

THE TRIM PARADOX

AN INSTANCE OF INTERDISCIPLINARY TENSION BETWEEN LAW, LOGIC, AND POLITICS

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To pass off a paradox of this sort with any chance of success you must be nothing less than the leader of a party. For if you are not, instead of gaping and staring at you, men will but laugh at you, or think of something else without so much as laughing.

Bentham's Handbook of Political Fallacies at 210-211

Interdisciplinary studies are a fruitful source of paradox. Some view this with dismay, others with delight. It can be delightful to find the old eternal problems posed by classical philosophy still rising to the fore. Plato and Aristotle live on. It is nevertheless frustrating to find one's current self-confidence in resolving, rather than simply posing problems, once again undermined. If Plato and Aristotle still live on, who are fit to share their circle?

Academic study has acquired an almost Darwinian diversification and specialization. Arguably, this suits at least the middle-age of each discipline. An exclusive professionalism contributes a needful sense of security for the propagation of new, and regeneration of old ideas. Ultimately the same sense of security defeats this initial purpose, however, by leading to an inbred self-referentiality, a deceptive persuasiveness, and a spurious precision. It is only by renewing one's own discipline again in the context of others that scholarship at large has any verification process or touchstone. Coke CJ reproved the personal interference of James I in judicial matters by deciding in the case of *Prohibitions del Roy*¹ that issues "are not to be decided by natural reason but by the artificial reason and judgment of law". Nevertheless, what do logicians think of law?² How do lawyers deal with politics?³ Will a student of politics shrug off as irrelevant any illogicality of political argument?

The specialization and diversification of scholarship make communication on an interdisciplinary level one of the most difficult and controversial of academic tasks. To consider law in the context of society may only be rewarding if one is open-minded (and confident enough of one's own discipline) to put law at risk. The real risk of any interdisciplinary inquiry, however, is of a different order. It is that the exponents of each discipline, in the face of interdisciplinary paradox or

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1 (1607) 12 Co Rep 63.

2 For a recent example, see Laurence Goldstein, "Four Alleged Paradoxes in Legal Reasoning" (1979) CLJ 38, 373, purporting to refute Hicks (supra n 51) and reassure lawyers that legal reasoning is not infected with paradox.

3 J A G Griffith, "The Teaching of Law and Politics" (1982) 16 Law Teacher 1.

contradiction, fall back to their established provinces in denying the relevance of the context to upset their specific discipline. The alarming appearance of interdisciplinary paradox does not then get the opportunity to prove enlightening. Professor J A G Griffith⁴ describes some of these difficulties in the context of teaching law and politics. Everyone engaging in interdisciplinary discussion has encountered them. Doubtless everyone is somewhat guilty of them. And so any logic that refutes legal doctrines or undercuts political argument is dismissed as interesting or perhaps intellectually clever by the lawyer and political scientist. Any political understudy of law is likewise dismissed by the lawyer. The real object of the interdisciplinary communication to engage together in making some mutual advance is rarely followed through. Indeed, it seems a good test of interdisciplinary accomplishment that the proponents of the respective disciplines veer back to the status quo at the very moment of truth. They recognise the risk to their own disciplines. Here, in the writer's opinion, is a paper providing an instance to prove it. The underlying principle at issue is this — that the more men rely on their own status in any particular province of knowledge the less possible it becomes for them to communicate any universal truth. Epimendides the Cretan first proved it *ad absurdum* in Athens. Now TRIM reinstates the same argument in New Zealand.

I

One of Bentham's great interests was political paradox. He described various forms of it in his *Handbook of Political Fallacies*.⁵ The significance of this all too often overlooked work lies in the success with which it establishes that the art of modern government, whether by way of legislation or administration, is subject to reason. The propaedeutic factor of logic⁶ means that rationality underlies politics no less than other disciplines. This is so however we may define politics, whether in Benthamite terms of utilitarian morality, or more abstractly by a Hohfeldian logic of power.⁷ Indeed, as Bentham⁸ writes of rationality in politics, nothing other than reason “. . . will be productive of any useful effect”.

Paradox is essentially the logician's preserve. In so far as Bentham voiced concern to avoid and eliminate political paradox, he advanced logic as a touchstone for politics. It is true that in its search for the

4 Ibid.

5 First published posthumously as *The Book of Fallacies; from unfinished papers of Jeremy Bentham by a Friend* (London, 1824). References herein to Apollo edition, (Thomas Crowell, New York, 1971) at 206-213.

6 See A A Luce, *Logic* (English Universities Press, London, 1958) at vii and 1-10 for the propaedeutic factor of logic by which it is seen to be an underlying, fundamental or preliminary discipline, both instrumental to and evaluative of all others; and Dorothy L. Sayers, *The Lost Tools of Learning* (Methuen, London, 1948).

7 See N J Jamieson, “Status to Contract — Refuted or Refined” (1980) 39 CLJ 33, which in accounting for the development of Hohfeldian logic refers to the work of Coode, Kanger, Pörn and others cited later in the present paper, and deals with the liar paradox in relation to legal theory in another way which parallels this account of the TRIM paradox.

