since they saw politics as arrested by the bonds of morality. This view is clearly reflected in what is sometimes referred to as the ancient theory of sovereignty, or the Aristotelian theory of ‘sovereignty of law’ which will be discussed next.

E. Sovereignty and the Ancient Community

Was the Aristotelian community sovereign? Did it possess any rights? Aristotle advocated the traditional Greek view when he said that the best form of government is that in which all are under the law. By this he meant that each person or group or institution in the community, including the community itself, was under the law. This theory is sometimes called the ‘sovereignty of law’ or ‘rule of law’. Aristotle, and Greek tradition, opposed ‘rule of law’ to rule by man, i.e., the rule of the tyrant that was considered unlawful. Aristotle’s theory seems to resemble modern liberal democracy’s ‘rule of law’. But there is a crucial difference: the Aristotelian political community was devoid of a legislative body.

Though the Greeks were the first to distinguish between (laws of) nature (physis) and the law of the community (nomos) and the first to acknowledge the latter as made by men, they did not create an instrument for conscious continuous positive legislation. The traditional Greek lawgiver—the nomothetes—was not a positive legislator, but was called in times of turmoil and political unrest to lay a code of laws. The nomothetes lacked two main characteristics shared by Hobbes’ sovereign as well as the modern legislature. First he was not continuous, which means he performed only one act of legislation. Second he did not rule through legislation. By these two characteristics, the Greek nomothetes resembles the founding fathers of a modern nation, or those who lay down its constitution.

Further, it is obvious that in the absence of a State, or of a law-enforcement apparatus, reforming or changing the law was possible only if it was widely accepted by the community. This condition is reflected by Aristotle’s words:

It is from habit, and only from habit, that law derives the validity which secures obedience. But habit can be created only by the passage of time; and a readiness to change from existing to new and different laws will accordingly tend to weaken the

30. Barker, supra, note 2 at lv.
31. Supra, note 17 at 59. For the idea that the law was superior to the community see supra, note 7 at 29-30
32. Supra, note 25 c.5 at 57-85.
33. Supra, note 1 at 323-24.
34. Hinsley, supra, note 7 at 29-30.
Thus was the Aristotelian law given. It was a customary law, not a product of the legislation of a continuous positive legislature. In the words of Ernest Barker:

The Law which Aristotle thus enthrones is no code: it is a custom, written and unwritten, which has developed with the development of a state.36

The absence of a positive legislature is complementary to Aristotle’s refusal to accept any (Hobbesian) person or institution which was above the law.37 Thus the Aristotelian concept of law protected the community from the tyrant. Nevertheless the absence of continuous legislature in the ancient community entailed constitutional stagnation which could have led to political instability.38 In the modern liberal democracy, positive legislation serves to adjust the law to changing public opinion and changing circumstances: it is also used to initiate changes in public opinion by advancing unpopular laws with the hope that, in the long run, they will become popular. Though the Greeks changed their laws, their idea of the law, which is reflected in Aristotle’s words, was as of something constant.39 Their reluctance to change the law is easily explained by the fact that it was customary law, i.e., that it was totally established on consent and not upon law-enforcement. The rigidity of the Greek law was one of the reasons for Plato’s theory of the philosopher-king.40

Thus against the background of the Aristotelian and classical Greek idea of the political community, it becomes clearer why Hobbes insisted upon the principle of unlimited sovereignty. In a way, Hobbes accepted the Aristotelian opposition between the classical ‘rule of law’ and ‘rule by men’, but he was ready to pay (or perhaps too anxious to pay) the price of an unlimited sovereign. His sovereign is an antithesis to the Aristotelian ‘rule of law’: he is the source of the law and above the law. Both Hobbes and Aristotle did not know what we in a modern liberal democracy already know, namely that positive (unlimited) legislation does not necessarily mean that the legislature is unlimited. This has been made possible in the modern liberal democratic Nation-State ever since the legislature, i.e., the Government or the State, has been separated from the sovereign, namely the nation. Thus it is possible to limit the legislature, or the State, without limiting the sovereign, the nation. The latter, though it does not actually legislate, is still considered to be the source of all legislation.