8 Bentham, op cit supra n 5 at 6.

principles of orderliness, the modern study of economics⁹ underlies both logic and politics. Nevertheless, our recognition of economics' relevance to politics owes as much to the Aristotelian tradition of, first a biological basis to political thought and action, and secondly a common concern with logic and politics,¹⁰ as it does to the modern laws of form¹¹ now underlying the art of government. By his *Handbook of Political Fallacies* and his earlier *Theory of Legislation*, however, Bentham was the first to promote, and the furthest to fulfil the use of logic directly as a verification process for politics. Hamilton's *Parliamentary Logic* of 1808¹² had hitherto only been an attempt in name.

In terms of Bentham's comprehensive account of political dis-argument it is not often that modern politics gives birth to new fallacies. It may be remarked, cynically in consequence of today's frequent oversight of Bentham's work, that perhaps contemporary politics is not innovative enough to make other than old mistakes. To this unfortunate general rule the TRIM paradox either provides substantive confirmation or proves to be an interesting exception. The outcome depends on whether one acknowledges classical standards in which the task of scholarship is simply to pose problems, or contemporary standards by which scholarship is required to resolve them.

Even if proved to demonstrate a species of political fallacy more ancient than modern, the case-history of the TRIM paradox has a renewed relevance in the contemporary task of continuing to apply logic to law and society. The advances in legal logic of Bentham were carried still further by Coode, Austin, and Salmond.¹³ The logical criteria of completeness, consistency and independence were satisfied for a logic of

9 Eg, economics underlies the contemporary jurisprudence of L L Fuller, *The Morality of Law* (Yale University Press, New Haven, 1964), in which justice is explained by its relationship to orderliness. For an account of Fuller's "science, theory or study of good order and workable arrangements" in explaining justice, see K E Dawkins, "The Legal Philosophy of Lon L Fuller: A Natural Law Perspective" (1977) 4 Otago LR 66 at 76-78.

10 This becomes especially convincing when the so-called laws of thought are viewed as biological emanations and the abstract patterns by which man accounts for the world are seen as organic self-reflections. It will be recalled that Aristotle, too often now forgotten as a biologist, himself derived politics through ethics from biology: N J Jamieson, "Towards a Systematic Statute Law" (1976) 3 Otago LR 543 at 580. For a recent summation, see F G Castles and S A Striptis, "Rationality, Personal Space, and the Political Order" (1981) 24 Political Studies at 92-97.

11 For one account of the underlying metalogic, see G Spencer Brown, *Laws of Form* (Allen & Unwin, London, 1969). Although intensely abstract in having as its "principal intention . . . to separate what are known as algebras of logic from the subject of logic, and to re-align them with mathematics" (at xi) Brown introduces the laws of form in a biological context. His theme is "that a universe comes into being when a space is severed or taken apart. The skin of a living organism cuts off an outside from an inside. So does the circumference of a circle in a plane" (at v).

12 Bentham, supra n 5 (H A Larrabee's Introduction) at 12-16.

13 A first account of the long overlooked contribution of George Coode is given by Jamieson in "Status of Contract — Refuted or Refined", supra. For Austin and Salmond, see R W M Dias, *Jurisprudence* (Butterworths, 1976) at 33-65.

legal relations by Hohfeld.¹⁴ This has not only been confirmed and substantiated in various ways by Kanger and Pörn,¹⁵ but extended by the latter to provide a logic of power applicable at large. The common lawyer is apt to think of Hohfeldian analysis in terms of private law. Most important to him are contracts and torts. The civil lawyer thinks correspondingly in terms of public law. More obviously important to him are constitutional relations between citizens and state. For the most part, the political scientist has yet to be apprised that here is a logic of power applicable to politics. Intimately enlightening of political problems of a range including revolution no less than constitutionalism, here is a new touchstone at least to explicate if not resolve paradoxes, and to avoid future if not eliminate present fallacies.

II

The Tax Reduction Integrity Movement, from which the acronym TRIM is derived, is a New Zealand organization which apart from one brief mention¹⁶ has yet to be documented by political science. It has been described, perhaps quite correctly because of its origins and associations, as an organization of "the extreme right".¹⁷ As the policy of this organization was presented to the New Zealand voter in the months leading up to the last General Election on 28 November 1981, however, this conclusion might appear unfair. From the stated objectives of TRIM, publicised in the daily press during those months, it may have appeared to many, whether they supported TRIM's objectives or not, to fall somewhat short of extreme right-wing. Whether, in terms of supporting government by an elite, believing in the inequality of people and nations, preserving traditional institutions, and feeling threatened by communism, TRIM shares these qualities as they are seen to mark the extreme right wing of New Zealand politics,¹⁸ depends on a more detailed empirical investigation of the relationship between the organization's innermost domestic arrangements and outward public image. Indeed, TRIM's avowed opposition to the established institution of New Zealand's party system can hardly be said to comply with the commitment to preserve traditional institutions requisite¹⁹ of New Zealand's extreme right wing. The concern of this paper is abstract, however, rather than empirical. It is intended to evaluate the logical validity only of TRIM's public image. For that purpose there is, as TRIM's advertising campaign is reputed to have cost,²⁰ almost \$NZ20,000 worth of empirical data.

14 W N Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1913) 23 Yale LJ 16; "Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1917) 26 Yale LJ 712. These articles are reprinted in W W Cook, *Fundamental Legal Conceptions* (Yale University Press, Newhaven, 1919).

15 Ingmar Pörn, *The Logic of Power* (Blackwell, Oxford, 1970). See Jamieson, supra n 7 at 337.

16 P Spoonley, "New Zealand First! The Extreme Right and Politics in New Zealand, 1961-1981" (1981) 33 Political Science 99.

17 Ibid at 107-108.

18 Ibid at 106.

19 Idem.

20 *Auckland Star*, 7 November 1981 (quoted by Spoonley, supra n 16). When one counts it all up, this figure is a most conservative estimate.

Besides being a very great deal of money for minority electioneering in New Zealand — especially when attributed to the efforts of what were no more than 100 financial members as late as 1980, TRIM's advertising campaign provides more than adequate data for what is, after all, essentially an abstract exercise.

In terms of this data,²¹ the acronym TRIM is intended to express dissatisfaction with party politics which are said to betray us all and lead to negative results by way of increased taxes, inflation, unemployment and repressive legislation. In place of party politics TRIM demands the personal integrity of politicians. It sets out to secure this integrity by requiring pledges from political candidates as to their conduct in office. A voters' guide is issued showing those candidates who have taken TRIM's pledges. The object is to persuade voters to vote only for integrity pledged candidates.

The voters' guide published by TRIM for the General Election of 1981 in New Zealand showed that of 339 candidates standing for election, only 22 had pledged themselves in any way to TRIM. Of these, one candidate²² purported to stand for the National Party (then the party holding office and subsequently returned to government), one other²³ described as Independent National, two candidates for the Labour Party²⁴ (then and subsequently returned with two Social Credit candidates to serve in opposition), nine candidates for the Social Credit Party,²⁵ four for other parties,²⁶ and five standing as Independents.²⁷

TRIM asked all candidates in the 1981 election to pledge themselves in five different ways. First, in terms of genuine electoral representation, the candidate would pledge that his loyalty to party politics, or international politics, would never take precedence over his loyalty to his electorate when acting or voting as its representative. Secondly, by way of expressing his belief in the individual's freedom of association and the nation's self-sovereignty, he would pledge himself always to vote against any form of compulsory association. Thirdly, in affirming every individual's right to the fruits of his own work, and to secure productivity by ensuring the fullest freedom by way of employment opportunities, he would pledge himself to vote for no more than a seven and a half percent flat rate of turnover tax in substitution for all other forms of taxation. Fourthly, by way of repudiating all kinds of protected monopoly (including State monopolies), he would pledge himself to vote against any

21 The following account of the movement is taken from advertisements published throughout the leading daily newspapers of New Zealand by TRIM before the 1981 General Election. Unless otherwise indicated, the specific source of data used for this account is the *Otago Daily Times* as published on 12, 24, and 27 November 1981.

22 J Tolhurst (Wanganui).

23 I R Sampson (Hunua).

24 A W Rae (Bay of Islands) and B O Griffiths (Otago).

25 S R Moody (Clutha), G Thew (Albany), J L Doel (Rotorua), S H Cowl (Wairarapa), M J Robertson (Otago), K A Harris (Otahuhu), T A Crosbie (Hamilton West), A F Scott (Eden), and E Brittain (Porirua).

26 G R Harker *Liberal Social Democrat* (Remuera), B G Merwood *Values* (Kaipara), G MacLean *Values* (Gisborne), G H Buchnall *Citizens Democratic* (Yaldhurst).

27 A J Wedekind (Hastings), W J Harris (Palmerston North), A W Begg (Wallace), T M Wyn-Harris (Pahiatua), C F MacGillivray (Tauranga).

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legislation preventing the free occurrence of competition. Fifthly, in manifesting his belief that government is predominantly responsible for inflation, he would pledge himself to vote against any increase in overall taxation, government spending, or the money supply, without his electorate's prior consent.

Of the 22 candidates who had pledged themselves variously to TRIM, only three did so in all five ways,²⁸ eight for aims 1, 2, 4 and 5,²⁹ one for aims 1, 2, 3 and 5,³⁰ three for aims 1, 2 and 4,³¹ four for aims 1, 2 and 5,³² one for 1, 4 and 5,³³ one for 4 and 5,³⁴ and one for the first aim alone.³⁵ This completes the concrete data on which elucidation of the TRIM paradox depends.

III

In more abstract terms a very interesting distinction may be drawn between two different kinds of political aims for which pledges were canvassed from candidates by TRIM. The first kind is exemplified by the first aim which concerns the electoral process and function. It requires candidates to pledge themselves that electoral representation take precedence over party and international politics. The second kind is exemplified by the third aim in favour of instituting a new system of taxation. Whereas the first kind of aim is procedural in its concern for the way that politics should function, the second is substantive in giving voice to a particular policy.

The remaining pledges canvassed from candidates manifest a similar although less clearly marked dichotomy of procedural and substantive concern. In its disavowal of any form of compulsory association, the second pledged aim may be seen to provide an extended or more fundamental basis for the procedural concern of the first aim in restraining party and international politics. The fifth pledge to be given by candidates, in opposing any increase in overall taxation without prior electoral consent, similarly substantiates the particular fiscal policy of the third. The fourth pledge is the most borderline instance in terms of the dichotomy. In disavowing monopolies and supporting freedom of association it may be seen to manifest procedural concern for the process of government. In so far as free association and the absence of monopolies are seen to correlate with productivity and commerce, however, the fourth pledge also comes close to sharing a substantive concern with TRIM's particular policy of taxation.