The ancient idea of a free, or self-governed, community meant a community which was ruled by consent, not a tyrant. Greek objection to tyranny was incorporated into the political credo of the modern liberal democracy. Yet the modern idea of a free nation, or a sovereign nation, also means a nation which

35. Barker, supra, note 2 at 1269a.
36. Ibid. at lv.
37. It should be noted that the Athenian Assembly was not a legislative body. See supra, note 1 at 323-24.
38. Mcllwain, supra, note 22 at 26-27. Also Barker, supra, note 2 at lv, and supra, note 1 at 323.
39. See supra, note 1 at 44 and at 323-24.
40. Ibid. at 323-24.
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is free to lay down consciously its own laws while, for the Greeks, self-government meant the right of the community to live under its own ancestral constitution, not to make it.

Therefore the Aristotelian community is not sovereign in the Hobbesian sense, and for our purposes it has no rights. The fact that the ancient community was a non-State political system was complementary to it not being sovereign. This is easily understood when we see the State as an instrument by which sovereignty is constituted.

The absence of concept of State as a distinct organ for promoting national or communal interests was accompanied also by the absence of the idea of communal interests. This was expressed by the traditional Greek idea of self-sufficient political community:

Small as it is, it is complete in itself: it is 'self-sufficient', in the sense that it meets from its own resources—its own accumulated moral tradition and the physical yield of its own soil and waters—all the moral and material needs of its members; and as it does no draw upon others, so it is not conceived as giving, or as bound to give, to others, or as making its own contribution to the general development of Hellas. Whole and complete, with a rounded life of its own, the _polis_ rises to a still higher dignity than that of self-sufficiency. It is conceived as 'natural'—as a scheme of life which, granted the nature of man, is inevitable and indefeasible. In this conception of 'nature' (_physis_) we touch a cardinal element in the theory of Aristotle.\(^41\)

Thus "Home-Rule and Self-Sufficiency are, in the traditional Greek view, almost convertible terms."\(^42\) The Aristotelian community is complete and round and lacks nothing. The modern nation, on the other hand, always lacks something and always exhibits an interest or a will; and it is the duty of the State to respond to this will and to materialize the national interests. Thus the "roundness" and the "completeness" of the Aristotelian community are complementary to its statelessness: a round self-sufficient community does not have interests and consequently does not need a State.

F. Plato and Sovereignty

Aristotle's 'sovereignty of law' represented the traditional Greek concept of law. Yet there were at least two exceptions in the classical Greek world to this idea. One of them was the Greek tyrant, the other was Plato's philosopher-king. The following citation is by Ernest Barker:

Here Plato, as we have seen, leaves behind the ordinary Greek conception of the State as association of equals, owning only the sovereignty of law; and he comes near to the adoption of tyranny, the form of rule in which the sovereignty of law disappeared, and a personal rule usurped its place. Of all forms of government this was the most unpopular in the Greek world: and Plato, though he is careful to dissociate his 'new monarchy' from ordinary tyranny, which he regards as its last and worst degradation, is nevertheless aware that he is enunciating a dangerous doctrine.\(^43\)

\(^{41}\) Barker, _supra_, note 2 at xlvii.
\(^{42}\) _Ibid._, note 1 at 6.
\(^{43}\) _Ibid._, note 1 at 237.
Though Plato was, no doubt, exceptional in the Greek world, the theory of sovereignty which he advocates in the *Republic* and the *Politicus* is important for our discussion since Plato seems to be aware of the shortcomings of a stateless political community. According to Ernest Barker, Plato’s Guardians were “an attempt at once to differentiate ‘State’ from ‘society’ and to discover an organ for the realization of the common good.”