The dichotomy of concern made manifest by TRIM's five pledges is a very significant one in jurisprudence. The distinction between procedural and substantive law, or as it is sometimes termed adjectival and sub-

28 Harker, Sampson and Moody.

29 Thew, Wedekind, W J Harris, Doel, Cowl, Tolhurst, Robertson and Begg.

30 Rae.

31 Merwood, K A Harris and Crosbie.

32 MacLean, Wyn-Harris, MacGillivray and Buchnall.

33 Scott.

34 Brittain.

35 Griffiths.

stantive law, is of much significance to the legal historian in explaining the development of legal systems.³⁶ In the morality of law, as that expression is now used to explain what earlier jurists knew variously as natural law, fundamental law,³⁷ or the principles of legality, the distinction between procedural and substantive, or primary and secondary concerns, is of critical significance. The works of L L Fuller³⁸ and H L A Hart³⁹, although popularly thought to be in contradiction, are crucially suggestive in their mutual confirmation of this dichotomy. No modern student of jurisprudence, albeit considering himself a sociologist or anthropologist, can afford to ignore this dichotomy. As the TRIM paradox demonstrates, it is no less relevant to the political scientist. Otherwise we would overlook the way in which TRIM contains a self-contradiction. This is a very interesting sort of self-contradiction, especially to the student of British government, for it shows how a movement to defeat the party-system may so operate as to make of itself a political party.

IV

However aptly suited or otherwise all or any of TRIM's five aims may be thought to be in promoting the "peace, order, and good government of New Zealand",⁴⁰ it is the means by which they are to be achieved, and the relation of these means to TRIM's canvassed aims, that attract the political scientist's attention. In terms of logical contrariety, basically between ends and means but manifest too in wider ways, TRIM is seen to provoke a paradox which either outrightly commits or comes perilously close to committing a political fallacy. In so far as consistency is a criterion of logicity, it is illogical in those wider ways for TRIM to profess opposition to the party-system and yet conduct itself in practice as a political party. In this it is illogical to do the opposite of what one honestly believes — there must be consistency between political thought and action. It is also illogical to profess a policy for a group to which one belongs, that is contradicted by what one does as a member of that group so as to implement the policy. In short it is illogical to go on doing what one sincerely condemns as being done.

These commonsense expressions of contrariety between TRIM's political thought and action can be rebutted only by some sort of counter-paradox. Such a counter-paradox (as may be contributed, for example, by a gross misunderstanding of Machiavellian political theory

36 Sir Henry Maine, *Ancient Law* (London, 1861; World's Classics, Oxford University Press, 1954); *Early Law and Custom* (John Murray, London, 1891). See also A K R Kiralfry, *Potter's Historical Introduction to English Law* (2nd ed. Sweet & Maxwell, 1958) at 312-345.

37 Cf Fuller, *Morality of Law* at 32-94.

38 *Ibid.*

39 *The Concept of Law* (Oxford University Press, 1961).

40 The expression "peace, order and good government" appeared in s 53 New Zealand Constitution Act 1852 (UK) and 15 and 16 Vict, Ch. 72, enabling the General Assembly with the Colony of New Zealand to make laws for this purpose. The effect of repealing these words, as was done by the New Zealand Constitution Amendment Act 1973 is equivocal — arguably enabling the legislature to make laws other than for the "peace, order and good government of New Zealand".

whereby each and every means can be justified by its end), nevertheless only intensifies the initial contrariety. What was a simple self-contradiction between TRIM's political thought and action becomes by brute Machiavellianism a compound dilemma. This may be visualised in terms of TRIM's hypothetical rise to power and maintenance of power as a political party. Because the end of TRIM in being the party in power would have been achieved by means of TRIM's anti-party policy, it is only brute Machiavellianism that can defend the means by which TRIM acquires and continues in power as being justified by the end of TRIM as the party in power. The contrariety between TRIM's thought and action is in no way resolved. On the contrary, it is compounded by self-referentiality — and that in terms of arbitrary power.

V

Primarily the task so far has been generally to describe, and now secondarily to investigate the nature of the TRIM paradox. The following investigation is four-fold, first to formulate or define the logical form of alternative logical forms of the paradox with as much exactitude as possible, secondly to evaluate them against known logical systems in terms of validity and invalidity, thirdly to suggest and consider whatever means of diminishing, resolving, or eliminating the paradox as will enlighten its nature, and fourthly and lastly to identify and consider the consequences of the paradox both in its empirical context and in the hypothetical histories that might befall it as these consequences affect the logical status of TRIM's position in political science and constitutional law.

At the outset it is needful to distinguish two related questions of political science that are posed by the TRIM paradox. The first pertains to morals and politics. How subversive or conspiratorial can politics properly be in founding what is in effect a party to do away with party politics? Secondly, how self-contradictory and thus irrational can any political movement allowably be in securing its avowed end by contradictory means? Bentham would doubtless have answered the first question of morals and politics in terms of utilitarianism. Although that is beyond the immediate purpose of this paper, which is rather to examine the second question of self-contradiction by using logic instead of morals as the touchstone of politics, we shall later advert to ethical issues in considering the consequences of the paradox. Indeed, we shall find the paradox of subscribing to party politics to defeat the party system most enlightening of politics at large and constitutional conventions in particular. As an instance of politics in action, it demonstrates how difficult it is to observe the touchstone of reason in politics while attempting to defeat something so strongly established in British government as the party system. It also demonstrates the sort of illogicalities which entrap the most obvious, direct, and as it may be forthright attempt to put an end to party politics by existing constitutional means.

The data of TRIM's case history demonstrates that by operating, whether naively or deviously, in the context of the party system, TRIM

generates enough political momentum to become its own political party. Putting the ethical alternative raised by deviousness aside (at least momentarily), the logical alternative is not just whether to beat or join one's opponents is an exclusive or inclusive disjunction.⁴¹ Indeed, the logical issue goes very much deeper than that. It poses the question as to whether any logic of politics exists by which it will be valid to beat one's opponents by joining in the very enterprise of theirs to which one is opposed, and by presuming to beat them in the course of that mutually enjoined but moot enterprise, go on in their place to behave just as they had originally behaved in giving cause for opposition and in turn defeat. Answering these questions first by way of intuitive response, there is no way in which this course of political action can be rationally condoned. It is true that a definition of politics in terms of arbitrary power will support the top dog by virtue of the fact of his simply being the top dog — but this is purely self-referential arbitrary power.⁴² Politics on such terms has no touchstone or verification procedure. Any claim by politics to be a science or the subject of scientific study without such process of verification would thus be meaningless.⁴³ Although faintly allowable in exceptional circumstances (and to this extent) given expression as must be admitted in rules of international law,⁴⁴ there is little or no room for the concept of arbitrary power in municipal law or national politics. Indeed, since arbitrary power is itself arbitrary,⁴⁵ there is no rational structure or system by which it can be evaluated as valid or invalid. It would then amount simply to a sociological fact without any prescriptive force — the very reverse of politics in action. And any attempt to satisfy the logician's search to find a verification process to satisfy the decision problem⁴⁶ for politics would be pointless. In terms of established

41 For the purposes of this paper, exclusive or inclusive disjunctions may be distinguished by the semantic entailment of examples. Thus a proposition of exclusive disjunction (technically definable in terms of its truth matrix number 0110) may be understood by considering that at this instant I may be in Edinburgh or Sydney but cannot very well be in both places at the same time. Comparing this with inclusive disjunction (having the matrix number of 1110) if I say I am either in my own or in my neighbour's garden, I may be in both at that instant by reason of having one leg over the boundary fence.

42 The irrelevance of arbitrary power to any prescriptive or evaluative account of law and politics is borne out in two articles, N J Jamieson, "The Dilemma of Statutory Commencement" (1980) NZLJ 180 and "Commencement Orders" (1981) NZLJ 56.

43 See K R Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge* (Routledge & Kegan Paul, London, 1963).

44 The theory and practice of recognition at international law nevertheless long remain most uncertain, and different doctrinal beliefs "have divided the jurists into hostile camps: the trumpets of doctrine therefore give an uncertain sound", M W Graham, "In Quest of a Law of Recognition" Faculty Law Research Lecture (University of California, Los Angeles, 1933) at 15. Even in domestic law, however, there are exceptional circumstances in which "[S]uccessful revolution sooner or later begets its own legality", and "[L]egal theorists have no option but to accommodate their concepts to the facts of political life": S A de Smith, *Constitutional and Administrative Law* (Penguin, 1973). If there is an operational legal concept at all it is that of legal continuity.

45 Even if arbitrary power were re-instituted as gamesmanship, politics can rarely be construed, except at the expense of its inherent seriousness, as a game.

46 The decision problem is the problem for any branch of logic, of finding some system applicable to every well-formed formula of the system that will enable one to decide in every instance by a finite number of moves the logical status of the formula within the system. R L Stone, "The Compleat Wrangler" (1965) 50 Minnesota LR 1001, is the first to consider law as presenting or aspiring to this sort of calculus.

political theory, arbitrary power could only be equated with politics at the expense of excluding rationality as a prescriptive force.

This conclusion does not merely contradict, but instead parodies Bentham's *Handbook of Fallacies*, for his examples of political dis-argument thereby become legitimate instruments of politics. In this context the TRIM paradox prima facie demonstrates the difficulty if not the impossibility of avoiding self-contradiction in politics while engaged in trying to beat one's political opponents by joining them. The full extent of TRIM's position when expressed as an inclusive disjunction of involvement in party politics as the means of opposing the same involvement as an end seems doomed, albeit as yet only by way of intuitive response. The task remains of gauging TRIM's political thought and action against various logical forms, however, to determine the validity or invalidity of its position in more rigorous fashion.

VI

Following the accepted philosophical convention of proceeding from the general to the particular, the task of formulating, and if possible quantifying the logical form or alternative logical forms of the TRIM paradox calls for a comparison of this paradox with other paradoxes. This comparison entails categorising the TRIM paradox according to a typology of paradoxes. Clearly that would be a very lengthy undertaking. It will suffice in the abstract to distinguish between the notion of paradoxes which are only apparent self-contradictions, and paradoxes which are really self-contradictory. Apparent self-contradictions are mere anomalies in communication and can be resolved by further explication. Some people think that all paradoxes are of this sort. Other people, in today's minority, think that real self-contradictions do exist, notionally rather than verbally, and cannot be resolved by any better means of communication. The first kind of paradox is merely linguistic, the second conceptual. Beyond that brief dichotomy of paradoxes in the abstract, we must content ourselves with a reference to some of the leading contemporary works by the philosopher Ryle,⁴⁷ on the subject. Since the TRIM paradox prima facie evidences a contrariety between what TRIM does and what TRIM says, however, it will be well to emphasise the distinction between apparent paradoxes caused by faulty communication and real paradoxes caused by faulty thought. As for constructing a typology of paradoxes on a more concrete plane, we can compare the TRIM paradox with the problems of circularity discussed elsewhere which beset constitutional law (for example, in entrenching constitutions, commencing statutes, the judicial comity of precedent, and parliamentary sovereignty)⁴⁸ and with the same circularity which besets politics by way of problems in social welfare and revolutionary tactics, before going on to compare TRIM with the paradoxical logical forms of the *world problemique*, and in more detail with the liar paradox.