Plato’s departure from the traditional Greek ‘rule of law’ seems like the introduction of a principle of unlimited sovereignty. Thus Richard Crossman and Karl Popper attribute to Plato a somewhat Hobbesian theory of unlimited sovereignty, placing him two thousand years ahead of his time.

To what extent, then, was Plato successful in his attempt to differentiate State from society? To what extent did he manage to escape the Greek “stateless mind” and move toward an Hobbesian concept of sovereignty? Did he acknowledge collective or communal rights? I will try to deal briefly with these questions. Is Plato’s ideal city sovereign? A careful examination of the *Republic* suggests otherwise. The *Republic* distinguishes clearly between the philosopher-kings, who are the ruling class and thus a part of the city, and the philosophers, namely Socrates and Glaucon, who are not part of the city and who lay down its constitution. The Platonic ruler, the philosopher-king, is limited by a constitution which he does not make and which he cannot revoke. Thus he does not have the power of the sovereign, namely the power to constitute the political community and the power to legislate. Consequently Socrates and Glaucon assume the role of the traditional Greek lawgiver, the *nomothetes*: they lay down a constitution from the outside, but they do not rule. Hence neither the class of philosopher-kings as a collective nor Socrates and Glaucon are sovereign in the Hobbesian sense. Thus the ideal city, or the ideal political community, is not sovereign and its right to lay down its own laws is denied.

It should be emphasized that the right of the philosopher-kings to legislate is denied though they may have the knowledge or the insight of the ideal constitution. They may be competent to legislate and “if the city were to send out men to form a colony elsewhere, the Guardians of the mother city could act as founder-legislators of that.” But they would not be sovereign in these new colonies. Since after laying down the constitution of the new colonies, that is, after establishing the city, if they assumed the role of philosopher-king, they would find themselves under a given constitution without any possibility to change it.

When Popper attributes the principle of unlimited sovereignty to Plato he also means that Plato seeks to control almost every aspect of human life. Nevertheless it is the *constitution*—not the city, or the state, or the class of philosopher-kings—that penetrates every aspect of human life. Thus if Plato’s Guardians were an attempt to differentiate “State” from “Society”, the attempt failed. Instead of differentiating State from Society, Plato is simply dividing

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44. *Supra*, note 1 at 14.
society into three classes, giving dominance to one class, namely the philosopher-kings, yet putting it, along with the other classes, under the constitution. The tripartite division is not reached by force, but by moral insight of each class and by education. Thus Plato retains the traditional Greek idea of the political community as predominantly moral or ethical entity, and not as a coercive agency.

The absence of communal sovereignty in Plato's ideal city is also accompanied by the denial of communal interests. Plato makes it clear that these are indications of incompleteness. The first city, out of which the ideal city evolved, is naturally harmonious and self-sufficient. Thus it has no interests. It becomes deficient the moment it deteriorates into the "city of pigs", namely the moment that it exhibits any need or interest. Plato introduces the Guardians, that is the "State", not in order to supply that need, but to restore harmony to the city: to make the city disinterested again. Consequently Plato does not recognize collective or communal interests. His further insistence that the ruler should be disinterested and that the philosopher-kings, as a class, should be disinterested, also prevents the possibility that the interest of the rulers will be taken as representing the interest of the community.

Thus it seems that even though Plato has been an exception in the classical Greek world, he remains within the Greek tradition and his political community still bears the features of the Greek "stateless mind". Using the words of Ernest Barker again: "Thus, does Plato, true after all to the ideas of Greece, seek to make even his philosopher-kings the servants of a fundamental and unchanging social order."

48. Supra, note 1 at 201.

49. To say that the tripartite division is based upon consent and not upon state-force does not mean that Plato was a liberal. I am using the term "consent" only to distinguish it from physical coercion, thus consent can be a result of moral or educational coercion as well (which is the case of Plato's tripartite division). See supra, note 47 at 106-09.

50. Supra, note 1 at 238.