47 G Ryle, *Philosophical Arguments* (University of Oxford Press 1945); *Dilemmas* (Cambridge University Press, 1954); *The Concept of Mind* (Hutchinson, 1949).

48 See supra nn 2, 7, 13, and 42, and infra nn 51 and 52.

The *world problemique*, as this expression coined by the Club of Rome⁴⁹ suggests, imports a world view. By its opponents it is seen to be a holist expression of doomsday proportions. It certainly rests on a most pessimistic first premise. Some problems, including among them unfortunately the most crucial human problems such as those of population growth and food supplies, appear to be beyond the powers of human resolution. The paradox is that the more we apply ourselves to solving these problems the worse they become. What the *world problemique* means therefore is that man invariably accomplishes the opposite of what he intends by any large scale task. In terms of TRIM's case history, it means that any full scale assault on a strongly established political convention such as the party system will, when made from within rather than without the system, achieve the opposite of what is intended. The result is simply to reinforce the system. Whether political scientists share this pessimism of politics to the same extent as the Club of Rome and others do of economics is a very interesting but underlying question of political philosophy. In its abstract connotation, the *world problemique* exudes epistemological, metaphysical and theological as well as a possible political significance. As Tillich⁵⁰ reminds us, the paradox of the *world problemique* runs as deep as man's theological destiny. It is in the particular context of the liar paradox rather than the *world problemique*, however, that the TRIM fallacy can be more thoroughly explicated, and more exactly formulated.

VII

The liar paradox was first propounded by Epimenides the Cretan. He went on record as saying that "All Cretans are liars". Spoken by anyone other than a Cretan, the proposition is trivial and philosophically uninteresting. The sociologist may sound out its xenophobic significance but because the proposition's universe of discourse is slight the proposition has little relevance for any other discipline. Spoken by a Cretan, however, the reverse becomes the case. The problems then raised by the liar paradox for language and meaning go on to undercut almost every field of knowledge.

The liar paradox was given its first expression in a legal context by Protagoras and Eulathus in Hellenic times. The story⁵¹ goes that the lawyer Protagoras agreed to accept Eulathus as a law student. Because Eulathus was too poor to pay tuition fees, Protagoras agreed to postpone them until Eulathus won his first case. Eulathus, although qualified, never practised, so Protagoras sued him for his fees on the double-edged argument that he would be entitled to enforce judgment if he won the case, no less than on losing the case he would be entitled to recover from Eulathus in terms of their bargain. Eulathus ably defended himself by

49 See D L Meadows and others, *The Limits to Growth: A Report on the Predicament of Mankind* (Potomac Assoc. for Club of Rome, New York, 1971); M Mesarovic and E Pestel, *Mankind at the Turning Point* (Dutton, New York, 1974); C H Waddington, *Tools for Thought* (Paladin, St Albans, 1977) at pp xiii, 13, 96, 226 and 239.

50 Paul Tillich, *The Eternal Now* (SCM Press, London, 1963) at 37-46.

51 See J C Hicks, "The Liar Paradox in Legal Reasoning" (1971) 29 CLJ 275.

counter-paradox. "If I lose," argued Eulathus, "the condition precedent to my liability will remain unfulfilled, and if I win, I rely on the court's ruling that I owe you nothing."

It is clear from the Protagoras instance that the liar paradox can be compounded into a complex and non-integrating set of alternatives by way of a complex dilemma that is not amenable to a simple solution. In the case of Epimenides the Cretan, this may be represented in polysyllogistic argument as follows:

Cretans tell nothing but lies
 Epimenides is a Cretan
 Therefore Epimenides tells nothing but lies

Epimenides tells us that "Cretans tell nothing but lies"
 Epimenides (being a Cretan) tells nothing but lies
 Therefore the statement that "Cretans tell nothing but lies" is itself a lie.

If we construct a similiar polysyllogistic argument for the TRIM data, we find that it no less surely follows the logical form for the liar paradox.

The party system is no good for politics
 TRIM is part and parcel of the party system
 Therefore TRIM is no good for politics

TRIM's policy is that "the party system is no good for politics"
 TRIM (being part and parcel of the party system) is no good for politics
 Therefore the policy that the party system is no good for politics is itself a no good policy.

Thus TRIM's manifesto against party politics, in being reducible to the logical form of the liar paradox, demonstrates the same compound dilemma of non-integrating alternatives. By participating in the party system even though to defeat the party system, by canvassing the electorate to ensure votes for TRIM-pledged candidates, as well as in many other ways, we find TRIM acting to all intents and purposes as a political party, and so like Epimenides the Cretan contradicting himself in words and deeds.

VIII

It is a very moot point in philosophy whether the liar paradox is of a linguistic or notional nature. It would seem to be not merely a mixture but a compound of both — the exact relationship of what is said or professed being at odds with the status of the person who says or professes it. Indeed, in terms of legal concepts,⁵² the contradictoriness of the relationship can be formulated as a matter of the status or acknowledged

52 See Jamieson, "Status to Contract — Refuted or Refined", supra n 7, by which the liar paradox is used to explicate Maine's theory of social progress in terms of a movement from status to contract. This is done by integrating historical with analytic jurisprudence. In turn the liar paradox, as also the TRIM paradox, may be elucidated in terms of the legal concepts of contract and status, thus confirming the integrity of the first exercise.

authority of the speaker conflicting with, instead of reinforcing the dynamic power to enter into a commitment or contract of communication. This is done by way of convincing his audience to believe in the content of his communication. As Thoreau says, "it takes two to make a truth". In enlisting his audience's belief in the truth of what he says, every speaker enters into a fiduciary relationship with the listener. What is said must equate with the speaker's commitment to it — both in words and deeds. In the liar, as in the TRIM paradox, the alleged commitment of Epimenides and TRIM respectively are at odds with their status as explicitly asserted in both words and deeds. In terms of the liar paradox, what we can expect ourselves to believe in as communicated (or contracted) by any utterance depends on the status of the utterance. In its most simple form, whether we can believe in any self-referential statement made by any person or political party depends on the status of that person or party. If he is a liar, or is dishonest, the person or party has little or no status or truth value, and so there is little reason to believe the statement. If the statement self-referentially attacks the credentials or status of its own maker, then the self-contradiction of the communication explodes the status of its own maker. The statement itself has no status. Thus, if TRIM is a political party, its enunciated policy that political parties are bad for politics is not only self-referential but self-destructive to TRIM. This is but an aspect of the way in which form and function, as represented by language and thought, procedure and substance, or any policy promoted in the context of an established political system, strenuously interact and indeed go on to self-destruct in the absence of complete and thorough metaphysical integrity.

The ways in which both procedural matters interact with substantive matters so that adjectival concerns or political means control content or political ends, and also vice versa, quickly become apparent from studying these instances of the liar paradox of which TRIM is an enlightening example. In the words of one of Sir Henry Maine's⁵³ most "brilliant generalizations", "substantive law has at first the look of being gradually secreted in the interstices of procedure". The same point is made with more modernity in communication theory by Marshall McLuhan's⁵⁴ proposition, "the media is everything". It is in the province of strict legal theory, moreover, that the liar paradox has been thought to underlie and explain basic problems of precedent, parliamentary sovereignty, *renvoi*,⁵⁵ and also in a more technical sense, the commencement of legislation.⁵⁶ It has provoked a concern for a theory of types in law, and through integrative jurisprudence, a concern for applying logic to law. It can afford a remarkable touchstone for the examination of old arguments such as whether societies progress from status to contract.⁵⁷ In terms of the dichotomy between an abstract concern for the electoral process and a more substantive concern to

53 Maine, *Early Law and Custom* at 389.

54 Marshall McLuhan, *Understanding Media: The Extensions of Man* (Routledge & Kegan Paul, London, 1964).

55 Hicks, *supra* n 51.

56 Jamieson, *supra* n 42.

57 Maine, *Ancient Law*, *supra* n 36; Jamieson, *supra* n 7.

implement a new policy of taxation, it can be seen to affect the so-called Tax Reduction Integrity Movement. The curious contrariety between what TRIM says and what TRIM is poses a strange parallel with the paradox of Epimenides the Cretan. The outcome depends on whether TRIM, besides being a product, is not also, despite its denials, a party member of the party system. This brings us to the third task in our analysis of TRIM. Can we find any means by which to diminish the particular force of the liar paradox which destroys the status of TRIM's position?

In trying to decide this question, it may be seen that in the first place TRIM depends on pledges. These are verbal professions of faith in certain principles. Whether those who make them will go on to practise what they preach will be monitored by TRIM. The outcome depends on the continuing loyalty of each candidate in honouring his pledge and his responsibility for any breach of it. The question arises how different is this from the position of a party within a continuing party system?

It is clear that TRIM has a political structure. In its own terms it is a "non-profit voluntary organisation", having "thousands of financial supporters from all walks of life . . . concerned to find out where individual candidates stand on basic freedom principles" which involve "voting for lower taxes and less government". It exists, and explicitly purports to exist as a political institution. The author of the present paper is not ill-disposed to most of the several abstract aims of TRIM, but he is also concerned that whatever support is given is entrapped perhaps needlessly in political paradox. There is real concern that to overlook this paradox and fall into the fallacy occasioned by putting those aims into the political action undertaken by TRIM will simply make a political party out of TRIM that is no less anxious than any other to perpetuate the party system. If this seems to be an unduly pessimistic political conclusion, it still comes perilously close to exemplifying the *world problemique*.

The concern that TRIM has the potential to perpetuate the party system arises first and most obviously from TRIM's institutionalised structure. Secondly, TRIM depends for its operation on a pledged system of loyalty. Thirdly, it operates in an existing context of party system politics. By simply organising a party to oppose the system TRIM seems also doomed to partake in it. Finally, and most particularly and objectively, it is obvious by TRIM's failure to distinguish adequately between procedural and substantive matters as that distinction has long been clearly drawn for the law and politics of progressive societies, that TRIM's doom to be a party member of party politics is assured.

If TRIM restricted itself to concerns for the electoral process in terms of political science rather than entrap itself in the substantive policy of tax reform it might have a chance to succeed without falling into that which it most of all desires to avoid. Yet it is tax reduction which principally provides TRIM's momentum. It is by this engagement in substantive politics, moreover, that the political momentum of TRIM is likely to precipitate a disappointing instance of the *world problemique*. This can best be seen in total view by an instance of *argumentum ad absurdum*. By means of this hypothetical argument we thus enter the fourth and final stage of our investigation of the TRIM paradox.

Let us suppose that all, or at least a majority of, successful candidates in the General Election of 1981 in New Zealand had pledged themselves in all five ways required by TRIM.⁵⁸ The pledges operate throughout at least a majority within the parliament to which the pledged candidates were elected. We have in political fact a TRIM Government. There are no constitutional conventions by which this can be contradicted. Because TRIM overlooks the problem of whether it may itself constitute a political party does not make it any less of a party within the party system. "Vote only for TRIM-pledged candidates," says TRIM — typically the slogan of a political party. Furthermore, the process of honouring the pledges throughout the new Parliament's term of office is monitored externally by TRIM — in political fact, a party system. And if only a bare majority of the successful candidates had pledged themselves to TRIM there is even more pressure, however understandably human, to uphold one's loyalty towards, and continue what become the party dictates of TRIM.

As TRIM itself truly quotes, "the price of liberty is eternal vigilance". It is a vigilance of what lies within oneself and the group to which one belongs as well as what lies without. Epimenides, after all, was himself a Cretan. One learns from the liar paradox that one cannot fight party politics with party politics and still be rational any more than one Epimenides the Cretan can presume to be truthful in fighting lies with lies. What is needed is a different level of abstraction and a theory of types in politics as well as in law and other disciplines to distinguish the categories of concern that otherwise become confused.

Finding the truth to resolve the TRIM paradox is first the preserve of political science rather than, as TRIM attempts, politics in action. The key lies in drawing an adequate distinction between constitutional means and political ends and refusing to allow one's concern for the processes of government to be drawn into and confused with the substantive content of tax reform in political debate. The all consuming constitutional significance of taxation is demonstrated by our heritage of tax cases such as *Hampden's Case*⁵⁹ and others, besides statutes such as Magna Carta and the Bill of Rights. In constitutional law this might indicate a possibility of breaching TRIM's dichotomy between procedural and substantive aims. If this could be done, then the sense of paradox is substantially lessened, but the task is great and quite beyond the possibility of this paper.

58 In fact no TRIM pledged candidates were elected, although a few were defeated quite narrowly.

59 *R W Hampden (The Case of Ship Money)* (1637) 3 St Tr 825. Cf *Bate's Case* (1606), 2 St Tr 371; *Darnel's or The Five Knights' Case* (1627) 3 St Tr 1; *Godden v Hales* (1686) 11 St Tr 1165; all supporting royal prerogative with *Prohibitions del Roy* (1607) 12 Co rep 63; *The Case of Proclamations* (1611) 12 Co Rep 74, and more recently *Attorney-General v Wilt's United Dairies* (1921) 37 TLR 884; *Commissioners of Customs and Excise v Cure and Deeley* [1962] 1 QB 340, and *Fitzgerald v Muldoon* (1976) 2 NZLR 615. Consider another possible about-turn with *Burmah Oil Co Ltd v Lord Advocate* [1965] AC 75; and see Jennings, "Was Lord Coke a Heretic" in *The Law and The Constitution* (5th ed. 1959) at 318-329.

Bentham might have considered the continuing paradoxical position of TRIM rather cynically in terms of fallacies of irrevocable laws and vows.⁶⁰ It is not clear whether he would apply his strictures on the longevity of laws⁶¹ to hustings speeches, party promises and TRIM pledges. If he did the consequence might well be to allow any anti-party to become the party to which it was opposed. In the present writer's opinion this would be to go too far. It is all a question of temporal jurisprudence⁶² — which for positive law constitutes the relationship of time to command. In more abstract terms, however, it is suggested that the political fallacy of TRIM comprises a kind of category mistake.⁶³ It confuses politics with metapolitics, that is to say one level of consciousness or plane of endeavour with another. Everyday commonsense alone makes obvious the fallacious circularity of argument inherent in TRIM's attempt to defeat the party system. The party system cannot be destroyed by establishing what is in effect a political party to secure that end. The attempt of TRIM, whether successful or not, is in itself a victory for the party system. By its active campaign for tax reform, TRIM failed to act independently enough of substantive policy to take a stand outside the party system. By its continuing institutional structure and commitment towards the administration of government, and especially by its administering, monitoring, and exacting responsibility for pledges, TRIM is little different in principle from any other political party. The moral is clear — the party system is immune to party politics.⁶⁴ This is so unless one is prepared to sacrifice Bentham's touchstone of rationality in politics. It is not logically immune, however, to independently minded individuals who see the elimination of the party system, not as a fit policy for yet another political party, but as a challenge to independent candidates of individual conscience.

60 Bentham, *Book of Fallacies*, supra n 5, Ch. III.

61 *Ibid* at 72-73.

62 See Dias, *Jurisprudence* pp 64-65, and for his temporal approach to jurisprudence in general, *ibid* pp 24-26. See also the previous edition of his same work (pp 20-22, 272) and "Temporal Approach Towards a New Natural Law" [1970] CLJ 75.

63 Ryle, *Concept of Mind*, supra n 47.

64 As the election itself proved for TRIM when it would seem in Bentham's own words ". . . men thought of something else without so much as laughing". The issue is nevertheless still an open one. TRIM is already preparing for the next election in 1984, when its proponents are going to try again.